

UNITED NATIONS

**REPORT OF THE  
INTERIM COMMITTEE  
OF THE  
GENERAL ASSEMBLY**

**(Third session: 16 January - 18 September 1950)**



**GENERAL ASSEMBLY**  
OFFICIAL RECORDS : FIFTH SESSION  
SUPPLEMENT No. 14 (A/1388)

*Lake Success, New York*  
*1950*

#### NOTE

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# REPORT OF THE INTERIM COMMITTEE OF THE GENERAL ASSEMBLY

## (Third session: 16 January - 18 September 1950)

Rapporteur: Mr. Joseph Nisot (Belgium).

[Original text: English]

1. The present report covers the work of the third session of the Interim Committee during the period between the end of the fourth and the beginning of the fifth regular sessions of the General Assembly.

### 1. Organization of the third session of the Interim Committee

2. In accordance with the provisions of resolution 295 (IV), the Chairman of the Interim Committee during its previous session, in consultation with the Secretary-General, decided to open the third session of the Committee on 16 January 1950. The 36th meeting was convened on that date.

3. The Committee held ten plenary meetings between 16 January and 18 September 1950. At its 46th meeting, it approved the present report for submission to the fifth session of the General Assembly.

4. At its 36th meeting, the Committee elected the following officers: Chairman, Mr. João Carlos Muniz (Brazil); Vice-Chairman, Mr. Abdur Rahim Khan (Pakistan); and Rapporteur, Mr. Joseph Nisot (Belgium). On 15 March 1950 Mr. Abdur Rahim Khan submitted to the Chairman his resignation from the office of Vice-Chairman following his appointment as representative of his Government on the United Nations Council for Libya. The Committee at its 38th meeting was informed of the resignation and elected Mr. J. R. Jordaan of the Union of South Africa as Vice-Chairman.

5. A sub-committee was established at the 36th meeting to consider whether the rules of procedure of the Interim Committee should be revised in the light of changes made by the General Assembly in its own rules during the fourth session, taking into account the provisions of resolution 295 (IV) of the General Assembly. The sub-committee was composed of the following nine members: Afghanistan, Argentina, Bolivia, Burma, Dominican Republic, France, Sweden, United Kingdom of Great Britain and Northern Ireland, and the United States of America. At its 37th meeting, the Interim Committee adopted, on the report of its sub-committee, certain amendments to its rules of procedure.

6. The Committee also considered, at the 36th meeting, the organization of its work with respect to matters which were before it under resolutions adopted by the General Assembly during its fourth session. These matters were:

### A. Consideration of the report of the United Nations Commission for Eritrea

The Assembly had provided in resolution 289 (IV) that "the Interim Committee of the General Assembly shall consider the report and proposal or proposals of the Commission [for Eritrea] and report, with conclusions, to the fifth regular session of the General Assembly".

### B. Study of procedure to delimit the boundaries of the former Italian colonies not already fixed by international agreement

Resolution 289 (IV) of the General Assembly called upon "the Interim Committee of the General Assembly to study the procedure to be adopted to delimit the boundaries of the former Italian colonies in so far as they are not already fixed by international agreement, and report with conclusions to the fifth regular session of the General Assembly".

### C. Examination of item 68 of the agenda of the fourth regular session of the General Assembly

In resolution 292 (IV) the General Assembly decided "to refer item 68 of the agenda [Threats to the political independence and territorial integrity of China and to the peace of the Far East, resulting from Soviet violations of the Sino-Soviet Treaty of Friendship and Alliance of 14 August 1945 and from Soviet violations of the Charter of the United Nations], and any charges of violations of the principles contained in the above-mentioned resolution [resolution 291 (IV) on the promotion of the stability of international relations in the Far East], to the Interim Committee of the General Assembly for continuous examination and study in the light of that resolution, and to report to the next regular session of the General Assembly with recommendations, or to bring it to the attention of the Secretary-General with a view to reporting to the Security Council if it deems it necessary to do so as a result of the examination or of the state of the matter submitted to it for study".

### D. Systematic study of the promotion of international co-operation in the political field

The Assembly, in resolution 295 (IV) instructed the Interim Committee "to consider systematically, using the recommendations and studies of the Interim Committee contained in documents A/605 and A/AC.18/91, the further implementation of that part of Article 11 (paragraph 1) relating to the general principles of co-

operation in the maintenance of international peace and security, and of that part of Article 13 (paragraph 1 a) which deals with the promotion of international co-operation in the political field, and to report with conclusions to the General Assembly”.

## **II. Work of the Interim Committee**

### **A. CONSIDERATION OF THE REPORT OF THE UNITED NATIONS COMMISSION FOR ERITREA**

7. The report of the United Nations Commission for Eritrea was presented to the Interim Committee at its 39th meeting held on 13 July 1950 by Mr. Mian Ziauddin (Pakistan), Rapporteur of the Commission.

8. At the same meeting, the Committee was informed by the Secretary-General of the desire of the Italian Government to participate in the discussions of the Committee on the question of Eritrea, and decided to invite the representative designated by the Italian Government to attend the meetings of the Committee for that purpose. His Excellency, Mr. Giuseppe Brusasca, Under-Secretary of State for Foreign Affairs of Italy, thereafter took part in the discussions of the Committee on this subject.

9. Debate on the report of the Commission for Eritrea took place during the 40th, 41st, 42nd and 44th meetings, held during the period from 14 to 31 July 1950.

10. At the 45th meeting held on 15 September, the Chairman summarized the situation with respect to the report of the Commission for Eritrea in the following statement to the Interim Committee:

“The trend of the speeches in the Interim Committee, since it started the examination of the report of the Commission for Eritrea and the evident drive of all the delegations to reach a solution on a basis of compromise, encouraged me, as I expressed in our last meeting, to explore every means of reconciling the conflicting interests which have hitherto prevented any decision being reached regarding the future status of Eritrea.

“Confidential discussions, initiated jointly by the United States and United Kingdom delegations, had taken place with the representatives of the interested delegations in an endeavour to find suitable grounds for a satisfactory formula. The unremitting efforts made by these two delegations resulted in considerable progress being made in establishing principles on which such a formula could be built.

“As Chairman of the Interim Committee, I had been kept confidentially informed of the steps which were being taken as discussions proceeded and I, myself, later participated in them. When the proper moment arrived, I assumed the responsibility, again on a strictly informal basis, of taking them further. In this, Ambassador Padilla Nervo of Mexico joined, in a personal capacity, in order to widen the scope of the discussion. The formula which resulted from these strenuous efforts to seek a compromise that might lead to the solution of this complex and difficult problem appears to those who took part in the conversations under my direction as a carefully balanced formula capable of meeting the widely divergent views. It affords a common denominator to the opposing interests. It takes into consideration the positive and constructive elements contained in the re-

port of the Commission for Eritrea and the trend of the debate in the Interim Committee. It agrees with the directives established by the Treaty of Peace and with the principles of the United Nations Charter. It respects the best interests of the inhabitants of Eritrea and affords an adequate protection to the foreigners resident therein. It recognizes the fundamental needs of Ethiopia as expressed in the discussions which have taken place in the General Assembly. Although that formula does not give entire satisfaction to all the interests involved, at least it can be said that it affords a useful basis for further discussion in the General Assembly in view of finding a solution for the Eritrean question.

“Considerations which were alien to the principles involved in the solution of this problem did not permit us to recommend to the Interim Committee the formula which arose from the consultations carried on under my direction. I regret that the Interim Committee has not now the necessary time to proceed with its endeavours in order to make a set of recommendations to the General Assembly on the question of Eritrea. Much of our time was consumed in the process of consultation to arrive at a formula capable of reconciling so many divergent views, and which could obtain the necessary majority. Our inability, despite our best efforts, to succeed in reaching a consensus of opinion among a substantial number of delegations, must not however cause us to lose heart. Our strivings have not been in vain. No striving when sincere can ever be in vain. The results of our efforts might again be taken up and carried further by the General Assembly.

“The Interim Committee did a good job. The general debate which took place here contained a wealth of wise suggestions which most surely will be greatly helpful to the General Assembly when it tackles again a settlement of this difficult problem. The question of the future destination of Eritrea was entrusted to the General Assembly for a solution, and the General Assembly cannot rest at ease before it settles that question in accordance with the principles of the Charter and to the advantage of the people of Eritrea.

“In view of the extremely short time which remains before the opening of the General Assembly session, I suggest that the best course for us to follow is to request our Rapporteur to make his report to the General Assembly incorporating in it this statement of the Chairman.”

11. The Interim Committee concurred in the suggestion of the Chairman.

### **B. STUDY OF THE PROCEDURE TO DELIMIT THE BOUNDARIES OF THE FORMER ITALIAN COLONIES NOT ALREADY FIXED BY INTERNATIONAL AGREEMENT**

12. The Committee agreed at its 36th meeting held on 16 January that consideration of this item would require additional information as to the present position with respect to the boundaries concerned. Accordingly, the Committee requested the Secretariat to prepare an analysis which would provide the members of the Committee with the required data.

13. In compliance with this request, the Secretary-General submitted to the Committee a memorandum entitled “Study of procedure to delimit the boundaries of the former Italian colonies” (A/AC.18/103) setting

forth the position regarding the several boundaries of the respective territories. This memorandum was considered by the Interim Committee at its 37th meeting held on 7 February 1950. It was decided, however, to postpone the consideration of this item until full information was available to the Committee concerning the draft Trusteeship Agreement for Somaliland.

14. On 15 September, at the 45th meeting, a draft resolution on procedure for delimiting certain of the boundaries was submitted by the delegation of the United States of America (A/AC.18/118/Rev. 1). In view of the objections raised by a number of representatives to the effect that the limited time available before the opening of the fifth session of the General Assembly made it impossible for them to consult their Governments concerning the United States draft resolution, it was decided to annex the text of the draft resolution to the report of the Interim Committee to the General Assembly. The draft resolution is attached as annex C.

#### C. EXAMINATION OF ITEM 68 OF THE AGENDA OF THE FOURTH REGULAR SESSION OF THE GENERAL ASSEMBLY

15. The representative of China opened the debate on this item at the 37th meeting of the Committee held on 7 February, and introduced a draft resolution (A/AC.18/107).

16. On 15 September, at the 45th meeting of the Interim Committee, the Chairman made the following statement with respect to this item of the Committee's agenda:

"The scope of this item, relating to the political independence and territorial integrity of China and to the peace of the Far East, is wide and it touches upon important issues which are at present being considered by other United Nations bodies. Many of them which bear a close relationship to this item will be included in the agenda of the forthcoming session of the General Assembly. It is possible therefore that to debate the item here on the very eve of the Assembly and in the context of the present political situation would not serve a useful purpose.

"I believe that I reflect the views of many members when I suggest that the Interim Committee would facilitate the work of the General Assembly if it were to decide not to debate this question and to instruct its Rapporteur to so indicate in his draft report to the General Assembly."

17. The representative of China, while recognizing that no time remained for the Committee to deal with this question, expressed his disappointment that the Committee had not found it possible to give full consideration to this item of its agenda.

18. The Interim Committee concurred in the suggestion of the Chairman that it decide not to debate this question.

#### D. SYSTEMATIC STUDY OF THE PROMOTION OF INTERNATIONAL CO-OPERATION IN THE POLITICAL FIELD

19. At its 36th meeting, the Interim Committee established a sub-committee on international co-operation in the political field to pursue the systematic studies which the Interim Committee was instructed to develop under the terms of paragraph 2(c) of General Assembly resolution 295 (IV) of 21 November 1949. The Sub-Committee was composed of the following fifteen members: Australia, China, Cuba, France, Greece, Iran, Israel, Lebanon, Mexico, Netherlands, Norway, Panama, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

20. The Sub-Committee submitted its report (A/AC.18/114) to the Interim Committee at the 38th meeting, held on 10 July.

21. An addition to paragraph 16 of the report of the Sub-Committee was proposed by the representative of Colombia when debate on the report was resumed at the 43rd meeting, held on 27 July. After discussion, it was agreed to annex to the present report the text proposed by the representative of Colombia (see annex B).

After further discussion, the Interim Committee adopted the following resolution:

*"The Interim Committee,*

*"Considering the provisions of paragraph 2(c) of resolution 295 (IV) adopted by the General Assembly on 21 November 1949,*

*"Considering the report prepared by the Sub-Committee on International Co-operation in the Political Field on the work undertaken in accordance with these provisions,*

*"Considering that this report, which constitutes a valuable informative contribution to the task undertaken by the Interim Committee in implementation of the aforementioned resolution, indicates the present progress of the studies which are being continued in accordance with that resolution,*

*"Decides that the report of the Sub-Committee on International Co-operation in the Political Field shall be communicated for information to the General Assembly and to the Member States."*

22. The report in full is attached to the present report as annex A.

## ANNEX A

### Report of the Sub-Committee on International Co-operation in the Political Field to the Interim Committee

Rapporteur: Mr. James FAWCETT (United Kingdom).

[Original text: English]

[5 July 1950]

Document A/AC.18/114

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#### PART I

1. The Sub-Committee on International Co-operation in the Political Field (Sub-Committee 9), composed of the representatives of Australia, China, Cuba, Ecuador, France, Greece, Israel, Iran, Lebanon, Mexico, Netherlands, Norway, Panama, South Africa, Turkey, United Kingdom, United States of America, Uruguay and Venezuela, met on 25 January 1950 and elected Mr. Alexis Kyrrou (Greece) Chairman, and Mr. J. E. S. Fawcett (United Kingdom) Rapporteur.

In carrying forward the systematic studies which the Interim Committee was instructed to pursue under General Assembly resolution 295 (IV), paragraph 2 (c), the Sub-Committee established three working groups and has in all held eight meetings to direct and consummate their work. That work is described in paragraphs 2-5 below.

2. *Working Group 2*, composed of Mr. Kyrrou (Greece) Chairman, Mr. Azkoul (Lebanon) Rapporteur, Mr. Ordonneau (France), Mr. Oxman (Israel), Mr. Duncan (Panama), Mr. Fourie (Union of South Africa), and Mr. González (Venezuela), was estab-

lished to complete the study of United Nations commissions, giving priority to a comparative analysis of their working, especially as regards organization and procedure.

This study was confined to eleven United Nations commissions which were the subjects of a series of memoranda prepared by the Secretariat, and was based on the report (A/966) of the Interim Committee for 1949, annex II "Study of the organization and operation of United Nations commissions" and especially paragraphs 60-67 dealing with rules of procedure.

Variations in the rules of the several commissions were analysed in order to determine the reasons for variation and the possibility of formulating standard or model rules. It was found that the reasons for variation lay in the differing sizes and tasks of the commissions and the situations in which they found themselves. For example, a small commission may dispense with formal procedures more easily than a large one; investigation presents many procedural problems different from conciliation; and a commission working in a



remote region would be bound to employ less elaborate practices than one seated in a metropolitan centre. The formulation of standard or model rules did not therefore appear practicable. Nevertheless, there are a number of problems and difficulties encountered by commissions in their procedure and organization such as place of meeting; form of chairmanship; form and distribution of records; publicity of meetings and relations with the press, local or international; relationship with the host and other interested Governments and methods of liaison between them; access to the commission of individuals and organizations wishing to present their views. A summary of these and other problems might well prove useful to principal organs of the United Nations in creating commissions, to the Secretariat in preparing draft rules for newly established commissions, and to the commissions themselves.

Attention is called to the efforts of the Secretariat to assure a continuous interchange of information among commissions on matters of a procedural and administrative nature. Various steps designed to bring to each commission the benefit of the experience gained by other commissions have been instituted. These steps include, for example, the transfer of experienced Secretariat personnel from one commission to another; the analysis and exchange of information derived from Secretariat officials responsible for the administrative affairs of commissions; the preparation of an administrative manual embodying the experience of all commissions and the compilation of a manual for the guidance of observers in the field. The work relating to commissions is now co-ordinated through a special committee of Secretariat officials under the immediate authority of the Executive Office of the Secretary-General. As the work of commissions proceeds, the Secretariat necessarily will become the repository of a wealth of accumulated experience relating to specific problems and their solution.

3. *Working Group 3*, composed of Mr. Kyrrou (Greece) Chairman, Mr. Fawcett (United Kingdom) Rapporteur, Mr. Kiang (China), Mr. García Amador (Cuba), Mr. Cordova (Ecuador), Mr. Luns (Netherlands), Mr. Hyde (United States of America), was established to work on paragraphs (1) to (4) of part II, B of the Interim Committee's programme of work.<sup>1</sup>

Paragraphs (1) to (4) of that programme of work are concerned with disputes and special political problems which come to the General Assembly, from the stage at which efforts at peaceful settlement are made by the States concerned to the stage at which the General Assembly is seized of the question at issue and has taken certain preliminary steps necessary to the recommendation of measures of settlement.

It must be borne in mind that the experience of the General Assembly in handling disputes and political problems is still relatively short and limited, and that many questions which may be asked upon the interpretation and application of the Charter in this field

have not yet been answered, or conclusively answered, in the practice of the General Assembly. Therefore, in considering the Assembly's practice during its first four sessions, within the framework of paragraphs (1) to (4) of the programme of work, the Sub-Committee has striven to avoid any inferences or conclusions from Assembly practice which cannot be clearly demonstrated from the Assembly record; to arrange the available Assembly records which it has studied, not around hypothetical questions and problems, but around those which have been actually raised and faced in the Assembly; and above all to avoid speculative interpretation of the Charter. The Sub-Committee has sought to set out the questions and problems in a clear and orderly manner; to show, by quotations from the Assembly records, what opinions have been expressed by Members upon them from differing points of view and what answer or solution the Assembly has made.

Part II of the present report sets out the results of this approach to the Assembly's practice, and the Sub-Committee believes that it will also be of practical use to delegations. Paragraphs (9) to (11) of part II are based upon a valuable note by Mr. Kural (Turkey) on the characteristics of disputes which was fully discussed. In its consideration of section B of part II, the Sub-Committee was greatly assisted by a study by Mr. García Amador (Cuba) which is appended to the present report.

4. *Working Group 4*, composed of Mr. Kyrrou (Greece) Chairman, Mr. Fawcett (United Kingdom) Rapporteur, Mr. Shann (Australia), Mr. Abdoh (Iran), Mr. Noriega (Mexico), Mr. Stabell (Norway), Mr. Kural (Turkey) and Mr. Oribe (Uruguay), was established to work on paragraphs (5) to (8) of part II, B of the Interim Committee's programme of work.

This part of the programme of work is concerned with the handling of disputes and political problems by the General Assembly from the stage at which it makes its first decisions and recommendations on the substance of the question to the stage of final settlement. For the reasons which will appear below, the Sub-Committee has limited this year's study of these matters to a detailed survey of paragraphs (5) to (8) of the programme of work which draws attention to the main problems. This forms part III of the present report. Paragraph (7) of the programme of work has been dealt with indirectly in paragraph 112 below and elsewhere in parts II and III.

5. The Sub-Committee has not thought it practicable at this time to draw extended conclusions from parts II and III of the present report but has inserted at the end of certain sections of the report comments which the Interim Committee may desire to consider.

6. In the present year, the emphasis has been placed by the Sub-Committee on the handling of disputes and special political problems *within the General Assembly*.

7. The Sub-Committee suggests that consideration be given in future work to the broader, external subjects for settlement by the United Nations with less emphasis upon the internal processes of its principal organs. This would call for study of the efficacy of different types of measures of settlement recommended by the principal organs of the United Nations concerned

<sup>1</sup> See *Official Records of the fourth session of the General Assembly*, Supplement No. 11 (A/966), annex I: "Programme of work of the Interim Committee in implementation of paragraph 2 (c) of resolution 196 (III) of the General Assembly". Part II, B of this programme of work provides for a study on "Settlement of disputes and special political problems by the General Assembly".

with disputes and special political problems; it would follow the lines of the survey contained in part III and consider in particular the questions raised in paragraph

115 below; it would also lend significance to a continued study of the operation of United Nations commissions.

## PART II

### Section A

#### General considerations

8. Among the political and security questions<sup>2</sup> which have been brought before the General Assembly, there are those which are of general concern and those touching particular national interests of States, which may be described in some cases as disputes and in others as special political problems.<sup>3</sup>

The present study is based on paragraph 13 of the over-all plan of work and is intended to emphasize the interest and concern of that plan of work with broad political problems as well as with the problems arising from disputes as that term is used in the Charter.

9. "Special political problems" is a designedly broad and loose term used in this study to cover those political and security questions brought before the General Assembly which are neither primarily disputes nor necessarily of general concern; for example, this study touches upon the questions of Palestine and Korea which may be described as special political problems in this sense. In this sense, too, these studies touch upon and will in the future cover phases of broader aspects of international co-operation.

10. Consideration has also been given to the characteristics of those disputes in which, under the Charter, the parties and the United Nations have special duties. These characteristics are not to be considered as in any sense the definition of a dispute as such but merely as the characteristics which are normally possessed by such disputes.<sup>4</sup>

(a) A dispute must be a disagreement; in other words, there must be a controversy between the parties.<sup>5</sup> This takes the form of claims, which are met with refusals, counter-claims, denials or counter-charges, accusations, etc. The fact that one or more of the parties has applied to a competent international organ to deal with the dispute with a view to obtaining a solution of the problem, requesting protection or instituting legal proceedings, is evidence of the existence of a disagreement.

(b) There must be parties to a dispute and the parties must be States.

<sup>2</sup> Given below are the titles of questions that have been referred to by short titles in the present report:

Chinese question: "Threats to the political and territorial integrity of China and to the peace of the Far East . . .";

Greek question: "Threats to the political independence and territorial integrity of Greece";

Korean question: "The problem of the independence of Korea";

Palestine question; Spanish question: for those questions in all their various phases.

