

Chapter V

**SUBSIDIARY ORGANS ESTABLISHED BY OR IN PURSUANCE
OF SECURITY COUNCIL RESOLUTIONS**

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INTRODUCTORY NOTE

The material included in this chapter pertains to procedures of the Security Council in establishing, or authorizing the establishment of, subsidiary organs deemed necessary for the performance of its functions. Part I, "Occasions on which subsidiary organs of the Security Council have been established or proposed," includes one case history in which the Council established the subsidiary organ, three case histories in which the Council decided to authorize the Secretary-General to set up the subsidiary organs, and four case histories giving accounts of occasions on which proposals to establish a subsidiary organ were not adopted by the Council. With respect to the case histories in which subsidiary organs were established or set up by the Secretary-General pursuant to Council resolution, no implication is intended as to whether these bodies do or do not come within Article 29.

In chapter VIII, under the Palestine question, is found a decision of the Council giving further directives

to the subsidiary organ previously established in connexion with the question, and under the "situation in the Republic of the Congo" in that chapter are found directives to the subsidiary organs the establishment of which is dealt with in part I of this chapter.

In part II of this chapter is included a case history of an occasion on which a special problem of procedure in relation to a subsidiary organ was considered in the Council.

Article 29 of the Charter

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Rule 28 of the provisional rules of procedure

The Security Council may appoint a commission or committee or a rapporteur for a specified question.

Part I

OCCASIONS ON WHICH SUBSIDIARY ORGANS OF THE SECURITY COUNCIL HAVE BEEN ESTABLISHED OR PROPOSED

NOTE

During the period under review the Security Council: (1) established the Sub-Committee under the resolution of 7 September 1959 in connexion with the report by the Secretary-General relating to Laos;^{1/} (2) decided to authorize the Secretary-General to take the necessary steps in order to provide the Government of the Republic of the Congo with military assistance, this authorization having been implemented by the Secretary-General by the setting-up of the United Nations Force in the Congo;^{2/} (3) requested the Secretary-General to establish "the observation operation" in Yemen, this request having been implemented by the Secretary-General by the setting-up of the United Nations Yemen Observation Mission;^{3/} and (4) requested the Secretary-General to establish under his direction and reporting to him a small group of experts on South Africa.^{4/}

For the Sub-Committee, the Council decided the composition and terms of reference. In the case of the United Nations Force in the Congo, the Secretary-General determined the composition and the scope of the Force and the limitations of its powers. In the instance of "the observation operation in Yemen," the Secretary-General was empowered by the Council to establish the subsidiary organ "as previously de-

finied by him" in his reports to the Council, including its composition and terms of reference. With regard to the Group of Experts on South Africa, the Council, while defining the terms of reference of the Group, left to the Secretary-General decisions regarding the number of experts and their appointment.

Of the subsidiary organs established in connexion with the Security Council's discharge of responsibilities for the maintenance of international peace and security, the United Nations Representative for India and Pakistan and the United Nations Truce Supervision Organization in Palestine continued in existence during the period under review. In one instance the Council requested the latter organ to report as appropriate concerning the situation.^{5/}

During the period covered by this Supplement, the Security Council in four instances had not adopted proposals for the establishment of subsidiary organs.^{6/}

The Council has not, during the period under review, entrusted every task in connexion with activities at "places other than the seat of the Organization" to subsidiary organs. Besides the organizational functions entrusted to the Secretary-General in connexion with the establishment of the organs mentioned above (see Cases 2, 3, 4), the Council, in connexion with the situation in the Congo, requested the Secretary-

^{1/} Case 1.

^{2/} Case 2.

^{3/} Case 3.

^{4/} Case 4.

^{5/} Decision of 9 April 1962 (Resolution S/5111, O.R., 17th year, Suppl. for April-June 1962, pp. 95-96).

^{6/} Cases 5, 6, 7, 8.

General to report,^{7/} authorized him to take action concerning Belgium's implementation of the resolution of 14 July 1960,^{8/} requested him to implement the resolution of 9 August 1960,^{9/} and authorized him to take vigorous action with regard to all foreign military and paramilitary personnel, political advisers not under the United Nations Command and mercenaries.^{10/} In connexion with the complaint concerning South Africa (letter of 25 March 1960) the Secretary-General was requested by the Council to make arrangements which would assist in upholding the purposes and principles of the Charter and to report thereon;^{11/} in connexion with the question of race conflict in South Africa the Secretary-General was requested to keep the situation in South Africa under observation and to report to the Council within a certain period;^{12/} in connexion with the complaint by Senegal the Council requested the Secretary-General to keep the development of the situation under review;^{13/} and in connexion with the situation in territories in Africa under Portuguese administration the Secretary-General was requested to ensure the implementation of the resolution of 31 July 1963, to furnish necessary assistance and to report within a certain period.^{14/} The reports from the United Nations Truce Supervision Organization in Palestine continued to be submitted to the Security Council through the Secretary-General.

A. INVOLVING, TO FACILITATE THEIR WORK, MEETINGS AT PLACES AWAY FROM THE SEAT OF THE ORGANIZATION

1. Subsidiary organs established

CASE I

Sub-Committee under resolution of 7 September 1959 in connexion with the report of the Secretary-General relating to Laos

At the 847th meeting on 7 September 1959, in connexion with the report of the Secretary-General relating to Laos, the representative of the United States introduced a draft resolution^{15/} sponsored jointly with France and the United Kingdom which proposed the appointment of a sub-committee consisting of Argentina, Italy, Japan and Tunisia with instructions to examine the statements made before the Council concerning Laos, to receive further statements and documents and to conduct such inquiries as it might determine necessary, and to report to the Council as soon as possible.

^{7/} Decisions of 14 July, 22 July and 9 August 1960 (Resolutions S/4387, S/4405 and S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16, 34-35 and 91-92).

^{8/} Decisions of 22 July and 9 August 1960.

^{9/} Decision of 9 August 1960.

^{10/} Decision of 24 November 1961 (Resolution S/5002, O.R., 16th year, Suppl. for Oct.-Nov. 1961, pp. 148-150).

^{11/} Decision of 1 April 1960 (S/4300, O.R., 15th year, Suppl. for April-June 1960, pp. 1-2).

^{12/} Decisions of 7 August and 4 December 1963 (S/5386, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 73-74); and (S/5471, O.R., 18th year, Suppl. for Oct.-Dec., pp. 101-102).

^{13/} Decision of 24 April 1963 (S/5293, O.R., 18th year, Suppl. for April-June 1963, pp. 30-31).

^{14/} Decisions of 31 July and 11 December 1963 (S/5380, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 63-64; and S/5481, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 108-109).

^{15/} S/4214, 847th meeting; para. 59.

The representative of France noted that Laos, as a Member of the United Nations, was entitled to apply to the Organization when it deemed it appropriate. Turning to the question of the Geneva agreements, in so far as they affected Laos, he stated that they sanctioned the independence of Laos and in no way placed it under permanent trusteeship. The International Commission for Supervision and Control was set up to verify the implementation of the clauses of the armistice agreement and was not given exclusive powers of jurisdiction.

The representative of the United Kingdom, expressing himself along similar lines, noted that the Government of Laos maintained that, since a political settlement had been achieved, it was no longer obliged to submit to the supervision of the International Commission; the United Kingdom believed that the Government of Laos was entitled to take this view.

At the 848th meeting on the same day, the representative of the USSR objected to the proposal, stating that the Council could not be a party to measures which would undermine the validity of existing international agreements.^{16/}

At the same meeting, the draft resolution submitted by France, the United Kingdom and the United States was put to the vote and adopted^{17/} by 10 votes in favour, 1 against, and no abstentions.^{18/}

CASE 2

United Nations Force in the Congo

Establishment

At the 873rd meeting on 13/14 July 1960, the convening of which was requested^{19/} by the Secretary-General in order to hear his report on a demand for United Nations action in relation to the Republic of the Congo, the Secretary-General pointed out^{20/} that his request was made under Article 99 of the Charter, and recommended to the Council

"to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Congo, to provide the Government with military assistance during the period which may have to pass before, through the efforts of the Government with the technical assistance of the United Nations, the national security forces are able to fully meet their tasks."

"Were the United Nations to act as proposed," the Secretary-General said, "the Belgian Government would see its way to a withdrawal."^{21/}

^{16/} For texts of relevant statements, see:

847th meeting: France, paras. 65-73; United Kingdom, paras. 74-85; United States, paras. 57-64.

848th meeting: USSR, paras. 28-31.

^{17/} 848th meeting; para. 131, Resolution S/4216, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 8-9.

^{18/} For related discussion in connexion with procedural questions related to voting, see chapter IV, Cases 6, 23 and 24. In connexion with consideration of procedures in the establishment of subsidiary organs, see Case 9.

^{19/} S/4381, O.R., 15th year, Suppl. for July-Sept. 1960, p. 11.

^{20/} 873rd meeting; para. 18.

^{21/} *Ibid.*, para. 27.

The Secretary-General stated further that, were the Security Council to act on his recommendation, he would base his actions on the principles set out in his report to the General Assembly "on the conclusions drawn from previous experiences in the field,"^{22/} and outlined the principles pertinent for the authority and composition of the United Nations Force.^{23/}

The recommendations of the Secretary-General were embodied in the resolution^{24/} adopted by 8 votes in favour to none against, with 3 abstentions at the same meeting,^{25/} in which the Security Council decided

"to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks" (operative paragraph 2).

On 18 July 1960 the Secretary-General submitted his first report on the implementation of Security Council resolution S/4387 of 14 July 1960.^{26/}

At the 879th meeting on 21/22 July 1960, the Security Council unanimously commended "the Secretary-General for the prompt action he had taken to carry out resolution S/4387 of the Security Council, and for his first report."^{27/}

Composition

At the 873rd meeting on 13/14 July 1960, the Secretary-General stated^{28/} that the selection of personnel for the United Nations Force should be such as to avoid complications because of the nationalities used. In the prevailing situation this did not exclude the use of units from African States while, on the other

hand, it did exclude recourse to troops from any of the permanent members of the Security Council. It was his intention to get, in the first place, assistance from African nations.

At the same meeting the representative of the USSR submitted an amendment^{29/} to operative paragraph 2 of the Tunisian draft resolution^{30/} to insert after the words "such military assistance," the words "provided by the African States Members of the United Nations." He stated^{31/} that this addition was necessary because the Security Council should give the Secretary-General instructions on where he should procure the military assistance for the Republic of the Congo. Such assistance should be provided by the independent States of Africa which had expressed their readiness to furnish it. A clarification of this kind would not hamper the Secretary-General but, on the contrary, would assist him in making the necessary arrangements.

The amendment was not adopted. There were 4 votes in favour to 5 against, with 2 abstentions.^{32/}

At the 888th meeting on 21 August 1960, the Secretary-General, referring to the composition of the United Nations Force, stated^{33/} that in his first report he had applied the rule approved previously in the case of the United Nations Emergency Force.^{34/} That rule had been that forces from any of the perma-

^{22/} S/4386. O.R., 15th year, Suppl. for July-Sept. 1960, pp. 15-16; 873rd meeting: para. 205.

^{30/} S/4383, same text as resolution S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16.

^{31/} 873rd meeting: para. 206.

^{32/} 873rd meeting: para. 225.

^{33/} 888th meeting: paras. 95, 96.

^{34/} In his first report on the implementation of the Security Council resolution S/4387 of 14 July 1960 (S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24, paras. 16-30), the Secretary-General in the section entitled "the composition of the Force," referring to his statement at the 873rd meeting, said that to the extent that the Republic of the Congo needed international assistance, such assistance should, within the framework of the United Nations, in the first instance be given by African nations as an act of African solidarity. However, this natural reliance on regional solidarity for the solution of a problem of that kind should be qualified by an element of universality, essential to any United Nations operation. Therefore, while the Force should be built around a core of military units from African States, it should also, to the extent which might be found practical, include units from other areas which met the general conditions for the composition of a United Nations Force. Elements from other regions included in the Force might be considered as assistance given in the spirit of the Charter to the African community of nations by nations of those other regions. It would be unjustified to interpret the United Nations action in the sense that nations from outside the region stepped into the Congo situation, using the United Nations as their instrumentality, because of the incapability of the Congo and of the African States themselves to make the basic contribution to the solution of the problem. The efforts of the Secretary-General to build up the Force had been guided by that interpretation of the United Nations operation. Apart from being influenced by the factors mentioned, the Secretary-General had been guided by considerations of availability of troops, language and geographical distribution within the region. The offers of the Governments of Ghana, Guinea, Morocco, Tunisia, Ethiopia and Mali to put military units at the disposal of the United Nations had been accepted. The Secretary-General had appealed further for assistance in the form of troops from three European, one Asian and one Latin American country, meeting the general conditions applying to a United Nations Force. The Secretary-General stated further that in broad outline that completed the picture of the geographical distribution sought for the Force in implementation of the decision of the Security Council on the basis of the principles outlined by him. It reflected his wish to give the African community of nations the central position while maintaining the universal character of a United Nations operation.

^{22/} Official Records of the General Assembly, Thirteenth Session, Annexes, agenda item 65 (United Nations Emergency Force), document A/3943, Summary study of the experience derived from the establishment and operation of the Force; report of the Secretary-General, pp. 8-33.

