

## Chapter X

~~CONSIDERATION OF THE PROVISIONS OF CHAPTER VI OF THE CHARTER~~

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## INTRODUCTORY NOTE

the pacific settlement of disputes, for the debates preceding the major decisions 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 of their relation to the provisions of the Charter. For the decisions of the Council in the pacific settlement of disputes, the reader should turn to the appropriate sub-headings of the Analytical Table of Measures adopted by the Security Council.<sup>1</sup>

The material in this chapter constitutes only part of the reviewed in chapters I-VI, in so far as they relate to the consideration of disputes and situations, are also integral to the application by the Council of Chapter VI of the Charter. Chapter X only presents the instances of deliberate consideration by the Council of the relation of its proceedings or of measures proposed to the text of Chapter VI.

The case histories on each question must be examined in the context of the respective proceedings presented in chapter VIII.

### CHAPTER VI OF THE CHARTER: PACIFIC SETTLEMENT OF DISPUTES

#### *Article 33*

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.

international peace and security.

#### *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.

3. The proceedings of the General Assembly in respect of the provisions of Articles 11 and 12.

#### *Article 36*

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

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

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

#### *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 deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Without prejudice to the provisions of Articles 33 to 37 the make recommendations to the parties with a view to a pacific settlement of the dispute.

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

## Part I

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

## NOTE

cations submitting disputes or situations to the Security Council contained references to prior effort at pacific settlements.<sup>2</sup>

The significance of Article 33 in the pacific settlement

The four-year history entered in this part of chapter X

Resolutions and decisions adopted by the Security Council during the period under review contained no direct negotiations in order to settle their differences

special representative to conduct an investigation of the events that had given rise to the complaint, and subsequently took note with appreciation of the report of the enquiry by the Special Representative acting in the exercise of the Secretary-General's good offices (Case 3). In all these cases, the Council issued also general calls for a negotiated settlement of the questions contested by the parties.

A number of draft resolutions which were either not adopted or not voted upon by the Council might also be

urgent demand of the Council for: (a) Negotiations, on

<sup>2</sup> In connexion with the situation in Cyprus: 1646th meeting;

Complaint by Iraq, 1702nd meeting; Iraq, first intervention; Iran, first intervention.

Council entered under "Measures for settlement" and "Provisions bearing on specific issues relating to the settlement" in the Analytical Table of Measures of chapter VIII of this Supplement.

<sup>4</sup> S/10607, OR, 27th yr., Suppl. for Jan-March 1972, pp. 83-84.

Territories would explore new avenues of settlement, such as bilateral or third-party commissions.

the basis of the right to self-determination and independence, with the genuine representatives of the people of the

institutions freely elected and representative of the peoples, in accordance with resolution 1514 (XV).<sup>3</sup> This provision

During the meetings of the Council in Panama City the representatives of Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan and Yugoslavia submitted a draft resolution

draft resolution the Council would have retained that it is a

elimination of the causes of conflict between them, (2) would have taken note also of the willingness shown by the Governments of the United States of America and the

the Isthmian Canal and its amendments and to conclude a

Canal which would fulfil Panama's legitimate aspirations and guarantee full respect for Panama's effective sovereignty over all of its territory; and (3) would have urged the Governments of the United States of America and the

spirit of friendship, mutual respect and co-operation and to conclude without delay a new treaty aimed at the prompt elimination of the causes of conflict between them.

In the course of the discussion focusing on the issue of the Panama Canal a large number of representatives stated

negotiations between the United States and Panama.<sup>5</sup> Other representatives also expressed support for a negotiated settlement, held, however, that it was up to the two

<sup>5</sup> 1639th paras. 130-135. S/10607/Rev.1 adopted as resolution

<sup>6</sup> S/10931/Rev.1, OR, 28th yr., Suppl. for Jan-March 1973, pp. 57-58. It was submitted at the 1702nd meeting, paras. 28-29. For the original draft S/10931 submitted by Panama and Peru see 1698th meeting, para. 112.

1700th meeting: Kenya, paras 25-28; Austria, para. 47; Guinea, para. 65; 1701st meeting, India, paras. 55-58.

bilateral matter.<sup>8</sup> The representative of the United States

The draft resolution received 13 votes in favour, 1

United Nations confers this responsibility on the Security Council, it also provides—indeed, in Article 33, it specifically enumerates—many ways to resolve international issues

failed of adoption owing to the negative vote of a permanent member of the Council.<sup>16</sup>

resolutions

could best be resolved by direct negotiations between the parties rather than through involvement of the Security Council.<sup>10</sup>

Except for one explicit reference to Article 33,<sup>17</sup> there

The draft resolution received 13 votes in favour, 1 against with 1 abstention and failed of adoption owing to the negative vote of a permanent member of the Council.<sup>11</sup>

ences to this Article in the debates in the Council.<sup>18</sup> In connexion with the situation in Namibia, several representatives mentioned the various means for the peaceful settlement of disputes and situations under the Charter; one of them supported the ongoing negotiations between the Government of South Africa and the Secretary-General as a major instrument provided for in the Charter, while two African spokesmen warned that all the provisions for

to 1735th meetings,<sup>12</sup> a draft resolution was submitted by the delegations of Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan and Yugoslavia, under this draft the

drawn because of South African defiance and that these instruments should only be employed if they were likely to

tive and determined efforts of his Special Representative

negotiations regarding the Senegalese peace plan.<sup>19</sup> During

ation 242 (1967), (5) express serious concern at Israel's

Melanesia and of Belize and urged that these issues be settled

Special Representative to resume and pursue their efforts to promote a just and peaceful solution of the Middle East problem, (8) decide to afford the Secretary-General and his Special Representative all support and assistance for the discharge of their responsibilities and (9) call upon all parties concerned to extend full co-operation to the Secretary-General and his Special Representative.