<sup>3</sup> See *Official Records of the fourth session of the General Assembly*, Supplement No. 11 (A/966), annex I, paragraph 26: "The work of the General Assembly in these two types

(i) There can be no controversy unless there are contending parties. Clearly, there cannot be a dispute unless there are at least two parties, one on each side. There may also be disputes involving more than two parties, as in cases where more than two parties make mutually conflicting claims to the same object, for example a territory, or where upon either side of a dispute there are two or more parties.

(ii) The parties to a dispute must be States directly concerned. It is generally accepted that the parties to international disputes must be States; thus, the Charter states that "all Members shall settle their international disputes . . ." (Article 2, paragraph 3) and the Members are, of course, States. Similarly, in Article 35, in the case of parties to a dispute which are not Members of the United Nations, it is made clear that States are meant. If one of the parties is not a State but a natural or legal person whose status is derived from municipal law, a State must take up and espouse that party's case if it is to be asserted against another State and if the contention is to become an international dispute.

In exceptional cases it may be necessary for the General Assembly to treat a *de facto* government as a party to a dispute. In such a case the government concerned should be sufficiently stable and defined to justify the treatment normally reserved to States. The views expressed by the United Nations organ involved will bear on the decision whether the *de facto* government will be treated as a party. The question will also arise whether the other party or parties to the dispute would be prepared to treat the *de facto* government as a party.

(c) Subject of dispute: It must relate to a specific question of interest or law.

Specific question: It must be possible to formulate the question with sufficient clarity and concreteness for an international body to form an opinion upon it and settle it. Mere international uneasiness and lack of confidence between States, for example, however serious they may be, cannot be regarded as disputes or treated as such, so long as specific complaints are not put forward.

The wording of Article 33, which provides that the parties to a dispute shall, first of all, seek a solution by

of matters can most usefully be taken up as a whole. Only such a study can reveal whether differing procedures should be adopted by the General Assembly for dealing with different but related types of political problems."

<sup>4</sup> This question was examined in 1948 and views then expressed are to be found in *Official Records of the third session of the General Assembly*, Supplement No. 10, document A/605, paragraphs 18 to 20.

<sup>5</sup> The Permanent Court of International Justice stated that a "dispute" is a disagreement on a point of law or fact, a controversy in which juridical arguments or interests of persons are opposed to one another.

negotiation, inquiry, mediation, conciliation, arbitration, etc. implies that the question must be reasonably precise to permit its settlement by such international organs.

**Question of interest:** The interest may be material or moral and affect one or more parties.

**Question of law:** The dispute must concern the interpretation of a point of law, usage, prevention of usage, abuse, violation of a right, etc.

According to Article 36, paragraph 3, if the dispute relates to a question of law and can be regarded as a legal dispute, the Security Council should take into consideration that such questions should be referred to the International Court of Justice. However, reference to the Court is not mandatory and the Security Council may recommend the parties to seek a solution by other means or may itself recommend a solution.

11. While these characteristics are to be found in every international dispute, there is a further characteristic which the Charter contemplates as marking those disputes in which the parties and the organs of the United Nations have special duties. This further characteristic of these disputes is that they affect the maintenance of international peace and security.

An outstanding interest of the United Nations lies in the maintenance of international peace and security, and when the Charter, in the statement of the purposes of the United Nations, mentions international disputes, it specifies that it is referring to disputes which might lead to a breach of the peace (Article 1, paragraph 1). When, in the statement of the Organization's principles, the Charter again touches on disputes between the Members of the United Nations, it again has consideration of peace and security in mind as well as of justice (Article 2, paragraph 3).

Disputes brought before the Assembly are again viewed in relation to the maintenance of peace and security (Articles 35, and 11, paragraph 2). This characteristic emerges even more clearly in the provisions of the Charter relating to the Security Council, which has the primary responsibility for the maintenance of international peace and security.

In what respect a dispute may affect the maintenance of peace and security must be answered according to the circumstances of each particular case. However, the Charter itself gives general guidance on the question. For example, Article 2 sets out, among others, the principle of the sovereign equality of United Nations Members, the duty to fulfil Charter obligations in good faith, the obligation to settle international disputes in such a manner that international peace and security, and justice, are not endangered; the obligation to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. It follows, for example, that the violation of these principles or hostile acts or intervention referred to in Article 2, paragraph 4, are to be regarded as defeating the purposes set out in Article 1, among which the maintenance of peace and security is outstanding.

## Section B

### Peaceful means of settlement resorted to by States

12. For the broad purpose of the United Nations, set out in Article 1, paragraph 1, of the Charter, the obligation of peaceful settlement of disputes is assumed by Members under Article 2, paragraph 3, and may be assumed by non-members in accordance with Article 35, paragraph 2. The obligation is given particular application by Article 33, paragraph 1, to disputes "the continuance of which is likely to endanger the maintenance of international peace and security", and by Article 52, paragraph 2, to "local disputes".

The handling of disputes and special problems by the General Assembly or by regional agencies is, however, a process politically different from their settlement by the parties directly concerned, since proposals for settlement by the parties represent national self-interest while those by the General Assembly or regional agencies express the will and authority and, ideally, the interest of the international community.

The obligation of peaceful settlement is fundamental to the United Nations and to the international community; moreover it is a continuing obligation, which does not cease by reason only of reference of a dispute to the General Assembly. In a political sense, therefore, the General Assembly can and normally will take into consideration the efforts made by the parties themselves to settle a dispute by the modes set out in Article 33, paragraph 1, in deciding whether and in what way it will seek to settle the dispute by its own processes.

13. The inter-American system illustrates the relation between the processes of peaceful settlement by regional agencies or States acting through them and settlement by organs of the United Nations. For this purpose, the inter-American system comprises the charter of the Organization of American States signed at Bogotá on 30 April 1498; the American Treaty of Pacific Settlement (Pact of Bogotá) signed on 30 April 1948; and the Inter-American Treaty of Reciprocal Assistance concluded at Rio de Janeiro on 2 September 1947.<sup>6</sup>

14. The charter of the Organization of American States sets forth that "Within the United Nations, the Organization of American States is a regional agency" (article 1) and that none of the provisions of its charter "shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations" (article 102). Article 10 of the Rio Treaty contains an identical provision. Article 20 of the charter of the Organization provides that "all international disputes that may arise between American States shall be submitted to the peaceful procedures set forth in this charter, before being referred to the Security Council of the United Nations". Article II of the Pact of Bogotá provides in rather different words that "the High Contracting Parties recognize the obligation to settle international controversies by regional pacific

<sup>6</sup> The charter will enter into force upon ratification by two-thirds of the twenty-one signatories. The Pact of Bogotá is in force between Costa Rica, Honduras and Mexico; and by special agreement between Costa Rica and Nicaragua although the latter has not yet ratified it. The Rio Treaty came into force on 3 December 1948. It has been ratified by sixteen States.

procedures before referring them to the Security Council of the United Nations", while the Rio Treaty in article 2 says "... the High Contracting Parties undertake to submit every controversy which may arise between them to methods of pacific settlement and to endeavour to settle any such controversy among themselves by means of the procedures in force in the Inter-American System before referring it to the General Assembly or the Security Council of the United Nations".

The Pact of Bogotá binds its contracting parties to recognize the compulsory jurisdiction of the International Court of Justice in all legal disputes under Article 36, paragraph 2, of its Statute (article XXXI); and further provides in article LI for resort to the General Assembly or the Security Council for the purpose of moving either of those bodies to request an advisory opinion from the International Court of Justice. According to article L, if one of the parties to the Pact "should fail to carry out the obligations imposed upon it by a decision of the International Court of Justice or by an arbitral award, the other party or parties concerned shall, before resorting to the Security Council of the United Nations, propose a Meeting of Consultation of Ministers of Foreign Affairs to agree upon appropriate measures to ensure the fulfilment of the judicial decision or arbitral award".

15. It is clear that these inter-American instruments and the regional arrangements and agencies which they establish were designed to conform to the requirements of Chapter VIII and other relevant provisions of the United Nations Charter and to be related functionally to the United Nations.

Indeed the obligation which the American States have assumed as Members of the United Nations, under Article 52, paragraph 2, of the United Nations Charter, is reaffirmed in article 20 of the charter of the Organization of American States which provides that "all international disputes that may arise between American States shall be submitted to the peaceful procedures set forth in this Charter, before being referred to the Security Council of the United Nations". This article does not preclude direct reference to the General Assembly and, in this respect, it differs from article 2 of the Rio Treaty quoted above.

Up to the present time, relations in the field of peaceful settlement between the Council and members of the Organization of American States and the United Nations have consisted in the former informing<sup>7</sup> the Security Council of activities undertaken by the Council of the Organization of American States, and the Inter-American Peace Commission.<sup>8</sup> The incident on the Costa Rican border referred to in the telegram to the President of the Security Council (S/1116) which stated that "on Friday 10 December at 23:15 the territory of Costa Rica was invaded by armed forces coming from Nicaragua" and the Haiti-Dominican Republic incident were not placed on the agenda of the Security Council, though the Security Council referred to them in part V of its report to the General Assembly (A/945); neither were the other communications placed on its agenda.

<sup>7</sup> See articles 5 and 15 of the Rio Treaty.

<sup>8</sup> Cuba and Dominican Republic (S/982, S/1036); Costa Rica and Nicaragua (S/1116, S/1171, S/1172, S/1239, S/1268); Haiti and Dominican Republic (S/1307, S/1346);

## COMMENT BY THE SUB-COMMITTEE ON SECTION B

16. The Organization of American States was chosen as one of the regional systems for pacific settlement of disputes which could well illustrate the relation between those processes of settlement within and those outside the United Nations.

A dispute or situation may be considered as "local" and "appropriate for regional action", within the meaning of Article 52, not so much because of the place where it occurs or the region to which the parties or States concerned belong as because they participate in a regional arrangement or constitute a regional agency of peaceful settlement of disputes.

The obligation of peaceful settlement assumed by Members of the United Nations does not itself affect their right to bring a question before the General Assembly under Article 11, paragraph 2, and Article 35, paragraph 1; but certain Members may by a separate agreement constituting a regional arrangement undertake to limit the exercise of that right by calling for prior efforts at peaceful settlement.

The Charter does not specify where responsibility lies for notification to the Security Council under Article 54, but it may presumably be discharged either by the parties or States concerned or by the regional agency itself.

## Section C

### Submission of questions to the General Assembly

17. Disputes and special political problems which have been submitted to the General Assembly and placed on its agenda fall into four main classes:

- i. *Questions that have been submitted with reference to specific Articles of the Charter*

#### *First session, second part:*

Question of the treatment of Indians in the Union of South Africa, submitted by India, under Articles 10 and 14 of the Charter (A/149, 21 October 1946).

#### *First special session:*

Palestine question, submitted by the United Kingdom under Article 10 of the Charter (A/286, 2 April 1947).

#### *Third session, second part:*

Question of the treatment of Indians in the Union of South Africa, again submitted by India under Articles 10 and 14 of the Charter (A/577, 16 July 1948).

- ii. *Questions that have been submitted by international agreements*

#### *First session, first part:*

Spanish question, submitted by Panama, on the basis of a resolution adopted at the San Francisco Conference and a statement from the Potsdam Conference (A/Bur/25, draft resolution by Panama, 6 February 1946; report of the General Committee, A/40).

Cuba and Peru (S/1390). See generally a memorandum prepared by the Secretariat entitled "Recent Inter-American Experience in the Field of Pacific Settlement" (A/AC.18/SC.9/L.6).

### *Third session:*

Question of the disposal of the former Italian colonies, submitted by the United States, France, the United Kingdom and the Union of Soviet Socialist Republics in pursuance of Article 23 and paragraph 3 of Annex XI of the Treaty of Peace with Italy (A/645, 16 September 1948).

### *iii. Questions submitted without reference to any specific Article of the Charter*

#### *First session, second part:*

Spanish question, submitted by Belgium, Czechoslovakia, Denmark, Norway and Venezuela (A/Bur/45, 31 October 1946).

#### *Second session:*

Greek question, submitted by the United States of America (A/344, 21 August 1947).

Korean question, submitted by the United States of America (A/Bur/85, 17 September 1947).

#### *Second special session:*

Palestine question, special session summoned by the Secretary-General on the request of the Security Council (A/530, 7 April 1948).

#### *Third session:*

Spanish question, submitted by Poland (A/616, 20 August 1948).

Appeal to the great Powers, submitted by Mexico (A/662/Rev.1, 2 October 1948).

Observance in Bulgaria and Hungary of human rights and fundamental freedoms, submitted by Bolivia (A/820, 18 March 1949) and Australia (A/821, 21 March 1949).

Indonesian question, submitted by India (A/826, 1 April 1949) and Australia (A/827, 1 April 1949).

Palestine question, placed on the agenda at the request of the Mediator (A/647, 18 September 1948).

#### *Fourth session:*

Observance in Romania of human rights and fundamental freedoms (item considered in conjunction with the question of the observance of human rights in Bulgaria and Hungary and fundamental freedoms), submitted by Australia (A/948, 22 August 1949).

Condemnation of the preparations for a new war, and conclusion of a Five-Power Pact for the strengthening of peace, submitted by the Union of Soviet Socialist Republics (A/996, 24 September 1949).

Chinese question, submitted by China on the basis of "violations of the Charter", without specifying a particular Article (A/1000, 27 September 1949).

### *iv. Questions that have been included in the provisional agenda in accordance with previous General Assembly resolutions*

#### *Second session:*

Spanish question, in accordance with resolution 39 (I).

Treatment of Indians in the Union of South Africa, in accordance with resolution 44 (I).

Palestine question, in accordance with resolution 106 (S-1).

#### *Third session:*

Greek question, in accordance with resolution 109 (II).

Korean question, in accordance with resolution 112 (II).

#### *Fourth session:*

Greek question, in accordance with resolution 193 (III).

Korean question, in accordance with resolution 195 (III).

Question of the disposal of the former Italian Colonies, in accordance with resolution 287 (III).

Observance in Bulgaria and Hungary of human rights and fundamental freedoms in accordance with resolution 272 (III).

Indonesian question, in accordance with resolution 274 (III).

Palestine question, in accordance with resolution 194 (III).

18. There is an inherent procedural difficulty that the General Committee, and in some degree also the plenary meetings, have to discuss the inclusion of a question in the agenda without detailed knowledge of its background; this difficulty has been met in part by rule 20 of the rules of procedure of the General Assembly.<sup>9</sup>

19. It will be seen that few disputes and special political problems have been submitted to the General Assembly with reference to a specific Article of the Charter, though this has not excluded reference in debate (on inclusion of the question in the agenda) both in the General Committee and in plenary meeting, to Articles 10, 11, 13 and 14,<sup>10</sup> and other Articles within the scope of which the question is deemed to fall.<sup>11</sup>

20. The issue of the competence of the General Assembly<sup>12</sup> may be raised in two forms: is it competent to discuss a question, and is it competent to make recommendations upon it?

21. There is a close relationship between this issue and the inclusion of an item in the agenda of the General Assembly, since the limitations upon its competence

<sup>9</sup> Rule 20 reads as follows:

"All items proposed for inclusion in the agenda shall be accompanied by an explanatory memorandum and, if possible, by basic documents or by a draft resolution."

<sup>10</sup> The representative of Bolivia, referring to submission by Bolivia of the question of observance in Bulgaria and Hungary of human rights and fundamental freedoms: *Official Records of the third session of the General Assembly, Part II, General Committee*, page 26.

<sup>11</sup> The representative of the United States pointed out that Article 1, paragraph 2, of the Charter contained a principle applicable to the situation in Korea: *Official Records of the second session of the General Assembly, Plenary Meetings, Vol. I, page 286*.

<sup>12</sup> The competence of the committees of the General Assembly can be a separate issue: see rule 120 (formerly rule 110) of the Assembly's rules of procedure.

may have to be examined by the General Committee when it makes its recommendations to the plenary meeting upon the provisional agenda,<sup>13</sup> or by the plenary meeting itself. The following practices have been observed: first, without prejudice to the question whether a discussion in the General Committee upon the competence of the General Assembly in a particular case would or would not be in order, it can be said that the General Committee cannot decide any question of competence.<sup>14</sup> Secondly, the inclusion of a question in the agenda is not in itself a decision by the General Assembly that it is competent to discuss or make recommendations upon it.<sup>15, 16</sup>

22. It is also clear from the rules of procedure and the practice of the General Assembly that the General Committee cannot itself delete an item from the provisional agenda or supplementary list, though it may recommend its rejection or its postponement to a future session.<sup>17</sup>

23. The General Assembly has on several occasions postponed consideration of a question until a future session; it has also, when recommending measures for the settlement of a dispute or special political problem, requested the body which it has created for this purpose, or the parties concerned, to report to the General Assembly at its next session. A question so postponed<sup>18</sup> or a report so called for<sup>19</sup> must be placed on the provisional agenda and its inclusion in the agenda decided *de novo*. However, it is probable that only in exceptional cases would the General Committee recommend or the General Assembly decide upon the exclusion of such a question or report from the agenda.<sup>20</sup>

24. It should be stressed that nothing in this section is intended to be a statement in general about the functions and competence of the General Committee.

<sup>13</sup> Under rule 40 (formerly rule 35).

<sup>14</sup> See discussion in General Committee on the items submitted by Australia and Bolivia regarding the observance in Bulgaria and Hungary of human rights and fundamental freedoms: *Official Records of the third session of the General Assembly, Part II, General Committee*, page 10; and particularly, the statements of Canada, page 22, and Mexico, page 35.

<sup>15</sup> On the question of the treatment of Indians in the Union of South Africa, the President replying to the representative of the Union of South Africa, who maintained that "a decision to place an item on the agenda was in fact tantamount to a decision that the consideration of the item was within the competence of the General Assembly", said that if the item "was placed on the agenda, it would be referred to the First Committee, and the representative of the Union of South Africa could then as he had stated he intended to do, raise the question of the competence of the General Assembly". *Official Records of the third session of the General Assembly, Part I, Plenary Meetings*, page 225.

<sup>16</sup> The representative of Belgium, speaking on the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms, went so far as to say that a decision on competence to deal with a question could not be properly taken unless that had first been included in the agenda. *Ibid.*, *Part II, Plenary Meetings*, page 22.

<sup>17</sup> The representative of India, speaking in the General Committee on the question of the treatment of Indians in the Union of South Africa, said:

"An item could not be deleted from the agenda at the request of a Member without serious infringement of the Assembly's prerogatives." *Official Records of the second part of the first session of the General Assembly, General Committee*, page 70.

The representative of Mexico, speaking in the General

## Section D

### Preparation of questions for consideration by the General Assembly

25. Preparation here means preparatory work done in contemplation of a session of the Assembly during which a question is to be considered for the first time; it does not include work done between sessions on a question already discussed by the Assembly but referred to a later session. Such work may consist in the making of documentation or in diplomatic preparation.

26. Documentation may be submitted by Members, by the Secretary-General, by other organs of the United Nations or by regional agencies. It may be recalled here that it was the practice of the Secretariat of the League of Nations to circulate, in advance of a session of the League Assembly, documentation on various items on the agenda, in the form of a summary of documents sent in by Governments and a survey of previous proceedings and action if the question had already been considered by the Assembly or another organ of the League.

It has not been the general<sup>21</sup> practice for Members of the United Nations to prepare and submit detailed documentation on disputes and special problems for their consideration by the Assembly. But rule 20 of the General Assembly rules of procedure provides that: "All items proposed for inclusion in the agenda shall be accompanied by an explanatory memorandum and, if possible, by basic documents or by a draft resolution". That rule came into force on 1 January 1950. Such documentation will tend to illustrate and support a particular view of a question.

27. The documentation provided by the Secretary-General will be by nature impartially chosen or compiled, and designed to assist the Assembly as a whole.

Committee on the Indonesian question, stated the principle that:

"The General Committee should in no case be permitted to become so to speak a dyke or a barricade which would prevent any Member State from bringing a dispute, or situation or a problem to the attention of all the Members of the United Nations". *Official Records of the third session of the General Assembly, Part II, General Committee*, page 48.

<sup>18</sup> General Assembly rules of procedure, rule 13 (c); (formerly rule 12 (c)).

<sup>19</sup> General Assembly rules of procedure, rule 13 (b); (formerly rule 12 (b)).

<sup>20</sup> See discussion on the Greek and Korean questions in the General Committee: *Official Records of the fourth session of the General Assembly, General Committee*, page 1, paragraphs 5 and 8; page 2, paragraphs 18 to 22; on the question of the treatment of Indians in the Union of South Africa: *Official Records of the third session of the General Assembly, Part I, General Committee*, page 13; and *ibid.*, *Plenary Meetings*, pages 223 to 226; on the observance in Bulgaria and Hungary of human rights and fundamental freedoms: *Official Records of the fourth session of the General Assembly, General Committee*, page 3, paragraphs 56 and 59.

<sup>21</sup> However, the Governments of India and the Union of South Africa both submitted detailed memoranda of relevant facts on the question of the treatment of Indians in the Union of South Africa (A/68, A/68/Add.1, A/68/Add.2, see *Official Records of the second part of the first session of the General Assembly, Joint Committee of the First and Sixth Committees*, annex 1 a; A/167, A/167/Add.1, *ibid.*, annexes 1 b and 1 c). Similarly, the Government of the United Kingdom submitted an account of its mandatory administration of Palestine to the second session (A/AC.14/8, see *Official Records of the second session of the General Assembly, Ad Hoc Committee on the Palestinian Question*, annex 2).