^{23/} 873rd meeting: para. 28.

^{24/} Resolution S/4387, O.R., 15th year, Suppl. for July-Sept. 1960, p. 16; see also chapter VIII, p. 162.

^{25/} 873rd meeting: para. 232.

^{26/} S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24. In this report, the Secretary-General stated that the resolution had been adopted in response to his initial statement (873rd meeting: paras. 18-29; see also chapter VIII, p. 162) which, therefore, might be regarded "as a basic document on the interpretation of the mandate". However, important points had been left open for an interpretation in practice. In submitting his report the Secretary-General wanted not only to bring to the knowledge of the Council what had been achieved so far but also what lines he had followed concerning the implementation of the authorization. Although the United Nations Force under the resolution was dispatched to the Congo at the request of the Government and would be present in the Congo with its consent and although it might be considered "as serving as an arm of the Government for the maintenance of order and protection of life," the Force "... is necessarily under the exclusive command of the United Nations, vested in the Secretary-General under the control of the Security Council. This is in accordance with the principles generally applied by the Organization. The Force is thus not under the orders of the Government...."

^{27/} 879th meeting: para. 108, Resolution S/4405 (oper. para. 3), O.R., 15th year, Suppl. for July-Sept. 1960, pp. 34-35.

^{28/} 873rd meeting: para. 28.

ment members should be excluded and he had read the word "forces" "in a very extensive sense, that is to say, it includes units or higher command of any kind. Beyond that the Security Council has not given me any guidance as to composition." There was also the rule that no country which could be considered as having a direct interest in the conflict should be permitted to send forces. In the specific situation, as regards the Congo, this rule had not limited the Secretary-General's choice. For practical reasons he had to get technicians, preferably bilingual, who could not be found in any other country than Canada. The Secretary-General did not look at membership in either NATO or the Warsaw Pact or any other grouping as excluding a country from participating in the operation. He wished to maintain a balanced geographical composition in any event: the countries with which he was having negotiations concerning added units were the United Arab Republic, Indonesia, Sudan, India, Ceylon and Burma.^{35/}

At the 889th meeting on 21/22 August 1960, the representative of Ecuador pointed out^{36/} that from time to time the Congolese authorities had said that they wanted the United Nations contingents to consist solely of African troops. However, any attempt to split the United Nations up according to racial or continental criteria conflicted with the Organization's universal nature and specific terms of the Charter and would destroy the spirit of universal co-operation and non-discrimination on which the Charter was based. In the view of the representative of the United States^{37/} it was unthinkable that the United Nations should draw a racial line with regard to the composition of the United Nations Force. The President, speaking as the representative of France, observed^{38/} that one of the major principles of the Charter was that no distinction should be made between individuals on grounds of race, sex, language or religion. It was, therefore, wise that, in selecting units for the United Nations Force, only contingents from the States directly concerned should be excluded from consideration. Any other distinction would be inadmissible.

The Secretary-General continued to report periodically on the composition and strength of the United Nations Force in the Congo.^{39/}

Area of operation

At the 877th meeting on 20/21 July 1960, the Secretary-General stated that no hesitation could exist as regards what was the area of operation for

^{35/} At the 877th meeting on 20/21 July 1960, the Secretary-General, introducing his first report on the implementation of Security Council resolution S/4387 of 14 July 1960 (S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24), stated that, as regards the military operation, the United Nations Force had been brought up to a strength which should serve as a satisfactory basis for the continued effort to assist the Government of the Republic of the Congo. However, its major expansion should not be excluded. The enterprise was far bigger and far more complicated than the United Nations Emergency Force, "... many more nations being involved, a multilingual basis to be used, military units with very different traditions to cooperate, and a vast area to be covered" (877th meeting, paras. 7, 9).

^{36/} 889th meeting: para. 62.

^{37/} 889th meeting: para. 100.

^{38/} 889th meeting: para. 139.

^{39/} More recently such information has been given in the form of United Nations press releases.

the United Nations Force. The resolution of 14 July 1960 (S/4387) in response to the appeal from the Government of the Congo, clearly applied to the whole of the territory as it had existed when the Security Council had recommended the Congo for admission to the United Nations (S/4377). Thus, the Force, under the resolution and on the basis of the request of the Government of the Congo, was entitled to access to all parts of the territory in fulfilment of its duties. The Secretary-General stated further that in his reply to a communication from Mr. Tshombé, he had made it clear that actions of the United Nations through the Secretary-General in respects covered by the resolution must, in view of the legal circumstances which he had to take into account, be considered by him as actions referring to the Republic of the Congo as an entity.^{40/}

At the 879th meeting on 21/22 July 1960, the Security Council adopted a resolution^{41/} in which the Council expressed recognition that it had recommended the admission of the Republic of the Congo to membership in the United Nations as a unit.

At the 884th meeting on 8 August 1960, the Secretary-General stated that in his second report^{42/} he had given his views as to the direction in which the Security Council might take useful action. The Council might also wish to state explicitly what so far had been only implied, that its resolutions applied "fully and in all parts also to Katanga."^{43/}

At the 886th meeting on 8/9 August 1960, the Security Council adopted a resolution^{44/} whereby, having noted the second report of the Secretary-General and his statement before the Council, and noting that the United Nations had been prevented from implementing the resolutions of 14 July and 22 July 1960 in the province of Katanga although it had

^{40/} 877th meeting: paras. 15, 16.

^{41/} S/4405, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 34-35, sixth preambular paragraph.

^{42/} In his second report, dated 6 August 1960, to the Security Council on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960 the Secretary-General stated that no objection had been raised during the 877th meeting against his interpretation concerning the applicability of the resolution to the territory of the Republic of the Congo as a whole, and the interpretation had been confirmed in the resolution of 22 July 1960. On 2 August 1960, the Secretary-General had emphasized to the Congolese Cabinet Committee for Co-operation with the United Nations that the obligations and rights laid down by the Security Council with full and prompt application to the entire territory of the Congo were meeting no opposition from any Government, including the Government of Belgium. The Secretary-General reported that Mr. Tshombé had informed him that the Katanga government was unanimous in its determination to resist by every means "the Lumumba Government" and the dispatch of the United Nations Force to Katanga. In his reply to Mr. Tshombé, the Secretary-General had stated that his position that the Security Council's resolutions applied to the entire territory of the Congo had been unanimously approved by the Council. The conclusions to be drawn from this and from the Charter provisions were obvious. The Secretary-General stated further that the Council resolutions regarding withdrawal and the sending of United Nations military units were intended to apply to the whole territory of the Congo as recommended for admission to the United Nations. In implementation of his mandate under the resolution of 22 July this had been the way in which the Secretary-General had understood his instructions and this also had been the direction in which he had operated (S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53, paras. 2, 4, 6, 10).

^{43/} 884th meeting: para. 27.

^{44/} S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92; 886th meeting: para. 272.

been ready, and in fact attempted to do so (preamble, second and fifth paras.), the Council (a) confirmed the authority given to the Secretary-General by the resolutions of 14 July and 22 July 1960 and requested him to carry out the responsibility placed upon him (oper. para. 1); and (b) declared that the entry of the United Nations Force into the province of Katanga was necessary for the full implementation of this resolution (oper. para. 3).

Limitations of the powers of the United Nations Force

[NOTE. Following the decision of the Security Council of 14 July 1960 to authorize the Secretary-General to take the necessary steps to provide the Government of the Republic of the Congo with military assistance, the Secretary-General proceeded with the establishment of the United Nations Force and at the same time defined its powers. In connexion with the latter task, the limitations of the powers and functions of the Organization, of the Security Council and of the Secretary-General himself had to be taken into consideration and had to be reflected in the limitations of the powers of the Force.

The case histories included below deal with the limitations of the powers of the United Nations Force in the Congo with regard to: (a) the principle of non-intervention in domestic matters; and (b) the use of force.]

(a) Limitations of the powers of the United Nations Force with regard to the principle of non-intervention in domestic matters

[NOTE. The two case histories dealt with in this sub-section concern the limitation of powers of the United Nations Force in the Congo with regard to internal conflicts. In the first instance, the debate was related to the statement of the Secretary-General in his first report on the implementation of Security Council resolution of 14 July 1960, in which the Secretary-General referred to his definition of the principle of non-intervention by the Force in internal conflicts and stated that on this basis the Force could not intervene in the conflict between local authorities in Katanga and the Central Government. In the second instance, the Secretary-General drew the attention of the Council to a challenge to his interpretation of operative paragraph 4 of the resolution of 9 August 1960, which reaffirmed the limitations of the powers of the Force with regard to the principle of non-intervention in domestic matters, and he requested a clarification of the attitude of the Council in the light of views presented in the challenge.]

CASE 2 (i)

The situation in the Republic of the Congo: in connexion with the first report of the Secretary-General on the implementation of Security Council resolution S/4387 of 14 July 1960

In his first report on the implementation of Security Council resolution S/4387 of 14 July 1960, referring to his statement^{45/} at the 873rd meeting on 13/14 July 1960, that the United Nations Force "may not take action which would make them a party to internal con-

licts in the country." the Secretary-General stated that the units of the United Nations Force in the Congo must not become a party in internal conflicts, that "they cannot be used to enforce any specific political solution of pending problems or to influence the political balance decisive to such a solution."^{46/}

At the 877th meeting on 20/21 July 1960, the Secretary-General recalled that "the United Nations Force cannot be a party to any internal conflict nor can the United Nations Force intervene in a domestic conflict".

At the same meeting the representative of the USSR observed that the United Nations Force should in no way interfere in the domestic affairs of the Congolese people.

At the 878th meeting on 21 July 1960, the representative of Ceylon stated that the United Nations was not dealing with the internal affairs of the Congo but with certain matters connected with the internal affairs of the Congo, that is the internal administration of the Congo only because of the request made by the Republic of the Congo to the United Nations for its assistance.

The representative of Argentina expressed the view that the problem of partition of the Congo concerned only the inhabitants of the Congo and they themselves must solve it. Neither the United Nations nor any State had the right either to recommend or order integration or to encourage secession.

At the 879th meeting on 21/22 July 1960, the representative of the United Kingdom said that the relationship between the province of Katanga and the other provinces of the Congo was a domestic problem which could not satisfactorily be resolved by the intervention of the United Nations or outside States. The representative recalled the statement of the Secretary-General that "the United Nations Force cannot be a party to any internal conflict nor can the United Nations Force intervene in a domestic conflict".

The representative of France stated that the French delegation considered particularly important the repeated assurances by the Secretary-General that the United Nations Force was necessarily under the exclusive command of the United Nations and could not "in any circumstances become a party to any internal dispute or be used to put through any political solution".

The representative of the USSR stated that he was unable to subscribe to certain aspects of the interpretation given by the Secretary-General to the resolution of 14 July. That resolution and the ensuing action for its implementation could not be regarded as endowing the United Nations with the right to interfere in the domestic affairs of a State and to assume responsibility for its domestic laws and regulations. That was not, nor could it be, part of the functions of the United Nations as defined in the Charter. The fundamental purpose of that resolution was to be

^{45/} 873rd meeting: para. 28.

^{46/} S/4369, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24, paras. 7, 13.

found in its demand for the withdrawal of the Belgian forces.^{47/}

In the resolution^{48/} adopted unanimously at the 879th meeting, the Security Council commended the Secretary-General "for the action he has taken to carry out resolution S/4387 of the Security Council, and for his first report" (operative paragraph 3).

CASE 2 (ii)

The situation in the Republic of the Congo: in connexion with the memorandum dated 12 August 1960 of the Secretary-General on the implementation of the Security Council resolution of 9 August 1960, operative paragraph 4, with a letter dated 14 August 1960 from the Prime Minister of the Republic of the Congo to the Secretary-General, and with the President's statements concluding the discussion in the Security Council

At the 887th meeting of the Security Council on 21 August 1960, convened at the Secretary-General's request to deal further with the situation in the Congo, the Secretary-General, referring to the challenge to his interpretation^{49/} of operative paragraph 4 of the resolution of 9 August 1960 by the Prime Minister of the Republic of the Congo in a letter^{50/} dated 14 August 1960, stated that his interpretation seemed to

^{47/} For texts of relevant statements, see:

877th meeting: Secretary-General, para. 17; USSR, para. 170;

878th meeting: Argentina, para. 130; Ceylon, para. 70;

879th meeting: France, para. 68; USSR, para. 120; United Kingdom, para. 25.

^{48/} S/4405, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 34-35; 879th meeting: para. 108.

^{49/} "Memorandum on the implementation of the Security Council resolution of 9 August 1960, operative paragraph 4" sent to the Central Government of the Republic of the Congo and the provincial government of Katanga (S/4417/Add.6, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 64-71, paras. 8-11).

In the memorandum the Secretary-General wrote:

"... the United Nations Force cannot be used on behalf of the Central Government to subdue or to force the provincial government to a specific line of action."

He added that:

"The policy line stated here, in interpretation of operative paragraph 4, represents a unilateral declaration of interpretation by the Secretary-General. It can be contested before the Security Council. And it can be changed by the Security Council through an explanation of its intentions in the resolution of 9 August. The finding is not subject to agreement or negotiation."