Case 1. *Situation in territories under Portuguese administration*: In connexion with draft resolutions submitted jointly by Guinea, Somalia and Sudan (S/10834), withdrawn, S/10838, replaced by S/10838/Rev.1, voted upon and adopted on 22 November 1972 as resolution 322 (1972).

While expressing general support for the exercise of good offices through the Special Representative, those representatives who made what might be considered implicit

Numerous speakers urged that the Portuguese Government should accept the call of the liberation movements in the territories under its administration for negotiations

of negotiations, direct or indirect, with or without prior conditions, between Israel and the Arab States involved: several spokesmen stressed the need for negotiations to arrive at a peace settlement,<sup>14</sup> others rejected this proposal and advocated the involvement of the Security Council in the search for further steps toward peace in the Middle East.<sup>15</sup>

territories would gain their independence. These negotiations should be initiated in accordance with the provisions for peaceful settlement under the Charter. Besides general calls for negotiations several representatives offered more specific proposals. Some of these envisaged to restrict the subject of the negotiations to the mode of transferring governmental authority to the independence movements in the territories; others emphasized the need for unconditional open talks. Most of the speakers in the debate suggested a strong involvement of the United Nations in

112: 1700th meeting: Canada, para. 173; 1701st meeting: France, para. 15; United Kingdom, para. 106.

<sup>9</sup> 1701st meeting, para. 117.

<sup>10</sup> *Ibid.*, para. 121. See also 1702nd meeting, para. 38, and 1704th meeting, paras. 73-75.

<sup>11</sup> 1704th meeting, para. 66.

<sup>12</sup> For the procedural history of these meetings see chapter VIII, part II: "The situation in the Middle East," pp. 124-131.

<sup>13</sup> S/10974, *OR*, 28th yr., *Suppl. for July-Sept. 1973*, pp. 20-21.

<sup>14</sup> See 1717th meeting: Israel, paras. 109-112; 1735th meeting: Australia.

<sup>15</sup> See 1717th meeting: Jordan, para. 126; 1720th meeting:

<sup>16</sup> 1735th meeting, following the intervention by Panama.

<sup>17</sup> See above, foot-note 9.

<sup>18</sup> Implicit references to Article 33 which occurred during the proceedings involving the cases 1 through 4 below, are not included in this paragraph.

<sup>19</sup> For relevant statements in connexion with the situation in Namibia see 1657th meeting: Italy, para. 105; 1678th meeting: Ethiopia; 1757th meeting: Niger.

<sup>20</sup> In connexion with the complaint by Senegal see 1667th meeting: Senegal, paras. 42-43.

<sup>21</sup> For relevant statements see 1696th meeting: Colombia, para. 123; 1697th meeting: Argentina, para. 90; 1698th meeting: Guatemala, para. 108-109; 1700th meeting: Guinea, para. 60.

getting the negotiations started and even in mediating between the parties during the actual negotiating process.<sup>22</sup>

time and favouring principal involvement of the United Nations.<sup>25</sup>

involved. Thus, draft resolution S/10834, which was subsequently withdrawn, would have provided under paragraph 6 as follows:

*Calls upon* the Government of Portugal, in conformity with the recommendations contained in General Assembly resolution 2918 (XXVI),

movements of Angola, Guinea (Bissau) and Cape Verde, and a view to arriving at a solution to the armed conflict that prevails in these Territories and permitting them to accede to independence.

It was replaced by a new text which underwent a few further changes (S/10838/Rev.1) and was subsequently adopted by the Council as resolution 322 (1972).<sup>24</sup> It read in its paragraph 3 as follows:

*Calls upon* the Government of Portugal, in accordance with the Assembly resolution 2918 (XXVI), to bring to an end the armed conflict that exists in the Territories of Angola, Guinea (Bissau) and Cape Verde, and Mozambique and permitting the peoples of these Territories to exercise their right to self-determination.

Case 2. *Situation in the Middle East*: In connexion with a

October 1973 as resolution 338 (1973), another draft resolution jointly submitted by the ten non-permanent members of the Council (S/11156), voted upon and adopted on 15 December 1973 as resolution 344 (1973).

Indonesia, Kenya, Mauritania, Peru, and the United Republic of Cameroon (S/11565), voted upon and adopted on 29 November 1974 as resolution 363

Following the outbreak of hostilities in the Middle East in October 1973, the Council issued several calls for the immediate start of negotiations between the parties, the first of these being resolution 338 (1973). The two sponsors of draft resolution S/11036, the USSR and the

East and urged the parties and the members of the Council to initiate the search for a peaceful settlement through negotiations in accordance with the Charter of the United Nations and under appropriate auspices. Speakers for the parties involved differed as to the goals and the procedures to be followed, the other side rejecting direct negotiations at that

<sup>22</sup> For relevant statements see 1672nd meeting: Sierra Leone, Ethiopia, 1673rd meeting: Tanzania, Mr. Dos Santos, Somalia, 1674th meeting: Belgium, 1676th meeting: Yugoslavia, Italy, Somalia; 1677th meeting: Panama; India; Japan; Somalia; France; United Kingdom; United States.