On the Palestine question, the Secretary-General provided elaborate documentary assistance (A/AC.18/58):

(a) The establishment of a Palestine library, which contained all available official documents and maps as well as unofficial documents and useful reference books;

(b) The provision of a list of the documents contained in the Palestine library, together with an index by subject-matter;

(c) The preparation of a volume containing a summary of the various solutions that had been proposed or considered by Governments, together with a summary of the various documents involved;

(d) A volume containing, under various specific headings, a factual background survey which would constitute a handbook on Palestine.

The Security Council may also, by way of its annual report or transmission of its records, including documents made available to it, provide documentation of a question to be considered by the Assembly; thus on the Spanish question<sup>22</sup> and the Greek question<sup>23</sup> the Security Council directed that "all records and documents of the case be put at the disposal of the General Assembly". No documentation has been provided so far by the Interim Committee or any regional agency.

28. Diplomatic preparation of a question may be carried on in that case or as part of a general practice, between government representatives—in particular the permanent missions to the United Nations—for the purpose of conciliation, elucidation of facts, or agreement on procedure for handling the question in the General Assembly. Diplomatic preparation may include the formulation of draft resolutions and, in certain cases, the exchange and consideration of documents between Member States, the Secretary-General or other organs of the United Nations and the specialized agencies.

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29. Documentation will be useful to the extent that it is authoritative, contemporary and concise.

Although in most cases the work of the United Nations is public property and although the conclusions reached by the United Nations will always be public property, it may be desirable that, in proper cases, the documents referred to in the preceding paragraph should be treated as confidential if practical means of protecting them could be worked out.

Careful preparatory work will clarify and have the effect of abbreviating discussions of questions in the General Assembly.

### Section E

#### Preliminary steps in the General Assembly

30. There are a number of preliminary questions which may arise for decision by the General Assembly,

<sup>22</sup> See *Official Records of the Security Council, First Year, Second Series, No. 21.*

<sup>23</sup> *Ibid.*, Second Year, No. 89.

<sup>24</sup> For the special forms of organization employed by the League of Nations Assembly, see document A/AC.18/68, section IX.

<sup>25</sup> See rules 16, 17, 18 and 19 for special sessions (formerly rules 15, 16, 17 and 18, respectively).

<sup>26</sup> See rules 21, 22, and 23 (formerly rules 14 and 19).

before the substance of a dispute or special political problem is dealt with. For example, procedural problems may arise calling for special forms of Assembly organization of special methods of conciliation; it may be necessary to invite non-members or other possible participants to take part in the proceedings; objections may be made to the General Assembly's competence to deal with the matter before it or to take a particular course of action upon it. These problems will be considered in turn in the light of Assembly practice.

#### (1) INITIAL PROCEDURE AND ORGANIZATION

31. Generally, disputes and special political problems have been dealt with by the General Assembly in the same manner as the broader political and organizational problems which the Assembly has considered. The Assembly has considered such questions not only within the framework of its normal procedure but also, with the exception of one question, within the course of its regular sessions. The special forms of organization, such as the establishment of an *Ad Hoc* Political Committee, have been designed primarily to expedite the work of the Assembly.<sup>24</sup> The normal procedure by which a question is handled by the General Assembly is as follows:

32. Questions submitted to the General Assembly for its consideration are included in the provisional agenda or supplementary list in accordance with rules 13 and 14 (formerly rules 11 and 12) of the rules of procedure. Rule 15 (formerly rule 14) further provides for the inclusion of "additional items of an important and urgent character" which are proposed after the provisional agenda and supplementary list have been circulated.<sup>25</sup>

33. The provisional agenda and the supplementary list, together with the Secretary-General's proposed allocation of agenda items, are considered by the General Committee, which makes recommendations thereon to the Assembly. The General Assembly in plenary meeting then adopts the agenda for the session,<sup>26</sup> and allocates the items to the appropriate Main Committees.<sup>27</sup>

34. Although a Main Committee cannot itself introduce new items on its own initiative, it is the Committee which adopts its own priorities for the consideration of the items on its agenda.<sup>28</sup>

35. Upon the completion of consideration, the report of the Committee is submitted to the General Assembly, where it is considered in plenary meeting<sup>29</sup> and the final decision on the question is taken.

36. Rule 66 (formerly rule 58) of the rules of procedure of the General Assembly provides that

"The General Assembly shall not, unless it decides otherwise, make a final decision upon any item on the agenda until it has received the report of a committee on that item."

<sup>27</sup> See rule 97 concerning the allocation of items (formerly rule 89).

<sup>28</sup> See rules 96 and 98 (rule 96 was formerly rule 88; rule 98 is a new rule).

<sup>29</sup> Rule 67 (formerly rule 59) states that report of a Main Committee shall be discussed in plenary meeting if at least one-third of the Members present and voting consider such discussion to be necessary. In actual practice, most reports on items considered in this memorandum have been the subject of extended review and discussion in plenary meetings.

37. The only instance in which a dispute or special political problem has been handled by the General Assembly in plenary meeting, without first having been referred to a Committee, was the Spanish question at the first session, first part.<sup>30</sup> In a number of other instances it has been suggested that questions be handled directly in plenary meeting, but these suggestions have been either withdrawn or rejected.<sup>31</sup>

38. The General Assembly has, however, approved the suggestion that more questions should be handled directly in plenary meeting, and particularly those questions "the essential aspects of which are already familiar to Members, such as items which have been considered by the General Assembly at previous sessions and which do not require either the presence of representatives of non-member States or the hearing of testimony".<sup>32</sup>

#### (a) Special forms of organization

39. The rules of procedure provide for six Main Committees of the General Assembly. The Assembly has on three occasions established an additional Committee.

(a) At the second session, the Assembly established a Committee to consider the items on the agenda concerning Palestine.<sup>33</sup>

(b) At the third session, part I,<sup>34</sup> and at the fourth session,<sup>35</sup> an *Ad Hoc* Political Committee was established to which a number of the items normally on the agenda of the First Committee were allocated.

40. The Assembly has on one occasion resorted to a variation in Committee practice for the specific pur-

<sup>30</sup> *Official Records of the first part of the first session of the General Assembly*, Plenary Meetings, 26th plenary meeting. For discussion in the General Committee, *ibid.*, General Committee, 13th meeting.

<sup>31</sup> See, for example, Spanish question:

*Official Records of the second part of the first session of the General Assembly*, General Committee, 22nd meeting, in particular the remarks by the representative of the United Kingdom on the proposal by the representative of the Ukrainian SSR.

See also *ibid.*, Plenary Meetings, 43rd plenary meeting and 46th plenary meeting, in particular the remarks by the representatives of Australia and the United Kingdom.

For suggestions for handling the item on the agenda in plenary meeting, see *Official Records of the first special session of the General Assembly*, Vol. II, General Committee, page 11; and *ibid.*, Vol. I, Plenary Meetings, pages 28 and 29.

Regarding the handling of the appeal to the great Powers in plenary meeting, see *Official Records of the third session of the General Assembly*, Part I, General Committee, pages 25 to 30.

<sup>32</sup> See annexes I and II to the rules of procedure of the General Assembly, as approved at the fourth session: A/520/Rev.1, pages 31 to 35.

<sup>33</sup> See *Official Records of the second session of the General Assembly*, General Committee, 35th meeting; and *ibid.*, Plenary Meetings, Vol. I, pages 272 to 275 (90th plenary meeting).

<sup>34</sup> See *Official Records of the third session of the General Assembly*, Part I, General Committee, 50th meeting; *ibid.*, Plenary Meetings, 158th plenary meeting.

<sup>35</sup> See *Official Records of the fourth session of the General Assembly*, General Committee, page 6; *ibid.*, Plenary Meetings, 224th plenary meeting.

<sup>36</sup> See *Official Records of the second part of the first session of the General Assembly*, General Committee, 19th meeting. During the course of the discussion in the General Committee, two proposals were put forward: one for a joint committee,

pose of handling a particular question. At the second part of the first session, it was decided to refer the question of the treatment of Indians in the Union of South Africa to a Joint Committee of the First and Sixth Committees in view of the legal and political character of the issues raised.<sup>36</sup>

41. Special sessions of the General Assembly may in themselves be special forms of organization for the handling of disputes and special political problems. The first special session, for instance, was called "for the purpose of constituting and instructing a special committee to prepare for the consideration" of the Palestine question at the second regular session.<sup>37</sup> The first special session was called at the request of a Member State—the United Kingdom—and the second on the initiative of the Security Council.<sup>38</sup>

42. The Assembly has also provided in certain of its resolutions for the possible convocation of a special session. The resolution establishing the United Nations Special Committee on the Balkans, and the resolution establishing the terms of reference of the Interim Committee, have included such provisions.<sup>39</sup>

#### (b) Order of discussion

43. Rule 109 (formerly rule 99) provides that "the Chairman shall call upon speakers in the order in which they signify their desire to speak".

44. The usual practice has been for the representative of the Member which has requested the inclusion of an item in the agenda to make the initial statement

and a second that the question be referred for its legal aspects to the Sixth Committee, and for its political aspects, to the First Committee. Since the two delegations "most directly interested in the item" (i.e. the Union of South Africa and India) were prepared to accept the first of these procedures, the Assembly accordingly established the Joint Committee of the First and Sixth Committees. See *Official Records of the second part of the first session of the General Assembly*, Plenary Meetings, pages 930 and 931 (46th plenary meeting).

<sup>37</sup> The General Assembly decided in this instance to restrict the agenda of the special session to the one item, for which it had been summoned. See *Official Records of the first special session of the General Assembly*, Vol. II, General Committee, 28th to 31st meetings inclusive; and *ibid.*, Vol. I, Plenary Meetings, 70th plenary meeting.

<sup>38</sup> See rules 8 and 9 (formerly rules 7 and 8) of the rules of procedure and Article 20 of the Charter in connexion with the convocation of special sessions. See also A/286 (*ibid.*, Vol. I, Plenary Meetings, annex 1), for the communication from the United Kingdom concerning the first special session. The resolution of the Security Council, in accordance with which the second special session was called can be found in the *Official Records of the Security Council*, Third Year, Supplement for April 1948, document S/714.

<sup>39</sup> On UNSCOB see the following resolutions: 109 (II), 21 October 1947; 193 (III), 27 November 1948; 288 (IV), 18 November 1949.

On the Interim Committee see the following resolutions: 111 (II), 196 (III) and 295 (IV).

At the third session, first part, when the General Committee met to consider methods for completing the work of the session, a proposal was presented that a special session be called. The debate in the General Committee (52nd meeting, 4 December 1948; and 53rd meeting, 5 December 1948) contains a number of statements which are significant from the point of view of the opinions which representatives held concerning the character of a special session.



in Committee.<sup>40</sup> On one occasion, the First Committee decided to follow this practice although a representative who wished to raise objections to the competence of the Assembly to deal with the question had first indicated a desire to speak.<sup>41</sup>

45. When a dispute or special political problem has been discussed at a previous session of the Assembly, the consideration of the question at the subsequent session has usually begun with the presentation of reports on the measures which have been carried out since the previous session. When a commission has been established, normally discussion has been initiated by the presentation of the report by the Chairman or Rapporteur of the Commission.<sup>42</sup> In certain instances, discussion has begun with statements by members concerning the measures which their Governments have undertaken in accordance with previous Assembly resolutions.<sup>43</sup>

46. The general discussion in Main Committee has been postponed in certain instances for various reasons. When it has been considered that a dispute or special political problem directly concerns States which are not Members of the United Nations, the discussion of the question has usually begun with the extension of invitations to such non-members to take part in the debate.<sup>44</sup> In some instances, objections to the con-

sideration of an item based upon consideration of competence have been raised prior to the discussion of the question itself.<sup>45</sup> In one instance (the Greek question, fourth session), the general discussion was postponed until the First Committee had received the report of the Conciliation Committee which was established at the outset of the consideration of the item.<sup>46</sup>

47. Neither the rules of procedure nor the practice of the committees provides for special treatment to be accorded to parties to a dispute or to States directly concerned in a question. Such States have usually presented their views at an early stage in the general discussion, and, if they have brought the question to the Assembly, usually make the initial statements on the question.

### (c) Establishment of sub-committees

48. In the course of the handling of disputes and special political problems, the First and *Ad Hoc* Political Committees have on a number of occasions established sub-committees to deal with certain aspects of the question. Many of those sub-committees have been in the nature of drafting groups or have been entrusted with the consideration of proposals which have been advanced in committee with a view to arriving at a single draft resolution.<sup>47</sup> Some of the sub-committees,

<sup>40</sup> See below for instances of initial speeches made in Committees on the following questions:

Treatment of Indians in the Union of South Africa: *Official Records of the second part of the first session of the General Assembly*, Joint Committee of the First and Sixth Committees, India, page 1 (1st meeting).

Greek question: *Official Records of the second session of the General Assembly*, First Committee, United States, page 9 (60th meeting).

Korean question: *Ibid.*, United States, page 248 (87th meeting).

Chinese question: *Official Records of the fourth session of the General Assembly*, First Committee, China, page 340 (338th meeting).

Observance in Bulgaria and Hungary of human rights and fundamental freedoms: *Official Records of the third session of the General Assembly, Part II, Ad Hoc Political Committee*, Bolivia, page 65 (34th meeting).

Palestine question: *Official Records of the second session of the General Assembly, Ad Hoc Committee on the Palestinian question*, United Kingdom, page 2 (2nd meeting). This speech was made in accordance with the statement contained in the communication from the United Kingdom, requesting the convocation of the first special session, see *Official Records of the first special session of the General Assembly*, Vol. I, Plenary Meetings, annex 1.

<sup>41</sup> At the third session, part II, when the First Committee began consideration of the item "Treatment of Indians in the Union of South Africa", it was decided that the initial speech would be given by the delegation which had submitted the item to the General Assembly (India) even though the Union of South Africa had made the first request to speak in order to raise certain questions of competence. For the discussion on this question and on the application of rules 109 and 120, see *Official Records of the third session of the General Assembly, Part II*, First Committee, pages 246 to 253 (263rd meeting).

<sup>42</sup> See presentation of the following reports:

UNSCOB: *Official Records of the third session of the General Assembly, Part I*, First Committee, page 261 (171st meeting).

United Nations Temporary Commission on Korea: *Ibid.*, page 956 (231st meeting).

United Nations Commission on Korea: *Official Records of the fourth session of the General Assembly, Ad Hoc Political Committee*, page 2 (2nd meeting).

UNSCOP: *Official Records of the second session of the General Assembly, Ad Hoc Committee on the Palestinian Question*, page 4 (2nd meeting). Statement by the Acting Mediator: *Official Records of the third session of the General Assembly, Part I*, First Committee, page 162 (161st meeting).

United Nations Conciliation Commission for Palestine: *Official Records of the fourth session of the General Assembly, Ad Hoc Political Committee*, page 246 (43rd meeting).

<sup>43</sup> See statements by the representatives of the Union of South Africa and India on the question of the treatment of Indians in the Union of South Africa: *Official Records of the second session of the General Assembly*, First Committee, pages 419 ff. (106th meeting).

<sup>44</sup> In some instances, however, the opinion has been expressed that such invitations should be postponed until after the general debate, or until after the discussion of the report of a Commission.

See "Observance in Bulgaria and Hungary of human rights and fundamental freedoms": *Official Records of the third session of the General Assembly, Part II, Ad Hoc Political Committee*, page 62 (34th meeting).

Korean question: *Official Records of the third session of the General Assembly, Part I*, First Committee, pages 630 to 634 (200th meeting).

<sup>45</sup> See statements on the following questions:

Spanish question: *Official Records of the second session of the General Assembly*, First Committee, Dominican Republic, page 399 (103rd meeting).

Chinese question: *Official Records of the fourth session of the General Assembly*, First Committee, pages 339 and 340, statements by a number of delegations (338th meeting).

See also discussion concerning prior discussion on competence, and decision taken thereon by the First Committee in connexion with the question of the treatment of Indians in the Union of South Africa (see footnote 41 above).

<sup>46</sup> See paragraph 51 below.

<sup>47</sup> See for instance the following sub-committees:

Sub-Committee on the Spanish Question: *Official Records of the second session of the General Assembly*, First Committee, page 419 (105th meeting).

Sub-Committee on the Palestine Question: *Official Records of the first special session of the General Assembly*, Vol. III, Main Committees, First Committee, page 164 (52nd meeting).

however, have been given much more extensive functions in the elaboration or working out of draft resolutions for submission to the Main Committees.<sup>48</sup> Sub-committees have usually been set up after the conclusion of general discussions in the Main Committees. In many instances they have been composed entirely or in part of those representatives who have submitted draft resolutions or amendments thereto. In most cases the sub-committees have been able to submit agreed texts. While in some instances these draft resolutions have failed to secure majority votes in the Main Committees or the necessary two-thirds majority votes in plenary meetings, usually the texts are approved in amended form.

#### (d) Special methods for conciliation

49. In connexion with two questions, the Palestine question at the second session and the question of threats to the political independence and territorial integrity of Greece at the third and fourth sessions, the General Assembly has adopted a special internal procedure with a view to conciliation. In each case, the special method took the form of a conciliation group created by the First Committee or the *Ad Hoc* Political Committee which was considering the question.

50. Each of the conciliation groups included the Chairman and Rapporteur of the Committee, and the conciliation group on Palestine included also the Vice-Chairman of the Committee, and both of the conciliation groups on Greece included the President of the General Assembly and the Secretary-General.

51. Both the conciliation group on Palestine and the first conciliation group on Greece were established after the general debate on the questions had been concluded. The Palestine group was established simultaneously with two other sub-committees which were to define proposals for the future government of Palestine. The second conciliation group on Greece was created with the express provision that the consideration of the Greek question by the First Committee should be deferred pending the submission of the group's report.

### (2) OUTSIDE PARTICIPATION IN GENERAL ASSEMBLY PROCEEDINGS

#### (a) Possible participants

52. Possible outside participants in General Assembly proceedings may be classified as follows:

- (a) States not Members of the United Nations;
- (b) (i) *De facto* authorities;

<sup>48</sup> See for instance, the sub-committees of the *Ad Hoc* Committee on the Palestinian Question: *Official Records of the second session of the General Assembly, Ad Hoc Committee on the Palestinian Question*, pages 136 and 137 (19th meeting).

See also the sub-committees on the Palestine question, established by the First Committee at the second special session: *Official Records of the second special session of the General Assembly*, Vol. II, Main Committees, First Committee, page 228 (137th meeting) and page 237 (138th meeting).

<sup>49</sup> The First Committee rejected a proposal that Mr. Miltiades Porphyrogenis be heard on the Greek question: *Official Records of the third session of the General Assembly, Part I*, First Committee, page 275 (173rd meeting).

- (ii) Non-governmental organizations, that is to say, national groups or bodies which are not agencies of government or international bodies on which governments are not represented as such;

- (iii) Inter-governmental organizations.

It is not always easy to discern the line which divides classes (i) and (ii) of sub-paragraph (b) of the preceding paragraph.

There is no ground for believing that the General Assembly would hear any individual, other than a witness of fact or an expert witness, unless he spoke in some representative capacity which the Assembly recognized.<sup>49</sup>

#### (b) Nature and objects of participation

53. Neither the Charter nor the rules of procedure of the General Assembly contain provisions regulating outside participation<sup>50</sup> except where a dispute has been referred to the General Assembly under Article 35, paragraph 2. But two basic assumptions may be made: first, that no outside participant may cast a vote in the General Assembly; and second, that participation is limited in time and place to those stages of a General Assembly discussion in which the outside participant is concerned.

Broadly, the General Assembly has so far recognized two principal objects in inviting outside participation:

First, to obtain information which can best be supplied by the participant;

Second, where a participant is a party to a dispute or directly concerned in a special problem which is on the Assembly's agenda, to place that participant upon the same footing, as far as is practicable and justice requires, as those Members of the United Nations which are also concerned.

#### (c) Participation of States and Members of the United Nations

##### (i) General considerations

54. There are certain general principles involved in the question of participation. First the principle of natural justice, *audi alteram partem*; second, the principle that the consent of all States concerned is necessary to effective and peaceful settlement of disputes. Both principles may operate together.

55. It has been maintained<sup>51</sup> in the General Assembly on the question of participation in the handling there of disputes and special political problems that it would be illogical for the spirit of the Assembly to be opposed

Requests for participation by the Provisional Democratic Government of Greece on the Greek question, and the People's Democratic Republic of Korea on the Korean question were also rejected: Greek question: *Ibid.*, Annexes, documents A/C.1/350; Korean question: *Ibid.*, document A/C.1/366.

<sup>50</sup> The election of the judges of the International Court of Justice in which non-members which are parties to its Statute participate is a special case outside the scope of the present work.

<sup>51</sup> Greek question: *Official Records of the second session of the General Assembly*, First Committee, France, page 10; Belgium, page 10; China, page 10 (60th meeting).

to that of the Security Council;<sup>52</sup> conversely, it was said that the conditions attaching to invitations by the Security Council cannot be applied "automatically" to the Assembly.<sup>53</sup> A resolution which was finally adopted by the First Committee,<sup>54</sup> inquiring of Bulgaria and Albania whether as a condition of participation they were prepared "to agree to apply the principles and rules of the Charter in the settlement of the Greek question", is consistent with the view that the principles of Article 32 are applicable to the handling of a dispute by the General Assembly.

It has also been suggested that the condition of Article 35, paragraph 2 may be applied by analogy to participation by a non-member in the discussion of a dispute which it has not itself referred to the General Assembly.<sup>55</sup> This will be considered below, but here it may be said that this suggestion raises the further question whether a non-member which refers a dispute to the General Assembly in accordance with the provisions of Article 35, paragraph 2, is not thereby entitled to the same participation throughout as a Member, though without the right to vote. This question has not been decided or discussed by the General Assembly.