"The Secretary-General presents his findings, as to the significance of the operative paragraph in question, to the Central Government and to the provincial government. If, as expected, the provincial government, on the basis of this declaration, were to admit the free deployment of the United Nations Force in Katanga, but if, on the other hand, the finding and its consequences were to be challenged before the Security Council by others, and the Council were to disapprove of the finding, this would obviously mean a change of assumptions for the actions of the provincial government which would justify a reconsideration of its stand, having been taken in good faith on the basis of the interpretation given by the Secretary-General."

"Were the findings of the Secretary-General, as regards operative paragraph 4, to be challenged either by the Central or by the provincial government, the Secretary-General would immediately report to the Security Council with a request that it consider the interpretation and pronounce itself on its validity. Naturally, the Secretary-General in this context would draw the attention of the Council to its previous stand [the stand of the Security Council in the cases of Lebanon and Hungary, see paras. 2-5 of Memorandum] and strongly recommend its confirmation of this interpretation."

^{50/} S/4417/Add.7, document II, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 71-73.

In this letter the Prime Minister of the Republic of the Congo wrote the Secretary-General that the Government of the Republic could in no

him to be incontestable in the light of the Charter, of the debate preceding the adoption of the resolution of 14 July, of the relevant paragraphs of his first report which the Council "commended" in the resolution of 22 July and in subsequent debates and resolutions, and of previous Security Council practice.

In the light of the legal history of the matter there was no reason for the Security Council to confirm the Secretary-General's interpretation in the respect challenged. He added, "Should ... any member of the Council be at variance with my interpretation on the basis indicated by the Prime Minister of the Republic of the Congo, or on any other basis, I am sure that they may wish to give expression, in a draft resolution, to what they consider to be the right interpretation."

Evaluating the arguments in criticism of his interpretation, the Secretary-General stated that there was nothing in the record leading up to the resolution of 14 July which indicated that the Council, in discussing such assistance "as may be necessary" as provided in operative paragraph 2 of that resolution, had intended that such assistance be used to subdue the revolt in the province of Katanga. It would have been necessary, as a minimum, that the Council should have stated explicitly such an intention if the Secretary-General had been expected to act in a way contrary to his express statement that the United Nations Forces in the Republic of the Congo could "not take any action which would make them a party to internal conflicts in the country."^{51/}

"This statement, it is emphasized, was not challenged by any member of the Council in the debate which preceded the adoption of the resolution of 14 July 1960. Certainly, the Council cannot be deemed to have instructed the Secretary-General, without stating so explicitly, to act beyond the scope of his own request or contrary to the specific limitation regarding non-intervention in internal conflicts which he stated to the Council."

This interpretation was further borne out by the Secretary-General's subsequent reports and the debates and resolutions of the Council. Finally, in operative paragraph 4 of the resolution of 9 August, the Council reaffirmed that the United Nations Force would not be used to influence the outcome of any internal conflict.

"The use of the word 'reaffirms' shows that the Council was expressly stating what had previously been the understanding of the earlier resolutions and, in this sense, operative paragraph 4 of the resolution of 9 August must be considered as decisive in interpreting the military assistance 'as may be necessary' referred to in the resolution of 14 July [S/4387]."

way agree with the Secretary-General's personal interpretation of operative paragraph 4 of the resolution of 9 August 1960, which was "unilateral and erroneous." The resolution of 14 July 1960 expressly stated that the Security Council had authorized the Secretary-General "to provide the Government [of the Republic of the Congo] with such military assistance as may be necessary" in consultation with the Government. It was, therefore, clear that in its intervention in the Congo the United Nations was not to act as a neutral organization but rather that the Security Council was to place all its resources at the disposal of the Government of the Republic of the Congo.

^{51/} 873rd meeting: para. 28.

In the developments leading up to the resolution of 22 July, it had been the Secretary-General who had given the interpretation that the resolutions of the Council referred to the whole territory of the Republic of the Congo on the formal ground that that territory had been so established at the time when the Republic had been recommended by the Council for admission to the United Nations. This interpretation had been confirmed by the Council in the last paragraph of the preamble of its resolution of 22 July, however, without any indication as to how the Council had regarded the conflict between local authorities in Katanga and the Central Government. It had not been until in the Secretary-General's introductory statements in the debate leading up to the resolution of 9 August that the issue of Katanga had been presented for decision, and it had been then so presented

"in order to arrive at the reaffirmation of the right of the United Nations Force to enter Katanga and the obligation of the Belgian troops to leave Katanga. It was made clear in my own statements and in those of a majority of the members of the Council that, given the withdrawal of the Belgian troops from Katanga, the conflict between the Central Government and the provincial authorities was an internal matter, constitutional or otherwise. Neither in my presentation nor from the sponsors or supporters of the resolution did it emerge that United Nations troops—in contradiction to the whole history of the case up to that stage—would be introduced in order to impose the authority of the Central Government on the rebellious provincial leaders. On the contrary, the current of thought characterizing the debate was that the United Nations Force could not and should not force its way into Katanga, but should arrive there on a basis of acceptance by the Katanga authorities of the Security Council decisions as worded. It is for that reason characteristic that operative paragraph 3, which requested the presence of United Nations troops in Katanga, was combined with operative paragraph 4 're-affirming' that the Force would not 'be used to influence the outcome of any internal conflict, constitutional or otherwise.' Why should that have been said in this context, if not in order to make it clear that the presence of the United Nations troops in Katanga, as requested, was not intended to be an instrument to be used to influence the conflict of the provincial authorities with the Central Government?"

The Secretary-General stated that he would not ask for a confirmation by the Council of the obvious. In requesting a meeting at that stage his aim was to arrive at a clarification of the attitude of the Council in the light of the views presented by the Prime Minister of the Republic of the Congo.

At the 888th meeting on 21 August 1960, the representative of Guinea* said that the United Nations should take all necessary steps to put down the rebellion in Katanga. This action could not be interpreted as interference by the United Nations in the domestic affairs of the Republic of the Congo, since the attitude of the provincial president was one aspect of Belgian aggression in the Congo.

The representative of the USSR contended that the Secretary-General's interpretation, both in the memorandum of 12 August 1960 and in his statement at the 887th meeting, basically conflicted with the resolutions of the Council because it put Mr. Tshombé in the same position, as it were, as the Government of the Congo. The Government of the USSR reaffirmed its disagreement with this interpretation. The Security Council had given the Secretary-General no mandate to interpret its resolution of 9 August. In this case, therefore, the interpretation of the Council's resolution was his personal opinion and had "no legal, binding significance". Only the decisions adopted by the Council were valid currently and only the Council could modify those decisions. For the principle stated in operative paragraph 4 of the resolution of 9 August to be made applicable to the specific situation in Katanga, the Security Council would have to recognize the resistance of the "Belgian protégé... Tshombé" as an action to be considered a purely internal conflict, constitutional or otherwise, in the wording of that paragraph. However, what had happened in Katanga was undisguised foreign aggression. The States backing Belgium were trying to prove that operative paragraph 4 of the resolution of 9 August

"gives Tshombé's treason the status of a purely internal conflict having no connexion with Belgian aggression in the Congo, and therefore precludes the United Nations Force from giving military assistance to the Government of the Congo for the purpose of extending the restoration of law and order to Katanga."

The position of the USSR delegation was based on the resolutions of 14 and 22 July and 9 August and unless the Council adopted some new, specific decision, the interpretation proposed by the Secretary-General "... does not have and never will have any legal significance. That interpretation must under no circumstances be considered as reflecting the view of the Security Council."

Exercising his right of reply, the Secretary-General observed that in his memorandum of 12 August 1960 it was stated:

"we cannot, we will not, and we have no right to raise any resistance to any move made by the Central Government to assert its authority in Katanga. The other thing is that we cannot lend our active support, contrary to the principles announced here on a couple of occasions, to efforts of the Central Government. The two things should be kept apart. It should not be concluded from the fact that we cannot lend active support to the Central Government that we lend any kind of support to the other party, strengthen its hand or resist any moves from the Central Government."

The Secretary-General stated further:

"I come now to a somewhat difficult question of law and the position of the Security Council... Let me simply point out that the Security Council has asked me to implement the resolution. Implementation obviously means interpretation in the first instance. I gave an interpretation and that interpretation was challenged. I have referred the matter back to the Security Council. I have the right to expect guid-

ance. That guidance could be given in many forms. But it should be obvious that if the Security Council says nothing I have no other choice than to follow my conviction."

The representative of Argentina expressed the view that in the light of the resolution of 9 August 1960 there could only be one interpretation and that was the Secretary-General's. On the other hand, there was no precedent justifying United Nations action to prop up the power of a Member State's domestic authorities. The Secretary-General's interpretation was the same as that of the Council members who had spoken on the matter when the resolution had been adopted at the 886th meeting. To take the opposite view would be to detract from the purposes of the United Nations action and would mean interfering in the domestic affairs of the Congo.

At the 889th meeting on 21/22 August 1960, the representative of Italy maintained that the legal stand taken by the Secretary-General and the way in which he was fulfilling his mandate seemed scrupulously in line with the Security Council's resolutions. Their interpretation, which could be found in the Secretary-General's words, documents and actions, derived clearly from the Council's debates and was consistent with the sense of the Council's deliberations. In the resolution of 9 August, the strict neutrality of the United Nations had finally been clearly defined. The United Nations Force had been created with the proviso that it should avoid interference in the internal affairs of the Congo and devote itself solely to the mission of re-establishing respect for law and for the enforcement of order in the Republic of the Congo. The solution of the internal problems of the Congo could not fall under the jurisdiction of the United Nations and be part of its responsibilities. The domestic situation in the Congo should be the concern of the United Nations only if there was a possibility that it might become a threat to the peace and security of the world.

The representative of Ceylon contended that there could be very little doubt as to the meaning to be attached to the resolutions of the Security Council, particularly the resolution of 9 August. It was quite clear what the Security Council had meant when it had said in operative paragraph 4 of that resolution that the United Nations Force would not be used to influence the outcome of any internal conflict, constitutional or otherwise, or in any way intervene in such a conflict.

The representative of Ecuador observed that the demand of the Government of the Republic of the Congo that the United Nations Force should provide it with means of transport and should co-operate to settle the Katanga problem ran counter to the Council's resolution of 9 August, which the Secretary-General had interpreted rightly. The resolution, and his interpretation of it, must be upheld.

The representative of the United Kingdom stated that in the view of his delegation the Secretary-General's interpretation of operative paragraph 4 of the resolution of 9 August was undeniably correct. The resolution was abundantly clear and there could be no doubt that when the forces of the United

Nations had entered the province, the provincial authorities of Katanga had been satisfied, as a result of the adoption of this resolution, that the Security Council had not intended that those forces should be used in any way to influence the outcome of the dispute between the provincial authorities and the Central Government of the Republic.

The representative of Poland expressed grave concern over the fact that the direct discussions of the Secretary-General with Mr. Tshombé together with the interpretation given in the memorandum of operative paragraph 4 of the resolution of 9 August, gave the impression of recognition of Mr. Tshombé's status as an equal party in the dispute with the Government of the Republic of the Congo. The representative disagreed with that interpretation of paragraph 4, the sole purpose of which was to contend that the principle of non-intervention into internal conflicts should be applied to the case of Tshombé. He agreed that the United Nations Force should not interfere in the internal differences between the Government of the Republic of the Congo and local provincial authorities in so far as those differences were really in the nature of an internal conflict. This, however, was not the case in the province of Katanga, where authority had rested completely with the Belgian troops which supported Tshombé's rebellion. In those circumstances, to refrain from giving the assistance requested by the Central Government to restore law and order in the whole territory of the Republic of the Congo and to ensure its territorial integrity would indicate indirect support of Belgian intervention and direct acquiescence in the Belgian-inspired opposition to the Government of the Republic. In turn, such support would constitute an intervention in the internal affairs of the Republic of the Congo. The representative stated further that the current local administration of Katanga had been established as a result of armed aggression and, therefore, as a result of an illegal act. For this reason the principle of restitutio in integrum, which required restoration of the conditions which had existed before the illegal act had been committed, should be applied in the case of the province of Katanga.

The representative of China observed that the Charter forbade intervention in a domestic controversy of the Katanga type. The resolutions of the Security Council expressly barred any involvement. The Secretary-General's interpretation of the limits of the United Nations action in the Congo was the only possible interpretation.

The President, speaking as the representative of France, pointed out that the Council's resolutions were careful to define the mission of the United Nations Force so as to rule out any interference in the domestic affairs of the Congo. It was obvious that they must be interpreted in that spirit, which was the spirit of the provisions of the Charter which ruled out intervention by the United Nations in matters which were within the domestic jurisdiction of States.

After the conclusion of the debate, the President, in his "final observation," stated that the Council had listened to different and sometimes conflicting opinions. He believed that on both sides everything had been said to bring out the respective points of view

and he was convinced that the Secretary-General would have found in the debate the clarification which he had desired, and that it would assist him in the pursuit of his mission.^{52/}

(b) Limitations of the powers of the United Nations Force with regard to the use of force

[NOTE. The five case histories included below deal with the proceedings in the Council concerning the powers of the Force and the circumstances under which it was authorized to use force. During consideration of the issue, the view was advanced that, since the Council had not specifically adopted enforcement measures under Articles 41 and 42 of the Charter, the Force was prohibited from taking any initiative in the use of force and was only entitled to act in self-defence.