<sup>23</sup> S/10834, 02-27-72, S. 56, 6-10-72, 47-48.

the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts;

3. *Decides* that, immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.<sup>26</sup>

taken to start negotiations between the parties. The Council convened to discuss the arrangements for the proposed conference, and adopted resolution S/11156, which had been submitted by the ten

(1973) which read *inter alia* as follows:

*The Security Council,*

*Considering* that it has decided by its resolution 338 (1973) of 22 October 1973 that talks among the parties to the Middle East conflict for the implementation of resolution 242 (1967) of 22

*Noting* that a peace conference on the Middle East situation is to begin shortly at Geneva under the auspices of the United Nations,

*Expressing* the hope that the Peace Conference will make speedy progress towards the establishment of a just and durable

2. *Expresses its confidence* that the Secretary-General will play a full and effective role at the Conference in accordance with the relevant resolutions of the Security Council and that he will preside

informed of the developments in negotiations at the Conference, in order to enable it to review the problems on a continuing basis; ...

*During the debate several speakers stated that the phrase*

referred to those of the United Nations, that the arrangements for the Peace Conference on the Middle East were not sufficient to implement the phrase in resolution 338

this upcoming conference directly related to the responsibility of the Council for the maintenance of peace and security. One of these speakers went further by stating that his Government could not accept the abdication of this responsibility by the Council; in his opinion the Council

by accompanying it with suitable guarantees, but resolution 344 (1973) failed to spell out the link between the negotiations and the Council or to establish the conditions under which the Secretary-General would be invited to the

moment since negotiations regarding invitations to the conference were still proceeding and since previous resol-

<sup>25</sup> For relevant statements see 1743rd meeting: United States, Egypt, Israel; 1747th meeting: United States, USSR.



(b) Prompt and simultaneous withdrawal of concentrations of armed forces along the entire border, in accordance with an arrangement to be agreed upon between the appropriate authorities of the two countries;

(c) The creation of a favourable atmosphere conducive to achieving the purpose stated in the following subparagraph, by refraining totally from any hostile actions against each other;

(d) An early resumption, without any preconditions, at the appropriate level and place, of conversations with a view to a comprehensive settlement of all bilateral issues;

3. Expresses the hope that the parties will take as soon as possible the necessary steps to implement the agreement reached:

be requested by both countries in connexion with the said agreement.

Case 4. *Situation in Cyprus*: In connexion with a draft resolution emerging from consultations among members of the Council (S/11350), voted upon and adopted as resolution 353 (1974), a draft resolution submitted by the United Kingdom, (S/11446), revised through consultations among members of the Council (S/11446/Rev.1), voted upon and adopted as resolution 357 (1974), a draft resolution submitted by France (S/11450), twice revised (S/11450/Rev.2) voted upon and adopted as resolution 364 (1974).

members of the Council (S/11350), voted upon and adopted as resolution 364 (1974).

Prior to the crisis of July 1974, the Council had, on occasion adopted resolutions which might be considered as an indirect application of Article 33: in extending the

urge the parties to maintain determined co-operative efforts

themselves in a constructive manner of the current auspicious climate and opportunities.<sup>36</sup>

During the debates in the Council concerning the origin

between the parties directly involved and among the guarantor States to seek a just and lasting peaceful settlement of the intercommunal issues dividing the island republic and the surrounding neighbouring States. Most of

Nations for the pacific settlement of disputes and indicated

representative called for negotiations under the chairmanship of the Secretary-General and proposed the principal participation of the Security Council in the search for a solution. The representative of Cyprus raised the question whether

<sup>36</sup> Resolutions 315 (1972) of 15 June 1972; 324 (1972) of 12 December 1972; 334 (1973) of 15 June 1973; 343 (1973) of 14 December 1973; 349 (1974) of 29 May 1974; especially para. 2. In these resolutions the Council reaffirmed earlier resolutions whereby it had recommended certain measures of pacific settle

negotiations could be fair and open while the invader was occupying large parts of the territory.<sup>37</sup>

At the 1781st meeting on 20 July 1974, the President proposed to put to the vote a draft resolution which had emerged as a result of consultations among members of the Council.<sup>38</sup> The draft resolution was adopted as resolution 353 (1974); it provided in paragraph 5:

(The Security Council, ...)

5. Calls upon Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland to enter into negotiations without

formed, ...

At the 1792nd meeting on 14 August 1974, the Council voted upon a draft resolution, originally submitted by the United Kingdom<sup>39</sup> and revised during consultations among members of the Council,<sup>40</sup> and adopted it as resolution 357 (1974), paragraph 3 of which read as follows:

3. Calls for the resumption of negotiations without delay for the restoration of peace in the area and constitutional government in Cyprus, in accordance with resolution 353 (1974); ...

At the 1794th meeting on 16 August 1974, the President noted that a draft resolution submitted by

(The Security Council, ...)

3. Urge the parties to resume without delay in an atmosphere of mutual confidence and good will negotiations for the restoration of peace in the area and constitutional government in Cyprus, in accordance with resolution 353 (1974) whose outcome should not be impeded or prejudged by the acquisition of advantages resulting from military operations; ...

resolution sponsored by Austria, France and the United

(The Security Council, ...)

2. Warmly welcomes this development and calls upon those concerned in the talks to pursue them actively with the help of the Secretary-General and in the interests of the Cypriot people as a whole; ...

take, both individually and in co-operation with each other, all steps

In connexion with the extension of the mandate of

the Council in voting for the draft resolution which had

<sup>37</sup> For relevant statements see 1779th meeting: Cyprus; 1780th meeting: United States; 1781st meeting: United Kingdom; United States; Austria; 1782nd meeting: United States; 1792nd meeting: United States; 1794th meeting: President (USSR); 1810th meeting: Cyprus; United States.

<sup>38</sup> S/11350, adopted without change.

<sup>39</sup> S/11446, OR, 29th yr., Suppl. for July-Sept. 1974, p. 104.

<sup>40</sup> S/11446/Rev.1, adopted without change.

<sup>41</sup> S/11450, *ibid.*, pp. 105-106.

