

ARTICLE 52

CONTENTS

	<i>Paragraphs</i>
Text of Article 52	
Introductory Note	1-4
I. General Survey	5-8
II. Analytical Summary of Practice	9-83
A. The question of the scope of the provisions of Article 52 (1)	9-21
1. In the General Assembly	10-15
a. Decision of 20 December 1961 in connexion with a complaint by Cuba (letter of 8 August 1961)	10-15
2. In the Security Council	16-21
b. Decision of 27 February 1962 in connexion with a complaint by Cuba (letter of 22 February 1962)	16-18
c. Decision of 23 March 1962 in connexion with the letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions	19-21
B. The question of the relation between Article 52 (2) and (3) and Article 52 (4)	22-81
1. In the General Assembly	23-28
a. Decision of 21 April 1961 in connexion with a complaint by Cuba	23-28
2. In the Security Council	29-81
b. Decision of 19 July 1960 in connexion with a complaint by Cuba (letter dated 11 July 1960)	29-36
c. Decision of 9 May 1963 in connexion with the complaint by Haiti	37-41
d. Decision of 10 January 1964 in connexion with the complaint by Panama	42-48
e. Decision of 30 December 1964 in connexion with the situation in the Democratic Republic of the Congo	49-64
f. Decision of 14 May 1965, 22 May 1965 and Statement of the President of the Security Council of 26 July 1965 in connexion with the situation in the Dominican Republic	65-81
C. Retention on the list of matters of which the Security Council has been seized of items which were concurrently dealt with by regional organizations	82-83

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 contains two sets of provisions. Paragraph 1 of the Article establishes 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”. Paragraphs 2 to 4 of the Article define in general terms the relationship of the United Nations, particularly of the Security Council, with regional arrangements or agencies in respect of the pacific settlement of local disputes.

2. Instances of constitutional discussions with regard to the first aspect of this relationship between the United Nations and regional arrangements or agencies are treated under section A of the Analytical Summary and the second aspect of this relationship is dealt with under section B.

3. The General Survey, in addition to outlining the various entries of the two sections of the Analytical Summary, refers briefly to decisions of the Security Council which, while containing no specific reference to Article 52, appear to have some bearing on the provisions of that Article.

4. A new section (C), entitled “Retention on the list of matters of which the Security Council has been seized of items which were concurrently dealt with by regional organizations” has been added to the Analytical Summary of this study.

I. GENERAL SURVEY

5. During the period under review, there were three instances in which constitutional discussions concerned the question of whether or not the activity of a regional organization was consistent with the Principles and Purposes of the Charter and, therefore, in conformity with the provisions of Article 52 (1). Those constitutional discussions, treated in section A of the Analytical Summary,¹ took place both in the General Assembly and in the Security Council; they did not, however, lead to the adoption of a resolution. The Security Council adopted two resolu-

tions in which Article 52, together with certain other Articles of the Charter, was invoked. One of the resolutions also contained a wording reflecting the provisions of Article 52 (3). Constitutional discussions leading to the adoption of these two resolutions are dealt with in section B of the Analytical Summary.²

6. In one instance, the General Assembly adopted a draft resolution in which, *inter alia*, it requested the Secretary-General to invite the Administrative Secretary-General of the Organization of African Unity (OAU) to attend sessions of the General Assembly as

¹ See paras. 9–21 below.

² See paras. 23–30 and 49–64 below.

an observer.³ In submitting the draft resolution, a representative pointed out that, under Article 52, the Security Council, in resolution 199 (1964) of 30 December 1964, recognized the OAU as a regional agency and expressed the conviction that it would "help find a peaceful solution to all the problems and disputes affecting peace and security in the continent of Africa".⁴

7. The extent to which the United Nations should deal, in the light of the provisions of Article 52 (2-4), with disputes and situations involving Member States which were concurrently members of a regional organization was the subject of constitutional discussions in the six instances which are reviewed in section B of the Analytical Summary. In the first instance, the General Assembly adopted a resolution 1616 (XV) exhorting all Member States to take such peaceful action as was open to them to remove existing tension.⁵ In the second instance, the Security Council decided to adjourn the consideration of a question pending the receipt of a report from the regional organization of which the parties were members and invited the other members of the regional organization to lend their assistance towards the achievement of a peaceful solution in accordance with the Purposes and Principles of the Charter.⁶ In the third instance, the Security Council concluded its consideration of the matter with a statement by the President to the effect that most members of the Council considered

³ G A resolution 2011 (XX), of 11 October 1965. In that resolution, the General Assembly also invited the Secretary-General of the United Nations "to explore, in consultation with the appropriate bodies of the Organization of African Unity, the means of promoting co-operation between the two organizations and to report to the General Assembly as appropriate". In pursuance of this part of the resolution, the Secretary-General submitted two reports to the General Assembly at its twentieth and twenty-first sessions, respectively, on the steps that had been taken to encourage co-operation between the United Nations and the OAU (G A (XX), *Annexes*, a. i. 108, A/6174; G A (XXI), a. i. 22, A/6408). At its twenty-first session, the General Assembly adopted resolution 2193 (XXI) in which, after having expressed its satisfaction with the progress achieved in the implementation of the objectives of resolution 2011 (XX), it invited the Secretary-General to continue his efforts "particularly with respect to liaison and technical co-operation between the Secretariat of the United Nations and the Secretariat of the Organization of African Unity, and to report to the General Assembly as appropriate".

⁴ G A (XX), *Plen.*, 1356th mtg.: Upper Volta, para. 8.

⁵ G A resolution 1616 (XV) in connexion with the complaint by Cuba. See paras. 23-28 below.

⁶ S C resolution 144 (1960) in connexion with the complaint by Cuba. See paras. 29-36 below.

it preferable to leave the initiative to the regional organization concerned which was trying to bring about an amicable settlement of the dispute.⁷ In the fourth instance, the Security Council authorized its President to address an appeal to the parties to bring to an immediate end the exchange of fire and the bloodshed occurring in the area concerned.⁸ In the fifth instance, the Security Council adopted a resolution encouraging the regional organization concerned to pursue its efforts to help in the achievement of national reconciliation in accordance with a resolution previously adopted by that organization. Furthermore, it requested the Secretary-General to follow the situation and to report thereon to the Council.⁹ Finally, the Security Council adopted a draft resolution in which it invited the Secretary-General to send, as an urgent measure, a representative to the territory of a Member State involved in a situation of which a regional organization was also seized, for the purpose of reporting to the Security Council on the situation and it invited all concerned to co-operate with the representative of the Secretary-General in the carrying out of his task. Subsequently, the Security Council requested the Secretary-General to continue his task of reporting to the Security Council.¹⁰

8. During the period under review, reference to Article 52 has also been made in connexion with the consideration of the following questions: complaint concerning South Africa,¹¹ the letter of 5 September 1960 from the USSR (action of the Organization of American States (OAS) relating to the Dominican Republic),¹² and the complaint of the Government of Cyprus.¹³ In those instances, references to the Article were, however, incidental and did not lead to a constitutional discussion.

⁷ Decision of 9 May 1963 in connexion with the complaint by Haiti. See paras. 37-41 below.

⁸ Decision of 10 January 1964 in connexion with the complaint by Panama. See paras. 42-48 below.

⁹ S C resolution 199 (1964) in connexion with the situation in the Democratic Republic of the Congo. See paras. 49-64 below.

¹⁰ S C resolution 203 (1965) in connexion with the situation in the Dominican Republic. See paras. 65-81 below.

¹¹ For text of relevant statement, see S C, 15th yr., 853rd mtg.: Ghana, para. 28.

¹² For text of relevant statements, see S C, 15th yr., 893rd mtg.: Argentina, para. 42; Ecuador, para. 62; France, para. 87; 894th mtg.: Ceylon, paras. 7-10; Poland, para. 34.

¹³ For text of relevant statement, see S C, 19th yr., 1103rd mtg.: Cyprus, paras. 76-79.

II. ANALYTICAL SUMMARY OF PRACTICE

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

9. Section A of the Analytical Summary deals with three instances in which the question of the consistency of a regional organization or its activity with the provisions of the Charter was raised. All three instances related to complaints by Cuba: (i) letter of 20 December 1961 to the General Assembly, (ii) letter of 22 February 1962 and (iii) letter of 8 March 1962, both addressed to the Security Council.

1. IN THE GENERAL ASSEMBLY

a. *Decision of 20 December 1961 in connexion with a complaint by Cuba (letter of 8 August 1961)*

10. By a letter dated 8 August 1961¹⁴ addressed to the Secretary-General the representative of Cuba requested inclusion in the agenda of the General Assembly at its sixteenth session of an item which,

¹⁴ G A (XVI), *Annexes*, a. i. 78, A/4832 and Add. 1, p. 1.

after an amendment had been adopted in the General Committee, was entitled "Complaint by Cuba of threats to international peace and security arising from new plans of aggression and acts of intervention being executed by the Government of the United States of America against the Revolutionary Government of Cuba".