### (ii) *Procedure for invitation*

56. In most cases invitations to participate have been sent in response to a request by a non-member to be heard, though the degree of participation has not always been so large as requested. The General Assembly has also sent invitations without a prior request.

57. Requests from non-members have normally been referred to the committee dealing with the item concerned.<sup>56</sup>

58. No special problems appear to have arisen over credentials or representatives of non-members.

### (iii) *Conditions of participation*

59. In only two cases has the question of conditions for participation of a non-member been raised. At the second session, the First Committee debated requests of Albania and Bulgaria to be heard on the Greek question. The commission of investigation, appointed by the Security Council, had reported adversely upon the conduct of these countries. The representative of the United States stated<sup>57</sup> that representatives of Bulgaria and Albania should not be heard "unless they accepted in advance, for the purpose of the dispute, the obligations of pacific settlement provided for in the Charter". This view was supported by a number of members but op-

posed by the representative of the USSR on the ground that:<sup>58</sup>

"... Bulgaria and Albania could not be asked to bind themselves before they had even stated their case".

The First Committee adopted the following resolution:<sup>59</sup>

"The First Committee inquires of the representatives of Albania and Bulgaria if their Governments are prepared to agree to apply the principles and rules of the Charter in the settlement of the Greek question."

It will be observed that while the language of the United States proposal was adopted from Article 35, paragraph 2, that language was altered and generalized in the final resolution, so that the resolution cannot well be read as an application by analogy of that paragraph.

The Government of Albania in its reply claimed an absolute right to be heard<sup>60</sup> which could not, in its opinion, be made subject to conditions. The reply of the Government of Bulgaria was similar.

The First Committee's discussion on these rules was centred on the question whether, in face of these replies, Albania and Bulgaria should be invited to participate upon the same footing as Members. A Belgian proposal<sup>61</sup> was adopted which limited participation of the two States to making "statements . . . on the Greek question" and to replying "to any question which may be put to them".<sup>62</sup>

60. At the beginning of the discussion by the *Ad Hoc* Political Committee of the question of observance in Bulgaria and Hungary of human rights and fundamental freedoms, an Australian proposal that "the Committee invite representatives of Bulgaria and Hungary to participate without vote in the discussion of this question" was adopted by 17 votes to 1, with 31 abstentions.<sup>63</sup> These abstentions were in part due to beliefs that the proposal, in imposing no conditions or limitations on participation, went beyond the practice followed<sup>64</sup> in the Greek question, and that the Committee should not in the circumstances issue invitations unless requested to do so.<sup>65</sup>

### (iv) *Field of participation*

61. In most cases, representatives of non-members have participated in the discussions of the First and *Ad Hoc* Political Committees; but there is a question whether and how far they may participate in discussions in plenary meetings, in the General Committee, and in sub-committees of the Main Committees.

<sup>52</sup> Article 32 of the Charter makes provision for participation in proceedings in the Security Council. The Article embodies two provisions: first, that a non-member party to a dispute under consideration by the Security Council must be invited to participate without vote; second, that the Council shall lay down such conditions of participation as seem just. The first of these provisions embodies one or both of the principles set out in paragraph 54.

<sup>53</sup> *Ibid.*, USSR, page 11.

<sup>54</sup> *Ibid.*, page 12.

<sup>55</sup> *Ibid.*, Sweden, page 10.

<sup>56</sup> The General Assembly, in plenary meeting, instructed the General Committee to recommend a procedure for dealing with the requests (see paragraph 64 below). *Official Records of the first special session of the General Assembly*, Vol. I, Plenary Meetings, page 12 (69th plenary meeting).

<sup>57</sup> *Official Records of the second session of the General Assembly*, First Committee, page 9 (60th meeting).

<sup>58</sup> *Ibid.*, page 11.

<sup>59</sup> *Ibid.*, page 12.

<sup>60</sup> *Ibid.*, annex 15 f: "It is universally accepted as an elementary principle of justice that it is impossible to pass judgment and take decisions founded on right without hearing all the parties to a dispute."

<sup>61</sup> *Ibid.*, page 31 (62nd meeting).

<sup>62</sup> Similar invitations were issued to the Governments of Albania and Bulgaria to participate in the discussions on the Greek question at the third and fourth sessions.

<sup>63</sup> *Official Records of the third session of the General Assembly, Part II, Ad Hoc Political Committee*, page 65 (34th meeting).

<sup>64</sup> *Ibid.*, United States.

<sup>65</sup> *Ibid.*, El Salvador.

62. *Plenary meetings.* The Secretary-General stated in another connexion:<sup>66</sup> "The only exceptions to the rule that only representatives<sup>67</sup> of Member States may be heard in the Assembly have been made when we have invited heads of States to address it . . . as special guests."

When the Government of Albania addressed a request to the President of the General Assembly that it be heard in plenary meeting on the Greek question, the President stated that "he had replied in the negative, drawing attention [of the representative of Albania] to the fact that the practice of the General Assembly has been to provide in its Main Committees for the hearing of testimony from sources not represented in the General Assembly".<sup>68</sup> This ruling was upheld by the General Assembly.

63. *Sub-committees.* In dealing with the Palestine question (fourth session), the *Ad Hoc* Political Committee established a Sub-Committee to study all draft resolutions and amendments which had been or might be proposed on the question of an international regime for Jerusalem and the protection of the Holy Places.

The Sub-Committee stated in its report that:<sup>69</sup> "A representative of the Hashemite Kingdom of Jordan was invited to sit, without vote, during the meetings of the sub-committee."

On the question of the disposal of the former Italian colonies (third session), the First Committee established a Sub-Committee to consider requests to be heard from non-governmental organizations. Upon a suggestion that Italy participate in the work of the Sub-Committee, it was agreed that it could not, as a non-member, be a member of the Sub-Committee.<sup>70</sup> While there was disagreement as to whether it would be useful for Italy either to give its views or give evidence before the Sub-Committee, the First Committee decided that the Sub-Committee should be given complete freedom to determine what evidence it should hear and whom it should consult.

64. It appears, therefore, from General Assembly practice that: (a) the appropriate forum for a non-member participant is the committee dealing with the item with which it is concerned; (b) sub-committees appointed to gather information and consult opinion are free to hear representatives of non-members.

<sup>66</sup> *Official Records of the first special session of the General Assembly*, Vol II, General Committee, page 92 (32nd meeting).

<sup>67</sup> Presumably, by this is meant accredited representatives.

<sup>68</sup> *Official Records of the fourth session of the General Assembly*, Plenary Meetings, 245th plenary meeting, paragraph 4.

It may be observed that the invitation to the Government of the Netherlands to participate in the General Committee's discussion on the submission of the Indonesian question, the Netherlands being a Member of the United Nations, not a member of that Committee, is an application of the first principle referred to in paragraph 59 above. See also rule 43 of the General Assembly rules of procedure; and invitation to the Government of the Union of South Africa to attend the discussion on the inclusion of the item "Treatment of Indians in the Union of South Africa" in the agenda. *Official Records of the third session of the General Assembly, Part I*, General Committee, pages 11 and 12 (43rd meeting).

<sup>69</sup> A/AC.31/SC.1/17.

<sup>70</sup> See, for example, statements by the representatives of Ethiopia, Argentina, Venezuela: *Official Records of the third*

## (v) *Forms of participation*

65. The forms of participation have not been defined by the General Assembly, nor has it used uniform terminology in the matter. The forms of participation may, however, be deduced from the following:

(a) The terms in which the invitation is stated;

(b) The course of discussion preceding the decision to invite;

(c) Rulings by the Chairman after the invited representative has taken his seat.

66. The following examples may be cited in illustration (points (a), (b), (c), of this paragraph correspond to points (a), (b), (c), of the preceding paragraph):

(a) The terms of the invitation from the First Committee to Italy to participate in the discussion of the question of the disposal of the former Italian colonies were as follows:<sup>71</sup>

"Decides to invite the Government of Italy to send a representative to sit, without vote, during the Committee's consideration of the question of the disposal of the former Italian colonies, such representative to be present for the purpose of answering questions, providing such assistance as the Committee may require and making an initial statement, as well as such further statements as the Committee may consider appropriate."

(b) In the course of the discussion before the decision to invite Bulgaria and Albania to participate in the discussion of the Greek question, three forms of participation were proposed for them: as parties to a dispute placed upon an equal footing with those Members which were also parties;<sup>72</sup> as defendants entitled to reply to accusations;<sup>73</sup> or as witnesses.<sup>74</sup> The second or third forms were favoured by Members which considered that the replies from the two States were unsatisfactory. A Belgian proposal that the two States be invited was presented as follows:<sup>75</sup> ". . . (the First Committee) has decided to hear the statements of the Bulgarian and Albanian delegations on the Greek question and requests them to place themselves at the disposal of the Committee in order to reply to any questions which may be put to them."

The Belgian proposal was adopted. When the question was considered again at the third session, part I,

*session of the General Assembly, Part II*, First Committee, pages 44 and 45 (242nd meeting). The representative of Ethiopia, in particular, did not see why Italy should have a special role; and as it had already been admitted to the discussion in the First Committee, it could submit any observations on the report of the Sub-Committee.

<sup>71</sup> *Official Records of the third session of the General Assembly, Part II*, First Committee, Annexes, document A/C.1/431. This resolution was adopted by the First Committee at its 238th meeting: *Ibid.*, First Committee, page 2.

The First Committee followed the same procedure on the same question at the fourth session: see *Official Records of the fourth session of the General Assembly*, Annex to the First Committee, document A/C.1/494.

<sup>72</sup> See statements made by the representatives of USSR, Poland, Ukrainian SSR: *Official Records of the second session of the General Assembly*, First Committee, pages 30 and 31 (62nd meeting).

<sup>73</sup> *Ibid.*, Australia, pages 28 and 29.

<sup>74</sup> *Ibid.*, Belgium and El Salvador, pages 28, 29 and 31.

<sup>75</sup> *Ibid.*, page 31.

the representative of the United States of America proposed the same solution.

The representative of Poland submitted an amendment<sup>76</sup> "... authorizing the representatives of Albania and Bulgaria to reply to any points in the discussion of which they considered it necessary to participate".

He maintained that<sup>77</sup> "... according to the United States proposal, they would be merely guests, probably sitting not with representatives but in the Press section, and would not participate officially in the work of the Committee".

The Polish amendment was rejected and the United States proposal adopted. It was again adopted at the fourth session.

(c) A ruling by the Chairman during debate on the Greek question (second session) that the representative of Albania "must confine himself to answering questions"<sup>78</sup> was upheld by the Committee, the question which had been put at the beginning of the meeting having been clear. Again on the Greek question (third session), the Chairman interrupted the representative of Bulgaria "to inquire whether the Committee was willing to permit [him] to continue his speech, which obviously went beyond the scope of the question raised by the representative of Yugoslavia".<sup>79</sup> He was allowed to do so though the representative of the Philippines stated that the decision should not constitute a precedent.<sup>80</sup>

67. In the course of the debate on the Palestine question (fourth session), the chairman of the *Ad Hoc* Political Committee ruled:<sup>81</sup> "... that the representative of Jordan had the right to speak when his country was attacked, on the understanding that he must confine himself to replying to the attack".

68. The forms of participation so far recognized by the General Assembly for non-members are, therefore, broadly:

(a) The right to make statements, to answer (and perhaps ask) questions and to reply.

(b) The right to make a statement or statements and to answer questions; whether a refusal to answer questions would justify withdrawal of the right of participation has not been discussed in the General Assembly.

(c) The right to reply to specific accusations or attacks. There has been no discussion about the status of non-members as observers.

<sup>76</sup> *Official Records of the third session of the General Assembly, Part I, First Committee, page 246 (170th meeting).*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Official Records of the second session of the General Assembly, First Committee, page 88 (69th meeting).*

<sup>79</sup> *Official Records of the third session of the General Assembly, Part I, First Committee, page 363 (181st meeting).*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Official Records of the fourth session of the General Assembly, Ad Hoc Political Committee, page 305 (50th meeting).* The Hashimite Kingdom of the Jordan had been invited "to take part in the debates."

<sup>82</sup> For example, the International Red Cross in connection with the Palestine question: *Official Records of the fourth*

(d) *Participation of de facto authorities and non-governmental organizations*

(i) *General considerations*

69. The essential difference between these classes of outside participants and non-members is that, before they can be invited, their representational status must be determined. In the case of *de facto* authorities, there is a question whether they should be regarded as parties in interest. Again in the case of non-governmental organizations, which will normally participate as witnesses rather than parties in interest, it is necessary to find out whether the information their representatives give to the General Assembly is likely to be accurate and, in political matters, authoritative.

It should be observed that the instances selected below were those in which the General Assembly was given the specific task, by treaty or otherwise, of determining the future of a territory.

(ii) *Procedure for invitation*

70. As with non-members, the General Assembly normally acts upon requests for participation, though it may initiate invitations;<sup>82</sup> in either case the decision has normally been with the committee to which the relevant item has been sent.

On the Palestine question, however, the General Assembly, on the advice of the General Committee, resolved in plenary meeting:<sup>83</sup>

"1. That the First Committee grant a hearing to the Jewish Agency for Palestine on the question before the Committee;

"2. To send to that same Committee for its decision those other communications of a similar character from the Palestinian population which have been received by this special session of the General Assembly or may later be submitted to it."

The First Committee decided "to grant a hearing to the Jewish Agency for Palestine and the Arab Higher Committee"<sup>84</sup> even though the latter had withdrawn its request on the ground that the General Assembly had laid down a procedure in its resolution which did not place the Jewish and Arab interests on the same footing. The plenary meeting later confirmed the First Committee's application of the General Assembly's resolution.<sup>85</sup>

It may be said that this was a case where the General Assembly decided, though not explicitly, that the Jewish Agency and the Arab Higher Committee had each a

*session of the General Assembly, Ad Hoc Political Committee, page 256 (44th meeting).*

<sup>83</sup> *Official Records of the first special session of the General Assembly, Vol. I, Plenary Meetings, pages 114 and 115 (75th plenary meeting).*

<sup>84</sup> *Official Records of the first special session of the General Assembly, Vol. III, Main Committees, First Committee, page 78 (47th meeting).*

<sup>85</sup> In the course of discussion of the First Committee's competence to issue an invitation to the Arab Higher Committee after its request had been withdrawn, the representative of Argentina said: "I consider that this Committee is fully entitled to invite whomever it considers fit regarding the matter on its agenda. As regards the Arab population of Palestine, I will even say that the Committee is obliged to invite it..." *Ibid.*, page 24 (46th meeting).

representational status such that they were to be treated as parties in interest and therefore assimilated to non-members for purposes of participation.

71. Various methods, not all of which have been adopted, have been proposed for deciding what authorities or organizations should be heard.

(a) Establishment of a subsidiary organ to function in a territory which has no fully representative government:

In connexion with the Korean question, the First Committee adopted the following resolution, which sets out clearly the principles involved:<sup>86</sup>

"Inasmuch as the Korean question which is before the General Assembly is primarily a matter for the Korean people itself and concerns its freedom and independence, and *recognising* that this question cannot be correctly and fairly resolved without the participation of representatives of the indigenous population,

"The First Committee recommends that elected representatives of the Korean people be invited to take part in the consideration of the question.

"Further recommends that, in order to facilitate and expedite such participation and to observe that the Korean representatives are in fact duly elected by the Korean people and not mere appointees from military authorities in Korea, there be forthwith established a United Nations Temporary Commission on Korea, to be present in Korea, with the right to travel, observe and consult throughout Korea."

At the next session (third session, part I), the representative of the United States aptly referred to the Commission as a "Credentials Committee" and, on the basis of its report, the First Committee invited the Government of the Republic of Korea to take part in its discussions.<sup>87</sup>

(b) Consideration of the views of the States specially concerned:

The United Kingdom as mandatory of Palestine was represented on a sub-committee established to consider which authorities or organizations should be heard on the Palestine question;<sup>88</sup> and Egypt was represented on a similar sub-committee set up to consider requests to be heard on the question of the disposal of the former Italian colonies.<sup>89</sup>

In connexion with the Korean question, the representative of the United States addressed the following to the First Committee:<sup>90</sup>

"I have the honour to advise that it is requested that the various delegations to the General Assembly of the United Nations be informed that the only official Korean agencies authorized to speak officially for the Korean people under the military government which the

United States has established in South Korea are: (1) the civil administrator, and (2) the South Korea Interim Legislative Assembly.

"There is, of course, no objection, so far as the United States is concerned, to the expression by individual Koreans or others of their personal views regarding any problem which is before the United Nations. However, to avoid misunderstanding it should be made clear that such persons are in no sense representative of any official body recognized by the United States Government . . ."

It does not appear that, in any of these cases, the views of any States specially concerned were given distinct and separate consideration. The sub-committees concerned with the question of the disposal of the former Italian colonies were, however, instructed to study and take into account the report of the Four-Power Commission of Investigation.

(c) Special sub-committees to make recommendations on the hearing of non-governmental organizations:

A sub-committee so appointed by the First Committee<sup>91</sup> considered thirteen requests to be heard on the Palestine question and unanimously advised their rejection. The reasons given threw light on the test of representational status:<sup>92</sup>

"(a) That some of the requests originated with the organizations established outside Palestine which do not directly represent the population of that country.

"(b) That the other requests emanate from organizations which, although established in Palestine, do not in the opinion of the Sub-Committee, represent a sufficiently considerable element of the population of Palestine to justify the recommendation of a hearing before the First Committee."

The terms of reference of the similar sub-committee established by the First Committee to advise on requests from organizations on the disposal of the former Italian colonies applied what is largely the same text, namely, "the extent to which these parties of organizations represent substantial sections of opinion in the territory in question".<sup>93</sup> The sub-committee's report illustrates further the basis on which an invitation to a non-governmental organization to participate may be granted:

". . . While it was not completely satisfied that all the above-mentioned parties and organizations represented a substantial section of opinion in the territories concerned, and noting at the same time that the data available were incomplete and contradictory and that therefore the claims of these bodies could not be clearly substantiated, yet, it wished to give a liberal interpretation to the resolution of the First Committee of 11 April and accordingly decided to give the parties concerned the benefit of the doubt and to recommend them for a hearing."<sup>94</sup>

<sup>86</sup> *Official Records of the second session of the General Assembly, First Committee, page 281 (91st meeting)*. This resolution was adopted by the General Assembly at its 112th plenary meeting: *ibid.*, Plenary Meetings, Vol. II, page 858.

<sup>87</sup> *Official Records of the third session of the General Assembly, Part I, First Committee, page 955 (230th meeting)*.

<sup>88</sup> *Official Records of the first special session of the General Assembly, Vol. III, Main Committees, First Committee, pages 52, 54 and 57 (47th meeting)*.

<sup>89</sup> *Official Records of the third session of the General Assembly, Part II, First Committee, page 43 (242nd meeting)*.

<sup>90</sup> *Official Records of the second session of the General Assembly, First Committee, annex 16a*. In both North and South Korea there were provisional legislative assemblies.

<sup>91</sup> *Official Records of the first special session of the General Assembly, Vol. III, Main Committees, First Committee, page 78 (47th meeting)*.

<sup>92</sup> *Ibid.*, page 165 (A/C.1/164).

<sup>93</sup> See footnote 89.

<sup>94</sup> *Official Records of the third session of the General Assembly, Part II, First Committee, Annexes, document A/C.1/445*.



"In addition, the Sub-Committee has taken cognizance of the written communications from the various parties or organizations and of the oral statements made by the delegations of those of them who appeared before the Working Group."<sup>95</sup>

The same methods were employed in the discussion of the question of the disposal of the former Italian colonies (fourth session).

(d) Submission of written documents:

It appears that, if any non-governmental organization sends a written statement of opinion or information upon a question under discussion in the General Assembly, either to the Secretary-General or an officer of the General Assembly, the fact of this communication will usually be brought to the notice of the Members, which may consult the statement or ask for its circulation.

Thus, the sub-committee concerned with the question of the disposal of the former Italian colonies pointed out that:<sup>96</sup>

"It should be mentioned in this connexion that organizations which have not had an opportunity to be heard by the General Assembly have been and still are at liberty to submit written statements of their views."

A committee may also request a written statement from an authority<sup>97</sup> or organization.

(iii) Conditions for participation

72. It may be that the General Assembly will impose conditions upon the participation of a *de facto* authority claiming to be the lawful government of a State.

Thus, upon a proposal that the People's Democratic Republic of Korea be invited to take part in the discussion of the Korean question in the First Committee, the representative of New Zealand stated:<sup>98</sup>

"Furthermore, before the Committee could agree to recognize the Government of the People's Democratic Republic, it was essential that it should formally state that it respected the authority of the United Nations and the General Assembly. The United Nations might just as well abandon its attempts to promote peaceful co-operation if it was prepared to recognize a Government which flouted its decisions."

The proposal was, however, rejected<sup>99</sup> largely on the ground that the proposed participant had ignored the United Nations agency authorized to hear its views.

(iv) Field of participation

73. It appears to be well established<sup>100</sup> that authorities and organizations may not participate in the deliberations in the plenary meetings. The President of the General Assembly stated that:<sup>101</sup> "... the precedent

established by the United Nations since its inception was that non-governmental organizations could be allowed to state their case if and when invited by Committees, but never in a plenary meeting of the General Assembly".

(v) Forms of participation

74. The making of statements and answering of questions are the principal form of participation of authorities and organizations. Thus the sub-committee concerned with requests for hearings on the question of the disposal of the former Italian colonies recommended that the accredited representatives of those delegations should be invited to the table of the Committee to make a general statement of their views with regard to the question under consideration. The delegations should then remain at the disposal of the First Committee for giving, at the request of the Chairman, any additional information which members of the Committee might desire. Brief concluding statements might also be made by those delegations, "if they so wished". It was so decided.<sup>102</sup>

75. On the Palestine question, certain authorities and organizations were invited to appear before the First Committee and present their views on certain ways of handling the question, namely, "the constituting and instructing of the Special Committee";<sup>103</sup> which was to inquire into and report on the political future in Palestine.