On the other hand, it was contended that the Force was also entitled to resort to the use of force in self-defence in overcoming armed resistance met in the fulfilment of the task entrusted to it by the Council. This principle was implied in the relevant decisions of the Council and was reaffirmed by the Council when it had approved the Secretary-General's interpretation of the powers of the Force. It was also stated that the mandate of the Force included the authorization to disarm Belgian troops and private armies in the Republic of the Congo.

Subsequently, the Security Council authorized in two of its decisions: (a) the use of force "in the last resort"; and (b) the taking of "vigorous action including the use of requisite measure of force." In this connexion it was asserted that the decisions were not made under Articles 41 and 42.]

CASE 2 (iii)

The situation in the Republic of the Congo: in connexion with the first report of the Secretary-General on the implementation of Security Council resolution S/4387 of 14 July 1960 and with his second report on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960

At the 873rd meeting on 13/14 July 1960, the Secretary-General stated^{53/} that the United Nations Force "would not be authorized to action beyond self-defence". In amplification of this statement, the Secretary-General, in his first report on the implementation of Security Council resolution S/4387 of 14 July 1960, quoted^{54/} the following passage from his report^{55/} on the United Nations Emergency Force:

^{52/} For texts of relevant statements, see:

887th meeting: Secretary-General, paras. 37-51;

888th meeting: Argentina, paras. 149, 150, 152; Guinea*, para. 34;

USSR, paras. 55-65; Secretary-General, paras. 99, 100;

889th meeting: President (France), paras. 138, 144, 145; Ceylon, paras. 45, 48; China, para. 114; Ecuador, para. 59; Italy, paras. 8, 10, 11, 15; Poland, paras. 84-87; United Kingdom, paras. 70, 71.

^{53/} 873rd meeting: para. 28.

^{54/} S/4389, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 16-24, para. 15.

^{55/} GAOR, Thirteenth Session, Annexes, agenda item 65, document A/3943, Summary study of the experience derived from the establishment and operation of the Force: report of the Secretary-General, para. 179.

"... men engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions which they occupy under orders from the Commander,"

acting under the authority of the Security Council and within the scope of its resolution. "The basic element involved is clearly the prohibition against any initiative in the use of armed force."

By his second report^{56/} on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960, the Secretary-General informed the Council that on 4 August 1960, replying to a message from Mr. Tshombé that the Katanga government was determined to resist by every means the Lumumba Government and its representatives and the dispatch of United Nations forces to Katanga, he had drawn Mr. Tshombé's attention to the principles which applied to the United Nations operation in the Congo, as to any other para-military operation of the United Nations, and had stated:

"...

"(iii) United Nations military units are not entitled to act except in self-defence. This rule categorically prohibits the troops participating in the operation from taking the initiative of resorting to armed force, but permits them to reply by force to an armed attack, in particular to any attempts to resort to force which might be made with the object of compelling them to evacuate positions which they occupy on orders of their commander. ..."

Commenting further on the report of his Special Representative in the Congo, who recommended the Secretary-General to stop the Katanga operation in view of the opposition of provincial authorities in Katanga and their warnings that the United Nations troops would be opposed by Katanga forces, the Secretary-General reported that it was clear that the entry of United Nations military units into Katanga would have had to be achieved by the use of force. The Secretary-General pointed out further that the United Nations Force was not entitled to take such military initiative and action as would be necessary for an implementation of the Security Council decisions with regard to Katanga. For this reason he had to ask for instructions from the Security Council and for such decisions as the Council might find appropriate in order to achieve its aims. The Secretary-General went on to state, on the one hand, that the Council resolutions regarding withdrawal and the sending of United Nations military units were intended to apply to the whole territory of the Congo as recommended for admission to the United Nations. In implementation of his mandate under the resolution of 22 July 1960, this had been the way in which he had understood his instructions, and this also had been the direction in which he had operated.

"On the other hand, it is now clear that ... the aims of the resolutions cannot be achieved by the use of the United Nations Force, as its mandate

^{56/} S/4417, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 45-53, paras. 6, 9, 10.

has been defined. If the Council, as it is assumed, wishes to maintain its objectives, the Council must, therefore, either change the character of the Force, which appears to me to be impossible, both for constitutional reasons and in view of the commitments to the contributing Governments, or resort to other methods which would enable me to carry through the implementation of its resolution without going beyond my instructions as regards the Force."

At the 884th meeting on 8 August 1960, the Secretary-General stated that the Katanga authorities had introduced an unexpected element of organized military opposition by Congolese forces against the entry of the United Nations Force. Such opposition would require military initiative from the Force to which the Secretary-General would not be entitled to resort short of a formal authorization of the Council, using in this case only contingents representing Governments which would accept such a new stand by the Council.

At the 885th meeting on 8 August 1960, the representative of the USSR, commenting on the second report of the Secretary-General, stated that in explanation of the reasons for refraining from sending troops into Katanga it was argued that any attempt to send them into the territory of Katanga would lead to armed resistance on the part of Mr. Tshombé. However, it must be emphasized that the troops sent to the Republic of the Congo

"in accordance with the Security Council's decision have the right and the duty to remove—for that is why they have been sent there—any obstacles which may arise to impede the fulfilment of the tasks entrusted to them by the Security Council. If any armed resistance is offered to them, they are fully justified in using weapons on their side for purposes of defence, as contemplated in the Security Council's decision and confirmed when the Council approved the Secretary-General's interpretation of the troops' functions.

"...

"Consequently, if in the course of their operations for entering the province of Katanga the United Nations troops should meet with the armed resistance, then, in accordance with the Security Council's decision . . . they are entitled to eliminate such resistance by any means available to them."

At the same meeting, the Secretary-General observed that in his first report, which had been commended by the Security Council with the concurring vote of the USSR delegation, he had stated the reasons why the United Nations Force should not take any military initiative and should be regarded in that respect as limited to action in self-defence.

"I do not remember having heard any objection to that interpretation of its status, functions and competence; and that being the case, I would certainly have acted beyond my competence as established by the Security Council if I had . . . given an order, or rather, confirmed an order which would have meant that our forces would have been forced to military initiative."

At the 886th meeting on 8/9 August 1960, the representative of Ecuador commented that the Security Council, for reasons of a juridical nature and because of the maintenance of peace in Africa, must keep inviolate the principle that the United Nations military units were not entitled to act except in self-defence, even if the Governments which had contributed the various military units had been prepared to authorize their use in a military action other than in self-defence.

The representative of Argentina expressed the view that the character of the United Nations Force in the Congo should not be altered. Operations which, in view of threats of organized military resistance in Katanga, might have led to hostilities on a large scale would have been incompatible with the nature of the United Nations Force and with the purposes for which it had been sent. The Council's directive to the Force should state the principle that troops should not act as belligerents in large-scale military operations.

The representative of Poland said that it was difficult to understand why the United Nations troops would have to shoot their way into Katanga if not attacked before and, if attacked, they would have to defend themselves. This would take place without the necessity of changing the character of the Force, as suggested in the report of the Secretary-General.

The representative of Italy stated that there could not be the slightest doubt about the propriety of the interpretation given by the Secretary-General concerning the character of the Force and of the United Nations operation in the Congo. In this respect the first report of the Secretary-General constituted the political and legal basis for the interpretation of the resolution of 22 July 1960.

The representative of the USSR said that, in accordance with the resolutions of 14 and 22 July 1960, if the troops introduced into the territory of the Republic of the Congo by decision of the Security Council met with armed resistance, they might overcome it by any means available to them. This meant that the United Nations troops could and should resort to arms for the purpose of overcoming armed resistance as a matter of protection or of self-defence, when fulfilling the task entrusted to them by the Security Council. This was the only possible construction which could be placed on the resolutions of 14 and 22 July 1960 and the Secretary-General's interpretation.^{57/}

At the 886th meeting on 8/9 August 1960, the Security Council adopted^{58/} by 9 votes in favour to none against, with 2 abstentions, a draft resolution^{59/} submitted by Ceylon and Tunisia, confirming the authority given to the Secretary-General by the resolutions of 14 July and 22 July 1960 and requesting him to continue to carry out the responsibility placed upon him.

^{57/} For texts of relevant statements, see:

884th meeting: Secretary-General, para. 12.

885th meeting: USSR, paras. 97, 105-110; Secretary-General, para. 128;

886th meeting: Argentina, paras. 72, 80; Ecuador, paras. 42, 44; Italy, para. 116; Poland, para. 101; USSR, para. 227.

^{58/} 886th meeting: para. 272.

^{59/} S/4426, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 91-92, oper. para. 1.

CASE 2 (iv)

The situation in the Republic of the Congo: in connexion with the memorandum dated 12 August 1960 of the Secretary-General on the implementation of the Security Council resolution of 9 August 1960, operative paragraph 4, and with the letter dated 14 August 1960 from the Prime Minister of the Republic of the Congo to the Secretary-General

By memorandum dated 12 August 1960,^{60/} the Secretary-General informed the Security Council of the interpretation he had given to the Central Government of the Congo, as well as the provincial government of Katanga, of operative paragraph 4 of the resolution of 9 August 1960. The interpretation of the Secretary-General was challenged by the Prime Minister of the Congo in his letter dated 14 August 1960. The Secretary-General requested the President of the Security Council to call a meeting, the aim of the request being in the light of the views presented by the Prime Minister of the Republic of the Congo, to arrive at a clarification of the attitude of the Council.

At the 887th meeting on 21 August 1960, the Secretary-General, referring to the claim of independence by the provincial authorities of Katanga, stated that in the light of the domestic jurisdiction limitation of the Charter, it must be assumed that the Council would not authorize the Secretary-General to intervene with armed troops in an internal conflict when the Council had not specifically adopted enforcement measures under Articles 41 and 42 of Chapter VII of the Charter.

At the 888th meeting on 24 August 1960, the Secretary-General, referring to the observations of his Special Representative in the Congo on the directive on "Protection of internal security,"^{61/} said: "I think that this quotation makes it perfectly clear that we have applied a most restrictive interpretation of the right of self-defence."^{62/}

CASE 2 (v)

The situation in the Republic of the Congo: in connexion with the USSR draft resolution: voted upon and rejected on 14 December 1960

At the 913th meeting on 7 December 1960, the Secretary-General stated that the United Nations Force had

^{60/} S/4417/Add.6 and 7, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 64-76; see Case 2 (ii).

^{61/} In a message dated 19 August 1960, the President of Ghana forwarded to the Secretary-General a report by Major-General H. D. Alexander, in which it was stated that no clear concise orders had ever been given to the Ghanaian Force troops in Leopoldville. The Brigade Commander had repeatedly pointed out that he could not protect United Nations personnel, if his orders were to be passive resistance and non-interference with the "Force publique". He had also pointed out that he had been specifically ordered not to use force. On 17 August the United Nations Headquarters had issued orders concerning the action of the United Nations troops to deal with incidents. They had not given United Nations troops any liberty of action, even for the use of minimum force. (S/4445, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 99-101.)

Commenting on the report of Major-General Alexander, the Special Representative of the Secretary-General in the Congo, in his observations to the Secretary-General, said:

"... As the Special Representative of the Secretary-General in the Congo, I am the responsible United Nations official for interpreting to the Command of the Force the resolutions of the Security Council and the directives of the Secretary-General in pursuance of those resolutions. In so doing, from the outset, I have described the Force in the Congo to my military colleagues as a 'peace force, not a fighting

exercised its military power to protect political leaders of various factions from outright violence, even though such acts of protection had given rise to vigorous objection from the opposing side as having been interference in political events. On the other hand, it had been considered beyond the scope of the mandate for the United Nations to interpose its Force against the national Congolese army acting under the authority of a Chief of State whose representatives now had been accepted by the General Assembly.

At the 914th meeting on 8 December 1960, the President, as the representative of the USSR, submitted a draft resolution^{63/} whereby the Security Council would call upon the Secretary-General to secure the immediate release of Mr. Lumumba, Prime Minister of the Republic of the Congo, and his colleagues and to take all the necessary steps to ensure the resumption of the activities of the lawful Government and Parliament of the Republic of the Congo, and to request the Command of the United Nations Force "immediately to disarm the terrorist bands of Mobutu".

At the 917th meeting on 10 December 1960, the representative of Ceylon stated that it was with full regard to the legal as well as the military implications of the consequences that he stated the view that the United Nations Command must be directed to take all necessary measures to disarm any private armies through the territory operating under the orders of authorities which had no basis in the constitution of the Congo. He stated categorically the desire to confer on the Secretary-General a mandate to make use of the armed forces at his disposal so as to carry out the purpose of maintaining law and order in the territory of the Congo by all the means that appeared to him to be necessary.

At the same meeting the Secretary-General stated that any action by force to liberate Mr. Lumumba would mean overriding by force the authority of the Chief of State. This would also be the case if the United Nations were to decide to disarm "illegal armies".

force.' I have stressed always that the arms carried by the members of this international army are to be used only in self-defence, and that the Force is in the Congo to do harm to no one, if it can be avoided...

