

**Chapter X**

**CONSIDERATION OF THE PROVISIONS OF CHAPTER VI OF THE CHARTER**

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## INTRODUCTORY NOTE

As in the previous volumes of the *Repertoire*, the criterion for inclusion of material in the present chapter is the occurrence of discussion in the Council referred to the text of Articles 22-28 or Chapter VI of the Charter. Thus, chapter X does not cover all the activities of the Council in the pacific settlement of disputes, for the issues presented by the provisions of the Council in this field have dealt almost exclusively with the actual issues before the Council and the relative merits of measures proposed without discussion regarding the juridical problem of their relation to the provisions of the Charter. For a guide

adopted by the Security Council.<sup>1</sup>

of the material relevant to the examination of the operation of the Council under Chapter VI of the Charter, since the procedures of the Council reviewed in chapters I-VI, where they relate to the considera-

regarded as integral to the application of Chapter VI of the Charter, Chapter X is limited to presenting the

of the relation of its proceedings or of measures proposed to the text of Chapter VI.

The case histories on each question require to be examined within the context of the chain of proceedings on the question presented in chapter VIII.

"1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

### "Article 34

dispute, or any situation which might lead to inter-

or situation is likely to endanger the maintenance of international peace and security.

<sup>1</sup> Chapter VIII, part I.

### "Article 35

"1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

this Article will be subject to the provisions of Articles 11 and 12.

### "Article 36

"1. The Security Council may, at any stage of a dispute, recommend such procedures or methods of adjustment as it may consider appropriate.

consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

"3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general

COUNCIL OF DISPUTE, IN ACCORDANCE WITH THE PROVISIONS

### "Article 37

"1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

"2. If the Security Council is unable to settle a dispute of the nature referred to in Article 33, it may recommend that the parties refer it to arbitration, to judicial settlement, to conciliation, to mediation, to enquiry, to negotiation, to regional agencies or arrangements, or to other peaceful means of their own choice.

Article 36 or to recommend such terms of settlement as it may consider appropriate.

### "Article 38

33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute."

## Part I

## CONSIDERATION OF THE PROVISIONS OF ARTICLE 33 OF THE CHARTER

## NOTE

During the period covered by this *Supplement*, prior efforts to seek a peaceful solution made by States submitting a dispute or a situation to the Security Council have in many instances been indicated in the initial communications, although Article 33 has not been expressly cited in any of them.<sup>2</sup>

... have generally drawn attention to the steps reached in efforts towards a peaceful settlement as

action under Chapter VI.<sup>3</sup> The scope of the obligation imposed by Article 33, paragraph 1, has been the subject of consideration in connexion with the problem of the appropriate stage at which a dispute should become the proper concern of the Council. The principle has been restated that before bringing a dispute or situation to the Council, the means of pacific settle-

by the parties.<sup>4</sup> On one occasion, failure to have recourse to direct negotiation has been adduced in support of the argument that there was no *prima facie* case for the Council to consider.<sup>5</sup> On another occasion

... paragraph 1 emphasizes priority of procedures for peaceful settlement, and in the light of the fact

accord with the provision of Article 36, paragraph 2,

which had already been adopted by the parties. It was argued on the other hand that the Security Council being the principal organ responsible for the main-

<sup>2</sup> Pakistan in its letter dated 16 January 1964 (S/5517) in connexion with the India-Pakistan question [O.R., 19th yr., *Suppl. for Jan-Mar. 1964*, pp. 26-34]; Cyprus in its letter dated

1 April 1964 (S/5635), in connexion with its complaint against the United Kingdom [O.R., 19th yr., *Suppl. for Apr.-June 1964*, pp. 1-2]; Cambodia in its letter dated 12 May 1964 (S/5607)

in connexion with its complaint against the United States and the Republic of Viet-Nam [O.R., 19th yr., *Suppl. for Apr.-*

[O.R., 19th yr., *Suppl. for July-Sept. 1964*, p. 268]; Afghanistan, Algeria, Burundi, Cambodia, Central African Republic, Congo (Brazzaville), Dahomey, Ethiopia, Ghana, Guinea, Indonesia, Kenya, Malawi, Mali, Mauritania, Somalia, Sudan,

Democratic Republic of the Congo [O.R., 19th yr., *Suppl. for*

lic of the Congo, Ethiopia, Ghana, Guinea, Ivory Coast, Kenya, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Morocco, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta and Zambia in their letter dated 28 July 1965 (S/6585), in connexion with the situation in territories in Africa under Portuguese administration [O.R., 20th year, *Suppl. for July-Sept. 1965*, pp. 147-149].

<sup>3</sup> See Cases 1 and 3.

<sup>4</sup> For statement of the principle during earlier periods of the Council's activity, see *Repertoire of the Practice of the Security Council, 1946-1951*, chapter X, note, pp. 376-377.

<sup>5</sup> See Case 3.

<sup>6</sup> See Case 2.

tenance of international peace and security, should be fully cognizant of a particular dispute or situation even though some other procedure of pacific settlement set forth in Article 33, paragraph 1, of the Charter had been resorted to.

The significance of Article 33 in the pacific settlement of disputes in accordance with the Charter rests

recourse by the Council to Article 33, or to the spirit of Article 33, in the discharge of its responsibilities

the Council. In this connexion, reference should be made to the entries in part IV of this chapter containing observations on the role of the Council to encourage negotiations between the parties, and to the entries under "Measures for settlement" in the Analytical Table of Measures adopted by the Security Coun-

question by which the Council, after demanding that a cease-fire should take place by a certain time, and deciding on certain other measures, called on the

of the political problems underlying the conflict being considered by the Council.<sup>7</sup>

restraint to avoid further incidents and restore peace, requested the Secretary-General to use his good offices

two parties.<sup>8</sup>

in connexion with the letter dated 16 January 1964 (S/5517)

[Note: In the course of the debate, views were ex-

this draft resolution, the representative of the Netherlands indicated that the main objectives of the draft resolution were to stop the fighting before it could spread to other areas and subsequently to open up an avenue to the parties to renew negotiations about their underlying political problem from

<sup>8</sup> Resolution 188 of 9 April 1964 (S/5650). Reference should also be made to the resolution adopted in the course of the consideration of the situation in Territories in Africa under Portuguese administration, by which the Security Council,

"achieve a peaceful solution" of the question under con-

the political parties within and outside the Territories concerned with a view to the transfer of power to political institutions freely elected and representative of the peoples. (Resolution 218 of 23 November 1965.)