76. A non-governmental organization may refuse to answer any question put to it, and any question may be asked of it.<sup>104</sup>

77. The extent to which authorities or organizations may make statements on procedural matters before the General Assembly has not been fully determined, though it is probable that such statements are precluded.<sup>105</sup>

(e) Participation of inter-governmental organizations

78. There has been no instance so far of participation by an inter-governmental organization but there appears to be no reason why it should not be granted participation, at least for the purpose of giving information to the General Assembly.

(3) CERTAIN QUESTIONS RELATING TO THE COMPETENCE OF THE GENERAL ASSEMBLY

79. The consideration of the disputes and special political problems by the First and *Ad Hoc* Political Committees has in several cases raised the question of the Assembly's competence. These cases are considered below, and what follows is concerned only with the Assembly's competence in this particular field.

<sup>95</sup> *Ibid.*, document A/C.1/442, page 7.

<sup>96</sup> *Ibid.*, First Committee, Annexes, document A/C.1/441, page 5.

<sup>97</sup> See, for example, *ibid.*, *Ad Hoc* Political Committee, page 186 (42nd meeting).

<sup>98</sup> *Official Records of the third session of the General Assembly, Part I*, First Committee, page 942 (229th meeting).

<sup>99</sup> *Ibid.*, page 955.

<sup>100</sup> Though opposed by certain Members; see, for example, the statement made by the representative of the USSR: *Official Records of the first special session of the General Assembly*, Vol. II, General Committee, page 110 (33rd meeting).

<sup>101</sup> *Official Records of the fourth session of the General Assembly*, Plenary Meetings, 245th plenary meeting, paragraph 3.

<sup>102</sup> A/C.1/442. See footnote 95.

<sup>103</sup> *Official Records of the first special session of the General Assembly*, Vol. III, Main Committees, First Committee, page 78 (47th meeting).

<sup>104</sup> Chairman's ruling, *Official Records of the fourth session of the General Assembly*, First Committee, 286th meeting, paragraph 95. Presumably the question must be within the scope of the matter under discussion.

<sup>105</sup> A number of members of the General Committee at the first special session held that the item under consideration was of a procedural character and that participation by authorities or organizations concerned would be inappropriate at that time: *Official Records of the first special session of the General Assembly*, Vol. II, General Committee, pages 103 to 123 (33rd meeting).

The Assembly's functions and powers in this field, as set out in the broad terms of Chapter IV of the Charter, are subject to the provisions of Articles 2, paragraph 7; 11, paragraph 2; and 12, paragraph 1, which impose express limitations upon what the General Assembly can do. There may be other limitations of a different order upon what the General Assembly should do.

80. Objection has been made to the Assembly's competence in the field of disputes and special political problems on various grounds: that Article 2, paragraph 7 precludes certain courses of action by the Assembly; that certain actions by the Assembly would encroach upon the field of the Security Council; that the Assembly may not take any action relating to the peace settlements following the war; that it may not delegate certain powers to subsidiary organs; and so on.

81. The principal questions arising on Article 2, paragraph 7, in the Assembly have been the following:

(a) Whether Article 2, paragraph 7 overrides all other provisions of the Charter absolutely;

(b) Whether the prohibition it contains is not absolute where the subjects of Article 55 are in issue, or where the question before the Assembly falls within the scope of Article 14;

(c) In any case, whether discussion in the Assembly or a recommendation, or some other form of collective action constitutes "intervention" by the Assembly;

(d) Whether the subject-matter of an international agreement ceases *ipso facto* to be "essentially within the domestic jurisdiction" of the parties to that agreement;

(e) Whether there are any general exceptions to Article 2, paragraph 7.

82. The questions indicated in the preceding paragraph are considered *seriatim* as follows:

(a) Statements made in connexion with the following questions:

(i) On the question of observance in Bulgaria and Hungary of human rights and fundamental freedoms, the representative of Belgium stated (third session, part II):<sup>106</sup>

"The fact was that Article 2, paragraph 7 . . . set a rule to which all the provisions of the Charter, with the single exception of the coercive measures in Chapter VII, were subject; the provisions relating to human rights were consequently also subject to it. The paragraph absolutely forbade the United Nations to intervene in matters which were essentially within the domestic jurisdiction of any State, whether or not it was a Member of the United Nations. That prohibition therefore applied to the Assembly, which could not have greater powers than the United Nations itself."

(ii) On the question of the treatment of Indians in the Union of South Africa, the representative of New Zealand (second session) stated:<sup>107</sup>

<sup>106</sup> Official Records of the third session of the General Assembly, Part II, Ad Hoc Political Committee, page 96 (35th meeting).

<sup>107</sup> Official Records of the second session of the General Assembly, First Committee, pages 433 and 434 (107th meeting).

<sup>108</sup> Official Records of the third session of the General

" . . . in the present case the provisions of Article 1, paragraph 3, and Article 55 (c) appeared to be in conflict with Article 2, paragraph 7. There could be no doubt that the first two Articles standing alone would warrant the Indian complaint; but, as a general matter of law, particular provisions overrode general provisions. However, to give undue force to Article 2, paragraph 7, might serve to render those principles worthless . . . Article 2, paragraph 7 itself contained words of doubtful clarity, such as 'intervene', 'essentially' and 'domestic jurisdiction'. That paragraph admitted of exception, but no one could suggest that there was any reason to invoke Chapter VII in the present case. The word which should be noted in the rest of the paragraph was 'nothing', which obviously showed that it was possible to maintain that that clause took precedence over anything else in the Charter.

" . . . the point to be decided was the legal question whether the matter was one essentially of domestic jurisdiction, and that should be settled by an authorized judicial organ."

The representative of Canada (third session, part II) stressed:<sup>108</sup>

" . . . that the right of the Assembly to discuss questions under Articles 10 and 14 of the Charter would be seriously impaired if too great force were given to the domestic jurisdiction clause in Article 2, paragraph 7 of the Charter . . . A happy balance must be maintained between those two concepts. Such a happy balance could not be expressed in a general principle, but must be determined by the facts of each particular case."

(b) A number of statements have been made on the relation between Article 2, paragraph 7 and Articles 10, 14 and 55, respectively:

(i) On the Spanish question, the representative of Norway, in replying to the argument that any action by the United Nations was to be considered an intervention in the internal affairs of Spain under Article 2, paragraph 7, observed:<sup>109</sup>

"If such was the correct interpretation of the Charter, there would be no room for considering even a resolution against the Franco regime, and the unanimous decision taken in London would run contrary to the principles of the Charter. But it should be recalled that the Franco regime had been established through foreign military intervention, and consequently the action proposed to the General Assembly should be considered as a peaceful adjustment of the Spanish situation."

(ii) On the question of observance in Bulgaria and Hungary of human rights and fundamental freedoms, the representative of China stated:<sup>110</sup>

"It must be determined whether Article 2 could restrict the provisions of Article 10. In the opinion of the delegation of China, it could not. Although Article 2 was drafted in rather general terms, the empha-

Assembly, Part II, First Committee, page 300 (267th meeting).

<sup>109</sup> Official Records of the second part of the first session of the General Assembly, First Committee, page 238 (36th meeting).

<sup>110</sup> Official Records of the third session of the General Assembly, Part II, General Committee, page 33 (59th meeting).



sis was laid first upon the words 'essentially within the domestic jurisdiction', and then upon the word 'intervene' and finally upon the word 'settlement'. It was clear, therefore, that the question of human rights and fundamental freedoms, which was so frequently mentioned in the Charter and in international treaties, could be studied without any infringement of the provisions of Article 2."

- (iii) On the question of the treatment of Indians in the Union of South Africa, the representative of the Union of South Africa stated:<sup>111</sup>

"... so as to exclude any possible doubt the sole exception to that principle [expressed in Article 2, paragraph 7] was expressly indicated... under Chapter VII. It was thus clear that if there had been a desire to include another exception such as... human rights, it would have been expressly excluded. In fact, Article 2, paragraph 7 excluded the operation of Articles 10 and 14, and, in short, everything except enforcement measures under Chapter VII."

(c) The scope of the term "intervention" has also been discussed at length and statements have been made suggesting or denying that discussion in the Assembly constitutes intervention or that recommendations in certain circumstances may not do so.

- (i) The Chairman of the General Committee (the representative of Australia), speaking on the inclusion of the question of observance in Bulgaria and Hungary of human rights and fundamental freedoms, in the agenda for the third session, stated:<sup>112</sup>

"If the duty of the United Nations were such as was laid down in Article 55, then the General Assembly was fully competent, under Article 10, to consider whether, in a specific case, human rights had been respected or observed either by a Member or by a non-member State, since Article 10 was essentially universal in scope.... The right of discussion provided for in Article 10 of the Charter was one of its most important provisions. There was no question or problem which came within the scope of the Charter and which concerned its aims, its principles or any one of its provisions, which could not be discussed by the General Assembly."

- (ii) Similar statements on the same question have been made by the representative of the United States of America:<sup>113</sup>

"... Article 2, (7) ... did not preclude discussion of the proposed agenda item [human rights in Bulgaria and Hungary] as it stood. Discussion could not normally be construed as intervention within the meaning of the Article."

and again:<sup>114</sup>

"Under Articles 55 and 56... the field of human rights had been brought expressly within the scope of

the Charter, and the General Assembly could exercise authority in this field under Articles 10 and 14. Article 2, paragraph 7... was not intended to preclude, in appropriate cases, discussion in the Assembly on the promotion of human rights and fundamental freedoms."

- (iii) Statements made on the question of the treatment of Indians in the Union of South Africa:

The representative of the Union of South Africa held a contrary view (to that of the representative of the United States, cited in (ii) above):<sup>115</sup>

"The authors of Article 2, paragraph 7... had meant... that the United Nations should not intervene in any way in the domestic affairs of a sovereign State, either by a discussion of such affairs, or, still less, by the adoption of resolutions concerning them".

The representative of the United States (same question) did not consider recommendations excluded by Article 2, paragraph 7 in certain circumstances:<sup>116</sup>

"It would seem that the many references in the Charter to the observance of human rights and fundamental freedoms brought the question fully within the competence of the General Assembly. True, Article 2, paragraph 7 provided that the United Nations should not intervene in matters within the domestic jurisdiction of any State but it was doubtful whether that paragraph was intended to prevent any consideration of such matters by the General Assembly and any expression of opinion in the form of a recommendation designed to assist the parties in reaching a settlement."

The representative of Belgium (same question) stated, on the other hand, that:<sup>117</sup>

"... the rights which a country gave to its nationals were essentially a question of domestic jurisdiction and... a recommendation of the General Assembly addressed to a State was an intervention within the meaning of Article 2, paragraph 7. It was, as a matter of fact, the most serious form of action that the General Assembly could take."

- (d) The principle laid down by the Permanent Court of International Justice in the Tunis Nationality Decrees Case<sup>118</sup> has been invoked in relation to Article 2, paragraph 7 in General Assembly debates.

- (i) Statements made on the question of the treatment of Indians in the Union of South Africa:

The representative of Peru was of the opinion that<sup>119</sup>

"the only criterion for determining what questions fell within domestic jurisdiction was the absence of international agreements covering those questions clearly..."

The representative of Cuba stated that<sup>120</sup>

<sup>118</sup> Permanent Court of International Justice, Series B, No. 4. It should be remembered that the Permanent Court was interpreting Article 15 of the League Covenant in which the operative words are "a matter which by international law is solely within the domestic jurisdiction of a party to the dispute".

<sup>119</sup> *Official Records of the third session of the General Assembly, Part II, First Committee, page 295 (266th meeting).*

<sup>120</sup> *Ibid., Ad Hoc Political Committee, page 77 (35th meeting).*

<sup>111</sup> *Ibid.*, First Committee, page 275 (265th meeting).

<sup>112</sup> *Ibid.*, General Committee, pages 15 and 16 (58th meeting).

<sup>113</sup> *Ibid.*, Plenary Meetings, page 12 (189th plenary meeting).

<sup>114</sup> *Ibid.*, *Ad Hoc* Political Committee, page 89 (35th meeting).

<sup>115</sup> *Ibid.*, First Committee, page 277 (265th meeting).

<sup>116</sup> *Ibid.*, page 294 (266th meeting).

<sup>117</sup> *Ibid.*, page 287 (266th meeting).

"... the questions at issue were of such importance that they could not be considered matters of purely domestic jurisdiction. Furthermore, the word 'essentially' in paragraph 7 of Article 2 indicated that when internal questions assumed international significance by reason of international treaties, they extended beyond domestic jurisdiction."

The representative of the Union of South Africa, speaking of Articles 55 and 56 a, in relation to the same question, was, however, of the opinion that<sup>121</sup>

"... a third exception to the rule of domestic jurisdiction might be sought in the direction of human rights and fundamental freedoms, such as the right to exist, the right to freedom of conscience, and freedom of speech, and the right of free access to the courts. Up to the present, however, there did not exist any internationally recognized formulation of such rights, and the Charter itself did not define them. Member States, therefore, did not have any specific obligations under the Charter, whatever other moral obligations might rest upon them."

- (ii) The representative of Poland, speaking on the question of observance in Bulgaria and Hungary of human rights and fundamental freedoms, stated:<sup>122</sup>

"... Articles 55, sub-paragraph b, and 56 could not be invoked in order to nullify the definite provisions of paragraph 7 of Article 2. Besides, Article 55 was clear. It was quite obvious that the maintenance of 'peaceful and friendly relations among nations' did not apply in the case of questions coming under the domestic jurisdiction of the various States, and that the word 'promote' did not mean 'impose' as some Members seemed to believe."

(e) An attempt to formulate in general terms the exceptions which there may be to the principle laid down in Article 2, paragraph 7, was made by the representative of the Netherlands, when speaking on the question of the treatment of Indians in the Union of South Africa:<sup>123</sup>

"... there were three types of exception to the inviolability of domestic jurisdiction referred to in the paragraph in question [Article 2, paragraph 7]:

"(1) Exceptions expressly recognized by the Charter, of which there was at present only one, relating to enforcement measures imposed by the Security Council.

"(2) Exceptions derived from the general rules of international law, for instance in cases of extreme persecution of minorities.

<sup>121</sup> *Official Records of the second part of the first session of the General Assembly, Joint Committee of the First and Sixth Committees, pages 3 and 4 (1st meeting).*

<sup>122</sup> *Official Records of the third session of the General Assembly, Part II, Ad Hoc Political Committee, page 80 (35th meeting).*

<sup>123</sup> *Official Records of the second part of the first session of the General Assembly, Joint Committee of the First and Sixth Committees, page 22 (3rd meeting).*

<sup>124</sup> *Official Records of the third session of the General Assembly, Part II, General Committee, Netherlands, pages 42 and 43 (60th meeting). Ibid., Plenary Meetings, Norway, page 31 (190th plenary meeting).*

"(3) Exceptions established by special rules of international law, that is to say those arising from treaty obligations."

83. The question of consideration by the Assembly of a dispute or situation which is being dealt with by the Security Council may arise in view of the provisions of Article 12, paragraph 1 and Article 11, paragraph 2. The matter was discussed in connexion with the Palestine question and the Indonesian question. Although the question of competence was not raised as such, objections to such consideration have been raised on the grounds that discussion in the Assembly would hamper efforts by the Security Council to settle the question;<sup>124</sup> against this, it has been argued that presentation of their views by all Members would clarify the problems in issue and in fact assist the Security Council.<sup>125</sup>

On the Palestine question it was declared by the President of the Assembly that<sup>126</sup> "... the position taken by the Syrian representative was based on Article 12 of the Charter, but that there was no objection to the matter being discussed in the Assembly."

No inference, it appears, can be drawn from Article 12, paragraph 1 that the general competence of the Assembly is limited by its provisions since they impose only a limitation in time.

84. A possible distinction between the political aspects of settlement of a dispute or special political problem as matter for the Assembly on the one hand, and of the military or security aspects as matter for the Security Council on the other hand emerged from debates in the First Committee:

#### (a) Palestine question:

- (i) The representative of Syria stated that he:<sup>127</sup>

"... objected to the USSR proposal for the withdrawal of all foreign military personnel from Palestine on the grounds that Article 12 of the Charter denied the Assembly the right to make any recommendation on a dispute or situation of which the Security Council was seized, unless the Council so requested. He recalled that the present discussion was taking place as a direct result of the Council's request made in April 1948 to the Assembly to consider further, at a special session, the future government of Palestine. The Council's request therefore related only to the final political settlement. It had not asked the Assembly to make any recommendations in connexion with military and security aspects of the Palestine situation. Consequently, the Assembly was not competent to adopt the USSR proposal."

<sup>125</sup> *Ibid.*, General Committee, India, page 40 (60th meeting).

<sup>126</sup> *Official Records of the third session of the General Assembly, Part I, Plenary Meetings, President, page 109 (142nd plenary meeting).* The representative of Syria stated that he "had no objection to the report of the late United Nations Mediator ... being discussed by the appropriate Committee of the General Assembly. If, however, any resolution were adopted or recommendations were to be made on the subject he would object in the First Committee to that procedure unless a formal request for any such resolution or recommendation came from the Security Council."

<sup>127</sup> *Official Records of the third session of the General Assembly, Part I, First Committee, page 798 (216th meeting).*

- (ii) The representative of the USSR, on the other hand, stated that he<sup>128</sup>

"... could not agree with those representatives who argued that the Assembly could not make a recommendation for the withdrawal of troops because that was a matter of which the Security Council was seized. The Security Council was at present dealing only with the limited questions of the truce and armistice and was not discussing the withdrawal of troops. Consequently the United Kingdom argument that any recommendation in the matter would bring the Assembly into conflict with the Security Council was unfounded, as was also the Syrian argument relating to Article 12 of the Charter. Furthermore, the withdrawal of troops was not merely a technical question; it was intimately connected with the major political issue, for its fulfilment was a prerequisite of a peaceful settlement in Palestine."

(b) Spanish question:

A proposal that "each Member of the United Nations terminate forthwith diplomatic relations with the Franco regime"<sup>129</sup> was opposed on the ground that it was a coercive measure, contemplated under Article 41, which the Assembly could not take on one or both of two grounds: that only the Security Council could require such a measure;<sup>130</sup> that the Security Council had not made a determination under Article 39 in respect of Spain, as a precondition of action under Article 41.<sup>131</sup>

85. It has been debated whether the United Nations, and the General Assembly in particular, is competent to handle questions of the peace settlements following upon the war, and reference has sometimes been made to the provisions of Article 107.

(a) In connexion with the suggestions to the countries concerned with the Treaty of Peace with Italy, the representative of Australia stated:<sup>132</sup>

"All those who took part in the drafting of the Charter at San Francisco know the exact purpose of the inclusion of that Article [107]. It was simply to make it clear that the belligerent countries responsible for the defeat of the enemies in the Second World War, shall have the right to proceed to make the treaty. There is nothing in the Charter that stops it, but neither is there anything in the Charter which prevents situations created by any treaty from being brought before the General Assembly for discussion."

(b) Statements made in connexion with the Korean question:

- (i) The representative of Poland, on the other hand, opposing the inclusion of this question in the agenda, stated:<sup>133</sup>

<sup>128</sup> *Ibid.*, page 799.

<sup>129</sup> Proposal made by the representative of Poland (A/C.1/24), see *Official Records of the second part of the first session of the General Assembly*, First Committee, annex 11 a. The representative of the Byelorussian SSR submitted an amendment (A/C.1/35 and Corr.1), *ibid.*, annex 11 c, which recommended that "each Member of the United Nations terminate diplomatic and economic relations with Franco Spain, such action to include the suspension of communications by rail, sea, air, post and telegraph".

<sup>130</sup> *Official Records of the second part of the first session of the General Assembly*, Plenary Meetings, El Salvador, page 1190 (58th plenary meeting).

<sup>131</sup> *Ibid.*, Peru, page 1216 (59th plenary meeting). *Official*

"... it was a question of the delineation of the competence of the United Nations. His Government held the opinion that two groups of issues existed at the moment: one, the winding up of the heritage of the war, and the other, the building of the new peace. In conformity with the decisions of the Allies, the two had been allocated to different bodies. The United Nations dealt exclusively with problems of peace. Korea was definitely a question arising from the war and, as such, was within the competence of some body other than the United Nations."

And again:<sup>134</sup>

"The problem of Korea was one which had arisen as a direct consequence of the war and as such, it came within the purview of the Council of Foreign Ministers, not of the United Nations."

- (ii) The representative of Norway (same question) speaking in plenary meeting and explaining his abstention stated:<sup>135</sup>

"... we feel as a matter of principle that the problem of the peace settlement with the ex-enemy States, of which this question of the independence of Korea is a part, does not belong to the matters to be dealt with by this Organization of ours, but is a matter for the nations which took an active part in the war."

(c) Statements made in connexion with the Palestine question:

- (i) The representative of Syria stated:<sup>136</sup>

"There was no provision in the Charter empowering the General Assembly to partition a mandated territory and impose upon its people constitutional forms and administrative regimes. Its jurisdiction was limited to Chapter XII of the Charter, and any divergence therefrom would establish a dangerous precedent."