<sup>42</sup> S/11450/Rev.2, adopted without further change.



emerged from consultations among members of the Council, provided *inter alia* the following:

(The Security Council,...)

<sup>44</sup> S/11573, adopted without change. For the detailed procedural history of this case see chapter VIII, part II, p. 144, under the same title.

Noting further that resolution 3212 (XXIX) enunciates certain principles of the Charter relating to the current problems of Cyprus by peaceful means, in accordance with the purposes and principles of the United Nations, ...

3. Urges the parties concerned to act with the utmost restraint and to continue and accelerate determined co-operative efforts to achieve the objectives of the Security Council; ...

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 34 OF THE CHARTER

NOTE

During the period under review, there has been no instance of an explicit reference to Article 34 in the resolutions or decisions of the Security Council. But there has been some constitutional discussion regarding the interpretation and application of this Article in connexion with an informal proposal under consideration <sup>45</sup>

varying degrees to the functions of investigation by the Council. In several of these instances the stated purpose of the proposed

the particular dispute or situation was in fact likely to endanger the maintenance of international peace and

Secretary-General to appoint a special representative to conduct an investigation of the events in a situation which could endanger peace and stability in the region.<sup>47</sup> In a third instance involving the situation created by the aggressive acts of the illegal regime in Southern Rhodesia

decided to dispatch a special Security Council mission, assisted by a team of six United Nations experts, to assess

maintaining alternative systems of communications for the

Council considered a draft resolution which proposed the

(1974)<sup>49</sup>

On a number of occasions, suggestions have been made that the Council consider the dispatch of fact-finding and information-gathering missions to assist in the struggle for self-determination and independence,<sup>50</sup> to form investigating committees and missions for the purpose of exam-

<sup>45</sup> Case 6 below, in connexion with the complaint by Cuba.

<sup>46</sup> Case 6.

<sup>47</sup> Case 7 below, in connexion with the complaint by Iraq.

<sup>48</sup> Case 5 below, in connexion with the complaint by Zambia.

<sup>49</sup> Case 8 below, in connexion with the situation in Cyprus.

<sup>50</sup> In connexion with the consideration of measures for the maintenance and strengthening of international peace and security in Latin America: 1699th meeting: Chairman, Special Committee of Twenty-Four, in connexion with the consideration of questions relating to Africa: 1636th meeting: Burundi.

ining the progress in major issues affecting the future of Africa,<sup>51</sup> for the control of the arms flow into the territories under Portuguese administration<sup>52</sup> and for the involvement of the Council in ending border incidents in Africa.<sup>53</sup>

In discussing such a suggestion, one spokesman pointed to the great value of investigations conducted by the United

political, economic and social situation in the Territories such as the views wishes and aspirations of the people,...

several times. In connexion with the complaint by Cuba,

in support of or in opposition to, the charges brought by the Government of Cuba.<sup>55</sup> The Article was also invoked during the consideration of measures for the maintenance and strengthening of international peace and security in Latin America by a representative who then added: "The perception that Article 34 of the Charter

already done much to strengthen the Council's effectiveness and to develop the Organization's peace-keeping role. It is unfortunately the case that the Council has not

area of the world. But preventive diplomacy, like

Council on the basis of adversary proceedings. It can and should be used to help the Council to

<sup>51</sup> In connexion with the same question: 1630th meeting: Yugoslavia.

<sup>52</sup> In connexion with the situation in Territories under Portuguese administration: 1672nd meeting: Liberia; 1676th meeting: Somalia; 1677th meeting: India, and in opposition to such an investigating committee: Panama.

<sup>53</sup> In connexion with the complaint by Senegal: 1669th meeting: United States.

<sup>54</sup> In connexion with the consideration of measures for the maintenance and strengthening of international peace and security in Latin America: 1699th meeting: Chairman, Special Committee of Twenty-Four.

<sup>55</sup> In connexion with the complaint by Cuba: 1741st meeting: Chile; 1742nd meeting: President (Yugoslavia); See also case 6 below for further details.

obligations for maintaining peace and security in all regions of the world.<sup>56</sup>

Case 5. *Complaint by Zambia*: In connexion with draft resolutions submitted jointly by Guinea, Kenya, Sudan and Yugoslavia (S/10875 and S/10876), revised, voted upon and adopted on 7 February 1973 as resolutions

During the discussions prior to and following the adoption of the two resolutions by the Council, the majority of its members favoured the dispatch of a Council mission to examine the situation in Zambia and to assess its needs for the maintenance of its economy and of alternative systems of communications, as long as the illegal régime in Southern Rhodesia continued to exist and to threaten or to attack the security and the economy of Zambia. Certain expressions gave doubts about the utility of a political mission and

necessary be extended or intensified in order to gauge the effectiveness of the Council measures in Zambia.<sup>57</sup>

The two draft resolutions<sup>58</sup> jointly submitted by the initial sponsors Guinea, Kenya, Sudan and Yugoslavia, were slightly revised in the course of the proceedings and subsequently adopted as resolutions 326 and 327 (1973).<sup>59</sup>

Resolution 326, paragraph 9 read as follows:

9. *Decides* to dispatch immediately a special mission, consisting of four members of the Security Council, to be appointed by the President of the Security Council after consultations with the members, to assess the situation in the area, and requests the mission to report to the Council not later than 1 March 1973, ...

Resolution 327, paragraph 3 provided the following:

(The Security Council, ...)

3. *Decides* to entrust the Special Mission, consisting of four members of the Security Council, referred to in paragraph 9 of

experts, to assess the needs of Zambia, in maintaining alternative systems of road, rail, air and sea communications for the normal flow of traffic; ..."