11. The First Committee at its 1230th meeting, on 20 December 1961, approved its Chairman's proposal that the agenda item should not be discussed at that time, since the General Assembly had to conclude its work that day. The recommendation was included in the report of the First Committee¹⁵ to the General Assembly. At the 1087th plenary meeting on the same day, the General Assembly took note of the report of the First Committee on the understanding that the item would remain on the agenda of the resumed session.¹⁶

12. At the resumed session, the First Committee considered the matter at its 1231st to 1243rd meetings held between 5 and 15 February 1962. During the debate, the Committee had before it a draft resolution,¹⁷ jointly submitted by Czechoslovakia and Romania, under which the General Assembly would make an urgent appeal to the Government of the United States to put an end to the interference in the internal affairs of the Republic of Cuba and call upon the Governments of Cuba and the United States to settle their differences by peaceful means.

13. In his initial statement, the representative of Cuba contended that the action of the United States Government against Cuba at the Punta del Este meeting was a violation of certain provisions of the charter of the OAS and of the Preamble and Articles 1 (2), 2 (1) and (7) and 52 of the United Nations Charter. In the light of the provisions of those Articles, the representative of Cuba raised a number of questions, including whether it could be considered consistent with the Purposes and Principles of the United Nations for a regional organization to discriminate against a Member State because of its social system.

14. During the discussion, it was emphasized that under Article 52 (1) the activities of regional agencies should be consistent with the Purposes and Principles of the United Nations which were to maintain international peace and security, to develop friendly relations among nations and to achieve international co-operation. Any action taken by the OAS declaring the incompatibility of the Cuban Government system with the inter-American system constituted a serious breach of the United Nations Charter, for in all matters of international life the latter should prevail, as was clear from Article 52. The OAS, it was further maintained, was a regional organization having juridical status under Article 52 of the United Nations Charter; if the aim of the decisions of Punta del Este was to impose sanctions against a member of the OAS, such decisions were contrary to the provisions of Article 52. In that

connexion, attention was drawn to Article 103. No regional organization could therefore adopt sanctions as only the United Nations had that prerogative.

15. On the other hand, it was observed that under the Bogotá charter, the OAS required its members to adopt a specific form of government known as "representative democracy" while the United Nations imposed no specific form of government on its members. Within the OAS, therefore, the adoption by any State of a political régime opposed to representative democracy was tantamount to its voluntary departure or self-exclusion from the inter-American system.¹⁸

Decision

At its 1243rd meeting, on 15 February 1962, the First Committee rejected all the operative paragraphs of the joint draft resolution, following which the Chairman declared that the joint draft resolution was to be considered as rejected.¹⁹ At the 1105th plenary meeting, on 20 February 1962, the General Assembly after hearing a statement by the Chairman of the First Committee that, in the light of the decision of the Committee, he had no recommendation to make, considered a draft resolution²⁰ submitted by Mongolia on 17 February 1962, which read as follows:

"The General Assembly,

"Having considered the report of the First Committee on agenda item 78 (A/5090),

"Recalls that it is a permanent aim of the United Nations to develop friendly relations based on respect for the principle of equal rights and self-determination of peoples and non-interference in the internal affairs of any State."

At the same meeting, after approving a motion for separate votes on the preambular and operative paragraphs and on the phrase "and non-interference in the internal affairs of any State", the General Assembly rejected the draft resolution as a whole by 45 votes to 37, with 18 abstentions.²¹

2. IN THE SECURITY COUNCIL

b. Decision of 27 February 1962 in connexion with a complaint by Cuba (letter of 22 February 1962)²²

16. By a letter dated 22 February 1962²³ addressed to the President of the Security Council, the representative of Cuba requested an urgent meeting of the Council to adopt the measures necessary to

¹⁸ For text of relevant statements, see G A (XVI), 1st Com., 1231st mtg.: Cuba, paras. 14 and 15; United States, para. 31; 1234th mtg.: Brazil, paras. 10 and 15; 1238th mtg.: Ghana, paras. 33 and 34; 1239th mtg.: Mali, para. 10; Poland, para. 7; 1240th mtg.: Ceylon, para. 30; India, para. 16; 1241st mtg.: USSR, para. 10. See also letter from the representative of the USSR, A/5093, p. 4, para. 4 (mimeographed).

¹⁹ G A (XVI), 1st Com., 1243rd mtg., para. 19.

²⁰ G A (XVI), Annexes, a. i. 78, A/L.385/Rev. 1, p. 8.

²¹ G A (XVI), Plen., 1105th mtg., para. 59.

²² See also this *Repertory* under Articles 35 and 53.

²³ S C, 17th yr., Suppl. for Jan.—March, p. 82, S/5080.

¹⁵ *Ibid.*, A/5072, p. 6.

¹⁶ G A (XVI), Plen., 1087th mtg., para. 117.

¹⁷ G A (XVI), 1st Com., A/C.1/L. 309; same text as A/5090, para. 3.

bring to an end the illegal action taken by the Government of the United States which promoted the adoption of enforcement action within and outside the OAS, and thus prevent the development of a situation which endangered international peace and security. Among the articles of the United Nations Charter invoked by the Government of Cuba in making its request were Articles 34, 35 (1) and 52. 17. At the 991st meeting, on 27 February 1962, during the discussion on the adoption of the agenda, it was contended that the OAS, a regional agency under the United Nations Charter, had adopted at Punta del Este decisions that violated both the fundamental principles and the provisions of the United Nations Charter. At Punta del Este it had been decided, among other things, to exclude Cuba from the OAS and to declare an embargo on the foreign trade of that State. Under Article 52 of the Charter, however, the activities of regional agencies had to be consistent with the Purposes and Principles of the United Nations. The Punta del Este decisions completely contradicted such fundamental principles of the United Nations Charter as those set forth in Articles 1 and 2, and violated the provisions of Article 2 (7) which prohibited interference in the domestic affairs of another State.

18. On the other hand, it was maintained that the OAS had always been true to its objectives, which were also the objectives of the United Nations. The OAS was fully competent under Article 52 of the United Nations Charter to deal with regional matters relating to the maintenance of international peace and security.²⁴

Decision

At the same meeting, the provisional agenda was voted upon and was not adopted having failed to obtain the affirmative votes of seven members. There were 4 votes in favour, none against, with 7 abstentions.²⁵

*c. Decision of the Security Council of 23 March 1962 in connexion with the letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions*²⁶

19. By a letter dated 8 March 1962²⁷ addressed to the President of the Security Council, the representative of Cuba asked for an urgent meeting of the Council in order to request an advisory opinion of the International Court of Justice with regard to certain legal questions related to the decisions adopted at the Eighth Meeting of Consultation of the Ministers for Foreign Affairs of the American Republics, held at Punta del Este. Those decisions, it was stated in the letter, violated the United Nations Charter since they resulted in unlawful enforcement action which had been taken against Cuba without

the authorization of the Security Council and which constituted an aggression against its sovereignty and a serious threat to international peace and security. Article 52 was invoked among the provisions of the Charter upon which the Cuban request was based. Among the issues raised were whether the OAS was a regional agency within the meaning of Chapter VIII of the Charter and whether its activities should be consonant with the Purposes and Principles of the United Nations Charter.

20. At its 992nd meeting, on 14 March 1962, the Security Council decided to include the question in its agenda. In his initial statement, the representative of Cuba contended that the decisions adopted at Punta del Este violated the clear provision contained in article 102 of the charter of the OAS according to which the provisions of that article should not be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations. The OAS, as a regional agency, was dependent on the United Nations. In accordance with Article 52 (1), regional agencies and their activities were to be consistent with the Purposes and Principles of the United Nations. Therefore, if a regional agency such as the OAS adopted arrangements or engaged in activities contrary to the principles of the United Nations, according to Article 52, the Security Council was the organ responsible for ensuring that the principles of the Charter should prevail. The fact that the adoption of the Punta del Este resolutions violated fundamental principles of the United Nations Charter made them invalid under Article 52. In support of that view, it was also contended that the unlawful enforcement action that had been undertaken against Cuba was a violation of the United Nations Charter as a whole for, under Article 52, the activities of regional organizations should be subordinated to the principles of the Charter. The measures which had been imposed by the OAS against Cuba and particularly its exclusion from the regional agency were in direct contradiction with the terms of the Charter "to practice tolerance and live together in peace with one another as good neighbors", as well as with the Purposes and Principles contained in Articles 1 (2) and 2 (7). One of the basic obligations of Member States mentioned more than once in the Charter and which related directly to regional agencies was to make every effort to achieve pacific settlement of local disputes, in accordance with Article 52. Those provisions had been violated by the application of sanctions on the regional level. Therefore, those resolutions could not be reconciled with the principles set forth in the United Nations Charter and with the explicit provisions of, among others, Article 52.

21. On the other hand, it was maintained that the OAS was, in the language of Article 52 (1) of the United Nations Charter, a regional organization for the maintenance of international peace and security. Like any other regional agency, the OAS must be entitled to determine who should participate in its proceedings, without being subject to any veto in the Security Council. The Council could not pretend to determine what Governments should

²⁴ For text of relevant statements, see S C, 17th yr., 991st mtg.: China, paras. 90 and 91; Romania, paras. 74-78. See also letter from Cuba dated 2 March 1962, S C, 17th yr., Suppl. Jan.-March, p. 84, S/5083.