- (ii) But this does not appear to have been developed or extensively discussed, although the representative of Lebanon (same question) opposed on similar grounds the purported delegation of powers to the Palestine Commission:<sup>137</sup>

"Statements had been made in the Committee that it was within the legal competence of the General Assembly to delegate powers to the proposed commission, but no member had indicated the Article or principle of the Charter from which the General Assembly derived its power. Article 10 of the Charter stated merely that the General Assembly could make recommendations to the Members of the United Nations, and Article 14 merely gave it the right to take certain limited measures for the peaceful adjustment of any situation. But it was not empowered to

*Records of the second session of the General Assembly*, First Committee, Netherlands, page 403 (104th meeting).

<sup>132</sup> *Official Records of the second session of the General Assembly*, Plenary Meetings, vol. I, page 280 (90th plenary meeting).

<sup>133</sup> *Ibid.*, General Committee, page 20 (38th meeting).

<sup>134</sup> *Official Records of the third session of the General Assembly*, Part I, General Committee, page 8 (43rd meeting).

<sup>135</sup> *Official Records of the second session of the General Assembly*, Plenary Meetings, vol. II, page 851 (112th plenary meeting).

<sup>136</sup> *Ibid.*, *Ad Hoc Committee on the Palestinian Question*, page 173 (28th meeting).

<sup>137</sup> *Ibid.*, pages 194 and 195 (31st meeting).

take substantive measures which would bind the future of a nation.

"Under Articles 10, 12 and 14 of the Charter, the General Assembly could make recommendations to the United Kingdom concerning the future government of Palestine."

86. The way in which the question of a limitation upon the General Assembly's competence in the field of disputes and special political problems is to be decided has also been debated.

Further, the General Assembly has on two occasions taken a decision upon its competence under rule 120 (formerly rule 110) of its rules of procedure. It has not so far requested an opinion from the International Court of Justice upon a question of its competence.

87. Rule 120<sup>138</sup> provides:

"Subject to rule 118, any motion calling for a decision on the competence of the General Assembly or the committee to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question."

The expression "calling for a decision" would not presumably exclude a motion proposing that the question should be referred to the International Court of Justice for an advisory opinion.

(a) On the Greek question, the representative of Yugoslavia submitted to the First Committee<sup>139</sup> a proposal calling upon the Greek Government to take steps to see that certain trade union leaders who were sentenced to death by a Greek Court, were not executed. The representative of France proposed that the Chairman of the Committee be requested to meet the Greek delegation with a view to examining the matter and to "take all the necessary steps to that end".<sup>140</sup> The representative of the USSR proposed that the French proposal be amended to include: "take measures to save the lives of the trade unionists who have been condemned to death".<sup>141</sup> During the discussion some representatives contended that the Yugoslav proposal and the USSR amendment raised the question of competence of the Assembly to entertain these proposals. On the motion of the representative of El Salvador, the Committee put the question of competence with regard to the Yugoslav proposal and the USSR amendment to the vote under rule 110 as it then was. A negative decision on the question of competence was reached. The French proposal was then put to the vote and adopted.

<sup>138</sup> Rule 120 (formerly rule 110): see report of the Special Committee on Methods and Procedures of the General Assembly, (*Official Records of the fourth session of the General Assembly*, Supplement No. 12 (A/937)), for explanation of the changes.

<sup>139</sup> *Official Records of the third session of the General Assembly, Part I*, First Committee, Annexes, document A/C.1/371; also *ibid.*, 186th meeting.

<sup>140</sup> *Ibid.*, First Committee, Annexes, document A/C.1/372.

<sup>141</sup> *Ibid.*, document A/C.1/373.

<sup>142</sup> *Official Records of the fourth session of the General Assembly, First Committee*, pages 109 to 113 (297th meeting).

<sup>143</sup> *Ibid.*, Annex to the First Committee, document A/C.1/512.

(b) During the fourth session, the question of the death sentences of the trade union leaders was again raised in the First Committee and a number of proposals were submitted. After considerable discussion, the representative of Lebanon invoked rule 110<sup>142</sup> and proposed that a vote be taken on the question whether the Committee was competent to decide on proposals regarding the death sentences pronounced in certain countries. The representative of Venezuela supported the principle of the Lebanese proposal and asked that the question of competence be considered separately in respect of each of the proposals submitted; and this procedure was followed by the Committee. The Committee decided that it was not competent to entertain any of the proposals except the Ecuadorian proposal,<sup>143</sup> which was revised and adopted by the Committee.

88. It should also be noted that, on the question of the treatment of Indians in the Union of South Africa, the representative of the Union of South Africa submitted the following proposal to the First Committee:<sup>144</sup>

*"The General Assembly*

*"Decides that item No. 2 on the agenda, dealing with the treatment of Indians, Asians and other non-white citizens of the Union of South Africa (document A/577), is a matter which is essentially within the domestic jurisdiction of the Union of South Africa, and that it does not fall within the competence of the Assembly."*

This proposal was put to the vote and was defeated.<sup>145</sup>

When this question was under consideration at the first session by the Joint Committee of the First and Sixth Committees, certain Members<sup>146</sup> urged that the objection of the representative of the Union of South Africa to the competence of the Assembly should be voted upon first as a preliminary question, but no such vote was in fact taken.

89. Where an objection to the Assembly's competence to handle a dispute or special political problem has been made, but no express decision has been taken upon it by the Assembly, the fact that the Assembly has proceeded to discuss and make a recommendation on the matter has raised the question whether these steps imply an assumption of, or decision on, competence.

90. In this connexion the following statements were made on the question of the treatment of Indians in the Union of South Africa:

(a) The representative of China:<sup>147</sup>

"If there were any doubt as to competence to deal with the matter, the General Assembly would not have

<sup>144</sup> A/C.1/460.

<sup>145</sup> *Official Records of the third session of the General Assembly, Part II*, First Committee, page 321 (268th meeting).

<sup>146</sup> *Official Records of the second part of the first session of the General Assembly*, Joint Committee of the First and Sixth Committees, Egypt, page 45 (5th meeting), Belgium, page 50 (6th meeting).

<sup>147</sup> *Official Records of the third session of the General Assembly, Part II*, First Committee, page 289 (266th meeting). A similar statement by this representative can be found in *ibid.*, Plenary Meetings, pages 431 and 432. During the second session, the same position had been taken by the representative of the Byelorussian SSR (*Official Records of the second session of the General Assembly*, First Committee, page 437) and the representative of the Ukrainian SSR (*ibid.*, page 446).

passed its resolution of 8 December 1946 by a two-thirds majority, it would not have considered the matter during its second session, and it would not have included it in the agenda for the third time, during the present session."

(b) The representative of the United States:<sup>148</sup>

"... was unable to accept the thesis that the Assembly was wholly incompetent to consider the present question, not only because it involved the relations between two Member States but also because the situation had been examined by the General Assembly at its first and second regular sessions."

(c) The representative of the Philippines stated:<sup>149</sup>

"... the issue of competence had been decided in the affirmative when the General Assembly had admitted the question on its agenda in 1946. He believed that the situation in respect of the General Assembly was similar to that which prevailed in any court of law; once a matter was admitted without opposition then the question of competence was decided."

(d) However, the implication of an assumption of competence was contested by the representative of the Union of South Africa in plenary meeting:<sup>150</sup>

"... in concerning itself with the complaint of the Government of India the General Assembly had in fact, on two previous occasions, exceeded its powers under the Charter. It followed that its action on the previous occasions had been invalid. The General Assembly could not enlarge its jurisdiction under the Charter by disregarding its provisions or by a succession of unauthorized acts which infringed the national sovereignty of Member States."

And later in the First Committee:<sup>151</sup>

"... no decision on the question of competence had been taken either in 1946 or 1947. A mere postulate could not be considered as a decision, nor did it constitute a precedent, the more so as in 1946 and in 1947 the General Assembly had assumed powers which it did not in fact possess, and had violated Article 2, paragraph 7 of the Charter."

<sup>148</sup> *Official Records of the third session of the General Assembly, Part II, First Committee, page 295 (266th meeting).*

<sup>149</sup> *Ibid.*, page 312. Compare similar statements on the Greek question (death sentences of trade union leaders): *Official Records of the third session of the General Assembly, Part I, First Committee, Yugoslavia, page 448*; and *Official Records of the fourth session of the General Assembly, First Committee, USSR, 297th meeting, paragraph 35.*

<sup>150</sup> Discussion of the General Committee's recommendation that the question of the treatment of Indians in the Union of South Africa be included in the agenda: *Official Records of the third session of the General Assembly, Part I, Plenary Meetings, page 222 (146th plenary meeting).*

<sup>151</sup> *Official Records of the third session of the General Assembly, Part II, First Committee, page 273 (265th meeting).*

<sup>152</sup> Palestine question: proposal by Egypt (A/AC.14/24, see *Official Records of the second session of the General Assembly, Ad Hoc Committee on the Palestinian Question, annex 16*); by Syria (A/AC.14/25, *ibid.*, annex 17); by Sub-Committee 2 of the *Ad Hoc Committee on the Palestinian Question* (A/AC.14/32, *ibid.*, annex 25), the eighth question to the Court proposed by the Sub-Committee was: "(h) Whether the United Nations, or any of its Member States, is competent to enforce or recommend the enforcement of any proposal concerning the constitution and future government of Palestine,

91. Proposals<sup>152</sup> have been made in the Assembly on several occasions, both by Members and by sub-committees, to request the International Court of Justice to give an advisory opinion upon a question of the Assembly's competence, but none has been adopted.

However, a variety of views have been expressed by Members upon the question whether such reference should be made to the International Court.

92. In this connexion, the following statements were made on the question of the treatment of Indians in the Union of South Africa.

(a) Some Members favoured a reference of certain questions to the International Court.

(i) The representative of the United States said:<sup>153</sup>

"... the General Assembly could seek the advice of the International Court of Justice, even when the organs of the United Nations were competent to deal with the question.

"The present relations between India and the Union of South Africa gave rise to political and to legal problems. In such cases it was desirable to refrain from a decision which might be based on an erroneous conception of the legal aspects. Whatever advice the Court might give, it was understood that the General Assembly would retain complete freedom as to its final decision. The most important point was to find the method which would lead to the best results."

(ii) The representative of the United Kingdom considered that:<sup>154</sup>

"... it would be advisable to refer the question of the Assembly's competence to the Court. The opinion of the Committee was too closely divided to allow it to make a recommendation which the Assembly could adopt."

(b) Other Members considered that such a reference was undesirable or unnecessary:

(i) The representative of Yugoslavia said:<sup>155</sup>

"It was not necessary to ask the International Court of Justice to define the meaning of a clause

in particular, any plan of partition which is contrary to the wishes, or adopted without the consent of the inhabitants of Palestine"; by Colombia (A/518, see *Official Records of the second session of the General Assembly, Plenary Meetings, vol. II, page 1400*); by Syria (A/C.1/405, *Official Records of the third session of the General Assembly, Part I, First Committee, Annexes*).

Question of the treatment of Indians in the Union of South Africa: questions proposed to the Court were directed to the meaning of Article 2, paragraph 7: proposal by Colombia (A/C.1 & 6/14, see *Official Records of the second part of the first session of the General Assembly, Joint Committee of the First and Sixth Committees, page 33*) amended jointly by the United States, United Kingdom and Sweden (A/C.1 & 6/20, *ibid.*, page 43); and see draft resolution of the Joint Committee of the First and Sixth Committees as amended by the Union of South Africa (A/205/Add.1, see *Official Records of the second part of the first session of the General Assembly, Plenary Meetings, page 1009*).

<sup>153</sup> *Official Records of the second part of the first session of the General Assembly, Joint Committee of the First and Sixth Committees, page 41 (5th meeting).*

<sup>154</sup> *Ibid.*, page 42.

<sup>155</sup> *Ibid.*, page 40.

of the Charter which certain members of the Committee had helped to draft. A text was always best interpreted by its author. An appeal to the Court would only have a meaning if the principles involved were not apparent and moreover, there was no obligation to adopt such a course. A request for an advisory opinion would simply amount to an attempt to burden the Court with the solution of a problem which was in fact purely political.

"If the International Court of Justice were requested to give an advisory opinion, people might gather the impression that the General Assembly did not wish to apply the principles of the Charter and that the United Nations might shelter the advocates of racial discrimination."

- (ii) The representative of Venezuela on a later occasion:<sup>156</sup>

"The question of jurisdiction should not be referred to the International Court of Justice because such a step by the Assembly might seem to annul its previous recommendations, prevent the submission of similar problems and prejudice its competence in such matters in the future."

- (iii) The representative of China stated that "the General Assembly was fully competent to determine its own jurisdiction".<sup>157</sup>

93. On two occasions, suggestions have been made that a special sub-committee should be created to study the question of the Assembly's competence to handle a particular dispute or special political problem: during the first session, second part, in the course of the discussion of the question of the treatment of Indians in the Union of South Africa;<sup>158</sup> and during the second session in the *Ad Hoc* Committee on Palestine.

In the second case, it was proposed that the sub-committee should be composed of jurists to consider, for example:<sup>159</sup> ". . . the legal effect of the wartime pledges to the Arabs, the validity of the Mandate, the legal competence of the General Assembly, etc."

In neither case was a sub-committee established.

#### COMMENT BY THE SUB-COMMITTEE ON SECTION E (3)

94. The essentially political character of the General Assembly inclines it to decide its competence for itself or more often to assume competence without an express decision. On the other hand, where opinions among Members differ on the interpretation of the Charter and legal doubts as to the Assembly's competence are strongly and sincerely held, the force of a recommendation by the Assembly will be weakened if it is made without an affirmative decision upon the question of competence, preferably with the assistance of the International Court of Justice in cases where it is practicable.

### PART III

#### Section A

##### Precautionary measures

95. These are appeals or recommendations by the General Assembly designed either to prevent the aggravation of a dispute or special political problem by actions of States or authorities directly concerned, or to insulate the area of dispute from political influence or military interference likely to obstruct the General Assembly's efforts at peaceful settlement. Precautionary measures have been taken before or at the same time as general measures of settlement; they may be in general terms or specific, and may be directed to all States, to all Members, to particular States including non-members, or even to the inhabitants of countries.

96. So on the Palestine question, all Governments and peoples, particularly the inhabitants of Palestine, were called upon "to refrain . . . from the threat or use of force or any other action which might create an atmosphere prejudicial to an early settlement",<sup>160</sup> and again "to refrain from taking any action which might hamper or delay the carrying out"<sup>161</sup> of the Assembly's recommendations on Palestine. Similarly, on the Korean question, all Members were called upon "to refrain from interfering in the affairs of the Korean people during the interim period preparatory to the establish-

ment of Korean independence, except in pursuance of the decisions of the General Assembly; and thereafter, to refrain completely from any and all acts derogatory to the independence and sovereignty of Korea".<sup>162</sup> On the Greek question, the General Assembly based its precautionary measures in part upon a determination that the conduct of certain States concerned was "unlawful" when it called upon Albania, Bulgaria and the other States concerned "to cease forthwith rendering any assistance or support to the guerrillas in fighting against Greece, including the use of their territories as a base for the preparation or launching of armed actions"; and recommended that all Members and all other States "refrain from any action designed to assist directly or through any other Government any armed group fighting against Greece . . . [and] from the direct or indirect provision of arms or other materials of war to Albania and Bulgaria until the Special Committee or another competent United Nations organ has determined that the unlawful assistance of these States to the Greek guerrillas has ceased".<sup>163</sup> The Assembly also recommended the establishment of normal diplomatic relations between the States concerned.

97. It may be observed of these precautionary measures:

<sup>156</sup> *Official Records of the second session of the General Assembly, First Committee*, page 465 (111th meeting).

<sup>157</sup> *Ibid.*, page 463.

<sup>158</sup> *Official Records of the second part of the first session of the General Assembly, Joint Committee of the First and Sixth Committees, Argentina*, pages 5 and 6 (1st meeting).

<sup>159</sup> *Official Records of the second session of the General*

*Assembly, Ad Hoc Committee on the Palestinian Question, Pakistan proposal*, page 135 (19th meeting).

<sup>160</sup> Resolution 107 (S-I).

<sup>161</sup> Resolution 181 (II).

<sup>162</sup> Resolution 112 (II).

<sup>163</sup> Resolution 288 (IV): compare earlier resolution 193 (III).



(a) That the General Assembly, perhaps mindful of the authority assumed by the United Nations under Article 2, paragraph 6, has not made any distinction, in its appeals and recommendations, between Members and non-members where non-members were directly concerned;

(b) That direct appeals to inhabitants of countries have not been modified according to whether there was or was not an established government in that country.<sup>164</sup>

## Section B

### Elucidation of facts

98. For the elucidation of facts underlying a dispute or special political problem before it, the Assembly has so far confined itself to granting participation in its proceedings to States, authorities or organizations likely to assist it; to creating special commissions with authority to investigate the facts; and to making use of the Interim Committee.

99. So, the United Nations Special Committee on Palestine was instructed to "conduct investigations in Palestine and wherever it may deem useful" as a basis for proposals on the future of Palestine;<sup>165</sup> and on the question of the disposal of the former Italian colonies, a Commission was "established to ascertain more fully the wishes and the best means of promoting the welfare of the inhabitants in Eritrea, to examine the question of the disposal of Eritrea and to prepare a report for the General Assembly, together with such proposal or proposals as it may deem appropriate . . ."<sup>166</sup> Certain other proposals made by Members for the elucidation of facts, but not adopted by the General Assembly, are of interest in that they raise the following questions:

(a) In what circumstances should States or authorities, concerned in a dispute or special political problem, participate in an investigation by the General Assembly of the facts underlying that dispute or problem? Thus, on the Greek question, the representative of Sweden proposed that the Secretary-General should establish a commission composed of members not belonging to the nationality of the parties for the purpose of examining the underlying causes of the situation in the Balkans and of the strained relations between Greece and its northern neighbours.<sup>167</sup>

(b) Are Members obliged to receive commissions charged by the General Assembly with the investigation of facts and, in particular, might such investigation be regarded by States in certain circumstances as intervention for the purposes of Article 2, paragraph 7? Thus, on the Greek question, a Cuban proposal would have recommended the establishment of a commission to ascertain if the Peace Treaties with Bulgaria, Hungary and Romania had been fulfilled, and to investigate if there was political and economic independence in Albania, Bulgaria, Greece, Hungary, Poland, Romania and Yugoslavia and if they were completely free from foreign intervention in their internal and external affairs.<sup>168</sup>

<sup>164</sup> Resolutions 107 (S-I) on Palestine and 293 (IV) on Korea. The latter appeals to "the Government of the Republic of Korea and all Koreans".

<sup>165</sup> Resolution 106 (S-I).

<sup>166</sup> Resolution 289 (IV).

## Section C

### Measures of settlement

100. Measures for the settlement of disputes and special political problems by the General Assembly have included direct recommendations to States, or authorities concerned; the use of the methods indicated in Article 33; the creation of special subsidiary organs with political, administrative or other functions; and the reference of the matter to other principal organs of the United Nations. The General Assembly has also taken steps to ensure continued control of the matter by the United Nations. Further, the Assembly has sometimes found it necessary to reaffirm earlier recommendations and resolutions.

101. It should be recalled here that the General Assembly has on more than one occasion sought, by appeals to Members or States at large, as well as to particular States, to remove some of the causes of international friction and disputes.<sup>169</sup> So, in an "Appeal to the Great Powers to renew their efforts to compose their differences and establish a lasting peace", the Assembly endorsed the declarations made at the Yalta conference and recommended that

" . . . the Powers signatories to the Moscow Agreements of 24 December 1945, and the Powers which subsequently acceded thereto, to redouble their efforts, in a spirit of solidarity and mutual understanding, to secure in the briefest possible time the final settlement of the war and the conclusion of all the peace settlements;

" . . . and to associate with them . . . the States which subscribed and adhered to the Washington Declaration of 1 January 1942."

Again at its fourth session, the General Assembly adopted a resolution entitled the "Essentials of peace"<sup>170</sup> which called upon "every nation" to observe the principles of the Charter which it enumerated and in particular called for international co-operation for the regulation of conventional armaments, the control of atomic energy, the settlement of disputes and the solution of "outstanding problems"; the resolution also called upon the five permanent members of the Security Council "to broaden progressively their co-operation and to exercise restraint in the use of the veto . . ."

#### (1) DIRECT RECOMMENDATIONS TO STATES OR AUTHORITIES CONCERNED

102. Direct recommendations by the General Assembly have fallen into two categories; those which constitute a decision by the Assembly upon the substance of the dispute or special political problem before it, and for compliance with which it relies upon its collective moral authority; and those which invoke particular obligations of States, arising under the Charter or international agreements or otherwise, in aid of the Assembly's efforts at peaceful settlement. These categories may overlap, for the Assembly may plainly combine both kinds of recommendations in a single

<sup>167</sup> *Official Records of the second session of the General Assembly*, First Committee, annex 15m.

<sup>168</sup> *Ibid.*, annex 15n.

<sup>169</sup> Resolution 190 (III).

<sup>170</sup> Resolution 290 (IV).

resolution; further, in certain cases, recommendations in the second category may be an indirect use of Article 33 and will be considered under that head.

103. Recommendations for compliance with the relevant provisions of the Charter or the carrying out of its principles have been made, but have seldom cited specific Articles,<sup>171</sup> perhaps because Members are presumed to know the scope of their Charter obligations.

The Assembly has also invoked obligations arising out of subsisting international agreements<sup>172</sup> and may decide that the conduct of a particular State is a breach of international obligation or inconsistent with the purposes of the United Nations. So, on the Greek question the General Assembly considered that "the continued aid given by Albania, Bulgaria and Yugoslavia to the Greek guerrillas . . . is inconsistent with the purposes and principles of the Charter".<sup>173</sup>

104. Decisions on the substance of a dispute or special political problem have been of three main kinds: those making a definitive political settlement, through the establishment of an independent State or States, or of an international regime; those designed to restore or maintain international peace and security; and those constituting steps towards the achievement of one of these broader objectives.