<sup>9</sup> For texts of relevant statements, see:

1087th meeting: Pakistan,\* paras. 14, 86-90.

1088th meeting: India,\* paras. 3-4, 61, 87.

1090th meeting: India,\* para. 55.

1091st meeting: Bolivia, paras. 63-64; China, paras. 5, 7;

Czechoslovakia, paras. 20, 20; Norway, paras. 12-13, 16-17; USSR, paras. 51, 54.

1104th meeting: Czechoslovakia, para. 62.

1115th meeting: Morocco, paras. 62-63.

1116th meeting: President (France), paras. 48, 56.

representative of Pakistan, \* explaining his Govern-

one table. He indicated that the form which such

representative of Pakistan, \* explaining his Govern- ment's request for a meeting of the Council,<sup>10</sup> drew attention to the worsening situation in Kashmir as well as to recent efforts to reach a peaceful solution of that and related problems outstanding between India and

The representative of Czechoslovakia stated that the role of the Council should be to help and encourage the two parties to embark on peaceful negotiations.<sup>12</sup> By so doing, the Council "would be respecting Article 33 of the Charter." Noting that the problem

indansigent n d r a

its refusal to move from its rigid position". In the light of those developments, he appealed to the Security Council to undertake steps which would carry that dispute towards a speedy and peaceful solution.

parties to resume negotiations, the Council should not at that stage introduce controversial issues which would constitute obstacles to the holding of such negotiations.

the view of his Government, what was to be done at that stage of the development of the matter under consideration was for India and Pakistan to hold meetings to discuss ways and means to restore normal conditions in the disturbed areas of India and Pakistan and to bring about intercommunal unity and harmony in both countries, and jointly to decide that they would not resort to war and would settle their differences peacefully. Pakistan, he contended, had failed to substantiate its charges that India was trying to integrate Kashmir further into India and that there was a grave situation in the area that would call for some action by the Security Council; there was, therefore, nothing

tive sought by the Council. He noted that one thing seemed certain:

"direct negotiations between both parties have not been exhausted, and nothing can officially be done under the peaceful procedures provided for by the United Nations Charter until it had been announced that the two countries have nothing more to say to each other."

At the 1091st meeting on 14 February the representative of China stated that since both India and Pakistan had indicated willingness to settle their differences by peaceful means, it was the duty of the Secu-

What the Council should do in the circumstances, therefore, was to help to create a propitious atmosphere in which such direct negotiations could be continued.

about such a peaceful settlement of the dispute. He pointed out in that connexion that the train of thought embodied in a draft resolution considered by the Security Council in June 1962<sup>11</sup> was still useful. The Council should therefore,

The representative of the United States noted that given the history of efforts to resolve the issues in the past, it was the view of his Government that the two countries should consider the possibility of recourse to the good offices of a country or a person of their choice to assist them in bringing about the resumption of negotiation and in increasing their effectiveness. He added that the Secretary-General might be of assistance to the two countries in exploring the possibility of such third-party mediation.

Once again urge the parties, possibly with the good offices of a third party, to enter into negotiations at the earliest possible date with a view to an ultimate settlement in accordance with the spirit of the Charter of the United Nations and with due

At the 1115th meeting on 12 May 1964, the view was expressed by the representative of Morocco that in spite of the divergent positions of the parties concerned, the Council might still, with their collaboration, make a further effort towards peaceful settlement, as neither of them had closed the door to bilateral talks.

by further negotiations, expressed the hope that it would prove possible for the Security Council to encourage the two parties to meet anew at the confer-

or any results they might produce. He added:

"The principle of direct negotiations would thus be preserved without the Council's relinquishing its

among other things, urged the Governments of India and Pakistan to enter into negotiations at the earliest convenient

sixteen years and must continue to assume them

At the 1116th meeting on 13 May 1964, the President, speaking as the representative of France, expressed the view that the United Nations, through the Secretary-General, should be requested to assist the party in the conduct of negotiations. He observed that "it would be desirable for the Secretary-General to ensure that the Security Council is in a position to keep abreast of developments in a matter which should be kept regularly informed by the two parties of the progress achieved or the difficulties encountered in the course of their bilateral negotiations and that he should be able to offer them his assistance or advice if necessary, so as to prevent the talks once started from being broken off again."

The meeting was adjourned with a statement by the President that he would, in line with a suggestion made at that meeting, consult members with a view to identifying the conclusions reached in the debate.

from the representative of the USSR requesting an  
raised whether the Security Council should consider

the Organization of American States. The constitutional issue debated centered on the competence of the Council to deal with the matter in the light of the

In his statement at the 1196th meeting on 3 May 1965, the representative of the USSR urged the Council to condemn the armed interference by the United States in the domestic affairs of the Dominican Republic as a breach of international peace and as an action incompatible with the obligations assumed by

withdrawing its forces from the territory of the Dominican Republic and the obligations placed upon

that the matter had previously been considered by the Organization of American States, and that all actions taken by the latter had been reported to the Security Council, in accordance with the provisions of Article 54. While not opposed to the discussion of the matter in the Security Council, he drew attention to the provisions of Article 33, particularly to the procedure of settlement. He added:

"This, of course, does not derogate from the authority of this Council. It merely prescribes the procedures and priorities envisaged by the authors of the two charters, the Charter of the United Na-

tions and that of the OAS, for dealing with disputes of a local nature, procedures and priorities that have been followed consistently in analogous situations in the past."