²⁵ S C, 17th yr., 991st mtg., para. 144.

²⁶ See also this *Supplement* under Article 53.

²⁷ S C, 17th yr., Suppl. for Jan.-March, p. 88, S/5086.

and should not participate in such a regional agency as the OAS, or the League of Arab States, or some future African or Asian regional agency. It was also contended that the self-exclusion of the Cuban Government from the OAS was not based on its "social system", but on its violations of the charter of the OAS. The Government of Cuba had conducted aggressive and subversive activities against other American States and, in violation of the charter of the OAS, had suppressed the fundamental rights of the individual. One representative also stated that Articles 52 and 53, which were the key provisions of the Charter dealing with the mutual relations of the United Nations, on the one hand, and regional organizations, on the other, should be given a realistic and carefully balanced interpretation. While fully safeguarding the authority of the United Nations and the Charter, regional organizations should, at the same time, be allowed the degree of autonomy and freedom of action they required to be able to function effectively and reach decisions in regard to problems which were of primarily regional concern and, therefore, appropriate for regional action. The proposition that it was a violation of Article 52 for a regional organization to exclude a State from its membership because of the social system adopted by that State was not acceptable since the most elementary right of any regional organization was its right to determine what States should constitute its membership. To deny regional organizations the freedom to exclude from membership Governments or States which appeared to the other members to have ceased to subscribe to the common aims of the membership as a whole, would be to deprive regional organizations of the sense of community of interest and purpose which was the main reason for their existence and would reduce the whole concept of regional organization to nullity.²⁸

Decision

At the 998th meeting, on 23 March 1962, a draft resolution²⁹ submitted by the representative of the USSR, under which the Security Council would request an advisory opinion of the International Court of Justice on several specific legal questions, was voted upon, as amended, and was rejected by 7 votes to 2, with 1 abstention.³⁰ At the same meeting, the President of the Council declared that the consideration of the item had been completed.³¹

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

22. Section B deals with six instances in which the question of the competence of the Security

²⁸ For text of relevant statements, see S C, 17th yr., 992nd mtg.: Cuba paras. 74 and 75; Venezuela, para. 75; 993rd mtg.: USSR, paras. 52-56 and 151; United States, paras. 102-104; 994th mtg.: Chile, paras. 54 and 61; Cuba, para. 9; 995th mtg.: China, para. 23; France, paras. 58-60; 996th mtg.: Ghana, para. 90; Ireland, paras. 56, 61 and 62; Romania, paras. 8, 9 and 12-15; 997th mtg.: Cuba, paras. 46, 48 and 60.

²⁹ S C, 17th yr., Suppl. for Jan.—March, p. 96, S/5095.

³⁰ S C, 17th yr., 998th mtg., para. 158. The representative of Ghana did not participate in the vote.

³¹ *Ibid.*, para. 169.

Council or of the General Assembly to consider matters which were at the same time being considered by a regional organization was raised. They concerned the following questions: (i) complaint by Cuba of 18 October 1960, addressed to the General Assembly; (ii) complaint by Cuba of 11 July 1960; (iii) complaint by Haiti of 5 May 1963; (iv) complaint by Panama of 10 January 1964; (v) situation in the Democratic Republic of the Congo, all addressed to the Security Council.

1. IN THE GENERAL ASSEMBLY

a. Decision of the General Assembly of 21 April 1961 in connexion with a complaint by Cuba

23. By a letter dated 18 October 1960,³² addressed to the President of the Assembly, the representative of Cuba requested inclusion in the agenda of the General Assembly at its fifteenth session of an item entitled "Complaint by the Revolutionary Government of Cuba regarding the various plans of aggression and acts of intervention being executed by the Government of the United States of America against the Republic of Cuba, constituting a manifest violation of its territorial integrity, sovereignty and independence, and a clear threat to international peace and security". The General Assembly decided to include the item in the agenda and referred it to the First Committee for consideration. At the 1154th meeting, on 18 April 1961, the First Committee had before it, *inter alia*, a draft resolution, jointly submitted by Argentina, Chile, Colombia, Honduras, Panama, Uruguay and Venezuela under which, after several amendments had been accepted by the co-sponsors, the General Assembly would (1) exhort those Member States which belonged to the OAS to lend their assistance with a view to achieving a settlement by peaceful means in accordance with the Purposes and Principles of the Charter of the United Nations and of the charter of the OAS, and to report to the United Nations, as soon as possible, the measures they had taken to achieve a peaceful settlement and (2) exhort all Member States to take such peaceful action as was open to them to remove existing tension.

Decision

At the 1161st meeting of the First Committee' the draft resolution was voted upon and adopted by 61 votes to 27, with 10 abstentions.³³

At its 995th plenary meeting, on 21 April 1961, the General Assembly voted on the draft resolution which had been recommended by the First Committee. The two operative paragraphs were voted upon separately. The result of the vote on the first operative paragraph was 56 votes in favour, 32 against, and 8 abstentions. The paragraph was not adopted, having failed to obtain the required two-thirds majority. The second operative paragraph was adopted by 59 votes to 13, with 24 abstentions, and

³² G A (XV), Annexes, a. i. 90, A/4543, p. 1.

³³ G A (XV), 1st Com., 1161st mtg., para. 12.

became the only operative paragraph of resolution 1616 (XV).³⁴

24. In the course of the proceedings in the First Committee, one representative expressed the view that the international dispute revolving around Cuba should be resolved within the framework of the United Nations, in accordance with the various means of pacific settlement set forth in the United Nations Charter. The Cuban problem did not, at that time, constitute a multilateral problem of the Western Hemisphere. That did not mean that it could not be settled by the procedure laid down in the charter of the OAS. The jurisdiction of OAS, however, was not exclusive; nor did it rule out that of the United Nations. Another representative stated that the competence of the United Nations to deal with a situation involving two Member States could not be challenged on the ground that both parties were also members of a regional organization. Once a complaint or situation had been brought before the United Nations, the organ dealing with it had the authority to recommend the means of pacific settlement which it deemed most conducive to a solution in the given circumstances; it was not necessarily compelled to adopt as the only, or even as the initial procedure, the referral of the question to the regional organization. If the idea of the compulsory, exclusive and preliminary competence of the regional organization were upheld, Members of the United Nations which were also members of such organizations would be precluded from having recourse to the variety of pacific settlement procedures specified in the Charter while other Members enjoyed that privilege to the full.

25. One of the co-sponsors of the draft resolution stated that the reference it contained to the OAS was intended to indicate that the sponsors believed that that organ was the most appropriate forum for considering and resolving the issue. There was no intention of claiming any exclusive competence for that organization. It was also stated that the recourse to it was legitimate since the Charter recognized the jurisdiction of regional agencies. In that connexion, it was pointed out that the competence of the American States was clearly recognized in Article 52 of the United Nations Charter, article 20 of the charter of the OAS and article 2 of the Inter-American Treaty of Reciprocal Assistance. It was further observed that the two spheres of competence, that of the United Nations and that of regional agencies, were complementary but that regional agencies being better acquainted with the problems arising in their particular region had a better chance of success in any attempt at conciliation or mediation. Another representative considered that the OAS, to which both contending States belonged, was the agency which, under Article 52 of the United Nations Charter, should consider the dispute before referring it to the Security Council or the General Assembly. The view was also expressed that it was not the intention of the sponsors of the draft resolution to refer the Cuban problem as a whole to the OAS since in the text of the draft resolution the

General Assembly "Exhorts those Member States which belong to the Organization of American States..." and not "Exhorts the Organization of American States...".

26. Objections to the draft resolution were raised on the ground that, since the question had been brought before the General Assembly, it should exercise its competence and that it was the responsibility of all Member States of the United Nations, and not only of the OAS, to demand that an end be put to a situation endangering international peace and security. Those who argued that the only decision open to the General Assembly was to refer the complaint to the OAS overlooked the fact that the OAS was competent to meet at any time to deal with any matter whatsoever. Moreover, it was claimed that under its charter, the OAS could not consider the matter without the consent of the parties concerned.

27. It was further observed that if operative paragraph 1 of the draft resolution was expanded to include the words "and to report to the United Nations General Assembly at its sixteenth session the measures they have taken to achieve a settlement by peaceful means", its text might be acceptable. In the absence of such a provision, however, there could be no assurance that the regional organization in question, which might be dominated by the opinions of certain States, would not take action prejudicial to the interests of the complainant.

28. Another representative maintained that firstly, the member of the OAS in question could have brought his case before that organization, but had preferred to bring it before the United Nations; secondly, the OAS could take any measures without being called upon to do so by the United Nations; thirdly, the sponsors of the draft resolution did not mention anywhere in their text that the OAS would report to the United Nations on the implementation of the provisions of the draft resolution; fourthly, it was essential that any appeal made by a small country to the United Nations, particularly if it was a complaint against a great Power, should be heard instead of being referred to another organization, especially if the appealing country was opposed to such a measure. Furthermore, the appealing country might not belong to any regional organization.³⁵

2. IN THE SECURITY COUNCIL

b. *Decision of 19 July 1960 in connexion with a complaint of Cuba (letter of 11 July 1960)*³⁶

29. By letter dated 11 July 1960,³⁷ the Minister for Foreign Affairs of Cuba requested an urgent

³⁴ G A (XV), Plen. 995th mtg., paras. 363 and 364 respectively.