(a) The resolutions of the General Assembly on Korea, Palestine and the former Italian colonies have had, in varying degrees, the consequences of constitutional instruments.

Thus, with regard to Korea the Assembly recommended the holding of elections in Korea to choose representatives who, constituting a National Assembly, should "convene and form" a National Government,<sup>174</sup> and later<sup>175</sup> declared that there had been established in Korea "a lawful government . . . having effective control and jurisdiction over that part of Korea where the Temporary Commission was able to observe and consult . . ."

On the Palestine question, the United Nations Commission was instructed "after consultation with the democratic parties and other public organizations of the Arab and Jewish States . . . [to] select and establish in each State as rapidly as possible a Provisional Council of Government" which was to receive progressively from the Commission full responsibility for the administration of that State in the period between the termination of the Mandate and the establishment of each State's independence.<sup>176</sup>

In the case of Libya, the Assembly recommended that the Administering Powers in co-operation with the United Nations Commissioner should "initiate immedi-

ately all necessary steps for the transfer of power to a duly constituted independent Government" and administer the territories for the purpose of assisting to establish "Libyan unity and independence".<sup>177</sup>

(b) The Assembly has in two instances decided upon the establishment of special international regimes, both within the framework of a wider political settlement.

It recommended that Somaliland should become independent at the end of ten years from the date of the approval of a Trusteeship Agreement by the General Assembly, and during the period before independence should be placed under the International Trusteeship System with Italy as Administering Authority.<sup>178</sup> With regard to Jerusalem, the Assembly decided that it should be placed under a permanent international regime, the Trusteeship Council being requested to draw up a Statute for Jerusalem.<sup>179</sup>

(c) The Assembly has made a number of recommendations designed to give effect to definitive political settlements or to limit areas of dispute. These have been concerned with the withdrawal of troops;<sup>180</sup> repatriation of inhabitants who have left their homes because of hostilities or for other reasons,<sup>181</sup> or have become prisoners;<sup>182</sup> determination of boundaries;<sup>183</sup> and administrative arrangements.<sup>184</sup>

## (2) USE OF THE METHODS SET OUT IN ARTICLE 33

105. The Assembly has availed itself of the provisions of Article 33 by calling upon Members, and those non-members which have accepted the Charter obligations of peaceful settlement for the purpose of the dispute in question, to use one or more of the methods set out in Article 33 for settling their differences.

(a) On the question of the treatment of Indians in the Union of South Africa, the Assembly invited:<sup>185</sup>

" . . . the Governments of India, Pakistan and the Union of South Africa to enter into discussions at a round-table conference, taking into consideration the purposes and principles of the Charter of the United Nations and the Declaration of Human Rights".

(b) On the Greek question, the Assembly called more than once upon Greece's northern neighbours:<sup>186</sup>

" . . . to co-operate with Greece in the settlement of their differences by peaceful means, in accordance with the provisions of Article 2, paragraph 3 of the Charter . . ."

And specified a number of matters, which, if made the subject of agreement between them, would contribute to a settlement, by recommending, *inter alia*, that:<sup>187</sup>

<sup>179</sup> Resolutions 181 (II) and 303 (IV).

<sup>180</sup> Resolutions 112 (II), 195 (III) and 293 (IV) on Korea.

<sup>181</sup> Resolutions 193 (III) on Greece and 194 (III) on Palestine.

<sup>182</sup> Resolution 288 (IV), Greece.

<sup>183</sup> Resolution 181 (II), establishing the boundaries of the projected Arab and Jewish States and of the City of Jerusalem.

<sup>184</sup> Resolution 181 (II). The projected Arab and Jewish States were to be bound by all the international agreements and conventions and financial obligations assumed on behalf of Palestine by the mandatory Power; any dispute about their continued validity was to be referred to the International Court of Justice.

<sup>185</sup> Resolution 265 (III).

<sup>186</sup> Resolutions 288 (IV); and also 193 A (III).

<sup>187</sup> Resolution 109 (II).

<sup>171</sup> Resolution 288 (IV) on Greece cited Article 2, paragraph 3. Resolutions 109 (II) and 193 (III) on Greece; 44 (I) and 265 (III) on the treatment of Indians in the Union of South Africa; 272 (III) on the observance in Bulgaria and Hungary of human rights and fundamental freedoms; and 291 (IV) on China cited no specific provisions.

<sup>172</sup> Resolutions 193 (II) and 288 (IV) on Greece (Frontier Conventions); 272 (III) on observance in Bulgaria and Hungary of human rights and fundamental freedoms (Peace Treaties of 1947); and 291 (IV) on China.

<sup>173</sup> Resolution 193 (III).

<sup>174</sup> Resolution 112 (II).

<sup>175</sup> Resolution 195 (III).

<sup>176</sup> Resolution 181 (II).

<sup>177</sup> Resolution 289 A (IV).

<sup>178</sup> Resolution 289 (IV).



“... they establish frontier conventions . . . , cooperate in the settlement of the problems arising out of the presence of refugees in the four States concerned through voluntary repatriation wherever possible and . . . study the practicability of concluding agreements for the voluntary transfer of minorities . . .”

(c) Similarly, the Governments and authorities concerned in Palestine were called upon “to seek agreement by negotiations conducted either with the Conciliation Commission or directly”.<sup>188</sup>

The general resolution 190 (III), “Appeal to the great Powers . . .” and resolution 290 (IV), “Essentials of peace” are also related to Article 33.

106. Notwithstanding the provisions of Article 36, paragraph 3, the General Assembly has not expressly recommended recourse to judicial settlement of legal disputes, nor even arbitration.<sup>189</sup> It should be observed here that article 8 of the Brussels Treaty provides *inter alia*, that “In the case of a mixed dispute involving both questions for which conciliation is appropriate and other questions for which judicial settlement is appropriate, any Party to the dispute shall have the right to insist that the judicial settlement of the legal questions shall precede conciliation”.<sup>190</sup>

107. The Assembly has made direct use of some of the methods set out in Article 33, and in particular mediation and conciliation, by establishing subsidiary organs with authority to assist the States or authorities concerned to reach a settlement,<sup>191</sup> and by creating conciliation groups within the Assembly itself.

Thus on the Palestine question, the *Ad Hoc* Committee on the Palestinian Question created a conciliation group consisting of the Chairman, the Vice-Chairman, and the Rapporteur of the *Ad Hoc* Committee. If they succeeded in initiating the conciliation process, they were authorized to co-opt other members to assist with their task.<sup>192</sup> The First Committee, when dealing with the Greek question at the third session, part I, provided for a meeting of the representatives of the four States concerned under the auspices of the President of the Assembly, the Secretary-General, and the Chairman and the Rapporteur of the First Committee.<sup>193</sup>

“... to explore the possibilities of reaching agreement amongst themselves as to the methods and procedure to be adopted with a view to resolving present differences between them.”

At the fourth session the First Committee again appointed a Conciliation Committee, with the same composition, to continue the conciliation started at

the third session “in an endeavour to reach a pacific settlement of existing differences.”<sup>194</sup>

### (3) USE OF SUBSIDIARY ORGANS

108. The Assembly has from time to time created commissions for the purpose of investigation, observation, conciliation, and administration.<sup>195</sup>

### (4) REFERENCE TO OTHER PRINCIPAL ORGANS OF THE UNITED NATIONS

109. On the Palestine question, the General Assembly decided that:<sup>196</sup>

“The Trusteeship Council shall not allow any actions taken by any interested Government or Governments to divert it from adopting and implementing the Statute of Jerusalem.”

The Trusteeship Council had been “designated to discharge the responsibilities of Administering Authority” (on behalf of the United Nations in the projected permanent international regime for the City of Jerusalem).

Simultaneously, the Assembly called upon:

“... the States concerned to make formal undertakings, at an early date and in the light of their obligations as Members of the United Nations, that they will approach these matters with good will and be guided by the terms of the present resolution”.

110. On the Spanish question, the Assembly made a recommendation in general terms to the Security Council, that it “consider the adequate measures to be taken” if there were not established in Spain within a reasonable time a government.<sup>197</sup>

“... which derives its authority from the consent of the governed, committed to respect freedom of speech, religion and assembly and to the prompt holding of an election in which the Spanish people, free from force and intimidation and regardless of party, may express their will...”

111. On the Palestine question, the Assembly relied in part upon the Security Council and the Economic and Social Council for the implementation of its resolution. This will be considered below.

112. The Assembly may ask the International Court of Justice for an advisory opinion upon any legal question whatsoever, and has already done so in the field of disputes and special political problems. However, it has not so far expressed itself upon the question

<sup>188</sup> Resolution 194 (III).

<sup>189</sup> A Cuban proposal (A/C.1/270, see *Official Records of the second session of the General Assembly*, First Committee, annex 19f) to this effect on the question of the treatment of Indians in the Union of South Africa was not adopted.

<sup>190</sup> Referred to in the report of Sub-Committee 6 of the Interim Committee, dated 28 March 1949 (A/AC.18/91, paragraph 47).

<sup>191</sup> For the work of United Nations commissions, see *Official Records of the fourth session of the General Assembly*, Supplement No. 11, annex II, and Secretariat memoranda on individual commissions.

<sup>192</sup> *Official Records of the second session of the General*

*Assembly*, *Ad Hoc* Committee on the Palestinian Question, 19th meeting.

<sup>193</sup> *Official Records of the third session of the General Assembly*, Part I, First Committee, 193rd meeting; see also *ibid.*, Plenary Meetings, Annexes, document A/728/Corr.1 and Corr.2, page 391.

<sup>194</sup> *Official Records of the fourth session of the General Assembly*, First Committee, 276th meeting.

<sup>195</sup> *Ibid.*, Supplement No. 11, annex II; and Secretariat memoranda on individual commissions.

<sup>196</sup> Resolution 303 (IV). Compare similar earlier resolutions 181 (II) and 185 (S-2).

<sup>197</sup> Resolution 39 (I). In a later resolution on Spain (114 (II)), the Assembly confined itself to a reference to the responsibilities of the Security Council under the Charter.

whether such an advisory opinion is to be taken by the Assembly as a final determination of the legal question involved.<sup>198</sup>

#### (5) IMPLEMENTATION OF RESOLUTIONS

113. The Assembly has sought to implement its policy, as expressed in its resolutions, in various ways: by reaffirming resolutions; by detailed recommendations of a military, political or administrative character; by invoking the assistance of the other principal organs of the United Nations; by proposing conditions to non-members for their admission to the United Nations; and by influencing the economic or diplomatic relations of States.

114. The resolutions on the Palestine question contain detailed recommendations of a military, political, or administrative character and call upon other principal organs to collaborate in the task of implementing them. Thus, the Security Council was requested to "determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution"<sup>199</sup> and, if the situation warranted, to:

"... supplement the authorization of the General Assembly by taking measures, under Articles 39 and 41 of the Charter, to empower the United Nations Commission... to exercise... the functions... assigned to it by the resolution".

Moreover, the Commission itself was directed to:

"... be guided in its activities by the recommendations of the General Assembly and by such instructions as the Security Council may consider necessary to issue".

The United Nations Mediator was directed to:<sup>200</sup>

"... conform in his activities with the provisions of this resolution, and with such instructions as the General Assembly or the Security Council may issue".

Similarly, the Economic and Social Council was called upon to appoint the three foreign members of the proposed Joint Economic Board, which was delegated to implement the measures necessary to realize the objectives of economic union between the proposed Arab and Jewish States.<sup>201</sup>

115. Two cardinal questions arise, which can scarcely yet be answered from the comparatively short experience of the General Assembly:

(a) What is the relationship between the General Assembly and the Security Council where a dispute or special political problem before the former calls for the prevention or cessation of hostilities?

<sup>198</sup> The only advisory opinion of the Court which the General Assembly has actually considered was concerned with international claims by the United Nations. The advisory opinion on the Treaties of Peace with Bulgaria and Hungary, in connexion with the question of human rights and fundamental freedoms, (requested in resolution 204 (IV)) has not yet been considered by the Assembly.

<sup>199</sup> Resolution 181 (II).

<sup>200</sup> Resolution 186 (S-2).

<sup>201</sup> Resolution 181 (II).

<sup>202</sup> Resolution 32 (I).

<sup>203</sup> Resolution 39 (I). A similar proposal by Cuba at the third session, part II, that "until the situation... is com-

(b) What is the difference between a decision of the Security Council, as contemplated by Article 25, and a General Assembly recommendation, both designed to prevent or stop hostilities?

116. The Assembly endorsed<sup>202</sup> the decision of the Potsdam Conference that Spain did "not possess the necessary qualifications to justify its admission" to the United Nations and also recommended<sup>203</sup> the exclusion of Spain from the specialized agencies and from participation in international conferences.

117. It was, however, resolved that<sup>204</sup> "... all Members of the United Nations immediately recall from Madrid their Ambassadors and Ministers plenipotentiary accredited there" though this did not necessarily involve the severance of all diplomatic relations with Spain. Proposals to sever or restrict economic relations between Members and Spain were made but not adopted.<sup>205</sup>

118. The Assembly has, however, sought to preclude the maintenance and the establishment of economic or other privileges in areas in which it has concerned itself. For example, States enjoying capitulatory privileges and immunities in Palestine were invited to renounce them in the proposed Arab and Jewish States and in the City of Jerusalem.<sup>206</sup> Furthermore, the Assembly called upon all States to:<sup>207</sup>

"... respect existing treaties relating to China... [and] refrain from (a) seeking to acquire spheres of influence or to create foreign-controlled regimes within the territory of China; (b) seeking to obtain special rights or privileges within the territory of China".

119. Finally, the Assembly has taken various steps to ensure continued control by the United Nations of a matter before it. These measures have included reports to the Secretary-General and/or to the next session of the General Assembly; retention of an item on the agenda; reference to the Security Council; reference to the Interim Committee; convocation of a special session; reference to an advisory council or commission; and reference to an *ad hoc* committee.

#### COMMENT BY THE SUB-COMMITTEE ON SECTION C (3)

120. It would appear that insufficient additional data are available at the present time for any great expansion of the sections of the report of the Interim Committee for 1949 dealing with the organization and procedure of the commissions. However, the following observations may be made:

(a) Some commissions have shown a tendency to relate their rules of procedure directly to the rules of the parent organ, whether the General Assembly or the

pletely elucidated" Bulgaria and Hungary should be excluded from the United Nations, specialized agencies and international conferences (A/AC.24/48/Rev.2, see *Official Records of the third session of the General Assembly, Part II, Ad Hoc Political Committee, Annexes*) was not adopted.

<sup>204</sup> Resolution 39 (I).

<sup>205</sup> For example, the draft resolution of France: A/C.1/Sub.4/3, see *Official Records of the second part of the first session of the General Assembly, First Committee, annex 11k, page 360*.

<sup>206</sup> Resolution 181 (II).

<sup>207</sup> Resolution 291 (IV).

Security Council. The Sub-Committee believes that commissions should approach the question of their organization and procedure, as reflected in their rules, upon the basis of the fact that their function is quite distinct from that of the parent organ, and perhaps obtain draft rules at an early stage from the Secretariat.

The Sub-Committee would anticipate that the Secretariat within budgetary limits will keep current, through periodic revision, its comparative tabulation of the rules of procedure of commissions, and will continue the series of memoranda on the organization and procedure of United Nations commissions as the experience of new commissions becomes available, particularly of those invested with new functions of a technical character, such as administration and the delimitation of boundaries.

(b) In the report of the Interim Committee for 1949, attention was drawn to the duties and responsibilities of the Member States with respect to membership on commissions. The Sub-Committee desires to emphasize this point by observing that the individual skill and experience of the representatives of the Member States composing a commission is a matter of utmost importance to the successful work of the commission. The Sub-Committee notes that nineteen Member States have now designated individuals for inclusion in the Panel for Conciliation and Inquiry established by the General Assembly (resolution 268 D (III)). Prompt action on this matter by the remaining Member States should do much to assure and facilitate the appointment of representatives of the highest calibre and most appropriate experience to the commissions of the United Nations.

## APPENDIX

### Regional action for pacific settlement within the framework of the Charter

Study prepared by Mr. F. V. GARCÍA AMADOR (Cuba)

#### I. Introduction

1. The present study has been prepared in conformity with the invitation extended by the Sub-Committee to the representative of Cuba. The purpose of the study is to examine the various questions which may arise in connexion with matters appropriate for regional action, either when a matter of this kind is referred to an organ of the United Nations or is being dealt with on a regional basis.<sup>208</sup>

2. As regards content, the time factor and the broad scope of the subject have made it necessary to confine the study to an examination of the inter-American system for specific settlement. However, for the purpose indicated in paragraph 1, a description of the inter-American system will suffice as an illustration in examining the above-mentioned questions. In this connexion, it should be noted also that the criterion followed in the preparation of part V below (Regional action and the application of procedures for pacific settlement by the organs of the United Nations) was, purely and simply, that of clarifying and defining with precision those concepts and provisions of the Charter which may be applicable, in one way or another, to matters appropriate for regional action.

3. Lastly, the author wishes to record his acknowledgment of the valuable contribution of the Secretariat in the preparation of the study. The factual material used in parts III and IV of the study is taken from a document produced by the Secretariat (memorandum on "Recent Inter-American Experience in the Field of Pacific Settlement", A/AC.18/SC.9/L.6).

#### II. Provisions of the United Nations Charter

4. The Charter of the United Nations provides for the existence of regional arrangements or agencies whose purpose is to deal with such matters relating to the maintenance of international peace and security as

are appropriate for regional action (Article 52, paragraph 1). On the subject of the pacific settlement of disputes, the continuance of which is likely to endanger international peace and security, the Charter indicates, among the pacific means through which the parties involved shall first of all seek a solution, resort to regional agencies or arrangements (Article 33, paragraph 1).

When specifically referring to local disputes, the Charter provides that the Members of the United Nations entering into regional arrangements or constituting regional agencies shall make every effort to achieve pacific settlement of such type of disputes through such regional arrangements or by such regional agencies before referring them to the Security Council (Article 52, paragraph 2).

5. The Charter establishes further that the Security Council shall encourage the development of pacific settlement of local disputes through regional arrangements or by regional agencies, either on the initiative of the States concerned or by reference from the Security Council (Article 52, paragraph 3). The Security Council shall likewise, when it deems necessary, call upon the parties to settle their dispute by peaceful means, including resort to regional arrangements or agencies (Article 33, paragraph 2). Lastly, the Charter provides that the Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security (Article 54).

6. Apart from the preceding provisions, the entire system of the Charter for pacific settlement by organs of the United Nations may be applicable in one way or another to matters appropriate for regional action. In fact, the Charter does not preclude the General Assembly or the Security Council from performing their duties and exercising their powers (Articles 10, 11, 14 and Chapter VI) whenever a matter of this nature has

<sup>208</sup> See A/AC.18/SC.9/L.3.

been brought to the attention of either of them, or is being dealt with through regional channels, with a view to pacific settlement (Article 52, paragraph 4).

### III. Th inter-American system for pacific settlement

7. *Historical background of the system.* The inter-American system for pacific settlement has been substantially reorganized during the last decade. In the past the American Republics had concluded a number of treaties, conventions and protocols establishing and regulating various means of peaceful settlement such as good offices, mediation, investigation, conciliation and arbitration.<sup>209</sup> The system for pacific settlement established in these instruments was based on the general principle that parties to a dispute could resort to procedures of their own choice. Should the parties fail to achieve settlement by any of the peaceful means provided for, and should the dispute be deemed likely to endanger the peace and security of the continent, the other American Republics were to consult among themselves with a view to agreeing upon appropriate measures to maintain or restore peace.

#### A. LEGAL FRAMEWORK OF THE PRESENT SYSTEM

8. *Instruments constituting the system.* The charter of the Organization of American States, signed at the Ninth American International Conference (Bogotá, 1948) is the basic instrument of the present inter-American system for pacific settlement.<sup>210</sup> In chapter IV of the charter (Pacific settlement of disputes) it is provided that "a special treaty will establish adequate procedures for the pacific settlement of disputes and will determine the appropriate means for their application . . ." (article 23). The instrument specifically referred to in the charter is the American Treaty on Pacific Settlement, also called the "Pact of Bogotá", signed at the same Conference.<sup>211</sup> The "Pact of Bogotá" is intended eventually to replace the various treaties, conventions and protocols mentioned in paragraph 7 above.<sup>212</sup> The Inter-American Treaty of Reciprocal Assistance (Rio de Janeiro, 1947, hereinafter called the Rio Treaty) also contains provisions relating to pacific settlement.<sup>213</sup> Finally, resolution XIV on the Peaceful Solution of Conflicts, adopted by the Second Consultative Meeting of the Ministers of Foreign Affairs (Havana, 1940) is also one of the instruments

which constitute the present inter-American system for pacific settlement.<sup>214</sup>

9. *The obligation to seek peaceful settlement.* The charter of the Organization of American States reaffirms the principle that "controversies of an international character arising between two or more American States shall be settled by peaceful procedures" (article 5, g), and to the effect the charter establishes that "all international disputes that may arise between American States shall be submitted to the peaceful procedures set forth in this Charter . . ." (article 20). Similar provisions are contained in the Pact of Bogotá (article I) and in the Rio Treaty (article 2).<sup>215</sup> With respect to the extent of this obligation, it may be noted that within the inter-American system such obligation applies to "all international disputes". The purpose of the Bogotá charter seems to be that "no dispute between American States shall fail of definitive settlement within a reasonable period" (article 23).