He suggested that in the light of the actions already taken by the OAS, it would be prudent, constructive and "in keeping with precedents established by this Council" to permit the OAS to continue to deal with

At the 1198th meeting on 4 May 1965 the representative of Uruguay noted that his delegation had no objection to the Security Council to inquire at any time into a dispute or situation, the continuance of which was likely to endanger the maintenance of international peace and security, even though the dispute was being considered by a regional organization. He then stated:

"This authority, which the provisions of Article 52, paragraph 4, and Articles 34 and 35 of the Charter of the United Nations clearly confer upon

traverse international law, and in particular, Article

the authority of the Security Council was not being considered by a regional organization, with regard to the provisions of Article 33, he observed:

"The reference in Article 33 of the Charter to the participation of regional agencies in the dispute as proof of the wisdom of having recourse to such an agency and awaiting its settlements in the present case. Apart from the fact that this step is recommended as something to which the parties have recourse only if they think it advisable — it should be noted that the Article says 'shall . . . seek

stricted powers of the Security Council to take cog-

not therefore be considered as limiting the powers

to the regional agency has utterly failed to reduce existing tension or solve the problem of the aggression in question."

The representative of the United Kingdom, having referred to the provisions of Article 33, noted that under Article 36, paragraph 2, the Security Council should take into consideration the procedure of settlement already adopted by the parties. The Council would, in his view, best serve the cause of peace in the Dominican Republic if it endorsed the action by the OAS and appealed to all engaged in the fighting to submit to the mediation of the Special Committee which the OAS had appointed for that purpose.

The representative of the Netherlands, speaking at the 1203rd meeting on 7 May 1965, observed that from the provisions of Articles 33 and 32 it seemed

<sup>13</sup> For texts of relevant statements, see:

1964, United States, 63, United States, 70,

75, 87-88.

1964, United States, 63, United States, 70, United Kingdom

clear that the first and normal way to try to solve a  
OAS. That, however, did not mean that his delega-  
denies the competence of the Security Council to

ernment of Senegal felt "in any way aggrieved by  
approach Portugal for the purpose of reaching a peace-  
made by the Government of Senegal to talk matters

Following further debates on the complaint before  
the Council at that and other subsequent meetings, a  
draft resolution jointly submitted by Ivory Coast, Jor-  
dan and Malaysia was adopted at the 1208th meeting  
on 14 May 1965 which, *inter alia*, called for a strict  
cease-fire and invited the Secretary-General to send  
a representative to the Dominican Republic for the  
purpose of reporting to the Security Council on the  
situation then developing in that country.<sup>16</sup>

In the light of that and other arguments his dele-  
gation had set forth, the representative of Portugal  
concluded that there was no prima facie ground for the  
Council to deal with the Senegalese complaints.

The representative of France recalled the pream-  
bular paragraph of resolution 178 (1963) which ex-  
pressed the hope that tensions between the parties  
would be eliminated in accordance with the provisions  
of the United Nations Charter. He stated that the

with the draft resolution jointly submitted by Ivory  
adopted on 19 May 1965

[Note: The argument was advanced on the one  
hand that before recommending a particular course

visions are those of Article 33 which sets out the  
are the possibilities which the Council could...  
once more invite the parties to explore."

The representative of Senegal\* at the same

negotiations. It was contended, on the other hand, that  
given the past attitude of one of the parties to the  
dispute, further bilateral negotiations would serve no  
purpose.]

stated in reply that direct negotiations were impossible  
due to bad faith displayed by the Government of Por-  
tugal, which, despite its pledge to respect the sover-  
eignty and territorial integrity of Senegal, had  
committed sixteen violations of Senegalese territory in  
two years, and that it was therefore difficult to con-

At the 1206th meeting on 13 May 1965, the repre-  
sentative of Portugal\* after noting that the complaint

and reaffirmed his Government's position stated before  
the Council in 1963,<sup>18</sup> to the extent that the first duty  
of parties to a dispute under Article 33 was to seek  
a solution by peaceful bilateral arrangements before  
bringing charges to the Security Council. If the Gov-

At the 1212th meeting on 19 May 1965, a draft  
resolution jointly submitted by the Ivory Coast, Jor-  
dan and Malaysia was adopted, by which the Security  
Council *inter alia* deplored the incursions by Portu-  
guese military forces into Senegalese territory and  
affirmed its resolution 178 (1963); requested the  
Government of Portugal to take all effective and neces-

<sup>16</sup> 1208th meeting, para. 8; resolution 203 (1965). For dis-  
cussion of the various measures proposed and acted upon in  
the course of the debate on the matter, see Chapter VIII,  
pp. 216-217.

16-17; Senegal,\* para. 78.

<sup>17</sup> 1212th meeting, Congo (Brazzaville), para. 22.

Case 8.

<sup>18</sup> 1212th meeting, para. 27; S/PES/204 (1965), O.R., 20th

pp. 12-13.

**Part II**

**CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER**

**NOTE**

Article 34 has not, in the course of the period under  
review, been discussed in terms of its proper applica-  
tion or interpretation. In cases where it has been in-  
voked in letters of submission,<sup>20</sup> no further views were  
expressed as to its bearing on the competence of the

the Security Council to deal with the matter under  
consideration.<sup>21</sup>

The two case histories entered in part II of this  
chapter are those in which issues have arisen con-  
cerning the competence of the Security Council to  
investigate matters brought to its attention. In the

have been referred to it along with references to other Arti-

one party in the light of the fact that similar charges  
had been investigated by the International Commis-

<sup>20</sup> See part III, note.

<sup>21</sup> See part I, Case 2, note 3. See also chapter XII, Case 9.

tion for Supervision and Control established by the

by Senegal, the problem was posed as to whether or not a request to the Secretary-General to keep the situation under review should not be preceded by an impartial investigation conducted by the Security Council.<sup>23</sup>

For fuller appreciation of the scope of the application of Article 34 for the period under review, reference should also be made to constitutional discussions

carried in parts I and IV of this chapter, as well as in chapter VII.