³⁵ For text of relevant statements, see G A (XV), 1st Com., 1153rd mtg.: Ecuador, paras. 12 and 15; 1154th mtg.: Mexico, para. 14; 1155th mtg.: Argentina, para. 24; 1156th mtg.: Colombia, para. 17; Nepal, para. 11; Uruguay, para. 5; 1158th mtg.: Afghanistan, para. 27; Australia, para. 18; El Salvador, para. 8; Panama, para. 23; Peru, para. 1; 1159th mtg.: Mexico, para. 3; Nigeria, para. 31; Saudi Arabia, para. 43; USSR, para. 12; Venezuela, para. 16; 1161st mtg.: Afghanistan, para. 3.

³⁶ See also this *Supplement* under Articles 34 and 35.

³⁷ S C, 15th yr., Suppl. for July—Sept., p. 9, S/4378.

meeting of the Security Council in order to consider a grave situation, endangering international peace and security, which resulted from the repeated threats and aggressive acts to which Cuba had been subjected by the Government of the United States. The request was based on Articles 52 (4), 24, 34, 35 (1), 36 and 103 of the Charter. At the 874th meeting, on 18 July 1960, the Council included the question in the agenda.³⁸

30. In his initial statement, the representative of Cuba contended that the right of any State which was a Member of the United Nations to have recourse to the Security Council could not be questioned. The regional agencies did not take precedence over the obligations of the Charter. Regional arrangements made under the terms of Article 52 of the Charter entailed rights which were of an optional rather than an exclusive character, and Member States could exercise whichever of those rights they chose. Cuba, therefore, was entirely within its rights in coming before the Security Council, and those who invoked, in particular, Article 52 (2) of the Charter to support the argument that the cases which States members of the OAS bring to the Security Council should be submitted to the OAS ignored paragraph 4 of that Article which stated that it "...in no way impairs the application of Articles 34 and 35". It was thus evident that any American State which was a Member of the United Nations could choose between recourse to the Security Council or recourse to the OAS in the event of a dispute or a situation. Otherwise, one would have to reach the conclusion that the American States, upon forming a regional agency, had renounced their rights under the United Nations Charter. There could, however, be no question that what they had done was to supplement their rights under the Charter with those which they enjoyed under the regional agency. In support of that view, he quoted statements made by the representatives of Ecuador and Uruguay in referring to the case of Guatemala during the general debate at the ninth session of the General Assembly, in September and October 1954.³⁹

31. In his reply, the representative of the United States maintained that under the Inter-American Treaty of Reciprocal Assistance and the charter of the Organization of American States, the American Republics had contracted to resolve their international differences with any other American State first of all through the OAS. Therefore, the proper forum for the discussion of any controversies between the Government of Cuba and the Governments of other American Republics was the OAS. The causes of international tensions in the Caribbean area had been under consideration by the Inter-American Peace Committee since the meeting of Foreign Ministers of the American States in Santiago, Chile, in August 1959. The Council of the OAS was considering the matter and was expected to call for a Foreign Ministers' meeting shortly. In those circumstances, the Council should take no action on the

Cuban complaint, at least until the discussion by the OAS had been completed. It was preferable to resort to the regional organization first and to the United Nations as a place of last resort.⁴⁰

32. At the same meeting, the representatives of Argentina and Ecuador submitted a draft resolution⁴¹ which read as follows:

"*The Security Council,*

"...

"*Taking into account* the provisions of Articles 24, 33, 34, 35, 36, 52 and 103 of the Charter of the United Nations,

"*Taking into account* also articles 20 and 102 of the Charter of the Organization of American States of which both Cuba and the United States of America are members,

"...

"*Noting* that this situation is under consideration by the Organization of American States,

"1. *Decides* to adjourn the consideration of this question pending the receipt of a report from the Organization of American States;

"2. *Invites* the members of the Organization of American States to lend their assistance toward the achievement of a peaceful solution of the present situation in accordance with the purposes and principles of the Charter of the United Nations;"

33. In introducing the draft resolution, the representative of Argentina noted that it had been debated whether a country belonging to the OAS, a regional agency recognized under Article 52 of the Charter of the United Nations, was entitled to bring a dispute with another American State before the United Nations or should first have recourse to the regional machinery. He suggested that the Security Council could agree on the practical proposition that, since the regional organization had already taken cognizance of the matter, it was desirable to await the results of its action and ascertain its point of view. The proposal, contained in operative paragraph 1 of the draft resolution, to adjourn consideration of the question pending receipt of a report from the OAS was not designed to deny the Council's competence in the matter, or even to settle the legal question of which organization should act first. Instead, what was suggested was that the Council should take note that the regional organization was dealing with the question and recognize that, for a better evaluation of the issues, it would be useful if the Council had before it the conclusions of the regional organization. Such preliminary measure, however, could not prevent the Council from making precautionary provisions to ensure that the situation did not deteriorate before the OAS had reported on the question.

34. Another representative also maintained that it was juridically correct and politically advisable to try to solve through regional bodies those disputes which could be dealt with by regional action. This action might be the best remedy for certain problems

³⁸ S C, 15th yr., 874th mtg., preceding para. 1.

³⁹ S C, 15th yr., 874th mtg.; Cuba, paras. 6–11. See also G A (IX), Plen., 481st mtg., paras. 15 and 16; 485th mtg., para. 58.

⁴⁰ S C, 15th yr., 874th mtg.: United States, paras. 97–102.

⁴¹ *Ibid.*, para. 133, S/4392; same text as S/4395, Suppl. for July–Sept. p. 29.

in that their submission to the United Nations might result in complicating them. Since the Inter-American Commission on Methods for the Peaceful Solution of Conflicts was already seized of the matter, the Security Council should be called in only when other avenues, as provided by regional arrangements, had been properly explored. Regional organizations, as recognized in the Charter, in no way detracted from the powers of the Security Council as the organ responsible for the maintenance of international peace and security. However, when there was a case appropriate for regional action, the Council should recommend that course or should at least seek a report from the regional agency concerned before taking any decision itself. Acting in this way, the Council, far from relinquishing its competence, was in fact exercising it. The provisions of the Charter regarding regional agencies and the legal obligations assumed by States establishing them in no way invalidated their rights to appeal to the Council if, in their view, the defence of their right so required or if the situation or dispute was such that, although appropriate for regional action, it might endanger international peace and security. Therefore the Government of Cuba was entitled to submit its case to the Council or a regional agency. Any contrary interpretation would place States members of a regional agency in a position of *capitis diminutio* in the United Nations, which would be legally improper. The purpose of the draft resolution was to utilize the OAS in order to employ the method of negotiation. The Council, however, should reserve for itself final settlement of the matter until such time as the means for a solution through regional arrangements had been explored in accordance with the provisions of Article⁵². That was implicit in operative paragraph 1 of the draft resolution.

35. Objections to the draft resolution were raised on the grounds that it was for the Council to decide the question brought before it by Cuba. The Charter had given it clear directives in that respect and, although Article 52 provided for the use of regional arrangements for dealing with such matters as were appropriate for regional action, paragraph 4 of that Article contained a specific reservation to the effect that such a provision in no way impaired the application of Articles 34 and 35. Moreover, Article 34, together with the provisions of Article 52, meant that the Security Council could consider any case, regardless of other existing machinery, organization or body outside the United Nations, leaving the choice of the appropriate machinery, body or organization to the party directly concerned. It was obvious that the authors of the Charter found it necessary to safeguard the right of all States to seek assistance from the United Nations and its organs in situations which, in their view, might endanger the maintenance of international peace and security. With reference to the proposal that the Council should adjourn consideration of the question pending receipt of a report from the OAS, it was observed that the adoption of that proposal would mean a refusal by the Security Council to fulfil its obligation.⁴²

⁴² For text of relevant statements, see S C, 15th yr., 874th mtg.: President (Ecuador), paras. 154—156; Argentina, paras.

36. The representative of the USSR submitted three amendments⁴³ to the draft resolution. The first two proposals were to delete the sixth preambular paragraph and operative paragraph 1 and the third, to replace in operative paragraph 2 the words "Organization of American States" by "United Nations".

Decisions

The USSR amendments were voted upon as a whole and were rejected by 8 votes to 2, with 1 abstention.⁴⁴ The draft resolution jointly submitted by Argentina and Ecuador was adopted by 9 votes to none, with 2 abstentions, as resolution 144 (1960).⁴⁵

c. Decision of 9 May 1963 in connexion with the complaint by Haiti

37. By a telegram dated 5 May 1963,⁴⁶ addressed to the President of the Security Council, the Minister for Foreign Affairs of the Republic of Haiti requested, in accordance with Articles 34 and 35 (1) of the Charter, an urgent meeting of the Council to consider the situation caused by "the repeated threats of aggression and attempts at interference made by the Dominican Republic".