Council on 6 March 1973 and considered during the 1692nd through 1694th meetings.<sup>61</sup>

<sup>56</sup> 1689th meeting: Kenya; 1689th meeting: France; United States; 1690th meeting: Kenya; 1692nd meeting: Indonesia.

<sup>58</sup> S/10875 and S/10876; they were replaced by S/10875/Rev.1 and S/10876/Rev.1 cosponsored also by India and Indonesia.

<sup>61</sup> For the detailed procedural history of this case see chapter VIII, part II, under the same title.

Case 6. *Complaint by Cuba*: In connexion with two letters (S/10993 and S/10995) from the representative of Cuba

Articles 34, 35 and 39 of the Charter and asking for the intervention of the Council.

The Council debate about the Cuban charges against

regarding the interpretation of Article 34 and the definition of the alleged acts as a threat to international peace and security. The Council representative of Cuba invoked Article 34 alone or together with Articles 35 and

tuting a serious threat to international peace and security. On the basis of this interpretation the representative of Cuba formally asked for an investigation of his Govern-

negotiations did not see the events as running the criteria of Article 34 and related provisions of the Charter and

complained about must first of all be present and, secondly, it must threaten or endanger the maintenance of international peace and security. In the incident that occurred around the Cuban Embassy in Santiago neither of those

Although the representative of Cuba formally asked for

the issue.<sup>63</sup>

Case 7. *Complaint by Iraq*: In connexion with the President's statement representing the consensus of the members of the Council (S/11427).

During the consideration by the Council of the complaint by Iraq concerning incidents on its frontier with Iran, the representative of Iraq expressed his Government's willingness to accept a special mission of the Security Council to investigate the situation.

of the Secretary-General's Special Representative, several spokesmen praised the investigation by the Special Rep-

the resumption of negotiations toward a bilateral agreement between the two parties.<sup>64</sup>

As a result of consultations among the members the Council decided to appoint a Special Representative of the Secretary-General to investigate the situation.

1742nd meeting: United States; President (Yugoslavia); Cuba; Chile.

<sup>63</sup> For the detailed procedural history of this case see chapter VIII, part II, pp. 187-189, under the same title.

<sup>65</sup> S/11229, OR, 29th yr., Resolutions and Decisions of the Security Council, 1974, pp. 1-2.

5. As additional information is required, the Security Council requests the Secretary-General:

... to appoint as soon as possible a special representative to conduct an investigation of the events that have given rise to the

... to report within three months.

On 20 May 1974, the Secretary-General submitted a report to the Council which the Council considered at its 1776th meeting.

Case 8. *Situation in Cyprus*: In connexion with a draft resolution submitted by the USSR (S/11391), considered but not voted upon.

In the course of the Council debates concerning the crisis of summer 1974, the representative of the USSR repeatedly called for the immediate dispatch of a Special Mission of the Council to Cyprus for the purpose of verifying on the spot the implementation of resolution 353

S/11291, with an annex containing the report of the Special

chapter VIII, part II, p. 189 under the same title.

(1974) and of reporting to the Council. This proposal was also part of a draft resolution sponsored by the USSR.<sup>67</sup> The representative underlined the urgency of his Government's proposal by pointing to the deteriorating situation on the island and to the lack of up-to-date information for the Council whose active engagement would intensify the investigation of the current development and function as a

while others criticized it as a superfluous manoeuvre merely designed to disturb the efforts by the interested parties and by the Secretary-General to arrive at a peaceful solution. The draft resolution (S/11391) was considered by the Council which, however, did not vote upon the measure.<sup>68</sup>

<sup>67</sup> S/11391, OR, 29th yr., Suppl. for July-Sept. 1974, p. 70.

<sup>68</sup> For relevant statements see 1786th meeting: United Kingdom; 1787th meeting: USSR; 1792nd meeting: President

Kingdom; China; Byelorussian SSR; 1810th meeting: Byelorussian

the same title.

### Part III

#### CONSIDERATION OF THE PROVISIONS OF ARTICLE 35 OF THE CHARTER

##### NOTE

During the period under review, twelve questions involving the maintenance of international peace and security were brought to the attention of the Security Council, all by Members of the United Nations. The relevant date in the appended tabulation.

The Security Council has continued to consider, at the request of the parties or other members of the United Nations, questions that had previously been included in the agenda: the situation in Southern Rhodesia; the situation in the Middle East; complaint by Senegal; the situation in Territories under Portuguese administration; complaint by Zambia; the situation in Namibia; and complaint by the

cation addressed to the President of the Security Council, although Article 35 was cited only once<sup>70</sup> as the basis for submission.

No question was submitted to the Council as a dispute in twenty-one instances. Questions were explicitly described as situations in clause 73 of the Charter. Questions contained within clause 73 of Article 35, in one instance,<sup>74</sup> the Council was requested by a group of Members from the OAU to decide to convene meetings in an African capital to consider questions relating to Africa; a somewhat similar request was submitted by a Council member to hold meetings at Panama City to consider issues relating to Latin America.<sup>75</sup> In another case, Members requested meetings to resume consideration of a matter

requested separately that the Council consider the refusal

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

Members of the United Nations have generally submitted questions to the Security Council by means of communications

No new complaints were submitted under this agenda item, following the series of meetings since the 1779th meeting, on 16 July 1974, during which the Council discussed the new developments under the agenda item "The situation in Cyprus", the Council decided at its 1810th meeting, on 13 December 1974, to have the former item ("Letter dated 26 December 1963 from the Permanent Representative of Cyprus...") deleted from the list of items of which the Security Council is seized. Accordingly, the old item is not included in this tabulation. For the consideration by the Council of the reports of the Secretary-General on the United Nations operation in Cyprus see chapter VIII, part II under the title: *The Situation in Cyprus*.