10. *Means and procedures of pacific settlement.* According to the charter of the Organization of American States, "the following are peaceful procedures: direct negotiation, good offices, mediation, investigation and conciliation, judicial settlement, arbitration, and those which the parties to the dispute may especially agree upon at any time" (article 21). The charter adds that "in the event that a dispute arises between two or more American States which, in the opinion of one of them, cannot be settled through the usual diplomatic channels, the Parties shall agree on some other procedure that will enable them to reach a solution" (article 22). The "Pact of Bogotá" establishes and regulates the procedures of good offices and mediation (chapter two), of investigation and conciliation (chapter three), of judicial procedure (chapter four) and of arbitration (chapter five). The parties may use the procedures established in the Pact or any other special procedure which, in their opinion, will permit them to arrive at a solution (article II). One of the characteristic notes of the Pact is that once the procedure of conciliation is resorted to, any of the parties may institute arbitration or judicial settlement (articles XXXII and XXXV). So far as the Rio Treaty is concerned, although its fundamental purpose is reciprocal assistance in case of an armed attack or of any other act of aggression, the procedure of consultation provided for

<sup>209</sup> Treaty to Avoid or Prevent Conflicts between the American States, of 3 May 1923; General Convention of Inter-American Conciliation, of 5 January 1929; General Treaty of Inter-American Arbitration and Additional Protocol of Progressive Arbitration, of 5 January 1929; Additional Protocol to the General Convention of Inter-American Conciliation, of 26 December 1933; Anti-War Treaty of Non-Aggression and Conciliation, of 10 October 1933; Convention to Co-ordinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States, of 23 December 1936; Inter-American Treaty on Good Offices and Mediation, of 23 December 1936; Treaty on the Prevention of Controversies, of 23 December 1936.

<sup>210</sup> The charter will enter into force when ratified by two-thirds of the American Republics. So far, it has been ratified by Brazil, Costa Rica, the Dominican Republic, Honduras and Mexico. However, the organizational structure set up by the charter is already operating provisionally, in accordance with resolution XL of the Bogotá Conference.

<sup>211</sup> The Pact, signed by the twenty-one Republics, has been ratified by Costa Rica, Honduras and Mexico. Costa Rica and Nicaragua have agreed to recognize the Pact "as having

full validity as to disputes between them even before it is formally ratified" (article III of the Pact of Amity concluded between these two Republics on 21 February 1949).

<sup>212</sup> According to its article LVIII, as the Pact comes into effect through the successive ratifications of the contracting parties the instruments referred to shall cease to be in force with respect to such parties.

<sup>213</sup> The Rio Treaty entered into force on 3 December 1948. So far it has been ratified by sixteen signatories: Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, El Salvador, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, the United States of America, Uruguay and Venezuela.

<sup>214</sup> In pursuance of resolution XIV, on 31 July 1948 the Inter-American Committee on Methods for the Peaceful Solution of Conflicts was established in Washington with the following membership: Argentina, Brazil, Cuba, Mexico and the United States of America. This agency later changed its name to the Inter-American Peace Commission.

<sup>215</sup> In the three instruments, the general obligation to seek peaceful settlement is linked, so far as procedure is concerned, to the submission of disputes to the organs of the United Nations. See paragraph 14 below.

and regulated therein may be applicable to disputes or situations which "might endanger the peace of America".<sup>216</sup> Finally, resolution XIV of the Second Consultative Meeting instructs the Inter-American Peace Commission to exercise "constant vigilance to ensure that States between which any dispute exists or may arise, of any nature whatsoever, may solve it as quickly as possible", and to suggest "without detriment to the methods adopted by the parties or to the procedures which they may agree upon, the measures and steps which may be conducive to a settlement".<sup>217</sup>

#### B. RECENT APPLICATIONS OF THE SYSTEM

11. The inter-American system for pacific settlement has been applied, after reorganization, to a number of disputes and situations which have arisen between American States. These questions have been submitted to the inter-American agencies in pursuance of the Rio Treaty, resolution XIV of the Second Consultative Meeting or the "Pact of Bogotá". For the purpose of the present study, it is not necessary, however, to give a detailed account of these disputes and situations, nor of the procedure by which they were submitted to and settled by those agencies.<sup>218</sup>

### IV. Relationship of the inter-American system to the United Nations

#### A. PROVISIONS OF THE INTER-AMERICAN INSTRUMENTS

12. *The Organization of American States and the United Nations.* Article 1 of the charter signed at Bogotá declares that "within the United Nations, the Organization of American States is a regional agency". Enumerating the essential purposes of that organization, the charter states that these are established "in order to put into practice the principles on which [the organization] is founded and to fulfil its regional obligations under the Charter of the United Nations" (article 4). Moreover, the Bogotá charter declares that none of its provisions "shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations" (article 102).<sup>219</sup> These provisions reveal that the Organization of American States is not an organization of the American regional community entirely disassociated from the United Nations, but is functionally related to the world Organization.

13. *The inter-American system for pacific settlement and the "regional arrangements or agencies" authorized by the Charter of the United Nations.* In addition to the provisions mentioned in paragraph 12, above, the existing inter-American instruments relating to pacific settlement declare explicitly their consistency with the purposes and principles of the United Nations. The preamble to the Rio Treaty states that "the High Contracting Parties reiterate their will to remain united

in an inter-American system consistent with the purposes and principles of the United Nations, and reaffirm the existence of the agreement they have concluded concerning those matters relating to the maintenance of international peace and security which are appropriate for regional action". In the "Pact of Bogotá", the American Republics reaffirm "their commitments made in earlier international conventions and declarations as well as in the Charter of the United Nations", when they agree "to have recourse at all times to pacific procedures" (article I). It seems clear, therefore, that these inter-American instruments were designed to be consistent with the requisites or conditions laid down by the Charter of the United Nations in connexion with regional arrangements or agencies.

14. *The obligation to resort to regional procedures and the right to submit matters to the organs of the United Nations.* In virtue of the Rio Treaty, "the High Contracting Parties undertake to submit every controversy which may arise between them to methods of peaceful settlement and to endeavour to settle any such controversy among themselves by means of the procedures in force in the Inter-American System before referring it to the General Assembly or the Security Council of the United Nations" (article 2). The principle and the procedural rule contained in this provision were altered at the Bogotá Conference in such a way as to limit the obligation to resort to regional procedures, by recognizing the right of the parties to bring a matter to the General Assembly. Actually, this organ is not mentioned in the corresponding provisions of the charter of the Organization of American States (article 20) and of the "Pact of Bogotá" (articles II and L). Moreover, the scope of these provisions is to be interpreted in the light of the general terms of the charter of Bogotá (article 102) and of the Rio Treaty (article 10), namely, that none of such provisions "shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations". The foregoing indicates, therefore, that the purpose of these instruments is to impose on the Contracting Parties the obligation to make every effort to achieve pacific settlement of disputes which may arise among themselves, before referring them to the Security Council in pursuance of Article 52, paragraph 2, of the Charter of the United Nations.

15. *Other relations with the United Nations organs.* With a view to complying with Article 54 of the United Nations Charter, the Rio Treaty lays down that "the High Contracting Parties shall immediately send to the Security Council . . . complete information concerning the activities undertaken or in contemplation in the exercise of the right of self-defense or for the purpose of maintaining inter-American peace and security" (article 5). In this connexion, the Treaty adds that the

<sup>216</sup> According to article 6 of the Rio Treaty, "if the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the Continent." (The italics are the author's.)

<sup>217</sup> In addition, resolution XIV states that the Committee shall submit a report, to each meeting of the Ministers of Foreign Affairs and to each international conference of American States, regarding the status of such conflicts and the steps which may have been taken to bring about a solution.

<sup>218</sup> The memorandum prepared by the Secretariat and issued as a mimeographed document on 21 April 1950 (A/AC.18/SC.9/L.6) contains a detailed account of these recent applications of the inter-American system.

<sup>219</sup> Article 10 of the Rio Treaty contains an identical provision.

Council of the Organization of American States "shall act in all matters concerning this Treaty as an organ of liaison among the Signatory States which have ratified this Treaty and between these States and the United Nations" (article 15). The obligation under article 5 is therefore applicable, according to the circumstances, both to the parties specifically mentioned by the Treaty and to the Council of the Organization. Finally, other relations with the United Nations are provided for in certain provisions of the "Pact of Bogotá". In article XXXI of the Pact, the parties recognize in relation to any of them the jurisdiction of the International Court of Justice, in conformity with Article 36, paragraph 2, of the Statute of the Court. Moreover, any dispute, whatever its nature, may be brought before the Court if the parties do not agree to resort to arbitration, and in such cases the Court will have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the Statute (article XXXII). In connexion with requests for advisory opinions, the Pact lays down that "The parties concerned in the solution of a controversy may, by agreement, petition the General Assembly or the Security Council of the United Nations to request an advisory opinion of the International Court of Justice on any juridical question. The petition shall be made through the Council of the Organization of American States" (article LI).<sup>220</sup>

#### B. RELATIONS ESTABLISHED WITH THE UNITED NATIONS

16. *General relations.* The Secretary-General of the United Nations was invited to attend the Inter-American Conference for the Maintenance of Continental Peace and Security (Rio de Janeiro, 1947) and the Ninth International Conference of American States (Bogotá, 1948). The Bogotá Conference adopted a resolution inviting the United Nations "to be represented at Inter-American Conferences and Meetings of Consultation of Ministers of Foreign Affairs by its Secretary-General, or by an alternate in the event that the Secretary-General is unable to attend in person, in order that the Members of the world organization may be kept informed as to the work and the conclusions of those conferences" (resolution XXXIX of the Final Act). In turn, the General Assembly of the United Nations resolved at its third regular session "that the Secretary-General be requested to invite the Secretary-General of the Organization of American States to be present as an observer at the sessions of the General Assembly" (resolution 253 (III)).

17. *Relations concerning the activities undertaken or in contemplation for the maintenance of international peace and security.* On 24 January 1949, the Secretary-General of the Organization of American States sent the Secretary-General of the United Nations copies of the charter of the Organization of American States and of the American Treaty on Pacific Settlement ("Pact of Bogotá"), "which in order to comply with Article 54 of the Charter of the United Nations, I would appreciate your transmitting to the Security Council for its information" (S/1240). In addition, the Security Council has received to date thirteen communications concerning the activities of the inter-American agencies for the

maintenance of peace and security in the Continent.<sup>221</sup> All these communications have been circulated as Security Council documents, although they have not been placed on the provisional agenda of the Council's meetings (S/982, S/1036, S/1116, S/1171, S/1172, S/1239, S/1268, S/1307, S/1346, S/1389, S/1390, and S/1407). The Security Council took note of the communications concerning the situation between Costa Rica and Nicaragua and the incident between Haiti and the Dominican Republic in its report to the General Assembly covering the period from 16 July 1948 to 15 July 1949 (A/945, part V).

### V. Regional action and the application of procedures for pacific settlement by the organs of the United Nations

#### A. GENERAL QUESTIONS

18. *General principle.* According to the general provisions of the United Nations Charter relating to pacific settlement, the parties to a dispute are not under obligation first of all (that is, before submitting the dispute to the General Assembly or the Security Council) to try to settle the dispute through regional agencies or arrangements (Article 33, paragraph 1). Moreover, even Article 33, paragraph 1, allows the parties to resort to "other peaceful means of their own choice". On this subject, the Interim Committee has already had occasion to express the view that the parties should employ the method or methods most suitable for each particular dispute (A/605). In the case of local disputes, however, the Members of the United Nations entering into regional arrangements or constituting regional agencies are bound to "make every effort to achieve" their pacific settlement through such regional arrangements or by such regional agencies before referring them to the Security Council (Article 52, paragraph 2).

19. *"Matters . . . appropriate for regional action" and "local disputes".* The provisions of the Charter for pacific settlement of disputes by organs of the United Nations are applicable not only to disputes the continuance of which is likely to endanger the maintenance of international peace and security, but also to any situation which might lead to international friction or give rise to a dispute (Articles 10, 11, 14, and Chapter VI). For the purposes of the present study, therefore, the phrase "such matters relating to the maintenance of international peace and security as are appropriate for regional action" (Article 52, paragraph 1) should in principle be interpreted as including not only the "local disputes" specifically referred to in the Charter (Article 52, paragraphs 2 and 3), but also any local situation of the nature provided for in the Charter (Articles 11, paragraph 3; 14; 34; 35, paragraph 1; 36, paragraph 1). In what circumstances, then, should a matter, whether a local dispute or a local situation, be considered as appropriate for regional action? The method which seems best to conform to the aims embodied in Chapter VIII of the Charter (Regional arrangements) is to consider a dispute or situation as being of a "local nature", not because of

<sup>220</sup> Articles V and XLIII of the Pact also provide for relations with the International Court of Justice.

<sup>221</sup> See the Secretariat memorandum cited in footnote 218 for a detailed account of these communications.



the place where it occurs or the region to which the parties or interested States belong, but on the basis of the fact that those parties or States are parties to a regional arrangement or constitute a regional agency. The reason for this conclusion is obvious and imposed by the facts: it is certain that only the existence of a regional arrangement or agency, to which the parties or interested States may resort in case of a dispute, can make pacific settlement by these methods practicable.

20. *Requirements or conditions with which regional arrangements or agencies must comply.* The Charter does not offer a definition, in the strict sense of the term, of regional arrangements or agencies, but confines itself to stating the requirements or conditions which such arrangements or agencies must satisfy. These are as follows: (a) their purpose must be to deal with such matters relating to the maintenance of international peace and security as are appropriate for regional action; and (b) their constitution and activities must be consistent with the purposes and principles of the United Nations (Article 52, paragraph 1). The first requirement or condition is sufficiently broad to embrace the regional arrangements or agencies whose aim might be the pacific settlement of such problems as are provided for in Chapter VI, or the action with respect to threats to the peace, breaches of the peace or acts of aggression referred to in Chapter VII, or the fulfilment of both functions (Chapter VIII, Articles 52, paragraphs 2 and 3; 53, paragraph 1). The second requirement or condition should not be interpreted strictly, but in the sense that the constitution and activities of the regional arrangements or agencies should not be inconsistent with the purposes and principles set forth in Chapter I of the Charter.

#### B. RIGHTS AND DUTIES OF THE PARTIES OR STATES

21. *Submission to an organ of the United Nations of a matter appropriate for regional action.* The obligation of Members of the United Nations to make every effort to achieve pacific settlement of local disputes by means of regional arrangements or agencies does not affect, nor does it restrict in its exercise, their right to bring any dispute (or any situation which might lead to international friction or give rise to a dispute) to the attention of the General Assembly with a view to a pacific settlement (Articles 35, paragraph 1, and 11, paragraph 2). So far as the Security Council is concerned, to the obligation "to make every effort to achieve pacific settlement" by means of regional arrangements or agencies there should not be attributed a different aim or a broader scope than that which seems logically to derive from the Charter system for pacific settlement. This obligation would not be applicable, for instance, when a Member State brought a matter to the attention of the Security Council claiming that the other interested party or State had refused to settle the dispute or situation by the means specified in a regional arrangement, or that a regional agency had for some reason refused to deal with the matter or to offer a solution. In both cases it might be considered that every effort to achieve pacific settlement through regional channels had been made and that the parties or interested States had therefore ceased to be under the obligation set forth in Article 52, paragraph 2 of the Charter.

22. *Transaction of a matter through a regional arrangement or by a regional agency.* The Charter does not prevent the parties or interested States, after the regional procedure for the settlement of a particular problem has been initiated, from exercising their right of referring it to the attention of the General Assembly as a matter relating to the maintenance of international peace and security (Articles 35 and 11, paragraph 2). Should the parties fail to settle a local dispute (the continuance of which is likely to endanger the maintenance of international peace and security) through a regional arrangement or by a regional agency, they must refer it to the Security Council (Article 37, paragraph 1). In this respect, the Interim Committee has already had occasion to point out (A/605) that the words *first of all*, which appear in Article 33, paragraph 1, do not mean that all the methods indicated therein must be employed before the Security Council can examine the dispute. To resort to all these methods would mean to prolong the proceedings unnecessarily, especially in the case of a dispute, the continuance of which may endanger the maintenance of peace.

23. *Notification to the Security Council of regional activities.* The obligation laid down in Article 54 of the Charter refers to the various activities undertaken or in contemplation under regional arrangements or by regional agencies, provided that such activities aim at the maintenance of international peace and security. This obligation is justified by the fact that, under the Charter system, the Security Council has the primary responsibility for the maintenance of international peace and security (Article 24). Although the Charter does not specify where responsibility lies, the general wording of Article 54 would appear to indicate that either the parties or the regional agency, as the case may be, must fulfil this obligation. Accordingly, the parties must at all times keep the Security Council fully informed of activities undertaken or in contemplation under a regional arrangement or by a regional agency, when seeking a solution to a dispute or situation the continuance of which is likely to endanger international peace and security. Similarly, regional agencies undertaking or contemplating activities of any kind in pursuance of these aims are subject to the same obligation.

#### C. FUNCTIONS AND POWERS OF THE ORGANS OF THE UNITED NATIONS

24. *Functions and powers of the General Assembly.* Inasmuch as the Charter does not impose any limitation upon the functions and powers of the General Assembly, the Assembly may perform its functions and exercise its powers with regard to any matter appropriate for regional action for the purpose of pacific settlement. Accordingly, the General Assembly may: (a) discuss any question of a local nature within the scope of the Charter relating to the maintenance of international peace and security brought before it by a Member State, the Security Council or a non-member State, and may, except as provided in Article 12, make recommendations on such problems to the States concerned, to the Security Council or to both (Articles 10; 11, paragraph 2; 35); (b) call the attention of the Security Council to situations of a local nature which are likely to endanger international peace and security (Article 11, paragraph 3); and (c) subject to the provisions of Article 12, recommend measures for the peaceful adjust-



ment of any situation of a local nature, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations of the same nature resulting from a violation of the provisions of the Charter setting forth the Purposes and Principles of the United Nations (Article 14).

25. *Functions and powers of the Security Council.* The Security Council may fulfil the functions and exercise the powers conferred on it by the Charter with regard to any matter appropriate for regional action for the purpose of pacific settlement. Accordingly,

the Council is required to encourage the development of pacific settlement of local disputes through regional arrangements or agencies either on the initiative of the States concerned or by reference from the Council itself (Article 52, paragraph 3). To this end, when the Security Council deems that the continuance of a local dispute or situation is in fact likely to endanger the maintenance of international peace and security, it may recommend either appropriate procedures or methods of adjustment (Article 36, paragraph 1) or such terms of settlement as it may consider appropriate (Article 37, paragraph 2).

## ANNEX B

### **Colombia: proposal concerning the systematic study of the promotion of international co-operation in the political field**

A/AC.18/L.4

[Original text: Spanish]

*The delegation of Colombia proposes to add to paragraph 16 of document A/AC.18/114 (see annex A) the following:*

The system laid down by the Charter for pacific settlement by the organs of the United Nations is applicable to any dispute the continuance of which is likely to endanger the maintenance of international peace and security (Article 33), and to any situation which might lead to international friction or give rise to a dispute (Article 34). When, however, a regional agency or arrangement exists, such as those provided for in Article 52, the Members of the United Nations entering into such arrangements or constituting such agencies are to make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council. *The local character* of the controversy is easily

established by the fact that it is suitable for regional action, that is to say that it can be settled by means of an existing regional arrangement or agency. A controversy between two countries which are not bound by a regional arrangement or which do not belong to a regional agency will not be classified as *local* for any other reason. The classifying of a dispute as one suitable for regional action depends exclusively on the capacity of the regional agency or arrangement to attempt its settlement. If a group of Members of the United Nations constitute a regional agency or enter into a regional arrangement for the pacific settlement of their disputes and agree that they will not submit to the Security Council or to the Assembly any dispute between them before attempting a regional settlement, they will be acting within the framework of the Charter of the United Nations and collaborating effectively towards the accomplishment of its aims.

## ANNEX C

### United States of America: draft resolution concerning the study of procedure to delimit the boundaries of the former Italian colonies

A/AC.18/118/Rev.1

[Original text: English]

*The Interim Committee,*

*In accordance with General Assembly resolution 289 C (IV) adopted on 21 November 1949, in which the General Assembly called upon the Interim Committee "to study the procedure to be adopted to delimit the boundaries of the former Italian colonies in so far as they are not already fixed by international agreement, and report with conclusions to the fifth regular session of the General Assembly",*

*Having taken note of the memorandum prepared at its request by the Secretariat concerning this subject (A/AC.18/103), which listed the boundaries of the former Italian colonies not already fixed by international agreement, and having taken into consideration the views of the interested Governments,*

*Recommends to the General Assembly that it adopt the following resolution:*

*"The General Assembly,*

*"In accordance with annex XI, paragraph 3, of the Treaty of Peace with Italy, 1947, whereby the Powers concerned have agreed to accept the recommendation of the General Assembly on the disposal of the former Italian colonies, and to take appropriate measures for giving effect to it,*

*"Having made recommendations on this subject,*

*"Having taken note of the report and conclusions of*

*the Interim Committee with reference to the procedure to be adopted to delimit the boundaries of the former Italian colonies in so far as they are not already fixed by international agreement, and having taken into consideration the views of the interested Governments,*

*"With respect to Libya, recommends:*

*"That the portion of its boundary with French territory not already fixed by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments, assisted upon the request of either party by a person to be selected by them or, failing their agreement, to be appointed by the Secretary-General of the United Nations;*

*"With respect to the Territory of Somaliland under Italian Administration, recommends:*

*"That the portion of its boundary with British Somaliland not already fixed by international agreement be delimited, upon approval by the General Assembly of the draft trusteeship agreement for the Territory of Somaliland under Italian Administration, by negotiation between the British Government and the Italian Administration of Somaliland, assisted upon the request of either party by a person to be selected by them or, failing their agreement, to be appointed by the Secretary-General of the United Nations."*



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