

LETTER FROM THE SECRETARY-GENERAL TO THE PRESIDENT OF
THE SECURITY COUNCIL CONCERNING THE QUESTION OF
THE RETENTION OF THE IRANIAN CASE ON THE
AGENDA OF THE SECURITY COUNCIL

I feel it desirable to present to you my views with respect to the legal aspects of the question of the retention of the Iranian case on the agenda of the Security Council. The decision taken by the Council in this matter may institute an important precedent for the future, and it seems to me advisable to consider it most carefully in order to avoid a precedent which may cause later difficulties.

I submit the views herein expressed to you for such use as you may care to make of them.

On March 18, 1946, the Iranian representative brought to the attention of the Security Council, pursuant to Article 35, paragraph 1, of the Charter, "a dispute between Iran and the U.S.S.R., the continuance of which is likely to endanger the maintenance of international peace and security." On April 8 the Council resolved that the Council defer further proceedings on the Iranian appeal until May 6." On April 15 the Iranian representative informed the Security Council that the Iranian Government "withdraws its complaints from the Security Council." Previously the Soviet representative had requested "that the Iranian question should be removed from the agenda of the Security Council."

The issue considered yesterday in the Security Council is whether the question can properly be retained on the agenda in view of the fact that both parties now have requested that it be removed.

The powers of the Security Council are set forth in Chapter VI of the Charter in the following manner:

Under Article 33 the Council may call upon the parties to a dispute to settle it by negotiation, enquiry, etc. Under Article 34 it may investigate any dispute or situation which might lead to international friction or give rise to a dispute. Under Article 36 it may recommend appropriate procedures for the settlement of a dispute under Article 33, or of a situation of like nature. Under Article 37 the Council may decide to take action under Article 36 if it deems that the continuance

of a dispute is in fact likely to endanger the maintenance of international peace and security. Finally, under Article 38 it may, if all the parties to any dispute so request, make recommendations to the parties with a view to pacific settlements.

It is to be noted that the Security Council can be seized of a dispute or situation in one of three ways:

1. Under Article 35 by a state.
2. Under Article 34 by the Security Council itself.
3. Under Article 99 by the Secretary General.

In the present case, Article 99 is obviously not applicable. The Security Council has taken no action under Article 34, i.e. it has not ordered an investigation, which is the only action possible under that article. It is therefore not applicable at this time and cannot become applicable until an investigation is ordered.

The Council was originally seized of the dispute under Article 35, paragraph 1. Now that Iran has withdrawn its complaints, the Council can take no action under Article 33, 36, 37 or 38, since the necessary conditions for applying these articles (namely, a dispute between two or more parties) do not exist. The only Article under which it can act at all is Article 34. But that Article, as has already been said, can only be invoked by a vote to investigate, which has not been taken or even suggested in this case.

It is therefore arguable that following withdrawal by the Iranian representative, the question is automatically removed from the agenda, unless:

- a. The Security Council votes an investigation under Article 34, or
- b. A member brings it up as a situation or dispute under Article 35, or

c. The Council proceeds under Article 36, par. 1, which would appear to require a preliminary finding that a dispute exists under Article 33, or that there is "a situation of like nature."

An argument which may be made against the view of automatic removal from the agenda is that once a matter is brought to the attention of the Council, it is no longer a matter solely between the original parties, but one in which the Council collectively has an interest, as representing the whole of the United Nations. This may well be true; but, it would appear that the only way in which, under the Charter, the Council can exercise that interest, is under Article 34, or under Article 36, paragraph 1. Since the Council has not chosen to invoke Article 34 in the only way in which it can be invoked, i.e. through voting an investigation, and has not chosen to invoke Article 36, paragraph 1, by deciding that a dispute exists under Article 33 or that there is a situation of like nature, it may well be that there is no way in which it can remain seized of the matter.

TRYGVE LIE.