"The United Nations Command has issued orders to its troops which are very clear on the subject of the employment of force. The operations directive, familiar to everyone associated with the Force, states, under the heading 'Use of arms': 'At all levels, commanders are to be instructed to the effect that, on no account, are weapons to be used unless in cases of great and sudden emergency and for the purpose of self-defence. In such cases, the commander on the spot will ensure that the greatest care and control are used.'

"Again, in its directive on 'Protection of internal security,' the United Nations Command states: 'The principal purpose of the United Nations Force in the Congo, as defined in the proposal to the Security Council, is to assist the Government in maintaining law and order. In pursuing this purpose, the United Nations operation in the Congo should exhaust all possible peaceful means of keeping order before any resort to force. Every effort should be exerted to avoid harm to anyone, since public reaction to the employment of force by United Nations personnel might well prove disastrous to the success of the entire United Nations operation. Firing, even in self-defence, should be resorted to only in extreme instances. Any effort to disarm members of the United Nations Force is to be regarded as a legitimate cause for self-defence. This principle should be interpreted in the light of the overriding force of principle one above.'

"... The United Nations Force is in the Congo as a friend and partner, not as an army of occupation..." (S/4451, *ibid.*, pp. 113-115).

^{62/} For texts of relevant statements, see:

887th meeting: Secretary-General, para. 44;

888th meeting: Secretary-General, paras. 93-94.

^{63/} S/4579, 914th meeting: para. 62.

The Secretary-General pointed out further that, by diplomatic means, by political persuasion, the United Nations could try to further the meeting of both houses of Parliament and a round table conference, but this was an entirely different proposition from saying that the United Nations could put might behind such an invitation. This would open vistas which the Council would like to consider most seriously.

At the 920th meeting on 13/14 December 1960, the Secretary-General stated ^{64/} that the Council had not invoked Articles 41 and 42 of Chapter VII of the Charter, which provided for enforcement measures and which would override the domestic jurisdiction limitation of Article 2 (7). It was certain that the Council in no way directed that the United Nations Force should proceed beyond the legal basis of Article 40 and into the coercive action covered by Articles 41 and 42.

The representative of Ceylon stated that the overriding invitation by the lawful Government of the Republic of the Congo had been sufficient to make the action taken by the Security Council lawful action and to entitle the United Nations to send its forces into the Congo. Once the United Nations were in the Congo it "should take action which should go beyond the mere facile part which the Security Council has been playing, in some respects and in some cases relating to law and order." ^{65/}

At the 920th meeting on 13/14 December 1960, the USSR draft resolution was rejected ^{66/} by 2 votes in favour to 8 against, with 1 abstention.

CASE 2 (vi)

The situation in the Republic of the Congo: in connexion with the draft resolution submitted by the USSR: voted upon and rejected on 21 February 1961; with the joint draft resolution (S/4722) submitted by Ceylon, Liberia and the United Arab Republic: voted upon and adopted on 21 February 1961, and with the joint draft resolution (S/4733) submitted by Ceylon, Liberia and the United Arab Republic: voted upon, as amended, and not adopted on 21 February 1961

At the 928th meeting on 1 February 1961, the Secretary-General stated that the time had come when the Council must provide a basis for arrangements which would eliminate the threat from the Armée nationale congolaise, or units thereof, against efforts to re-establish normal political life and against law and order. The Secretary-General stated that he would welcome a decision of the Security Council requesting him to take urgently appropriate measures for assistance in the re-organization of the national army, preventing it, or its unit, from intervening in the current political conflicts in the country.

"As is well known, the mandate of the United Nations Force does not permit it to take military

^{64/} For the statement of the Secretary-General, see chapter XI, Case 4.

^{65/} For texts of relevant statements, see:

913th meeting: Secretary-General, paras. 29, 30;

917th meeting: Ceylon, paras. 53, 56; Secretary-General, paras. 62, 63, 65;

920th meeting: Ceylon, para. 107; Secretary-General, paras. 73-75.

^{66/} 920th meeting: para. 159.

initiative. This limitation has repeatedly been challenged and demands have been raised for a revision of the mandate to include such military initiative. In a couple of the documents now before the Security Council, demands are made that the United Nations resort to the use of force for certain specific purposes. Thus, President Kasa-Vubu wants the United Nations to use force against the units of the ANC which are serving Mr. Gizenga, and he threatens to ask for military assistance from other countries if the request is not met, thus neglecting the stand of the General Assembly at its fourth emergency special session in its resolution of 20 September [1474 (ES-IV)] which should exclude other countries from granting such assistance. Further, the Belgian Government requests the use of force for protection of its nationals in Oriental and Kivu, including obviously eight Belgian soldiers detained in Stanleyville.

"The Security Council will remember that similar requests for the use of force have previously been made for other purposes. Thus, the question was raised by members of the Organization with a view to the liberation of Mr. Lumumba, and, at a still earlier stage, the Central Government asked for the use of force against the units of the army which were loyal to Mr. Tshombé.

"I believe that a look at the four cases of requests for armed intervention which I have recalled, and their different purposes, will bring out clearly to everybody what problems would arise were the mandate to be widened as proposed. Certainly such a widening of the mandate could not be considered without a much clearer and fuller definition of the objectives to be pursued by the United Nations. Nor, of course, could the mandate be changed in relation to earlier decisions short of giving countries which have contributed troops on the basis of those first decisions an opportunity to withdraw were they not to approve of the new stand."

At the 932nd meeting on 7 February 1961, the representative of France stated that the Secretary-General had reported to the Council that he had not considered himself empowered to use force to prevent the acts of violence being perpetrated in the Congo, since the resolutions establishing his terms of reference had been based on Article 40, and not on Articles 41 and 42, which provided for measures of coercion. The representative agreed that whenever the circumstances permit it, persuasion was preferable to force, but was persuasion alone sufficient to maintain law and order? "Are not the United Nations contingents in duty bound to resort to coercion, if there is no other way to prevent degrading violations of the law of nations?"

At the 934th meeting on 15 February 1961, the representative of the USSR submitted a draft resolution, ^{67/} according to which

"The Security Council

"...

"2. Deems it essential that the sanctions provided under Article 41 of the Charter of the United Nations

^{67/} S/4706, 934th meeting: para. 112.

should be applied to Belgium as to an aggressor which by its actions is creating a threat to international peace, and calls on the States Members of the United Nations for the immediate application of these sanctions;

"3. Enjoins the Command of the troops that are in the Congo pursuant to the decision of the Security Council immediately to arrest Tshombé and Mobutu in order to deliver them for trial, to disarm all the military units and 'gendarmierie' forces under their control, and to ensure the immediate disarming and removal from the Congo of all Belgian troops and all Belgian personnel;

"..."

At the 935th meeting on 15 February 1961, the Secretary-General summed up measures which seemed to him must be pursued in the prevailing situation. He stated that instructions had been given to the Force to protect the civilian population against attacks from armed units; this was on the outer margin of the mandate of the United Nations but already in September the Secretary-General had said that this must be considered as a natural part of the duties of the Organization, and he had not met with any objections. Further, instructions had been given that

"in case a clash between armed units is threatening, the United Nations should use all means, short of force, to forestall such clashes through negotiations, through the establishment of neutralized zones, through cease-fire arrangements and through similar measures. Negotiations to those ends can be conducted on the basis of the military force at the disposal of the United Nations. The chance of success is greater, the bigger is the force. If this method of preventing civil-war risks by peaceful means is to be successful, it is indeed desirable that the United Nations Force should be strengthened. The weakening of the Force through withdrawal may make the efforts useless. I have also already stated that, were clashes between armed units to develop, the United Nations could not permit itself to become a third party to such a conflict. But the use of force in support of cease-fire arrangements should not therefore be excluded."

For his stand the Secretary-General would like to have an endorsement which only in part had been forthcoming in the past.

At the 937th meeting on 16 February 1961, the representative of Poland stated that the resolutions of the Council had given the Secretary-General a sufficient mandate for the disarming of Belgian troops and other personnel and their removal from the Congo, and for the disarming of the "military bands" under the command of Kasa-Vubu, Tshombé, Mobutu and Kalonji.

At the 938th meeting on 17 February 1961, the representative of the United Arab Republic introduced a draft resolution^{68/} submitted jointly with Ceylon and Liberia, providing:

"A

"The Security Council,

"..."

"1. Urges that the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of military operations, the prevention of clashes, and the use of force, if necessary, in the last resort;

"..."

The representative stated that if the steps to prevent civil war in the Congo and to evacuate the Belgian and other foreign military and para-military forces not under the United Nations Command were not taken and if the United Nations did not receive the necessary co-operation in this matter, the sponsors of the three-Power draft resolution would be compelled to demand that "measures be taken under Chapter VII of the United Nations Charter to achieve that objective." The representative added that he was referring to sanctions.

The representative of Czechoslovakia maintained that Belgium's continued colonial aggression against the Republic of the Congo created a new situation, which required that the United Nations should use all the sanctions and other means available to it under the Charter against the aggressor. The USSR draft resolution represented the only way out of the current situation.

At the 939th meeting on 17 February 1961, the representative of Yugoslavia maintained that the Security Council must ensure the immediate withdrawal of all Belgian military and para-military personnel in the Congo and of all other foreigners in the service of armed units other than those of the United Nations Force. If Belgium had not complied with this demand, effective sanctions should be taken against Belgium in accordance with the Charter.

At the 941st meeting on 20 February 1961, Ceylon, Liberia and the United Arab Republic submitted a joint draft resolution,^{69/} in which it was provided:

"The Security Council,

"..."

"3. Calls upon the United Nations authorities in the Congo to take all possible measures to prevent the occurrence of such outrages [the unlawful arrests, deportations and assassinations of political leaders of the Congo] including, if necessary, the use of force as a last resort;

"..."

At the same meeting, the representative of the United States, referring to joint draft resolution S/4722, stated that the United Nations was in the Congo to provide assistance to a Member of the Organization. It was not there, and could not be there to take action against that State. "Nothing has been done to authorize the taking of measures against it under Article 42 of the Charter, nor has the Security Council made findings necessary under the Charter which would justify such measures." Referring to the term "appropriate measures" in operative para-

^{68/} S/4722. Same text as S/4741, O.R., 16th year, Suppl. for Jan.-Mar. 1961, pp. 147, 148; see also chapter VIII, p. 177.

^{69/} S/4733/Rev.1, O.R., 16th year, Suppl. for Jan.-Mar. 1961, pp. 142-143; see also chapter VIII, p. 175.

graph 1 of part A of the draft resolution, the representative stated that what was "appropriate" must be governed by the provisions of the Charter, which placed restrictions upon the use of force and which prohibited the Organization from intervening in internal affairs. It was the understanding of his delegation that authorization to use force only "in the last resort" meant that every effort would be made to accomplish the purposes of this paragraph by agreement among the contending elements in the Congo. "Clearly, this resolution means that force can not be used until agreement has been sought by negotiation, conciliation and all other political measures."

The representative of China said that to authorize the United Nations Command to use force in the Congo was a measure which was against the Charter; he requested that the phrase "including, if necessary, the use of force as a last resort" in operative paragraph 3 of the joint draft resolution S/4733 be put to the vote separately.

The representative of Turkey maintained that paragraph 5 of part A of the joint draft resolution S/4722, by reaffirming all previous resolutions of the Security Council and of the General Assembly on the Congo, brought the Security Council back in a strengthened way to the principle of non-interference in connexion with any of the aspects of the Congo problem and the same was true of other fundamental principles. Also from paragraph 5 came the mandate of the Secretary-General as a result of the reaffirmation of the previous resolutions.

The representative of Pakistan stated that the solution of the problem created by the current situation in the Congo could be found by a decision of the Council that the continuing presence in the Congo of Belgian military and paramilitary personnel and of all foreign personnel not in the country under the authority or with the consent of the United Nations would lead to the application of sanctions prescribed under Articles 41 and 42 of the Charter.

The representative of Morocco observed that sanctions must be applied to Belgium if it persisted in ignoring the United Nations resolutions.

At the 942nd meeting on 20/21 February 1961, the President, speaking as the representative of the United Kingdom, stated that it was his understanding, like that of the representative of the United States, that under part A, operative paragraph 1 of joint draft resolution S/4722 "there will be no question of using force until agreement has been sought by negotiation, conciliation and other peaceful measures." This interpretation was supported by the reference in the draft resolution to previous resolutions of the Security Council and the General Assembly, which all established the principles of consultation and impartiality and emphasized that the mission of the United Nations was to assist in the maintenance of law and order and to safeguard the unity, territorial integrity and political independence of the Congo. It was in the light of these provisions of earlier resolutions that the operative paragraphs of both parts of the draft resolution should be interpreted. Specifically as regards paragraph 1 of part A, the interpretation which the United Kingdom delegation put on the words "and the use of force, if necessary, in the last resort" was that "force will

only be used by the United Nations to prevent a clash between hostile Congolese troops. There can be no question of empowering the United Nations to use its forces to impose a political settlement."

The representative of Chile stated that to provide for the use of force was contrary to the Charter and to the objectives of the operation that had been undertaken.

The representative of China stated that he shared the interpretation of the representatives of Turkey, the United States and the United Kingdom on operative paragraph 1 of part A of joint draft resolution S/4722.