ARTICLE 34

CASE 4.<sup>24</sup> COMPLAINT BY CAMBODIA. In connexion with the draft resolution submitted by the Ivory Coast and Morocco, voted upon and adopted on 4 June 1964<sup>25</sup>

[Note: In the course of the discussion touching on future efforts of the United Nations to preserve peace and security in the areas bordering Cambodia and the Republic of Viet-Nam, the suggestion was made that the efforts of the International Commission for Supervision and Control might be supplemented by an investigation team established by the Security Council to report on the incidents alleged to have taken place in those areas. On the one hand, it was contended that the responsibility for controlling the border areas rested with the International Commission for Super-

was argued on the other hand, that the Security Council might establish a committee of investigation.

representative of Cambodia recalled that his Government had proposed the dispatch of a United Nations commission to investigate charges made by the United States that "the Vietcong" had penetrated into South Viet-Nam through the territory of Cambodia. In that connection, he indicated that his Government would renew this suggestion if the dispatch of a United Nations commission of inquiry to Cambodia would make it possible to investigate the charges.

made against Cambodia, for it could not serve as a substitute for the International Commission for Supervision and Control, the latter having been made the permanent body for the purpose.

The representative of the United States after denying the Cambodian charge that his Government had steadily refused a proposed inspection of the regions bordering Cambodia and South Viet-Nam indicated that his Government was prepared to consider any pro-

United Nations Commission for Supervision and Control

The representative of France noted at the 1121st meeting on 25 May 1964, that it would be more advisable to utilize the two international control commissions in Cambodia and Viet-Nam created by the Geneva Conference rather than to establish a completely new organ to deal with matters which had essentially been the concern of the commissions. He suggested that for the purpose envisaged, the terms

have to be modified so as to correspond with their new responsibilities. It further stated that the terms

are, of course, not for the Security Council to define these terms of reference; but my delegation thinks the Council can make a recommendation to the Powers concerned which they would most certainly consider implementing, so that the terms of reference can be defined according to the procedure regarded by them as most suitable."

At the 1125th meeting on 3 June 1964, the representative of Morocco introduced a draft resolution jointly submitted with the Ivory Coast<sup>26</sup> paragraph 5 of which would have the Security Council decide

"to send three of its members to the two countries and to the places where the most recent incidents have occurred, in order to consider such measures as may prevent any recurrence of such incidents . . ."

With regard to this operative part, the Ivory Coast

same meeting and at the 1126th meeting on 4 June 1964, that after getting in touch with the Govern-

after visiting the two countries, they should be

"In requesting the commission to be appointed by the Council to go to the places where the most recent incidents occurred and to visit the two countries in question, we did not intend that the mission of these members of the Council should be confined to mere corroboration of the facts, which have been explained here in a concordant manner by all the parties concerned. But we felt that the

in the two countries, would enable the delegation sent by the Council to collect data which perhaps have not been set forth here, and which in a subsequent report might be useful for the Council's

decision it might take.

At the 1126th meeting, after further discussion, the joint draft resolution was adopted unanimously."

CASE 5.<sup>28</sup> COMPLAINT BY SENEGAL: In connexion with the draft resolution jointly submitted by the

<sup>23</sup> 1121st meeting, paras. 40-45; S/RES/107 (1964) O.R., 19th yr., Resolutions and Decisions of the Security Council.

1206th meeting: Portugal,\* para. 44.  
1210th meeting: Bolivia, paras. 100-101.  
1211th meeting: Ivory Coast, paras. 42-45.  
1212th meeting: Ivory Coast, para. 65; Netherlands, para. 23; United Kingdom, paras. 39-40.

<sup>24</sup> For texts of relevant statements, see:

1121st meeting: France, paras. 106-107.  
1125th meeting: Morocco, para. 23.  
1126th meeting: Morocco, para. 7.  
\* S/RES/107 (1964) O.R., 19th yr., Resolutions and Decisions of the Security Council, same text as S/5741, p. 190.



dan, Malaysia and the Ivory Coast voted upon and adopted on 19 May 1965

[Note: In the course of the debate the suggestion was made to have the allegations of incursions investigated by either a joint commission composed of Portugal and Senegal or by the Security Council, acting

At the 1206th meeting on 13 May 1965 the representative of Portugal,\* after hearing the charges of violation of Senegalese territory proposed that the Governments of Senegal and Portugal agree to the setting up of an inquiry team to investigate the allegations of violation of said territory and air space made by the Government of Senegal. That team should comprise three persons, one appointed by the Senegalese

and who would be appointed either by the Secretary-General of the United Nations or the President of the Security Council in consultation with the two Governments concerned.

At the 1210th meeting on 18 May 1965, the repre-

as follows:

"4. Requests the Secretary-General to keep the

might be advisable, but in the view of his delegation,

a much wider and more dramatic range and compass."

At the 1211th meeting on 19 May 1965, the repre-

<sup>29</sup> S/6366, 1210th meeting, para. 84.

representative of the Ivory Coast announced that operative paragraph 4 of the draft resolution had been changed to read "4. Requests the Secretary-General to follow the development of the situation."<sup>30</sup>

At the 1212th meeting on 19 May 1965, the representative of the Netherlands, commenting on the joint

proposal for an inquiry team made by the representative of Portugal. He noted that since the proposal had been considered unacceptable by one side,

"the Council could itself have ordered an investigation of the facts of the dispute, in accordance with Article 34 of the Charter, for instance by inviting the Secretary-General to send a representative to

Kingdom noted, in explanation of his delegation's vote, that:

"We recognize that in paragraph 4 of the resolution, provision is made for the Secretary-General to follow developments and we welcome that. But we wish to emphasize that we believe that in all matters of

investigation.

At the same meeting the representative of the Ivory

requests the Secretary-General to follow the develop-

he will keep the situation under review."

that paragraph was the only one that would satisfy

<sup>30</sup> S/6366/Rev.1, same text as resolution 204 (1965) of Security Council, 1965, pp. 12-13.

<sup>31</sup> 1212th meeting, para. 37.

### Part III

#### APPLICATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER

##### NOTE

During the period under review, fifteen questions relating to the maintenance of international peace and security were brought to the attention of the Security Council, all of which were submitted by Members of the United Nations. The relevant data regarding submission are summarized in the appended Tabulation. This part of chapter X, however, is concerned only with the application of Article 35 by Members as well as States not Members of the United Nations.