38. By a *note verbale* dated 6 May 1963,⁴⁷ the Permanent Mission of the Dominican Republic transmitted to the Secretary-General, *inter alia*, the text of a message addressed by the President of the Dominican Republic to the Chairman of the Council of the OAS in which his Government agreed to cooperate with the commission of investigation appointed by that Council, acting as provisional Organ of Consultation, to study the situation on the spot. At its 1035th meeting, on 8 May 1963, the Security Council decided to include the question in its agenda.⁴⁸ In his initial statement, the representative of the Dominican Republic observed that the question raised by the Government of Haiti was being considered by the OAS, the agency which should deal with the matter, and it had already taken steps towards finding a peaceful solution to the problem. After quoting Article 52 (2) and (3) of the United Nations Charter, he further stated that those provisions were simply the application of the principle established in Articles 33 and 36 of the Charter that the settlement of international disputes should preferably be by such peaceful means as were chosen by the parties. Consequently, his Government hoped that the Security Council would decide to suspend its consideration of the matter and to leave it in the hands of the OAS.

39. The representative of Haiti contended that the representative of the Dominican Republic had

134—136; 875th mtg.: Ceylon, paras. 29—32; Italy, paras. 6—10; Poland, paras. 55—58 and 60; United Kingdom, para. 63; 876th mtg.: USSR, paras. 77—85, 92—95 and 105—107.

⁴³ S C, 15th yr., 876th mtg., paras. 105—107.

⁴⁴ *Ibid.*, para. 127.

⁴⁵ *Ibid.*, para. 128.

⁴⁶ S C, 18th yr., Suppl. for April—June, p. 38, S/5302.

⁴⁷ *Ibid.*, p. 40, S/5306.

⁴⁸ S C, 18th yr., 1035th mtg., preceding para. 1.

restricted the scope of Article 52 of the United Nations Charter, since in Article 52 (4) it was clearly stated that that Article in no way impaired the application of Articles 34 and 35 of the Charter. Haiti was therefore within its rights in submitting the case to the Security Council under Articles 34 and 35 of the Charter. The dispute between both countries was of the nature referred to in those Articles since there was danger of a conflagration, which could affect peace in the Continent and in the world. Moreover, although in legal doctrine it was recognized that the concept of a regional agreement assumed the existence of a convention, it was also considered that, in its ideal form, that concept implied the setting up of controls by a higher international authority which ensured that the individual agreements were consistent with the broader arrangements of which they were a constituent part. The Government of Haiti felt confident that its complaint would be duly considered by the Security Council. If, however, the Council should deem it advisable, despite the seriousness of the situation, to await the results of the OAS peace mission, the Government of the Republic of Haiti would have no objection, provided that the Council did not decide against proceeding with consideration of the question and remained ready to take it up again at any time.

40. During the discussion, a number of representatives stated that it was evident that, in compliance with obligations contracted under the relevant regional arrangement, both parties to the dispute had accepted the jurisdiction of the OAS which had already taken all measures so far necessary to bring about a peaceful settlement of the conflict. In such circumstances, the Council could hardly disregard the existence of the regional arrangement. In the case of the OAS charter, its provisions were compatible with the United Nations Charter and corresponded to the provisions of Article 52 (2). It was also provided under Article 52 (4) that the Security Council could, of its own accord or at the request of a Member State, assume jurisdiction in any matter of a regional nature liable to give rise to an international conflict or dispute. Any State member of the OAS was therefore entitled to submit a regional dispute to the Security Council. However, if the Security Council assumed jurisdiction, such action should be taken only when the procedures for the peaceful settlement of the dispute in the regional agency had failed. Consequently, the Council should, under the terms of Article 52 (3), leave the matter within the jurisdiction of the OAS.

41. On the other hand, some representatives maintained that while, under the terms of Article 52 (2), the development of pacific settlement of local disputes through regional agencies should be encouraged, it should not be interpreted to mean that the world organization could relinquish such competence, much less transfer its authority to a regional organization. Under Articles 24, 34, 35, 52 (4) and 103 of the Charter, the Security Council was competent to deal with regional disputes that had been submitted to it for its consideration. It was also observed that the United Nations Charter had definite priority over the charter of the OAS. Regional

organizations should not be a hindrance to the exercise of the rights and the fulfilment of the obligations of the United Nations. Moreover, according to the practice of the Security Council in recent years, the United Nations had repeatedly considered issues arising in the region in which the OAS functioned, whether or not the particular issue was at the time being considered by that organization.⁴⁹

Decision

At the same meeting, the President (France) noted⁵⁰ that most of the members of the Council considered it preferable, at that stage, to leave the initiative to the regional organization which was trying to bring about an amicable settlement of the dispute and that none had any objection to that procedure. He then proposed, and the Council agreed, to adjourn the meeting, on the understanding that the matter it had considered would remain on its agenda.

d. Decision of 10 January 1964 in connexion with the complaint by Panama

42. In a letter dated 10 January 1964,⁵¹ the representative of Panama requested the President of the Security Council, in accordance with Articles 34 and 35 (1) of the Charter, to convene an early meeting in order that the Council might consider "urgent matters connected with the grave situation that exists between Panama and the United States of America because of the Canal enclave" in Panamanian territory. The situation with which Panama was confronted had been brought about by the "repeated threats and acts of aggression committed by the Government of the United States" in Panama, which infringed its territorial sovereignty, violated its territorial integrity and constituted in practice "a serious danger to peace and international security".

43. At its 1086th meeting, on 10 January 1964, the Security Council decided to include the question in its agenda.⁵² The representative of Panama stated that Panama was the victim of an unprovoked armed attack committed by the armed forces of the United States stationed in the Panama Canal Zone. After giving a detailed account of the situation and of the claims of Panama concerning the Canal Zone, he requested the intervention of the Security Council to restore peace and tranquillity in the Canal Zone and to find a lasting solution to the question.

44. In his reply, the representative of the United States, after noting that the Inter-American Peace Committee of the OAS had unanimously agreed,

⁴⁹ For text of relevant statements, see S C, 18th yr., 1035th mtg.: Dominican Republic, paras. 49–53; 1036th mtg.: President (France), paras. 147 and 148; Brazil, paras. 48 and 53; China, para. 129; Ghana, paras. 55 and 71; Haiti, paras. 17–19; Morocco, para. 132; Norway, paras. 114–116; Philippines, paras. 120 and 123; USSR, paras. 76–80; United Kingdom, para. 141; United States, para. 104; Venezuela, paras. 34 and 39–42.

⁵⁰ S C, 18th yr., 1036th mtg., paras. 150 and 151.

⁵¹ S C, 19th yr., Suppl. for Jan.—March, p. 18, S/5509.

⁵² S C, 19th yr., 1086th mtg., para. 19.

pursuant to the request of both Governments, to go to Panama to ascertain the facts, denied the allegations of aggression by the United States and stated that the United Nations Charter, both in Article 33 and in Article 52, provided for pacific settlement of local disputes through regional agencies, as did the charter of the OAS in its article 20. Without derogating from the responsibilities of the Council, local disputes could most effectively be dealt with through regional procedures.

45. The representative of Brazil, while welcoming the news that a fact-finding mission of the OAS had been or was about to be dispatched to the area, expressed the opinion that the Security Council should also become seized of the matter and adopt certain measures of an emergency nature which might be applicable to the case at issue. In so doing, the Council would not be impinging upon the provisions of the charter of the OAS. On the contrary, it would be strengthening whatever decisions the regional organization might eventually take. For those reasons, he suggested that the President of the Council be authorized to address an appeal to the parties concerned to bring to an immediate end the exchange of fire and the bloodshed occurring in the area.

46. Another representative called attention to the fact that the United Nations Charter placed on the parties the obligation to seek a peaceful solution by the means specifically set out in Article 33 (1), including "resort to regional agencies or arrangements, or other peaceful means of their own choice". Under Article 36 (2), the Council was enjoined to take into consideration "any procedures... which have already been adopted by the parties". Therefore, the OAS was clearly acting within the ambit of Articles 36 (2) and 52 (2) of the United Nations Charter, and it was certainly in accordance with the provisions of those Articles that every effort should be made by the parties to reach a solution to their differences through the OAS.

47. A number of representatives, while agreeing that a regional agency could give a substantial assistance to the Security Council, supported the proposal of the representative of Brazil since it registered the importance that the Security Council attached to a peaceful solution of the problem, while leaving the way open for the regional organization to take action which might provide the Council with the necessary assistance for its handling of the problem.

48. The representative of Panama stated that, there was nothing in the proposal by the representative of Brazil which was incompatible with the action already taken by the OAS. The United States representative also welcomed the proposal by the representative of Brazil.⁵³

Decision

At the end of the discussion, the President (Bo-

⁵³ For text of relevant statements, see S C, 19th yr., 1086th mtg.: Brazil, paras. 57-59; China, paras. 96 and 97; Ivory Coast, para. 91; Morocco, para. 84; Panama, paras. 21-36 and 86; United Kingdom, paras. 74 and 75; United States, paras. 42, 43, 51 and 92.

livia) noted that a number of Council members had supported the proposal of the representative of Brazil. There being no objection, he declared the proposal as adopted. He also stated that the question would remain on the agenda of the Council.⁵⁴

e. Decision of 30 December 1964 in connexion with the situation in the Democratic Republic of the Congo

49. By a letter⁵⁵ dated 1 December 1964 addressed to the President of the Security Council, the representatives of Afghanistan, Algeria, Burundi, Cambodia, Central African Republic, Congo (Brazzaville), Dahomey, Ethiopia, Ghana, Guinea, Indonesia, Kenya, Malawi, Mali, Mauritania, Somalia, Sudan, Uganda, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia requested the convening of the Security Council to consider the situation in the Democratic Republic of the Congo, which they thought might endanger the maintenance of international peace and security. In the explanatory memorandum, they indicated that the Organization of African Unity (OAU), established in conformity with Article 52 of the United Nations Charter, had created an *ad hoc* Commission to try to achieve the objectives set out in a resolution adopted by the OAU in regard to the situation in the Democratic Republic of the Congo. In the resolution, the OAU had called for a number of measures and requested that all those who were fighting should cease hostilities so as to seek, with the help of the OAU, a solution that would make possible national reconciliation and the restoration of order in the Congo.