The representative of Ecuador stated that he would vote in favour of the joint draft resolution S/4722 on the understanding that it would be interpreted in conformity with the views expressed by the representatives of the United Kingdom, the United States and Turkey.

At the 942nd meeting on 20/21 February 1961, the USSR draft resolution was rejected ^{70/} by 1 vote in favour to 8 against, with 2 abstentions. At the same meeting the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic was adopted ^{71/} by 9 votes in favour to none against, with 2 abstentions.

At the same meeting the representative of the United States submitted an amendment ^{72/} to operative paragraph 3 of the draft resolution S/4733/Rev.1 to add after the words "measures", the words "in accordance with the Charter". He explained that all action of the United Nations in the Congo, and especially the use of force, was circumscribed by the provisions of the Charter. "Force cannot be used against the State in the absence of specific findings of the Security Council under Article 42. . . ."

At the 942nd meeting on 20/21 February 1961, the President put to the vote the retention of the words "including, if necessary, the use of force as a last resort" in operative paragraph 3 of the draft resolution S/4733/Rev.1, as requested by the representative of China. The result of the vote was 5 in favour, 1 against, with 5 abstentions. The proposal that the words be included was not adopted. ^{73/}

The representative of the USSR drew attention to the fact that the United States amendment to operative paragraph 3 of the joint draft resolution S/4733/Rev.1 lost its meaning because the amendment "'in accordance with the Charter' was coupled with 'the use of force as a last resort'", which phrase had been deleted. To add the words "in accordance with the Charter" would, therefore, be "meaningless".

The representative of the United States observed that to delete the words "in accordance with the Charter" would seem to suggest the possibility of actions which were not in accordance with the Charter. Every resolution the Council adopted, every action it authorized, should be in accordance with the Charter, not only the use of force.

^{70/} 942nd meeting: para. 89.

^{71/} 942nd meeting: para. 95.

^{72/} S/4740, para. 3, 942nd meeting: para. 97.

^{73/} 942nd meeting: para. 129.

The representative of China pointed out that there were other means, not only the use of force, which should be used only in accordance with the Charter, such as the use of economic sanctions or diplomatic sanctions.

The representative of the USSR, replying to the statement of the representative of the United States, said that he would not oppose the phrase "in accordance with the Charter."

At the 942nd meeting on 20/21 February 1961, the joint draft resolution S/4733/Rev.1 submitted by Ceylon, Liberia and the United Arab Republic was not adopted:^{74/} the result of the vote was 6 in favour, none against, with 5 abstentions.

The representative of the USSR, explaining his vote on draft resolution S/4722, stated that his delegation regarded the provision in operative paragraph 1 of part A concerning the use of force in the last resort

"... as a positive decision directed primarily against Tshombé and Mobutu. If, however, the United Nations Command were to avail itself of this paragraph in order to use force against units of the Congo's legal Government, we would consider such action to be a violation of this resolution, since the resolution plainly indicates the context in which such measures should be taken."

The Secretary-General, recalling the series of developments finally leading to the assassination of Mr. Lumumba and his colleagues, pointed out that the members of the Advisory Committee had not at any time proposed that the Secretary-General take military action against the Katanga authorities to bring about Mr. Lumumba's release and had not suggested that the Secretary-General had been in a position to order military measures against the authorities for that purpose. This attitude of the Member States most directly concerned with the Congo and with the fate of Mr. Lumumba coincided with the position of the Secretary-General. It had been clearly recognized that

"the resolutions of the Security Council, authorizing the United Nations Force to assist in the maintenance of law and order, did not constitute an 'enforcement' measure calling for coercive military action against governmental authorities. The fact that the Council did not take any action under Article 41 and Article 42 of the Charter had been expressly pointed out to the Council at an earlier stage, and no Government expressed any dissent."

The Secretary-General pointed out further that in the second three-Power draft resolution (S/4733/Rev.1)

"... there was a reference to the use of force which, obviously, was regarded by the sponsors as a new departure giving new rights, presumably with Article 42 as a basis. That being so, it is clear a contrario that such a right to military intervention to liberate prisoners detained by local authorities, de facto or de jure, was not considered as having existed in previous resolutions, and the draft thus confirmed the interpretation maintained so far.

^{74/} 942nd meeting: para. 181.

"The stand in the draft resolution, as well as the interpretation by the main organs of previous resolutions, therefore, supports the position that whatever differences there might be regarding the interpretation of the Charter it could hardly be doubted that military action by the United Nations to free prisoners charged with crime must be regarded as prohibited by the Charter except when such military action constitutes part of an enforcement measure and is expressly adopted by the Council under Chapter VII of the Charter."^{75/}

CASE 2 (vii)

The situation in the Republic of the Congo: in connexion with the joint draft resolution submitted by Ceylon, Liberia and the United Arab Republic, voted upon and adopted on 24 November 1961

At the 974th meeting on 15 November 1961, the representative of Liberia introduced a draft resolution^{76/} submitted jointly with Ceylon and the United Arab Republic, in which it was provided:

"The Security Council,

"Recalling its resolutions S/4387, S/4405, S/4426 and S/4741,

"...

"4. Authorizes the Secretary-General to take vigorous action, including the use of requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign mercenaries and hostile elements as laid down in part A, paragraph 2, of the Security Council resolution of 21 February 1961;

"..."

At the same meeting, the representative of France stated that the military operation organized by the United Nations Force in August and at the beginning of September [1961] had illustrated the danger of action going beyond the mandate given to the Secretariat. It was obviously by different means and in different circumstances, by persuasion and not by force, that Katanga would be re-integrated into the Congo as a whole.

The representative of Sweden maintained that the United Nations action in the Congo ought to be of a limited nature. It should attempt to keep order in the country and to prevent, if possible, clashes between the forces of hostile parties. It was not charged with the tasks of participating in civil war. "Neither the

^{75/} For texts of relevant statements, see:

928th meeting: Secretary-General, paras. 79, 85-88:

932nd meeting: France, para. 89:

935th meeting: Secretary-General, paras. 25, 27, 28, 31:

937th meeting: Poland, paras. 9, 11, 12:

938th meeting: Czechoslovakia, paras. 48, 49; United Arab Republic, paras. 24-26:

939th meeting: Yugoslavia, paras. 14, 15:

941st meeting: China, para. 102; Turkey, para. 91; Morocco, para. 155; Pakistan, para. 122; United States, paras. 81-84:

942nd meeting: President (United Kingdom), paras. 20, 21; Chile, para. 35; China, paras. 53, 134; Ecuador, para. 57; USSR, paras. 131, 136, 194, 195; United States, paras. 101, 133; Secretary-General, paras. 225, 226, 228-231.

^{76/} S/4985/Rev.1, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 132-134.

Charter . . . nor the declarations made at the start of the intervention entitle the United Nations to such an extension of its role." When force had been used by the United Nations it had been in self-defence or in similar situations. The goal of the United Nations was, as it had been in the past, to create peace and stability in the country through negotiation.

The representative of Belgium expressed the view that, according to the Charter, force could only be used when all possibilities for conciliation had been completely exhausted, and that in the draft resolution should be inserted a provision in the direction of conciliation. It was not by speaking of force nor by contemplating the use of force that the United Nations was genuinely served; it was by following the path of reconciliation that the Council was true to the spirit and letter of the Charter.

At the 976th meeting on 17 November 1961, the representative of the United Kingdom stated that the purpose of operative paragraph 4 of the joint draft resolution was to give the Secretary-General additional powers to intervene, if necessary by force, in order to seize and expel the mercenaries in Katanga. In the view of the United Kingdom delegation, this paragraph went dangerously far in authorizing the use of force. The principal role of the United Nations in the Congo should be the role of pacification and conciliation. There were some circumstances in which force by the United Nations was indispensable, for example, in self-defence or by virtue of the resolution of 21 February 1961, strictly interpreted in the manner in which the representative of the United Kingdom and the majority of members of the Council had interpreted it in the debate at that time. Having quoted from his statement²² at the 942nd meeting, the representative stated that the point which he wished to emphasize was that "the role of the United Nations in the Congo must be the role of the pacifier and the conciliator. That is the only role consistent with the purposes of the Charter. . . ."

The representative of Ethiopia noted that the term used in operative paragraph 4 of the joint draft resolution, "requisite measure of force", meant, according to his understanding and, he was sure, to the understanding of all the members of the Council, that "force will be used only if necessary". The United Nations was not being converted into a fighting force merely because it was said that police action was necessary to evict the mercenaries from Katanga.

At the 978th meeting on 21 November 1961, the representative of the United States submitted amendments to the joint draft resolution of Ceylon, Liberia and the United Arab Republic, including an amendment²³ to its operative paragraph 4, to read:

"4. Authorizes the Secretary-General to take vigorous action, including the use of a requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary

²² 942nd meeting: paras. 20, 21.

²³ S/4989, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 136-137. (In the United States revised amendments (S/4989/Rev.1) and 2, the text of the amendment to operative paragraph 4 of the joint draft resolution was not changed). 978th meeting: para. 13.

personnel and political advisers not under the United Nations Command, and mercenaries as laid down in part A, paragraph 2, of the Security Council resolution of 21 February 1961."

At the 979th meeting on 21 November 1961, the representative of the United Kingdom expressed "very strong reservations" concerning the United States amendment to operative paragraph 4 of the joint draft resolution. In discharging this particular part of their mandate, the Secretary-General and the United Nations forces and officials in the Congo must not act in such a way that the outcome was further fighting. The United Kingdom delegation could not associate itself with any wording which could be interpreted as encouraging the local command "to use an added measure of force" which might endanger the uneasy peace prevailing in Katanga and lead to a further series of reprisals and counter-reprisals. The proper task for the United Nations was conciliation and pacification. The representative expressed hope that the Secretary-General "will interpret this particular part of his mandate with that principle in mind. However, the wording of operative paragraph 4 as amended, still seems . . . to go too far."

At the 982nd meeting on 24 November 1961, the United States amendment to operative paragraph 4 of the joint draft resolution was adopted²⁴ by 8 votes in favour, none against, with 3 abstentions.

The draft resolution submitted jointly by Ceylon, Liberia and the United Arab Republic (S/4985/Rev.1), as amended, was adopted²⁵ by 9 votes in favour to none against, with 2 abstentions.

At the same meeting, the Acting Secretary-General stated that the members of the Council and all interested parties were entitled to know what they might expect of him with respect to those provisions of the resolution which called for action by the Secretary-General. It was intolerable that efforts to prevent civil war and to achieve reconciliation in the Congo should be obstructed and thwarted by professional adventurers. He intended, therefore, to discharge the responsibilities entrusted to him in paragraph 4 of the resolution with determination and vigour. The Acting Secretary-General stated further that all the United Nations responsibilities flowing from the past resolutions on the Congo continued with new emphasis, since those resolutions had all been reaffirmed in the adopted resolution. Everything possible must be done to avert civil war, "even by the employment of force, should this prove necessary as a last resort."²⁶

²⁴ 982nd meeting: para. 82.

²⁵ 982nd meeting: para. 99. Resolution S/5002, O.R., 16th year, Suppl. for Oct.-Dec. 1961, pp. 148-150; see also chapter VIII, p. 183.

²⁶ For texts of relevant statements, see:

974th meeting: Belgium, paras. 143, 151, 152; France, para. 73; Liberia, para. 18; Sweden, paras. 81, 82.

975th meeting: Ceylon, paras. 26, 37.

976th meeting: Ethiopia, paras. 187, 189; United Kingdom, paras. 177-180;

979th meeting: United Kingdom, paras. 19, 20;

982nd meeting: Acting Secretary-General, paras. 101, 102, 104.

Termination

In his report dated 29 June 1964^{82/} on the withdrawal of the United Nations Force in the Congo and other aspects of the United Nations Operation there the Secretary-General stated that by its resolution 1885 (XVIII) of 18 October 1963, the General Assembly had made financial provision for the maintenance of a reduced United Nations Force in the Congo during the first half of 1964. In accordance with this resolution, the Secretary-General had taken the necessary steps to extend the stay of the Force until 30 June 1964. Its withdrawal would be completed by that date. The Secretary-General stated further that the completed withdrawal of the United Nations Force from the Congo marked the end of only the military phase of the United Nations Operation in the Congo. The resolutions of the Security Council concerning the Congo "continue to be applicable, since they have no terminal date".

CASE 3

United Nations Yemen Observation Mission

Establishment

At the 1039th meeting on 11 June 1963, in connexion with reports of the Secretary-General concerning Yemen, the Security Council, noting with satisfaction the initiative of the Secretary-General as mentioned in his report S/5298^{83/} "about certain aspects of the situation in Yemen of external origin", aimed at achievement of a peaceful settlement and "ensuring against any developments in that situation which might threaten the peace of the area;" noting further the statement^{84/} of the Secretary-General before the Security Council on 10 June 1963, requested the Secretary-General "to establish the observation operation as defined by him" and to report to the Council in the implementation of this decision.^{85/} On 4 September 1963, the Secretary-General reported^{86/} that the

^{82/} S/5784, paras. 5, c, 132.