The Security Council has continued, at the request of the parties or other Members of the United Nations,

question,<sup>32</sup> complaint by the Government of Cyprus,<sup>33</sup>

<sup>32</sup> See Tabulation, section B, entry 2.

<sup>33</sup> See Tabulation, section B, entry 3.

the question of great conflict in South Africa<sup>34</sup> and under Portuguese administration<sup>35</sup> and the Palestine question.<sup>37</sup>

##### SUBMISSION BY MEMBERS OF THE UNITED NATIONS

In submitting questions to the Security Council, Members of the United Nations have in most instances done so by means of a communication addressed to the President of the Security Council; in all fifteen instances covered for the period under review, communications were addressed to the President of the Council.

In their initial communications Members have usually

<sup>34</sup> See Tabulation, section B, entry 5.

<sup>35</sup> See Tabulation, section B, entry 11.

<sup>36</sup> See Tabulation, section B, entry 12.

<sup>37</sup> See Tabulation, section C, entry 15.

Article 35 of the Charter or that some Charter principle described as a "violation" of a territory of a Member

three instances, namely, the complaint by Panama,<sup>38</sup> the complaint by Yemen,<sup>39</sup> and the complaint by Cambodia.<sup>40</sup> Article 35 was invoked in the

STATES NOT MEMBERS OF THE UNITED NATIONS

ARTICLE 35

In the other communications submitting questions for consideration by the Security Council, no reference

As was noted above, all questions submitted during

international peace and security. In their initial communication, States have generally indicated the action requested of the Security Council as well as the nature of the question involved.

In no instance have Members submitted a question to the Council as a dispute. In ten instances,<sup>43</sup> the questions submitted were described as a "situation", in three instances as acts of aggression, and in one

of another State. In another instance the question was

consideration by the Council have been dealt with in accordance with rules 6-9 of the provisional rules of procedure and material relating to the application of these rules is contained in chapter II of the *Supplement*. In no instances in the communications addressed to the President of the Security Council requesting inclusion of a matter in the provisional agenda, was a draft resolution enclosed. Material on the practice of the Security Council in the implementation of Article 35

The Council has not, in respect of any new questions submitted for its consideration during the period under review, considered whether to accept the designation of a question in the initial communication. Nor was any question raised as to the appropriate designation for a question included in the agenda at an earlier period.

<sup>45</sup> See Tabulation, section B, entry 11.

<sup>38</sup> See Tabulation, section B, entry 1.

<sup>39</sup> See Tabulation, section B, entry 4.

<sup>40</sup> See Tabulation, section C, entry 13.

<sup>41</sup> See Tabulation, section B, entries 1 and 4.

<sup>42</sup> See Tabulation, section C, entry 14.

<sup>43</sup> See Tabulation, section B, entries 1, 2, 3, 4, 5, 6, 7, 8, 9 and 12.

<sup>44</sup> See Tabulation, section B, entry 10.

Tabulation of questions submitted to the Security Council (1964-1965)

\*\* SECTION A. QUESTIONS SUBMITTED BY MEMBERS AS DISPUTES

SECTION B. QUESTIONS SUBMITTED BY MEMBERS AS SITUATIONS

			Articles invoked as	Description of question	Action requested		
		United States	24, 25, (1)	"... grave situation that exists between Panama and the United States of America because of the Canal enclave in our territory." which "has	"... should intervene so that these acts of aggression may be considered by the Security Council."	S/5500, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 18-19	
				mitted by the Government of the Republic of Panama."			
2.	The India-Pakistan question (letter of 16	Pakistan	India	None	"... grave situation that has arisen in the State of Jammu and Kashmir."	"... to consider the grave turn that the situation in India-Pakistan Jammu and Kashmir	S/5517, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 26-27
					it poses to peace in the region."		
				Recent situation resulting from "the	"... to secure promptly"	S/5545, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 26-27	
				declared intentions of the Turkish	procedure in order to consider		
				Cyprus has made the danger of the invasion of the island both obvious and imminent".	ropriate measures under the relevant Articles of the Charter."		
				aggression against the peaceful Yemeni citizens ..."		1964, pp. 1-2	
				"... serious situation existing in South	"... positive and urgent action	S/5674, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 26-27	
				ments in the Republic of South Africa."	for the world."		
6.	Complaint by the United States (Tonkin Gulf Incident) (letter of 4 August 1964)	United States	Democratic Republic of Viet-Nam	None	"... serious situation created by deliberate attacks of the Hanoi régime on United States naval vessels in international waters.	"... to consider the serious situation ..."	S/5849, O.R., 19th yr., Suppl. for July-Sept. 1964, p. 135

Part III. Application of

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SECTION B. QUESTIONS SUBMITTED BY MEMBERS AS SITUATIONS (continued)

Question	Submitted by	Other parties	Articles invoked as basis for submission	Description of question in letter of submission	Action requested of the Security Council	Reference
7. Question of relations between Greece and Turkey (letter of 5 September 1964)	Greece	Turkey	None	"... dangerous situation brought about by actions already taken by Turkey."	"... to consider the matter and take appropriate measures."	S/5934, O.R., 19th yr., Suppl. for July-Sept. 1964, p. 268
8. Situation in the Congo (letter of 1 December 1964)	22 Member States	Dominican Republic, the Congo	None	"... brought about by actions which constitute an intervention in African affairs, a flagrant violation of the Charter of the United Nations and a threat to the peace and security of the African continent."	"... to ensure that such a situation does not recur in the future."	S/6076, O.R., 20th yr., Suppl. for Oct.-Dec. 1964, pp. 198-200
9. Situation in Southern Rhodesia (letter of 21 May 1965)	35 Member States	Southern Rhodesia	None	"... very serious situation existing in Southern Rhodesia."	To take and put into effect "the measures required to put an end to the present situation ..."	S/6294 and Add.1, O.R., 20th yr., Suppl. for July-Sept. 1965, pp. 111-112
10. Situation in the Dominican Republic (letter of 1 May 1965)	USSR	United States	None	"... the question of the armed intervention in the internal affairs of the Dominican Republic"	To "condemn the armed intervention in the domestic affairs of the Dominican Republic as a breach of international peace" and "call upon the United States Government to withdraw its forces from the territory of the Dominican Republic immediately". <sup>b</sup>	S/6316, O.R., 20th yr., Suppl. for April-June 1965, p. 70
11. Complaint by Senegal (letter of 7 May 1965)	Senegal	Portugal	None	"... repeated violations of Senegalese air space and territory by the Portuguese authorities."	To "ask Portugal to cease the violation of" Senegalese territory	S/6338, O.R., 20th yr., Suppl. for April-June 1965, pp. 105-106
12. Situation in Territories in Africa under Portuguese administration (letter of 28 July 1965)	32 Member States	Portugal	None	"the obstinacy of Portugal in its desire to perpetuate its domination over the colonial Territories under its administration," constituting "a serious threat to peace and security."	"... to take the appropriate measures envisaged in the Charter in order to give effect to its own resolutions on the question."	S/6585, O.R., 20th yr., Suppl. for July-Sept. 1965, pp. 147-149