<sup>70</sup> Together with Articles 34 and 39. See tabulation section B, entry 8.

entry 3 (XII), where Article 24 was invoked, and entry 6, containing an explicit reference to Article 28 (3).

<sup>72</sup> See tabulation, section B, entries 3 (i-iii, vi, ix, xii-xiv); 5; 7 (ii); 8; 9 (i); 11 (i-ix).

<sup>73</sup> See tabulation, section B, entries 3 (i, iii, ix-xi), 4, 7 (i), 8, 10, 11 (ii, vii).

<sup>74</sup> See tabulation, section B, entry 1.

<sup>75</sup> See tabulation, section B, entry 6.

<sup>76</sup> See tabulation, section B, 2 (i-iii).

whereas the latter asked for a meeting a few days later to consider the mutual release of all prisoners of war involved in their conflict.<sup>77</sup> On two occasions, a Member, as

Communications submitting questions for consideration

During the period under review, none of the letters of

#### STATES NOT MEMBERS OF THE UNITED NATIONS

The Council has not considered whether or not to accept the designation of any of the new questions submitted for its consideration in the initial submission. Nor was any

United Nations.

question included in the agenda at an earlier period.<sup>80</sup>

<sup>77</sup> See tabulation, section B, entry 3 (v and vi)

<sup>78</sup> See tabulation, section B, entry 3 (vii)

<sup>79</sup> See tabulation, section B, entries 9 (ii) and 12

<sup>80</sup> In one instance, in connexion with the situation in the Middle East, several Council members raised objections to the inclusion of a subitem in the provisional agenda. For the procedural history of this important case, including the vote and the resolution of the resulting procedural impasse see chapter II, part III, C. 1, Case.

Question	Submitted by	Other parties	Articles invoked in letter	Request for action by Security Council	Reference
1. Consideration of questions relating to Africa (letter dated 29 December 1971)	Secretary-General <sup>a</sup>	OAU	None	transmitting to the President of the Council the text of General Assembly resolution 2863 (XXVI) regarding the OAU request for Council meetings in an African capital	S/10480, mimeographed
2. Situation in Southern Rhodesia (i) letter dated 15 February 1972	Guinea, Somalia, Sudan		None	"request that the Council convene to resume consideration of this matter."	S/10540, OR, 27th yr., Suppl. for Jan.-March 1972, p. 50.
(ii) letter dated 20	Guinea, Somalia, Sudan		None	"to convene a meeting ... to resume	S/10798, OR, 27th yr.,
(iii) letter dated 8 May 1973)	Guinea, Kenya		None	"to convene a meeting ... to consider the second special report of the ... Committee ... concerning the question of Southern Rhodesia"	S/10925, OR, 28th yr., Suppl. for April-June 1973, p. 36.
3. Situation in the Middle East (i) letter dated 25	Lebanon	Israel	None	"persistent acts of aggression by Israel ... gravity of the situation endangering the peace and security of Lebanon, request to convene meeting"	S/10546, OR, 27th yr.
(ii) letter dated 25 February 1972)	Israel	Lebanon	None	"intolerable situation created by ... armed attacks against Israel from Lebanese territory, request to convene an urgent meeting"	S/10550, OR, 27th yr., Suppl. for Jan.-March 1972, p. 57.
(iii) letter dated 23 June 1972 <sup>b</sup> )	Lebanon	Israel	None	"persistent acts of aggression by Israel against Lebanon. In view of the extreme gravity of the situation, request to convene an urgent meeting"	S/10715, OR, 27th yr., Suppl. for April-June 1972, p. 137.
(iv) letter dated 23 June 1972)	Israel	Lebanon	None	"request to convene meeting to consider the continuous armed attacks from Lebanese territory against Israel"	S/10716, OR, 27th yr., Suppl. for April-June 1972, p. 137.

<sup>a</sup> Although the Secretary-General transmitted the General Assembly resolutions to the Council President, the request for a series of Council meetings was initially submitted by the Executive Secretary of OAU on behalf of the members to the Council President (S/10272 dated 13 July 1971)

<sup>b</sup> The letter of submission employs terms similar to those of Article 39 of the Charter.

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... of the provisions of Article 35 of the Charter  
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Tabulation of questions submitted to the Security Council (1972-1974) (continued)

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

Question	Submitted by	Other parties	Articles invoked in letter	Request for action by Security Council	Reference
((v) letter dated 5 July 1972)	Syrian Arab Rep.	Israel	None	"request a meeting of Council to deal with ... security personnel abducted by Israel)	S/10730, OR, 27th yr.,
((vi) letter dated 5 July 1972)	Lebanon	Israel	None	"in view of the gravity of the situation resulting from Israeli defiance of the SC resolution 316 (1972), request to convene a meeting"	S/10731, OR, 27th yr., Suppl. for July-Sept. 1972, pp. 57 f.
((vii) letter dated 17 July 1972)	Israel		None	"request to convene a meeting to consider the mutual release of all prisoners of war"	S/10739, OR, 27th yr., Suppl. for July-Sept. 1972, p. 72.
((viii) letter dated 9 September 1972)	Syrian Arab Rep.	Israel	None	"in view of continuing Israeli attacks on Syrian territories, request an urgent meeting"	S/10782, OR, 27th yr., Suppl. for July-Sept. 1972, pp. 97 f.
((ix) letter dated 10 September 1972 <sup>b</sup> )	Lebanon	Israel	None	"premeditated and unprovoked aggression by Israel; in view of gravity of situation ..."	S/10783, OR, 27th yr., Suppl. for July-Sept. 1972, p. 98.
((x) letter dated 12 April 1973 <sup>b</sup> )	Lebanon	Israel	None	"act of aggression by Israel; due to the gravity of that act and the threat it poses to peace and security in the Middle East, request to convene urgent meeting"	S/10913, OR, 27th yr., Suppl. for April-June 1973, pp. 22 f.
((xi) letter dated 11 August 1973 <sup>b</sup> )	Lebanon	Israel	None	"Israeli air force invaded the air space of Lebanon and forced a civilian plane to fly into Israel; request an urgent meeting to ..."	S/10983, OR, 28th yr., Suppl. for July-Sept. 1973, p. 25.
((xii) letter dated 7	United States		24	"request a meeting to consider the situation in	S/11010, OR, 28th yr.,
((xiii) letter dated 14 April 1974)	Lebanon	Israel	None	"Israeli armed forces launched an attack ... Due to gravity of the situation, endangering peace and security of Lebanon, request an urgent meeting"	S/11264, OR, 29th yr., Suppl. for April-June 1974, pp. 103 f.