^{83/} In this report dated 29 April 1960 (O.R., 18th year, Suppl. for April-June 1963, pp. 33-34, paras. 3 and 4), the Secretary-General informed the Council that he had received from the Governments of Yemen, Saudi Arabia and the United Arab Republic, in separate communications, formal confirmation of their acceptance of identical terms of disengagement in Yemen. A demilitarized zone to a distance of twenty kilometres on each side of the demarcated Saudi-Arabian-Yemen border was to be established from which military forces and equipment were to be excluded. In this zone, on both sides, impartial observers were to be stationed to check on the observance of the terms of disengagement and who would also have the responsibility of travelling beyond the demilitarized zone, as necessary, in order to certify the suspension of activities in support of the Royalists from the Saudi Arabian territory and the outward movement of the United Arab Republic forces and equipment from the airports and seaports of Yemen. (For the other terms of disengagement, see chapter VIII, p. 207). In his report dated 27 May 1963 (S/5321, *ibid.*, pp. 46-48), the Secretary-General stated that the military personnel in the Yemen operation would be employed under conditions similar to those applying to other United Nations operations of this nature (para. 4 (f)). By a report dated 7 June 1963 (S/5325, *ibid.*, pp. 50-51, para. 1), the Secretary-General informed the Council that Saudi Arabia and the United Arab Republic had agreed to meet the financial expenses of the operation.

^{84/} 1037th meeting, paras. 6-7, see also chapter I, Case 42.

^{85/} Resolution S/5331 (preamble, paras. one and two, operative paras. 1, 3), O.R., 18th year, Suppl. for April-June 1963, pp. 52-53.

^{86/} Report of the Secretary-General to the Security Council on the functioning of the United Nations Yemen Observation Mission and the implementation of the terms of disengagement, dated 4 September 1963, S/5412, O.R., 18th year, Suppl. for July-Sept. 1963, pp. 152-157, paras. 5-7.

operation of the United Nations Yemen Observation Mission was considered as having begun on 4 July 1963. The Secretary-General had noted that "by the provisions of the agreement on disengagement, UNYOM's functions are limited to observing, certifying and reporting". The agreement on disengagement involved only Saudi Arabia and the United Arab Republic since the former expressed the intention to end activities in support of the royalists from Saudi Arabian territory and the latter to withdraw its troops from Yemen. The Observation Mission was not concerned with Yemen's internal affairs generally, neither with actions of the Government of Yemen nor with its relations with other Governments and bordering territories. Nor did the Observation Mission have any authority to issue orders or directions. The parties themselves were solely responsible for fulfilling the terms of disengagement on which they had agreed.

Composition

In the same report,^{87/} the Secretary-General stated that the Observation Mission consisted of a small civilian staff and a small military headquarters staff based in Sana. On the military side, a reconnaissance unit consisted of 114 Yugoslav officers and other ranks transferred from the Yugoslav contingent serving with the United Nations Emergency Force; and an air unit, of about fifty officers and other ranks, had been provided by the Royal Canadian Air Force. Six military observers were stationed in Hodeia and Sana. On 2 January 1964, the Secretary-General reported^{88/} that the main task of observation had been carried out by Military Observers and staff from Denmark, Ghana, India, Italy, Netherlands, Norway, Pakistan, Sweden and Yugoslavia.

Termination

At the 1038th meeting on 11 June 1963, the Secretary-General stated^{89/} that the duration of the Observation Mission in Yemen should not exceed four months, and it could be concluded in two. In the event more than two months would be required, the Secretary-General would report this fact to the Council in advance. On 28 October 1963, the Secretary-General reported^{90/} that since the disengagement agreement had not been fulfilled and the United Nations observation was therefore still required, the Governments of Saudi Arabia and the United Arab Republic had undertaken to meet the expenses of the Observation Mission for a further period as from 4 September 1963, until 4 November 1963. The Observation Mission has been continued for two-month periods until 4 September 1964.^{91/} On 2 September 1964 the Secretary-General informed the Security Council that in view of the wishes of the parties to the disengagement

^{87/} S/5412, *ibid.*, paras. 3, 4.

^{88/} S/5501, paras. 7, 8.

^{89/} 1038th meeting, para. 5.

^{90/} S/5447, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 43-51, para. 2c.

^{91/} S/5477/Add.1 and 2, *ibid.*, pp. 51-54; S/5501 and Add.1; S/5572 and Add.1; S/5681; S/5794 and Add.1. Since November 1963, the Secretary-General has consulted members of the Security Council informally with regard to the extension of the Observation Mission in Yemen for two-month periods and, having found that there have been no objections, has instructed that the Mission be continued.

agreement and in accordance with his previously stated views, it was his intention to terminate the activities of the United Nations Observation Mission in Yemen on 4 September 1964.^{92/} On 11 September 1964 the Secretary-General reported to the Security Council that his decision to terminate the activities of the Mission on 4 September 1964 had been put into effect and the Mission ended its activities on that date.^{93/}

CASE 4

Group of Experts on South Africa

Establishment

At the 1076th meeting on 3 December 1963, in connexion with the question of race conflict in South Africa, the representative of Norway introduced a draft resolution^{94/} under which the Security Council would decide, to request the Secretary-General "to establish under his direction and reporting to him a small group of recognized experts to examine methods of resolving the present situation in South Africa through full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole, regardless of race, colour or creed, and to consider what part the United Nations might play in the achievement of that end."

In commenting on the proposed text, the representative of Norway stated^{95/} that it was "the result of careful consideration and consultation, particularly with the Secretary-General, who has indicated that he will be in a position to respond to the request, should the Security Council make such a request to him". He further stated that the purpose of this proposal was "to seek an alternative, positive course leading to the full application of human rights and fundamental freedoms for all inhabitants of South Africa, and to consider what part the United Nations might play in that connexion".

At the 1078th meeting on 4 December 1963, the Security Council, in adopting^{96/} the Norwegian draft resolution, decided to request the Secretary-General to establish the Group of Experts on South Africa.

Composition

In pursuance of the Security Council resolution, the Secretary-General reported to the Council^{97/} that he had announced in January 1964 that he had appointed the following persons to form the Group of Experts: Mrs. Alva Myrdal, Sir Edward Asafu-Adjaye, Mr. Josip Djerdja, Sir Hugh Foot and Mr. Dey Ould Sidi Baba.

In March 1964, Mr. Djerdja submitted his resignation from the Group which was accepted with regret by the Secretary-General. Mrs. Alva Myrdal was elected Chairman and Sir Hugh Foot Rapporteur of the Group of Experts. Their report, submitted to the

^{92/} S/5927, para. 12.

^{93/} S/5959.

^{94/} S/5469, same text as S/5471, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 103-105.

^{95/} 1076th meeting, para. 66.

^{96/} 1078th meeting: para. 137; S/5471, O.R., 18th year, Suppl. for Oct.-Dec. 1963, pp. 103-105.

^{97/} S/5658.

Secretary-General on 20 April 1964, was annexed to the report^{98/} submitted by the Secretary-General to the Security Council on 20 April 1964, in pursuance of the Council resolution of 4 December 1963.

Termination

In commenting on the draft resolution under which the Group of Experts was established, the representative of Norway stated at the 1076th meeting^{99/} that the term of six months had been provided in the last operative paragraph of the resolution for the Secretary-General to submit to the Council his report. This, in his view, was "the minimum of time within which the Group of Experts, under the control and direction of the Secretary-General, could usefully carry out the task suggested" in the resolution.

In their report to the Secretary-General,^{100/} the Group of Experts stated:

"You requested us to report not later than 15 May 1964, and at one time we considered making a short visit to the capitals of certain African States to hear the views of South Africans in exile, but we have already been able to meet the leaders of representative African organizations in New York and London and the rapidly increasing gravity of the situation has led us to cancel our visit to Africa and to submit our recommendations to you on grounds of urgency in advance of the date by which you originally asked us to report.

"We have been increasingly impressed by the dangers which are now imminent, dangers which involve all Africa and must have far-reaching international repercussions. It is the extent and imminence of these dangers which make new action imperative to give effect to the Security Council's initiative."

2. Subsidiary organs proposed but not established

CASE 5

At the 881st meeting on 25 July 1960, in connexion with the RB-47 incident, the United States submitted a draft resolution,^{101/} according to which the Security Council would recommend that the Governments of the USSR and the United States undertake to resolve their differences arising out of the incident of 1 July 1960.

"... (a) through investigation of the facts by a commission composed of members designated in equal numbers, by the United States, by the Soviet Union, and by a Government or authority acceptable to both parties, charged with inquiring into the incident by inspecting the site, examining such remains of the plane as may be located, and interrogating survivors and other witnesses. . . ."

The representative of the USSR said that the Soviet Union was categorically opposed to the establishment of the commission of investigation proposed by the

^{98/} S/5658, annex.

^{99/} 1076th meeting: para. 68.

^{100/} S/5658, annex, paras. 5 and 6.

^{101/} S/4409. Revised as S/4409/Rev.1, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 35-36.

United States since the Security Council had already been furnished with exhaustive data attesting clearly and definitively to the aggressive character of the flight of the United States RB-47 bomber "which was brought down in the Soviet Union's air space".

At the 882nd meeting on 26 July 1960, the representative of Argentina observed that the facts were not sufficiently clear to enable the Council to determine where the responsibility lay. Moreover, as the organ empowered to investigate any dispute which might lead to international friction, the Security Council had full authority to establish subsidiary bodies for the better investigation of the facts set before it. The Council, however, was not being asked to set up such machinery,

"... it is merely suggested that it should urge the parties to settle their dispute by means of an international inquiry. That power is specifically attributed to the Security Council in Article 33, paragraph 2 of the United Nations Charter, and has been confirmed by the established practice of this Organization."^{102/}

At the 883rd meeting on 26 July 1960, the representative of Ceylon, commenting on the absence of proof owing to the lack of evidence, suggested that the Council pursue the matter of trying to find the evidence, by the constitution of a commission. Such a body would be in a position to find that evidence and submit its findings to the Council; the charge could then be examined in the light of whatever evidence was available.

At the same meeting, the representative of the USSR stated that the United States proposal could be interpreted only as an attempt to deprive the Soviet Union of its sovereign right to take whatever steps were necessary to ensure the inviolability of its frontiers, and to transfer that right to an international commission. He added that there was no question of a dispute between two parties, but instead a clear-cut case of aggressive acts by one party against the other. Consequently, there was nothing to investigate.^{103/}

At the 883rd meeting on 26 July 1960, the draft resolution^{104/} of the United States failed of adoption; ^{105/} there were 9 votes in favour and 2 against (one of the negative votes being that of a permanent member of the Council).

CASE 6

At the 885th meeting on 8 August 1960, in connexion with the situation in the Republic of the Congo, the representative of the USSR stated that among other measures which might facilitate the Secretary-General's task of implementing the decisions of the

Security Council was the proposal^{106/} made by the Prime Minister of the Republic of the Congo to dispatch to the Congo a group of observers to ensure the strict application of the decisions concerning the withdrawal of Belgian troops from the whole of the Congolese national territory, including Katanga, and to ensure the territorial integrity and political independence of the Congo.

The Secretary-General observed that he saw in the proposal a certain value, to be judged in the light of practical needs, and expressed the view that observers from Morocco, Ethiopia, Ghana and India, which had supplied top-ranking officers for the United Nations Force, perhaps with one or two additions, could make a useful contribution.

At the 887th meeting on 21 August 1960, the Secretary-General, referring to the statement of the representative of the USSR at the 885th meeting, stated that it was his intention to invite the representatives of the countries contributing units to the United Nations Force in the Congo to serve as members of an advisory committee to the Secretary-General personally, following the pattern established by the Advisory Committee functioning for the United Nations Emergency Force in the Middle East.

The representative of the Republic of the Congo* maintained that the Congolese Government would like to see the Secretary-General sharing his responsibilities with a group appointed by the Security Council which would be made up of nationals of neutral Asian and African countries and would operate permanently on Congolese territory in close co-operation with the Central Government of the Congo and the Commander of the United Nations Force.

At the 888th meeting on 21 August 1960, the representative of Guinea* expressed the view that the Security Council should decide to send to the Congo a commission of observers instructed to ensure, together with the Secretary-General, implementation of the Security Council decisions, in agreement and solely with the Central Government of the Congo in order to help it to settle its dispute with Belgium. The commission would be at the disposal of the Central Government and would not be authorized to deal with provincial governments or with any other Congolese or foreign organization in the Congo, without the previous consent of the Government.

The representative of the USSR submitted a draft resolution^{107/} whereby the Security Council would: (a) decide to establish a group consisting of representatives of those Member States which, in accordance with the decision of the Security Council, had supplied armed forces to assist the Republic of the Congo, in

^{102/} See chapter X, Case 3.

^{103/} For texts of relevant statements, see:

881st meeting: USSR, para. 40; United States, para. 29.

882nd meeting: Argentina, paras. 8, 9, 11;

883rd meeting: Ceylon, para. 73; USSR, paras. 118, 178.

^{104/} S/4409/Rev.1, which included a second operative paragraph added at the suggestion of the President, speaking as the representative of Ecuador. 883rd meeting: Ecuador, para. 96.

^{105/} 883rd meeting: para. 188.