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consideration of Chapter VI of the Charter

SECTION C. QUESTIONS SUBMITTED BY MEMBERS AS THREATS TO THE PEACE, BREACHES OF THE PEACE OR ACTS OF AGGRESSION

Part III. App

			Articles invoked as basis for	Description of question	Action requested of the Security Council	
13. Complaint by Cambodia (letter of 13 May 1964)	Cambodia	United States South Viet-Nam (non-member)	35	"... repeated acts of aggression by United States—South Viet-Name forces against the territory and the civilian population of Cambodia."	"... to consider the situation resulting from these acts of aggression."	S/5697, O.R., 19th yr., Suppl. for Apr.-June 1964, pp. 130-132
14. Complaint by Malaysia	Malaysia	Indonesia	39	"blatant and inexcusable aggression against a peaceful neighbour in the area."	"... adjudge Indonesia guilty of aggression."	S/5930, O.R., 19th yr.,
15. The Palestine question: Complaint by Syria (letter of 14 November 1964)	Syria	Israel	None	"... aggression committed by Israel against the Syrian Arab Republic."	"... to condemn Israel in the strongest terms" and "to put an end to Israel's aggressive acts and policies." <sup>d</sup>	S/6044, O.R., 19th yr., Suppl. for Oct.-Dec. 1964, p. 55

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the island, which dispute has led to a progressive deterioration in internal security". S/5543, O.R., 19th yr., Suppl. for Jan.-March 1964, pp. 66-67. When the Security Council resumed

the United Kingdom (S/5543) and from the representative of Cyprus (S/5543).

<sup>b</sup>This quoted passage was part of the statement made by the representative of the USSR during the course of the debate on this item at the 1196th meeting on 3 May 1965. See 1196th meeting, para. 52.

<sup>c</sup>This quoted passage was part of the statement made by the representative of Malaysia during the course of the debate on this item at the 1144th meeting on 9 September 1964. See 1144th meeting, para. 68.

<sup>d</sup>This quoted passage was part of the statement made by the representative of Syria during the course of the debate on this item at the 1162nd meeting on 16 November 1964. See 1162nd meeting, para. 42.

Part IV.

NOTE

The case histories in part IV of this chapter com-

ment of the particular dispute of consideration in the light of the provisions of Chapter VI of the Charter. Part IV does not cover all the activity of the Council in the pacific settlement of

ly with the actual issues before the Council and the relative merits of measures proposed without discussion regarding the juridical problem of their relation to the provisions of the Charter. As a guide to the decision of the Council in the pacific settlement of disputes, reference should be made to the appropriate

review, the relation of these decisions to the provisions of Articles 36-38 has not been the subject of deliberations within the Council, with the provisions of Articles 36-38 been invoked in resolutions, although in one instance, a preambular paragraph of a resolution invoked Article 2, paragraphs 3 and 4, the former it will be noted bearing on the duty of

ful means.<sup>47</sup>

Moreover, by reason of the unity of the provisions of Chapter VI of the Charter, reference should be

ment were on occasion related to proposed measures to cope with situations which had been brought to the

of the peace or acts of aggression; consequently, refer-

of this supplement.

Constitutional discussions reflected in entries in this part, as was the case with entries in the same chapter of earlier volumes of the *Repertoire*, relate only in minor degree to the real import of the provisions of

of the absence or sustained discussion of the con-

Articles 36-37, but also of the need for discussing immediate measures to meet the exigencies of the mo-

The competence of the Security Council has never

in which a preference has been expressed for continued concern of a regional agency to deal with the

<sup>46</sup>Chapter VIII, part I.

through a communication addressed to the President of the

essentially within its domestic jurisdiction and, therefore, under Article 2 (7) excluding the competence of the Council to deal with it. See S/5723, O.R., 19th yr., *Suppl. or April-June 1964*, pp. 161-172. See also chapter XII, Case 5.

matter under consideration or for having the matter negotiated directly between parties concerned, Articles of the Charter have been invoked not so much to

requirements of the case.

On one occasion, the argument was put forward that while a regional organization should be allowed to continue to be approached with a matter with a view

General to follow the developments of the case and inform the Council thereon was a privilege of the Council, which it must retain in the interest of international peace and security.<sup>50</sup>

In two instances the Council was urged, in the light of procedures of settlement previously adopted by the parties concerned to confine the discharge of its re-

their unilateral efforts or to providing them with a mediator to facilitate reconciliations of their differences.<sup>51</sup>

CASE 6.<sup>52</sup> COMPLAINT BY PANAMA (letter of 10 January 1964):<sup>53</sup> In connexion with the Council decision of 10 January 1964 authorizing the President to appeal to the parties concerned to cease firing

[Note: It was argued in the course of the discussion that, since the Inter-American Peace Committee of the

the provisions of Articles 33 and 52, continue to be dealt with by the Organization of American States

On the other hand, the argument was advanced that, in view of the fact that the Organization of American States had already met, at the request of Panama

still appeal to both parties to cease firing and to end the bloodshed, while keeping the matter under review.]