50. By that resolution, the OAU had also decided that the *ad hoc* Commission would visit the Democratic Republic of the Congo, the Republic of the Congo (Brazzaville) and the Kingdom of Burundi with a view to (a) helping and encouraging the efforts of the Government of the Democratic Republic of the Congo in the restoration of national reconciliation and (b) seeking to bring about normal relations between the Democratic Republic of the Congo and its neighbours, especially the Kingdom of Burundi and the Republic of the Congo (Brazzaville).

51. The memorandum noted that the OAU could have succeeded in achieving the objectives set out in the above-mentioned resolution, if there had been no foreign intervention. The *ad hoc* Commission, it was added, had held a number of meetings with the Government of the Democratic Republic of the Congo and with the authorities in Stanleyville and had kept all interested parties, particularly the Governments of the United States and Belgium, informed of all developments. Nevertheless, "in complete defiance of Article 52 of the Charter of the United Nations and as a deliberate affront to the authority of the Organization of African Unity, the Governments of Belgium and the United States, with the concurrence of the United Kingdom Gov-

⁵⁴ S C, 19th yr., 1086th mtg., paras. 104, 105 and 108.

⁵⁵ S C, 19th yr., Suppl. for Oct.-Dec., p. 198, S/6076 and Add. 1-5.

vernment, launched military operations in Stanleyville and in other parts of the Congo".

52. By a letter⁵⁶ dated 9 December 1964, addressed to the Secretary-General, the representative of the Democratic Republic of the Congo transmitted a communication from the Prime Minister and Minister for Foreign Affairs of the Democratic Republic of the Congo to the President of the Security Council asking for the convening of the Council to consider the problem of "foreign interference in the domestic affairs of the Congo". In that communication, it was observed that, in violation of the provisions of the United Nations Charter and of the Security Council resolution of 22 July 1960 which requested all States to refrain from any action which might tend to impede the restoration of law in the Congo and undermine the territorial integrity and the political independence of the Republic of the Congo, certain States had assisted rebel groups in the eastern part of the Congo. It was then indicated that the Governments of Algeria, Ghana, Sudan and the United Arab Republic had directly or indirectly furnished aid to the rebels in the Congo. Moreover, the Government of the Congo had also discovered in its territory arms and ammunition of Chinese manufacture, and it was disturbed by press reports to the effect that the USSR was prepared to supply arms to the Congolese rebels and help pay for the shipment of those arms by air, which was to be carried out by the United Arab Republic and Algeria.

53. At the 1170th meeting, on 9 December 1964, the Council included in its agenda the letter from the representatives of the twenty-two Member States without objection, and the letter from the representative of the Democratic Republic of the Congo by 7 votes to 4.⁵⁷

54. In the course of the debate, the representatives of the Ivory Coast and Morocco submitted a draft resolution⁵⁸ which read as follows:

"The Security Council,

"...

"Convinced that the Organization of African Unity should be able, in the context of Article 52 of the Charter of the United Nations, to help find a peaceful solution to all the problems and disputes affecting peace and security in the continent of Africa,

"Having in mind the efforts of the Organization of African Unity to help the Government of the Democratic Republic of the Congo and the other political factions in the Congo to find a peaceful solution to their dispute,

"1. Requests all States to refrain or desist from intervening in the domestic affairs of the Congo;

"2. Appeals for a cease-fire in the Congo in accordance with the Organization of African Unity's resolution dated 10 September 1964;

"3. Considers, in accordance with that same re-

solution, that the mercenaries should as a matter of urgency be withdrawn from the Congo;

"4. Encourages the Organization of African Unity to pursue its efforts to help the Government of the Democratic Republic of the Congo to achieve national reconciliation in accordance with the above-mentioned resolution of the Organization of African Unity;

"5. Requests all States to assist the Organization of African Unity in the attainment of this objective;

"6. Requests the Secretary-General of the United Nations to follow⁵⁹ the implementation of the present resolution, to follow the situation in the Congo, and to report to the Security Council at the appropriate time."

55. In introducing the draft resolution, the sponsors observed, among other things, that the Security Council must use all the means provided by the Charter to secure a peaceful settlement of the problem and that regional agencies were one of the means provided for in Article 52 of the Charter. Since the parties concerned had already laid the matter before the OAU, the Security Council should encourage the OAU to continue its efforts within the framework accepted by the parties mainly concerned. That was the purpose of operative paragraph 4 of the draft resolution.

56. It was also noted that the intention of the sponsors had been that the Congolese problem should be solved within the framework of the efforts which the OAU had made and intended to make to solve the problem. In that connexion, it was necessary to take into consideration the resolution adopted by the OAU on 10 September 1964. Operative paragraphs 2 and 3 of the draft resolution were phrased with that objective in mind.

57. With respect to operative paragraph 6, it was pointed out that a situation as serious as that prevailing in the Congo and which materially affected the maintenance of international peace and tranquillity, should be kept under review by the Secretary-General who should report to the Security Council when he deemed it necessary. Furthermore, it was argued on behalf of the sponsors that, since the question of the Congo was brought to the Security Council after it had been dealt with by the OAU in the first instance, it would be appropriate for the Security Council to take decisions thereon and to ask the Secretary-General to provide it with information on the implementation of those decisions.

58. On the other hand, it was observed that, in dealing with the situation in the Congo, it might not be absolutely necessary to bring the United Nations into the picture again, particularly since the United Nations had had to withdraw from that country as a result of the various difficulties it had encountered. The OAU had had the Congolese problem "under advisement" at the time of the intervention and had established an *ad hoc* Commission whose task was to create conditions for a na-

⁵⁶ S C, 19th yr., Suppl. for Oct.—Dec., p. 217, S/6096.

⁵⁷ S C, 19th yr., 1170th mtg., paras. 62 and 63.

⁵⁸ *Ibid.*, 1186th mtg., para. 9.

⁵⁹ The word "follow" is used in the corrected English version to correspond with the French word "suivre", first rendered as "watch over". See *ibid.*, paras. 9 and 66.

tional reconciliation in the Congo. Operative paragraph 6 of the draft resolution, it was contended, did not meet the requirements of Member States that had brought the Congo situation to the Security Council, as all the speakers had recognized the competence of the OAU to seek a solution to the problem. As worded, that paragraph seemed to reveal "a tendency to cast doubt on the competence of the OAU".⁶⁰

59. At the 1187th meeting, an amendment⁶¹ was submitted by Algeria, Burundi, Central African Republic, Congo (Brazzaville), Dahomey, Ethiopia, Ghana, Guinea, Kenya, Malawi, Mali, Mauritania, Somalia, Sudan, Uganda, United Arab Republic, United Republic of Tanzania and Zambia to replace the text of operative paragraph 6 of the resolution submitted by the Ivory Coast and Morocco. The eighteen-Power amendment read as follow:

"Requests the Organization of African Unity, in accordance with Article 54 of the United Nations Charter, to keep the Security Council fully informed of any action it may take under the present resolution."

60. Following a statement by the representative of Guinea who introduced the amendment, there was some constitutional discussion revolving around the significance of the proposed amendment, in terms of its bearing upon Article 54 and the competence of the OAU to deal with the matter at hand.⁶²

61. At the 1188th meeting, it was announced by the sponsors of the draft resolution that, as there was no contradiction between the text of the draft resolution and the eighteen-Power amendment, they would accept the amendment. They proposed, however, to incorporate the text of that amendment, not as a replacement for paragraph 6, but as an additional paragraph. The new paragraph would precede paragraph 6 which would then be renumbered paragraph 7.⁶³

62. At the same meeting, the representative of Guinea, speaking on behalf of the sponsors of the amendment, said that they would accept that suggestion if the words "to follow the implementation of the present resolution" were deleted from operative paragraph 7 of the draft resolution.⁶⁴

63. At the 1189th meeting, the sponsors of the two-Power draft resolution, having expressed certain reservations, submitted a revised text of operative paragraph 7. It reflected the suggestion made by the representative of Guinea and read as follows:

"...
Requests the Secretary-General of the United Nations to follow the situation in the Congo, and

⁶⁰ For text of relevant statements, see S C, 19th yr., 1186th mtg.: Guinea, paras. 45-47; Ivory Coast, paras. 13 and 59; Morocco, paras. 25, 28, 30, 32, 33, 36 and 65; 1187th mtg.: Guinea, paras. 5, 12, 59 and 60; Ivory Coast, paras. 66 and 67; Morocco, paras. 45, 47, 48, 50 and 54.