	((xiv) letter dated 30 May 1974)	United States		None	"request an urgent meeting to consider the situation in the Middle East in particular Zambia, 0 Str. 42 in Art. 0809 of T.O. 6 1974, p. 1430	S/11304, OR, 29th yr., Zambia, 0 Str. 42 in Art. 0809 of T.O. 6 1974, p. 1430	
4.	Complaint by Senegal (letter dated 16 October 1972 <sup>b</sup> )	Senegal		Portugal	None	"this latest systematic act of aggression by Portugal against Senegal is most serious and significant, because a deliberate planned act of war is involved. ... Request a meeting as a matter of urgency"	S/10807, OR, 27th yr., Suppl. for Oct.-Dec. 1972, p. 17.
5.	Situation in Territories under Portuguese administration (letter dated 7 November 1972)	Thirty-seven States		Portugal	None	"request to convene a meeting to examine the present situation in the Territories under Portuguese domination. The Council should take the necessary measures to bring Portugal to recognize the right of self- determination and independence of the African	S/10828, OR, 27th yr., Suppl. for Oct.-Dec. 1972, p. 30.
6.	Consideration of measures for the maintenance and strengthening of international peace and security in Latin America (letter dated 9 January 1973)	Panama			28 (3)	proposal that the Council meet at Panama City to consider measures for the strengthening of international peace and security	S/10858, OR, 28th yr., Suppl. for Jan.-March 1973, pp. 27 f.
7.	Complaint by Zambia (i) letter dated 24 January 1973 <sup>b</sup> )	Zambia			None	"request urgently to convene a meeting for the purpose of considering serious acts of aggression against Zambia, committed by the white minority, illegal and racist régime in the British colony of Southern Rhodesia"	S/10865, OR, 28th yr., Suppl. for Jan.-March 1973, p. 31.
	(ii) letter dated 23 January 1973)	Guinea, Kenya, Sudan			None	"request urgent meeting to consider the explosive situation along the Zambian border which threatens the peace and security of the whole area"	S/10866, OR, 28th yr., Suppl. for Jan.-March 1973, p. 31.
8.	Complaint by Cuba (letter dated 13 September 1972 <sup>b</sup> )	Cuba		Chile	34, 35, 39	"Request to convene the Council as a matter of urgency with a view to considering the serious acts committed by the Armed Forces of Chile... The situation constitutes a serious threat to international peace and security within the meaning of Articles 34, 35 and 39 of the Charter"	S/10995, OR, 28th yr., Suppl. for July, Sept. 1972, p. 51.

Tabulation of questions submitted to the Security Council (1972-1974) (concluded)

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

Question	Submitted by	Other parties	Articles invoked in letter	Request for action by Security Council	Reference
(i) letter dated 4 December 1973)	Guinea, Kenya, Sudan		None	"request an urgent meeting for the consideration of the serious situation in Namibia"	S/11145, OR, 28th yr., Suppl. for Oct.-Dec. 1973, p. 257.
(ii) letter dated 13 December 1974)	Upper Volta		None	"As Chairman of the African Group, refer to General Assembly Res. 2575 (XXV) of 13 December 1974, and request a meeting of the Council at the earliest possible date to consider the question of Namibia"	S/11575, OR, 29th yr., Suppl. for Oct.-Dec. 1974, p. 257.
10. Complaint by Iraq (letter dated 12 February 1974b)	Iraq	Iran	None	"Request an urgent meeting to consider the continuing acts of aggression launched by Iranian armed forces against the territorial integrity of Iraq"	S/11216, OR, 29th yr., Suppl. for Jan.-Feb. 1974, p. 96.
11. Situation in Cyprus ((i) letter dated 16 July 1974)	Cyprus		None	"Request an urgent meeting on the critical situation in Cyprus, as a result of outside intervention with grave and threatening implications to the Republic of Cyprus and to international peace and security in the area, and for appropriate measures to be taken to protect the independence, sovereignty and territorial integrity of Cyprus"	S/11335, OR, 29th yr., Suppl. for July-Sept. 1974, p. 30.
((ii) letter dated 20 July 1974b)	Greece	Turkey, Cyprus	None	"Request an urgent meeting in order to take appropriate steps following the explosive security that was created by the brutal aggression of Turkish armed forces against Cyprus now in progress"	S/11348, OR, 29th yr., Suppl. for July-Sept. 1974, p. 30.
((iv) letter dated 23 July 1974)	Greece	Turkey, Cyprus	None	"Request to convene immediately the Council in order to examine a most serious situation created by the continuous Turkish violations of the cease-fire decided by the Council"	S/11366, OR, 29th yr., Suppl. for July-Sept. 1974, p. 57.