In the course of the consideration of the complaint by Panama at the 1086th meeting on 10 January 1964, the representative of the United States stated that in view of the fact that the Organization of American States had already met, at the request of Panama

before the Council, and in view of its decision to

continue to be dealt with by the Organization of Ameri-

33 and 52 both provided for pacific settlement of local disputes through regional agencies.

standing the steps taken by the Organization of American States, the Security Council should be seized of the matter and adopt some emergency measures to

<sup>51</sup>See Cases 7 and 8.

Ivory Coast, para. 91; Panama, paras. 86-87; United States, paras. 50-51, 92-93.

<sup>53</sup>S/5509, O.R., 19th yr., *Suppl. for Jan.-March 1964*, pp. 18-19.

the two Governments to impose utmost restraint over military forces under their command and to protect the civilian population. He added that ~~if the~~ suggestion was approved there would, then, be ~~advised~~ for a formal resolution. **restraint**

The representative of Panama \* stated in support of the Brazilian proposal that there was nothing in it the Organization of American States.

that time.

The representative of the Ivory Coast, while agreeing to the Brazilian suggestion observed that:

"It remains understood that our Organization will nevertheless keep the matter under review and will be able to intervene should the situation deteriorate

In the absence of any objection, the President (Bolivia), declared the Brazilian suggestion adopted and noted that the issue raised by the representative of

the representative of Pakistan."

[Note: After hearing the views of the representatives of Pakistan and India on the question before the

pressed willingness of both parties to solve their differences by peaceful means. It was contended by some members that in the circumstances of the case, the

tance, if requested. The contention was made, on the to the Security Council rest the debates, which might become inflamed, should adversely affect the talks. It was also argued that third party intervention, unsolicited by both parties, would hamper negotiations.]

The representative of the United Kingdom indicated at the 1090th meeting on 10 February 1964 that the Security Council's attention should be directed to the Pakistan. To that end the two States should, as a first

1090th meeting. United Kingdom, paras. 112-113, 115.

1117th meeting, President (France), para. 6; India, paras.

Council should stand ready to discuss it. In the second place, they should be prepared to resume negotiations on Kashmir and, as necessary, other related matters. He indicated in that connexion that the experience of negotiations conducted by the two countries in the course of 1962 and 1963 suggested that some degree of outside help would be necessary if satisfactory results were to be achieved. It was for that reason that his Government favoured mediation, as it had indicated to both parties from time to time. While

on them to consider all possibilities in that regard.

At the 1115th meeting on 12 May 1964, the representative of Ivory Coast, being of the opinion that recent statements by government and political leaders of India and Pakistan reflected a desire to seek a peaceful and just solution to the dispute through bilateral negotiations, and recognizing the difficulties that

"we should avoid hasty recourse to the Security Council, for the ensuing debate would become highly inflamed and would merely accelerate the break-

Council should, with a view to avoiding such an event- to ease the way for the resumption of negotiations and their successful conclusion, if necessary".

The representative of Norway, after a survey of the development of the matter under consideration, noted

tion of Jammu and Kashmir, and its main features acceptable to India and Pakistan. He added:

"We do not believe, however, that the Security

a particular solution. It is our view that in the present improved circumstances the most constructive role for the Security Council would be to consider what encouragement and assistance it can render to the parties in order that they may utilize vigorously the more promising circumstances now prevailing."

The representative of China reminded the members that the Council had been consistent in all the sixteen question, by accepting the view that in the absence of

self-determination. Consequently, the Council could

the two parties. As to the modes of settlement, he

Charter, the modalities by which the settlement might

be effected could be discussed with a view to agreement between the parties and "adjustments could be made to meet the changes in the conditions throughout these years and to accommodate the different views of both parties". The Council should accordingly urge the two parties to take advantage of the recent favourable developments in the situation and make further efforts to improve their relations. The Council

Following the President's statement, the representative of Pakistan expressed appreciation for the efforts at reconciliation made by the President, and noted:

"The summation by the President is neither a consensus nor a statement of agreed conclusions. As such, we consider it to be a purely descriptive and factual statement which the President of the Council has made, and not any kind of recommendation

the spirit of the Charter and with due regard to the

The representative of India expressed agreement

further efforts to persuade the parties to solve their differences by peaceful means, that the United Nations might in that connexion put some friendly pressure to bear on the two Member States in order that

statement was neither a consensus nor a resolution, and had therefore no binding effect on the parties. He

could only be solved by bilateral negotiations, and that any intervention on the part of a third party would hinder rather than help these negotiations. With regard to the role of the Secretary-General, he pointed out

representative view

"they may set aside . . . the emotional attitudes to which the long and protracted dispute has given

Kashmir debate, unless we both agree that he should so come". He added:

"I assure the Secretary-General and I assure the Council that any intervention on the part of the Secretary-General which is uninvited and without the consent of both parties will hinder and hamper the negotiations which we propose to carry on in the very near future."

Following this statement, the Council adjourned its meeting.

so as to bring an end to the dispute. After noting that recent developments demonstrated the emergence of a realistic approach to the problem, he stated:

CASE 8. <sup>67</sup> COMPLAINT BY THE GOVERNMENT OF CYPRUS: In connexion with a joint draft resolution, voted upon and adopted on 4 March 1964

"In spite of the fact that in my view, there is no substitute for direct talks in the present case, the parties should keep in mind the fact that the United Nations . . . has developed and polished the best available international machinery for the settlement of disputes. They should bear in mind that this . . . machinery is at their disposal at all times and can be set in motion at a moment's notice."

He drew attention in that connexion to the availability of the Secretary-General to assist the parties concerned

that the Council should, along with the establishment of a United Nations force in Cyprus, the Security Council should [ . . . ] a peaceful settlement of their problems.]

conclusion of the debate to recall some of the positive

with the matter, to express the Council's hope for a prompt and a fair settlement of the Jammu-Kashmir question, and to remind the parties of the availability of the Secretary-General's assistance.