⁶¹ S C, 19th yr., 1187th mtg., para. 12.

⁶² For constitutional discussions bearing upon Article 54, see this *Supplement* under that Article.

⁶³ For text of relevant statements, see S C, 19th yr., 1188th mtg.: Ivory Coast, paras. 25-28, Morocco, paras. 21 and 22.

⁶⁴ *Ibid.*, para. 45.

to report to the Security Council at the appropriate time."

64. At the same meeting, the representative of the USSR stated that he would not press for a separate vote on the eighteen-Power amendment which he had requested earlier⁶⁵ since that amendment had been incorporated *in toto* in the revised draft resolution.

Decisions

At the request of the representative of France, the Council voted separately on the first operative paragraph of the draft resolution, which it *adopted* unanimously.⁶⁶ The draft resolution as a whole, as amended, was then adopted⁶⁷ as resolution 199 (1964) of 30 December 1964 by 10 votes to none, with 1 abstention.

f. Decisions of 14 May 1965 and 22 May 1965 and statement of the President of the Security Council of 26 July 1965 in connexion with the situation in the Dominican Republic⁶⁸

65. By letter dated 1 May 1965,⁶⁹ the representative of the USSR requested the President of the Security Council to convene an urgent meeting of the Council "to consider the question of the armed interference by the United States in the internal affairs of the Dominican Republic".

66. At its 1196th meeting on 3 May 1965, the Security Council decided to include the question in its agenda.⁷⁰

67. In his initial statement, the representative of the USSR stated that, under the pretext of protecting American lives, the United States Government had launched an armed intervention landing 14,000 United States troops on the territory of the Dominican Republic. Moreover, in taking that military action without ascertaining beforehand the view of the members of the OAS, the United States had put before it a *fait accompli*. The aggression thus committed by the United States against the Dominican Republic was fraught with the most serious consequences for the maintenance of international peace and security. In a subsequent statement, the representative of the USSR observed that, while the United Nations Charter did not preclude the existence of regional arrangements or agencies for dealing with matters relating to the maintenance of international peace and security, Article 52 of the Charter was governed by the principle that, in order to ensure prompt and effective action, the Members of the United Nations had conferred on the Council, and not on any other body, primary responsibility for the maintenance of international peace and security. The situation in the Dominican Republic was too

⁶⁵ S C, 19th yr., 1188th mtg., para. 13, and 1189th mtg., para. 28.

⁶⁶ S C, 19th yr., 1189th mtg., para. 30.

⁶⁷ *Ibid.*, para. 34.

⁶⁸ See also this *Supplement* under Article 53.

⁶⁹ S C, 20th yr., Suppl. for April-June, p. 70, S/6316.

⁷⁰ S C, 20th yr., 1196th mtg., preceding para. 1.

serious for the Council to ignore. It was necessary in the circumstances for the Council to react quickly and effectively and to take decisive measures.

68. The representative of the United States, in his statement, drew attention to the provision of Article 33 of the United Nations Charter under which first efforts at peaceful settlement might include "resort to regional agencies or arrangements". That provision did not derogate from the authority of the Security Council. In the light of the actions already taken by the OAS, it would be constructive and in keeping with the precedents established by the Council to permit the regional organization to continue to deal with the regional problem concerning the Dominican Republic. The action taken by the OAS was fully within the scope of the authority of regional organizations to deal with the maintenance of peace and security within their jurisdiction, as provided for in Article 52 of the Charter.

69. In the course of the discussion, one representative said that his delegation had no doubts as to the competence of the Security Council to examine any dispute or situation the continuance of which might threaten the maintenance of peace and international security, even if the dispute was at the time under consideration by a regional body. Such an authority was clearly conferred on the Council by the provisions of Articles 52 (4), 34 and 35 of the Charter, and was even more appropriate when the situation involved appeared *prima facie* to contravene international law and, in particular, Article 2 (4) and (7) of the United Nations Charter. He reaffirmed the view expressed by his delegation in the General Assembly in September 1954⁷¹ that the principles of the regional system and the safeguards which it offered could not be invoked in order to prevent States from having direct and immediate access to the jurisdiction of the United Nations or to deprive them, even temporarily, of the protection of its agencies. The legal protection offered by both systems should be combined, never substituted for one another. Another representative, referring to Article 34, stated that there was no legal basis for attempts to deny the Security Council competence to investigate situations such as that in the Dominican Republic or to make its action contingent upon decisions of a regional agency. Although it was provided in Article 52 that none of the provisions of the Charter precluded the existence of regional agencies, it was nowhere acknowledged that they had primary or sole responsibility for dealing with threats to international peace and security which might arise in the area concerned. On the contrary, Article 52 (4) provided that that Article in no way impaired the application of Articles 34 and 35. The fact that a regional agency had under consideration a situation or a dispute in no way restricted the powers of the Security Council under Article 24. That article defined the Council as the organ having primary responsibility for the maintenance of international peace and security which acted on behalf of all Member States whether or not they were members of regional agencies or were directly involved in the situation in question-in carrying out

its duties under that responsibility. It was also emphasized that the authority and effectiveness of the Council action should be upheld. Whatever measures were taken by the regional organization was a question which belonged to the OAS separately and independently. It had nothing to do with the work of the Security Council and it could not affect the responsibilities of the Council members with which rested the task of maintaining international peace and security.

70. On the other hand, it was contended that in adopting the course they did, the members of the OAS had acted in accordance with the aims and the principles of their own organization and with the provisions of Articles 33, 36 (2) and 52 (2) of the Charter of the United Nations. They had furthermore requested the Secretary General of the OAS to report to the Security Council under the provisions of Article 54. The Council would, therefore, best serve the cause of peace in the Dominican Republic if its members would support the action taken by the OAS to find a peaceful settlement. However, as was evident from Article 52 (4), there was no denial of the competence of the Security Council to take cognizance of such a dispute and to make, if necessary, recommendations in respect thereof. The meaning of the Charter was that the Council was fully competent to consider all disputes which might endanger international peace and security. Nevertheless, a solution of such a dispute should, in the first place as the Charter provided, be sought through resort to a regional organization whenever such an organization existed. In compliance with Article 52 (3), the Council should encourage the settlement of local disputes through regional arrangements, which meant in the Dominican case through the OAS. In the meantime, the Council should keep the matter on its agenda and could discuss it again if the efforts of OAS failed to bring about a satisfactory solution.

71. At the 1204th meeting, on 11 May 1965, the representative of Uruguay introduced a draft resolution⁷² whereby, after taking note of several communications of the OAS and having regard to Articles 24, 34 and 35 and "the relevant provisions of Chapter VII" of the United Nations Charter, as well as the relevant provisions of the charter of the OAS, the Security Council would, *inter alia*, invite the Secretary-General to follow closely the events in the Dominican Republic, and to take such measures as he might deem appropriate for the purpose of reporting to the Council on all aspects of the situation; invite the OAS to keep the Council promptly and fully informed of the action taken with respect to that situation and to co-operate with the Secretary-General of the United Nations in the implementation of the resolution. It was stated in that connexion that the third preambular paragraph of the draft resolution evoked those Articles of the Charter on which the Security Council must base its competence. The concern of the sponsor of the draft resolution, it was pointed out, was to affirm what was the Council's competence without determining, discussing, considering or questioning the competence of regional agencies. Reference to

⁷¹ G A (IX), Plen., 481st, mtg., paras 16 and 17.

⁷² S C, 20th yr., 1204th mtg., paras. 3 and 4.

Articles 33 and 52 (2), which some representatives had wished to be made in the draft resolution, was not necessary. It would be inappropriate to mention those Articles, not only because the Council was confronted with a situation and not a dispute, but also because the temporary priority which those Articles accorded to a regional machinery related solely to "the type of international dispute amenable to conciliation and pacific settlement", and not to situations like the one under consideration, where charges of aggression had been made. It was further explained than while the primary responsibility rested with organs of the United Nations, it had been considered preferable not to mention it in the resolution; in a spirit of compromise, general reference in the draft resolution was made only to Chapter VIII, without mentioning any particular provision of that Chapter that might give rise to a difference of views.

72. The Uruguayan draft resolution was opposed on the grounds that it sought to interpose the Security Council into the Dominican situation at a time when the regional organization seemed to be dealing with it effectively. The adoption of such a draft resolution would tend to complicate the activities of the OAS by encouraging concurrent and independent considerations and activities by the Security Council. Thus the Council would not be encouraging peaceful settlement of local disputes by the regional arrangements as it was supposed to do under the provisions of the United Nations Charter. Should a resolution be adopted in order to manifest the admitted competence of the Security Council, its text should not contain any inferences that the Council was not encouraging the regional organization.

73. On 13 May 1965, the representative of the USSR submitted several amendments⁷³ to the draft resolution of Uruguay, one of which provided for the deletion of references to the reports of the OAS.