^{106/} S/4421, Telegram dated 7 August 1960 from the Prime Minister of the Republic of the Congo to the President of the Security Council, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 90-91: The group of observers would be composed of the representatives of India, Ceylon, Ghana, Ethiopia, Morocco, Guinea, United Arab Republic, Afghanistan, Indonesia and Burma. In letter dated 15 August 1960 to the Secretary-General, the Prime Minister of the Republic of the Congo requested the Security Council to send to the Congo a group of observers representing Morocco, Tunisia, Ethiopia, Ghana, Guinea, the United Arab Republic, Sudan, Ceylon, Liberia, Mali, Burma, India, Afghanistan and Lebanon (S/4417/Add.7, document VI, *ibid.*, pp. 75-76).

^{107/} S/4453, O.R., 15th year, Suppl. for July-Sept. 1960, p. 116.

order that this group, acting in conjunction with the Secretary-General, might ensure on the spot and without delay the execution of the decisions of the Council, including the withdrawal of Belgian troops from the territory of the Congo and the safeguarding of the territorial integrity and political independence of the Congo; (b) deem it necessary that the Secretary-General and the above-mentioned group should consult daily with the lawful Government of the Congo during their implementation of the decisions of the Security Council; (c) instruct the Secretary-General to furnish the Security Council with a report on the implementation of this resolution.

The Secretary-General stated that in various interventions, reference had been made to "the question of some kind of group" to be sent to the Congo. However, the Secretary-General had proposed

"a parallel to the Advisory Committee established in the case of the United Nations Emergency Force; that is to say, an advisory committee meeting with the Secretary-General, it may be here or, in some cases, it may be in the Congo.^{108/} But to station it in the Congo when I have to be here either for the Security Council or for the General Assembly would deprive me of the advantages of current consultation."

At the 889th meeting on 21/22 August 1960, the representatives of Italy, Ceylon and the United Kingdom supported the intention of the Secretary-General to establish an advisory committee composed of the representatives of the States contributing to the United Nations Force.

The representative of Poland expressed support for the USSR draft resolution.

At the same meeting the representative of the USSR stated that he would not press for a vote on the USSR

^{108/} No objections having been raised by the Security Council or by any of its members to the Secretary-General's intention, he proceeded with the establishment of the Advisory Committee. On 23 August 1960 the Secretary-General invited the permanent representatives of States contributing units to the United Nations Force in the Congo to meet with him as members of the Advisory Committee for current consultations on the United Nations operation in the Congo, in accordance with the intentions he expressed in the Security Council on 21 August. The following States were invited to serve: Canada, Ethiopia, Ghana, Guinea, India, Indonesia, Ireland, Liberia, the Federation of Mali, Morocco, Pakistan, Sudan, Sweden, Tunisia, and the United Arab Republic. ("Summary Chronology of United Nations Action relating to the Congo, Part II:" August 1-31, 1960, *United Nations Review*, vol. 7, No. 4, October 1960, p. 66). Subsequently, when other States contributed units to the United Nations Force in the Congo, their representatives were invited to participate in the work of the Advisory Committee. The Committee met with the Secretary-General in closed meetings and the records of the meetings were classified as confidential. The cooperation of the Advisory Committee with regard to the settlement

draft resolution since most of the members of the Council were not prepared to support it.^{109/}

CASE 7

At the 945th meeting on 14 March 1961, in connexion with the situation in Angola, the representative of Liberia introduced a draft resolution,^{110/} co-sponsored by Ceylon and the United Arab Republic, proposing the appointment of a Sub-Committee with a membership to be determined by the Security Council to examine the statements made before the Security Council concerning Angola, to receive further statements and documents, to conduct such inquiries as it might deem necessary and to report to the Security Council as soon as possible.

At the 946th meeting on 15 March 1961 the draft resolution was put to the vote and not adopted,^{111/} there being 5 votes in favour, none against and 6 abstentions.

CASE 8

At the 1022nd meeting on 23 October 1962, in connexion with complaints by representatives of Cuba, the United States and the USSR, the representative of the United States proposed^{112/} the dispatch to Cuba of a United Nations observer corps to assure and report on compliance with its demand for the immediate dismantling and withdrawal from Cuba of all missiles and other offensive weapons. The United States, however, did not press for a vote on its draft resolution.

**B. NOT INVOLVING, TO FACILITATE THEIR WORK, MEETINGS AT PLACES AWAY FROM THE SEAT OF THE ORGANIZATION

of internal problems in the Congo was authorized by the General Assembly by resolution 1474 (ES-IV) adopted at the 863rd meeting on 20 September 1960. In that resolution, the General Assembly appealed to all Congolese within the Republic of the Congo to seek a speedy solution by peaceful means of all their internal conflicts for the unity and integrity of the Congo, "with the assistance, as appropriate, of Asian and African representatives appointed by the Advisory Committee on the Congo, in consultation with the Secretary-General, for the purpose of conciliation (oper. para. 3)".

^{109/} For texts of relevant statements, see:

885th meeting: USSR, paras. 115, 117; Secretary-General, paras. 131, 132;

887th meeting: Congo,* paras. 78, 79, 95; Secretary-General, para. 36;

888th meeting: Guinea,* para. 31; USSR, paras. 79, 80; Secretary-General, para. 108;

889th meeting: Ceylon, para. 53; Italy, paras. 22-24; Poland, para. 91; USSR, para. 142; United Kingdom, para. 68.

^{110/} S/4769, 945th meeting: para. 107.

^{111/} 946th meeting: para. 165.

^{112/} S/5182, 1022nd meeting: para. 80.

Part II

CONSIDERATION OF PROCEDURES RELATIVE TO SUBSIDIARY ORGANS

NOTE

In this part is entered an instance of deliberation in the Security Council regarding a problem of procedure involved in the establishment and utilization of a subsidiary organ by the Council. The case history, however, while dealing with the procedures involved in

the establishment of a subsidiary organ also has a bearing on the distinction between the simple act of establishing a subsidiary organ as a matter of procedure under Article 29 and the process of investigation through the agency of a subsidiary organ under Article 34 of the Charter. Material relevant to the voting procedure will be found in chapter IV.

A. CONSIDERATION OF PROCEDURE IN THE ESTABLISHMENT OF SUBSIDIARY ORGANS

CASE 9

At the 847th meeting on 7 September 1959, in connexion with the report of the Secretary-General relating to Laos, the representative of the United States introduced a draft resolution ^{113/} co-sponsored by France and the United Kingdom, according to which the Security Council would decide to appoint a sub-committee consisting of Argentina, Italy, Japan and Tunisia with instructions to examine the statements made before the Council concerning Laos, to receive further statements and documents and to conduct such inquiries as it might determine necessary, and to report to the Council as soon as possible. The United States representative stated that the resolution was within the provisions of Article 29 of the Charter and the subsidiary organ, in effect, would "provide for the continuation of the Council's consideration of this subject".

The representative of Japan expressed the view that the establishment of the sub-committee under the terms of Article 29 was a matter of procedure. The representative of Argentina noted that the purpose of the proposed sub-committee was to collect information "so that the Council may have a first-hand account from qualified persons and may then be in a position to reach a final conclusion". It would be difficult for the Council itself to go to the scene of events to see what was happening; the sub-committee was therefore nothing more than an extension of the Council and, as such, clearly came within the procedural powers vested in the Council by Article 29.

At the 848th meeting on 7 September 1959, the representative of the USSR expressed his disagreement that the proposal was procedural. The proposal was in his view "a question of substance and a question of great importance, on which no decision should be taken without full consideration of all its possible political consequences".

The representative of Panama stated that in his delegation's opinion the setting up of the sub-committee, which could not draw conclusions or submit recommendations but would confine itself to submitting the facts to the Council, did not imply any judgement whatever of the situation described; its establishment was fully covered by the procedures authorized under Article 29 of the Charter and was "in accordance with rule 28 and rule 33, paragraph 4 of the rules of procedure of the Security Council".

The representative of the USSR reaffirmed his position. He cited earlier cases to show that the Council had treated the question of establishing a sub-committee to assist in the performance of its functions of maintaining international peace and security not as a procedural but as a substantive matter.

He stated that the proposed sub-committee was "essentially a sub-committee for investigation," and

^{113/} S/4214, same text as resolution S/4216, O.R., 14th year, Suppl. for July-Sept. 1959, pp. 8-9: 847th meeting: para. 59.

quoted paragraph 4 of the San Francisco declaration ^{114/} in which it was stated:

"... decisions and actions by the Security Council may well have major political consequences and may even initiate a chain of events which might, in the end, require the Council under its responsibilities to invoke measures of enforcement under Section B, Chapter VIII. This chain of events begins when the Council decides to make an investigation ... It is to such decisions and actions that unanimity of the permanent members applies. ..."

The President (Italy) stated that the question raised by the Soviet representative could more properly be taken up after the vote on the draft resolution. The representative of the USSR thereupon requested the President to settle the question of the voting procedure before putting the draft resolution to the vote.

After the vote had been taken on the question whether the vote on the draft resolution should be considered a procedural one, the President stated that it was "the interpretation of the Chair, shared by the overwhelming majority of the members, that the draft resolution falls clearly under Article 29 of the Charter. ..." Since Article 29 appeared in the Charter under the heading of "Procedure", that could not mean anything but that all matters included in it were of a procedural nature.

The representative of the USSR stated that the President's interpretation of the vote was at variance with the Charter, the four-Power declaration and the practice of the Security Council. As an illustration of the latter contention, he referred to the action taken in the Council at its 303rd meeting ^{115/} on 24 May 1948, when a vote on the same question had been taken.

The representative of France maintained that the Security Council was taking a preliminary step consisting of setting up a subsidiary organ of the Council for the purpose of studying its debates, collecting information and reporting back to the Council. This preliminary step, designed to enable the Council to carry out its functions, did not prejudice its future decisions. The decision taken was based on Article 29 of the Charter. It affected only members of the Council and provided them with appropriate means to cast further light on the situation. Accordingly, the resolution before the Council was in his view procedural in character.

The representative of the United Kingdom expressed the view that the Council was not considering a proposal to establish an investigating body, but a proposal under Article 29 of the Charter for the Council to establish a sub-committee of itself. There were no doubts that it was in accord with the letter and the spirit of the Charter that a decision of the Council to establish such a body to assist the Council in its work should be treated as a matter of procedure. Paragraph 2 of the San Francisco declaration dealt

^{114/} Statement by the Delegations of the four sponsoring Governments [the United States, the United Kingdom, the USSR and the Republic of China] on Voting Procedure in the Security Council, United Nations Conference on International Organization Documents, vol. II, pp. 711-714, para. 14; see also Repertory of Practice of United Nations Organs, vol. II, 1955, pp. 104-106 (U.N.P. 1955.V.2).

^{115/} 303rd meeting: para. 19.

with the decisions which could be taken by a procedural vote, including among these the establishment by the Council of "such bodies or agencies as it may deem necessary for the performance of its functions". This paragraph covered the establishment of sub-committees such as the one for which provision was made in the draft resolution before the Council.

The representative of the USSR stated that the Committee of Experts, for instance, was a body established in accordance with paragraph 2 of the San Francisco declaration. The task of the Committee, to formulate the rules of procedure, was the sort of action envisaged in the paragraph referred to. However, in saying that the sub-committee to be established should examine statements, receive further statements and conduct such inquiries as it might deem necessary, the sponsors of the draft resolution were saying the same thing as paragraph 4 of the San Francisco declaration which specified the action to be taken if any doubt arose in the Council as to whether a particular matter was or was not procedural.

The President observed that, with regard to the past practice of the Council, a similar action had taken place at the 507th meeting^{116/} of the Council on 29 September 1950. It was his conviction that the draft resolution fell within the scope of Article 29, which appeared under the heading of "Procedure", which meant that all matters included in it were procedural. The tasks entrusted to the sub-committee

^{116/} *Repertory of Practice of United Nations Organs*, vol. II, 1955, p. 80.

clearly defined its nature and its work. The sub-committee "should not itself conduct investigations or make recommendations". It "should collect information and present the facts in order to clarify the present situation and to enable the Council itself to make decisions".^{117/}

At the 848th meeting on 7 September 1959, the draft resolution submitted by France, the United Kingdom and the United States was put to the vote; there were 10 votes in favour, 1 against, with no abstentions. The President stated that the draft resolution was adopted.^{118/}

****B. CONSIDERATION OF THE PROCEDURE OF CONSULTATION BETWEEN PERMANENT MEMBERS**

****C. CONSIDERATION OF THE PROCEDURE OF DELEGATION OF FUNCTIONS**

****D. CONSIDERATION OF THE PROCEDURE OF MODIFICATION OF TERMS OF REFERENCE**

****E. CONSIDERATION OF THE PROCEDURE OF TERMINATION**

^{117/} For texts of relevant statements, see:

847th meeting: Argentina, paras. 100-103; Japan, para. 90; United States, paras. 59, 60;

848th meeting: President (Italy), paras. 71, 79, 126-128; France, paras. 91, 92; Panama, paras. 37, 38; USSR, paras. 30, 52-58, 63, 73, 80, 83, 85, 86, 116, 119, 122; United Kingdom, paras. 104, 107, 109, 110.

^{118/} 848th meeting: paras. 131-132.