In his opening statement at the 1095th meeting on 18 February 1964, the representative of the United Kingdom suggested after reviewing the developments

ident announced that he would, in accordance with the suggestion made by the representative of Brazil and supported by the representative of Norway, consult with Council Members with a view to identifying the conclusions reached in the debate.

influence of the Council to bear on the tense situation there, and exert a calming effect on all the parties concerned. The Council should, in the light of the agreement of all parties concerned to the establishment of an international force, point the way towards an agreed solution of the problems involved. It should, furthermore, point the way towards an acceptable form of

Consequently, upon the resumption of debate at the

the points of agreement among the members of the Council, the President declared *inter alia* that they

The representative of the United States, speaking at the 1096th meeting on 19 February 1964, stated that strenuous efforts would be required to bring about agreement between the two parties on a political settlement which would permit them to live in peace with one another. He suggested in that connexion

"expressed the hope that both parties would refrain from any act which might aggravate the situation and that they would take steps calculated to re-establish an atmosphere of moderation between the two countries and peace and harmony between the

1096th meeting: United States, para. 82.  
1097th meeting: Czechoslovakia, para. 60; Ivory Coast, paras. 76-77; Norway, para. 45

debates, the two countries concerned would resume their contacts in the near future with a view to



the Secretary-General to designate an impartial mediator to assist in achieving settlement.

At the 1097th meeting on 25 February 1964, the

that the parties would avail themselves of the assistance of the Secretary-General to work out the necessary arrangements in that respect. A mediator acting under the aegis of the United Nations would then be guided by the principles and purposes of the Charter

Council should request the Secretary-General to keep it informed of further developments.

The representative of Czechoslovakia indicated that the Security Council should, in the light of the cir-

concerned "to reach a peaceful settlement based on

The representative of Ivory Coast noted that the constitutional issues confronting the Greek and Tur-

Consequently, the Council should as a preliminary

ceded to find a suitable way to reconcile their existing differences.

At the 1098th meeting on 27 February 1964, the representative of Bolivia stated that, together with the

a final understanding which, while safeguarding the positions of the different parties, would be a step towards consolidation of the independence and territorial unity of Cyprus.

At the 1099th meeting on 28 February 1964, the

the Security Council should also consider what measures to take for the solution of the long-range problem by an equitable and just political settlement. The appointment of an impartial mediator could, in his delegation's view, do much to help bring about an equitable settlement of the dispute.

At the 1100th meeting on 2 March 1964, a draft resolution jointly sponsored by Bolivia, Brazil, Ivory Coast, Morocco and Norway,<sup>59</sup> was introduced by the representative of Brazil. The operative paragraphs of this draft resolution *inter alia* recommended for the creation, with the consent of the Government of Cy-

"Recommends further that the Secretary-General designate, in agreement with the Government of Cyprus and the Governments of Greece, Turkey and the United Kingdom, a mediator, who shall use his best endeavours with the representatives of the communities and also with the aforesaid four Governments, for the purpose of promoting a peaceful

solution and an agreed settlement of the problem confronting Cyprus, in accordance with the Charter of the United Nations, having in mind the well-

mediator shall report periodically to the Secretary-General on his efforts."

The joint draft resolution was voted upon and adopted unanimously at the 1102nd meeting on 4 March 1964.<sup>60</sup>

resolution jointly submitted by Morocco and Ivory Coast voted upon and adopted on 30 December 1964

[Note: It was contended during the consideration of the draft resolution that its operative paragraph re-

on to the Security Council was, in effect, casting doubt on the competence of the Organization of African

was argued on the other hand that the operative para-

retain with a view to the maintenance of international

At the 1186th meeting on 28 December 1964, a

"The Security Council,

"...

1964, in particular paragraph 1 relating to the mercenaries,

"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

"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,

"...

"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 resolution, that the mercenaries should be considered

"4. Encourages the Organization of African Unity to pursue its efforts to help the Government of the

<sup>59</sup> 1102nd meeting, paras. 26-28, S/RES/186 (1964), O.R., 19th yr., Resolutions and Decisions of the Security Council, 1964, pp. 2-4.

<sup>60</sup> For texts of relevant statements, see:

1186th meeting: Guinea,\* para. 46; Ivory Coast, para. 13.

1187th meeting: Guinea,\* paras. 5, 6-10, 12; Morocco, paras. 45, 47, 48, 50.

<sup>61</sup> For full text, see: S/6123/Rev.1, 1186th meeting, para. 9.

mentioned resolution of the Organization of African Unity;

lution."

In explaining the amendment, the representative of

competence

representative of the Ivory Coast stated that the Security Council should use all the means provided by the Charter to secure a peaceful settlement of the problem

with the OAU in order to facilitate the solution of the Congolese problem. He observed:

that to the extent that the matter had already been

"All members of the Security Council have recognized that the Organization of African Unity is and to help in finding, a peaceful solution to the

its efforts within the framework accepted by the parties mainly concerned". That, he noted, was what operative paragraph 4 of the draft resolution envisaged. He then observed:

Council of the measures it takes and of the results it achieves."

Speaking at the same meeting, the representative of Morocco noted that paragraph 6 of the joint draft resolution reflected "a regular prerogative of the Secu-

ity Council must, through the Secretary-General, the executive organ, follow the situation in the

no way be interpreted as casting a doubt on the competence of the OAU. He pointed out that the paragraph seemed a precise role entrusted to the Secretary-General, which was that of "informing the Security

be ready to take up the matter again should the situation continue to endanger peace in Africa and

the OAU". The OAU must be able by its own means

"We, therefore, considered that if the efforts of

the Charter in the interest of international peace and security"

work of Articles 52 and 54 of the United Nations Charter, its competence, if not its effectiveness

meeting on 30 December 1964 incorporated the as operative paragraph 6 and deleted the phrase "to-

eighteen African States that had brought the matter

draft resolution, subsequently re-numbered as para-

"Requests the Organization of African Unity, in

<sup>62</sup> Resolution ECM/RES.6 (IV) adopted by the Council of

<sup>62</sup> For text, see 1187th meeting, para. 12.

<sup>63</sup> 1187th meeting, paras. 32-34, resolution 1927 (1964). See also chapter VIII, pp. 142-143.