74. At the 1208th meeting, on 14 May 1965, after the president had read a telegram reporting that new hostilities had started in the Dominican Republic, the representative of Jordan introduced a draft resolution⁷⁴ jointly submitted with the delegations of the Ivory Coast and Malaysia. He stated that it was designed to enable the Council to obtain a clear report from the appropriate organs of the United Nations on the situation in the Dominican Republic. Under the terms of the draft resolution, the Council would (1) call for a strict cease-fire; (2) invite the Secretary-General to send, as an urgent measure, a representative to the Dominican Republic for the purpose of reporting to the Security Council on the current situation and (3) call upon all concerned in the Dominican Republic to co-operate with the representative of the Secretary-General in the carrying-out of this task.⁷⁵

⁷³ S C, 20th yr., S/6352 (mimeographed).

⁷⁴ S C, 20th yr., 1208th mtg., para. 6.

⁷⁵ For text of relevant statements, see S C, 20th yr., 1196th mtg.: USSR paras. 13–30, 51, 52, 206 and 210; United States, paras. 87 and 88; 1198th mtg.: Cuba, paras. 65–67 and 72; USSR, para. 146; United Kingdom, paras. 59–61; Uruguay, paras. 23 and 24; 1203rd mtg.: Netherlands, paras. 9, 10, 16 and 17; 1204th mtg.: United States, paras. 91, 93 and 96; 1208th mtg.: Jordan, para. 6.

Decision

At the same meeting, the Council unanimously adopted as its resolution 203 (1965)⁷⁶ the joint draft resolution.

75. At the 1214th meeting, on 21 May 1965, the representative of the United States introduced a draft resolution⁷⁷ under which the Council, taking note of the reports of the OAS would, in operative paragraph 4, urge the regional organization to intensify its efforts to establish the basis for the functioning of democratic institutions in the Dominican Republic and in particular to assure observance of the cease-fire agreed upon in the Act of Santo Domingo and in operative paragraph 5, request the representative appointed by the Secretary-General, in carrying out the responsibilities assigned to him by the Security Council, to co-ordinate with the Secretary General of the OAS in the light of the OAS resolution of 20 May 1965. In introducing the draft resolution, the representative of the United States stated that the Council should encourage the OAS, the competent regional organization, to achieve the objective of a peaceful settlement in accordance with the United Nations Charter.

76. At the same meeting, the representative of Uruguay introduced a revised text⁷⁸ of his draft resolution submitted on 11 May 1965, adapting it to the circumstances following the adopting by the Council of resolution 203 of 14 May 1965.

Decision

At the 1216th meeting, on 22 May 1965, the representative of the USSR submitted⁷⁹ a revised text of the amendments to the Uruguayan revised draft resolution. At the same meeting, the six USSR revised amendments were rejected in separate votes.⁸⁰ The revised draft resolution of Uruguay was voted upon and the result of the vote was 5 in favour, 1 against, with 5 abstentions. The draft resolution was not adopted,⁸¹ having failed to obtain the affirmative votes of seven members.

77. At the same meeting, the representative of the United States further observed⁸² that the constitutional issue before the Council centred on the recognition by the Council of its relationship with the OAS which was a regional organization speci-

⁷⁶ S C, 20th yr., 1208th mtg., para. 8. By a communication dated 19 May 1965, the Assistant Secretary General of the OAS transmitted to the Secretary-General of the United Nations the second report of the Special Committee of the Tenth Meeting of Consultation of Ministers of Foreign Affairs of the American Republic in which the Committee requested the Security Council to suspend all actions until the regional procedures had been exhausted as established in Article 52 (2) of the United Nations Charter. S C, 20th yr., Suppl. for April–June, pp. 160 and 163, S/6370 and Add. 1 and 2.

⁷⁷ S C 20th yr., 1214th mtg., para. 24.

⁷⁸ *Ibid.*, paras. 50–60.

⁷⁹ *Ibid.*, 1216th mtg., para. 40.

⁸⁰ S C, 20th yr., 1216th mtg., paras. 43–50.

⁸¹ *Ibid.*, para. 69.

⁸² *Ibid.*, para. 99.

fically provided for in the United Nations Charter. The Council should not, by its action, permit that relationship to be disturbed.

78. At the 1218th meeting, on 24 May 1965, the representative of the United States withdrew⁸³ his draft resolution.

79. At the 1220th meeting, on 3 June 1965, upon the proposal of the representative of Bolivia, the President (Netherlands) read out a letter⁸⁴ addressed to him by the representatives of Argentina, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay and Peru in which it was suggested that, in accordance with Article 52 (3) of the Charter, every effort should be made to encourage action by regional agencies for the pacific settlement of local disputes and that co-ordination of the action of the United Nations and of the OAS was an appropriate procedure for the maintenance of peace and security.

80. At the 1221st meeting, on 7 June 1965, the representative of Cuba, in objecting to the letter submitted by thirteen Latin American representatives, noted⁸⁵ that, while Article 52 (3) had been invoked and emphasized, no mention had been made of Article 52 (4) which affirmed the jurisdiction of the Security Council in connexion with its responsibility for the maintenance of international peace and security, and stressed the right of any Member of the United Nations to raise before the Security Council any situation such as the Dominican situation.

81. At the 1222nd meeting, on 9 June 1965, the representative of the United States, referring to the letter of thirteen Latin American representatives, maintained that there was no provision in the Charter requiring that only the Security Council could act when threats to peace occurred. After quoting Article 33 (1), the representative further stated that the mission of the OAS was not competitive with, but complementary to, that of the United Nations. Such a relationship was explicitly foreseen in Article 52, in which it was provided that, before referring local disputes to the Security Council, the Members of the United Nations which were members of a regional organization must make every effort to settle them peacefully through the regional arrangements. Within the terms of Article 52, the American States through the OAS had banded together to protect the Western Hemisphere against aggression and subversion. Therefore, there was no question of the competence or the jurisdiction of the OAS to deal with the crisis in the Dominican Republic, as long as its actions were consistent with the Charter. Article 4 of the charter of the OAS made clear the basic purpose and approach of the OAS to the settlement of regional problems, as well as its integral relationship to the United Nations itself, indicating how the OAS charter tied into Article 52 of the United Nations Charter⁸⁶.

⁸³ S C, 20th yr., 1218th mtg., para. 21.

⁸⁴ *Ibid.*, 1220th mtg., paras. 119 and 120.

⁸⁵ *Ibid.*, 1221st mtg., para. 95.

⁸⁶ *Ibid.*, 1222nd mtg.: United States, paras. 19-24.

Decision

At the 1233rd meeting on 26 July 1965, the President (USSR) stated that, after consultations had been held among members of the Security Council, he had been authorized to summarize the discussion held in the past few meetings of the Council on the situation in the Dominican Republic. In his statement⁸⁷ the President declared that it had become apparent that the members of the Council considered it necessary that the Council should continue to watch closely the situation in the Dominican Republic and that therefore the Secretary-General, in accordance with the previous decisions of the Council, should continue to submit reports to the Council on the situation in the Dominican Republic.

C. Retention on the list of matters of which the Security Council has been seized of items which were concurrently dealt with by regional organizations

82. During the period under review the concern of the Security Council with the pacific settlement of questions that were concurrently being dealt with by regional organizations, was also reflected in the retention of those questions on the list of matters of which the Security Council was seized.

83. Those questions were set out in the notification of the Secretary-General to the General Assembly of 19 September 1966⁸⁸, listing matters relative to the maintenance of international peace and security which were being dealt with by the Security Council. Included among the listed agenda items were (i) the complaint by Cuba of 11 July 1960;⁸⁹ (ii) the complaint by Cuba of 31 December 1960;⁹⁰ (iii) the complaint by Cuba of 21 November 1961;⁹¹ (iv) the complaint by Haiti (telegram dated 5 May 1963);⁹² (v) the complaint by Panama (letter dated 10 January 1964);⁹³ (vi) the situation in the Dominican Republic,⁹⁴ all of which during the period under review were being considered by the

⁸⁷ *Ibid.*, 1233rd mtg., para. 2.

⁸⁸ G A (XXI), Annexes, a. i. 7, A/6423.

⁸⁹ The question appeared as listed in the agenda of the Security Council: "Letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba addressed to the President of the Security Council".

⁹⁰ The agenda item was entitled: "Letter dated 31 December 1960 addressed to the President of the Security Council by the Minister for External Affairs of Cuba".

⁹¹ The agenda item was entitled "Letter dated 21 November 1961 from the representative of Cuba addressed to the Security Council".

⁹² The agenda item was entitled "Telegram dated 5 May 1963 from the Minister for Foreign Affairs of the Republic of Haiti to the President of the Security Council".

⁹³ The agenda item was entitled "Letter dated 10 January 1964 from the representative of Panama to the President of the Security Council".

⁹⁴ The agenda item was entitled "Letter dated 1 May 1965 from the representative of the Union of Soviet Socialist Republics addressed to the President of the Security Council".

OAS; and (vii) the situation in the Democratic Republic of the Congo,⁹⁵ which was considered by the OAU.

⁹⁵ The agenda item entitled was "Questions relating to the

Democratic Republic of the Congo: letter dated 1 December 1964 addressed to the President of the Security Council by the representative of twenty-two Member States; letter dated 9 December 1964 from the representative of the Democratic Republic of the Congo addressed to the President of the Security Council".