(v) letter dated 26 July 1974)	Cyprus	Turkey	None	"Request an emergency meeting to consider the deterioration of the situation in Cyprus, the continued and flagrant violation of the cease-fire by Turkey"	S/11384, OR, 29th yr., Suppl. for July-Sept. 1974, p. 66.
((vi) letter dated 28 July 1974)	USSR	Cyprus	None	"Request an urgent meeting to consider the question of the implementation of resolution 1975, adopted on 20 July 1974, concerning the situation in Cyprus. ... a situation threatening international peace and security continues to exist in Cyprus."	S/11389, OR, 29th yr., Suppl. for July-Sept. 1974, pp. 68 f.
((vii) letter dated 13 August 1974b)	Cyprus	Turkey	None	"Request an emergency meeting to be convened immediately to consider the dangerously grave situation that has arisen in Cyprus in consequence of renewed acts of naked aggression against Cyprus by Turkey"	S/11444, OR, 29th yr., Suppl. for July-Sept. 1974, p. 103.
((viii) letter dated 13 August 1974)	Greece	Turkey, Cyprus	None	"Request an urgent meeting in order to take appropriate steps following the explosive situation for international peace and security that was created after the interruption of the second phase of the Geneva talks as a result of the Turkish Minister's declaration that he considered the Conference terminated."	S/11445, OR, 29th yr., Suppl. for July-Sept. 1974, p. 104.
((ix) letter dated 27 August 1974)	Cyprus	Turkey	None	"Request a meeting to consider the grave situation in Cyprus including the refugee problem, and more particularly that arising from the expulsion by force and terror of the Greek Cypriot population from their homes in the invaded territory"	S/11471, OR, 29th yr., Suppl. for July-Sept. 1974, p. 124.
12. Relationship between the United Nations and South Africa (letter dated 9 October 1974)	Tunisia		None	"As Chairman of the African Group, request the convening of a meeting to review the relationship between the United Nations and South Africa, in conformity with resolution 3380 (XXIX) adopted by the General Assembly on 30 September 1974"	S/11532, OR, 29th yr., Suppl. for Oct.-Dec. 1974, p. 25.

## Part IV

## CONSIDERATION OF THE PROVISIONS OF ARTICLES 36-38 AND OF CHAPTER VI IN GENERAL

## NOTE

Part IV deals with cases in which discussion has arisen regarding the responsibility of the Security Council for the settlement of the particular dispute or situation under consideration in the light of the provisions of Chapter VI of the Charter.<sup>81</sup>

During the period under review, debates preceding decisions 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 their relation to the provisions of the Charter. Evidence for the interpretation of the provisions of Articles 36-38 has continued to be scant. None of the Articles have been invoked in the text of decisions adopted by the

have explicitly, but merely incidentally, referred to during

The material included in this part deals mainly with the

concerning itself with the respective issue.<sup>83</sup>

For relevant decisions other than those reviewed in this part the appropriate headings in the Analytical Table of

consulted, as well as the materials in the other parts of

Case 9. *Consideration of measures for the maintenance and strengthening of international peace and security*. In connexion with a draft resolution submitted by Panama, *Document E/1992* (S/10931).

<sup>81</sup> For general criteria for entries in this part, see *Repertoire of the Practice of the Security Council 1946-1951*, pp. 296 and 410.

<sup>82</sup> Article 37: in connexion with the Consideration of measures for the maintenance and strengthening of international peace and security in Latin America, 1698th meeting: President (Panama);

meeting: President (Panama); in connexion with the situation in the Middle East, 1720th meeting: Algeria; in connexion with the Relationship between the United Nations and South Africa, 1801st meeting: Madagascar.

<sup>83</sup> In connexion with the Relationship between the United Nations and South Africa, Article 2 (7) was invoked by South

<sup>84</sup> Special attention should be drawn to part I of this chapter, since the material covered in that part focuses primarily on the basic instruments of peaceful settlement and on the constitutional place occupied by the Council in this procedure.

form by Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan and Yugoslavia (S/10931/Rev.1), voted upon and not adopted, owing to the negative vote of a permanent member of the Council.

Panama Canal was of central concern. The sponsors of the original draft resolution (S/10931) and those co-sponsoring the revision (S/10931/Rev.1) held that the Council possessed the authority to settle the question of the Panama Canal Zone in accordance with the principles of international law and justice and with the provisions of Chapter VI of the Charter. This view was opposed by other members of the Council including a permanent member party to the question, who took the position that the Council could not dictate to the parties the specific terms

negotiating, but indicate merely the general principles on which the settlement should be based.

Draft resolution S/10931/Rev.1, 187th meeting, 1973, 18 July 1973, para. 1.

foster international peace and security and the maintenance of the peaceful use of the Canal by the international community.

The draft resolution, S/10931/Rev.1, 187th meeting, 1973, 18 July 1973, para. 1, was sponsored by eight non-permanent members, would inter-

principal purpose of the United Nations and under paragraph 3 would have urged the Government of the United States of America and the Republic of Panama to continue negotiations in a high spirit of friendship, mutual respect

treaty aimed at the prompt elimination of the causes of conflict between them.

At the 1704th meeting the revised draft resolution received 13 votes in favour, 1 against with 1 abstention and failed of adoption owing to the negative vote of a

<sup>85</sup> For relevant statements see 1698th meeting: President (Panama), 1701st meeting: France; 1704th meeting: President (Panama); United States, United Kingdom, France. The representative of the United States added that his delegation considered the revised draft resolution as unbalanced and imprecise and voted against it for that reason. The representative of the United

<sup>86</sup> S/10931/Rev.1, *OR*, 28th yr., *Suppl. for Jan.-March 1973*, pp. 57-58.

<sup>88</sup> For the detailed procedural history of this case see chapter VIII, part II, under the same title.