

ARTICLE 33

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ARTICLE 33

TEXT OF ARTICLE 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

INTRODUCTORY NOTE

1. The present study of Article 33 follows previous *Repertory* treatment of the Article in limiting the material it presents to the question of the relationship between the obligation of the parties concerned to seek peaceful settlement of a dispute or a situation and the intervention in the question of the Security Council or the General Assembly.

2. The cases treated in the Analytical Summary of Practice under section A reflect the extent to which parties to a dispute are obligated to seek pacific settlement before recourse to the Security Council, as well as the scope of the question of what measures the Security Council may take in the light of the provisions of Article 33.

3. Other resolutions and decisions adopted by the Security Council which do not involve any constitutional debate, but are considered to have a bearing on the application or interpretation of Article 33, are treated in the General Survey. Further material from the proceedings of the Security Council is also included in the General Survey.

4. This study should also be read in conjunction with those on Articles 36 and 40 because on occasion some of the Security Council resolutions and decisions either recommended procedures previously agreed upon by the parties concerned or were aimed at the immediate restoration of conditions that would make further efforts of peaceful settlement possible. No constitutional significance should, however, be attached to this reference, which is made merely for the convenience of the reader.

5. The material relating to relevant discussion of Article 33 in the General Assembly does not lend itself to constitutional analysis under section B of the Analytical Summary of Practice, but is treated in the General Survey under "B. Action by the General Assembly". This part of the General Survey refers to various resolutions adopted by the General Assembly, some of which contained basic declarations relating to the provisions of Article 33 while others called upon the parties concerned to seek a peaceful solution of their differences.

6. For the first time, important general references to Chapter VI of the Charter have been added to this study of Article 33 in order to ensure that a significant element in the interpretation and application of the principles of peaceful settlement is given proper consideration.

I. GENERAL SURVEY

A. Action by the Security Council

7. Among the resolutions adopted by the Security Council during the period under review, two referred explicitly to Article 33 of the Charter. Another resolution contained an explicit reference to Chapter VI of the Charter.

8. Resolution 377 (1975), adopted on 22 October 1975 in connexion with the consideration of the situation concerning Western Sahara, contained in its paragraph 1 a request by the Security Council, acting in accordance with Article 34 of the Charter and without prejudice to negotiations that the parties might undertake under Article 33 of the Charter, to the Secretary-General to enter into immediate consultations with the parties and to report to the Council on his efforts in order to enable the Council to take appropriate measures. Resolution 380 (1975), adopted on 6 November 1975 also in connexion with the same situation, reiterated in its paragraph 3 the phrase from resolution 377 (1975) about negotiations under Article 33 and urged the parties to co-operate with the Secretary-General in the fulfillment of his mandate.¹

9. Resolution 395 (1976), adopted on 25 August 1976 in connexion with the complaint by Greece against Turkey, recalled in its preambular part the Charter principles for the peaceful settlement of disputes and relevant provisions of Chapter VI of the Charter. In the operative part² of the resolution, the Council recommended certain modes of peaceful settlement and called in particular for a resumption of direct negotiations between the two parties over their differences. During the consideration of the issue, several representatives invoked Article 33 and Chapter VI explicitly and implicitly,³ without giving rise to a constitutional discussion.

10. During the period under review, the Security Council also adopted a number of resolutions which

¹ For the constitutional discussion regarding these two resolutions, see paras. 47-49 below.

² S C resolution 395 (1976), in particular, paras. 2 and 3.

³ For significant references, both explicit and implicit, to Article 33 and occasionally to Chapter VI, see: S C (31), 1953rd mtg., *passim*, statements by France, Italy, Pakistan, Panama, United Kingdom, United Republic of Tanzania, and by the President speaking in his capacity as representative of Japan. For the introduction of draft resolution S/12187 by the United Kingdom, see *ibid.*, paras. 5 and 6.

might be considered as an indirect application of Article 33 of Chapter VI. Several of these involved some constitutional discussion relating either to the situation under consideration or to the decision to be adopted.⁴ The remaining resolutions contain implicit references to Article 33 or Chapter VI without major constitutional importance.

11. Until 1974, in extending the stationing of the United Nations Peace-keeping Force in Cyprus for further periods, the Council referred implicitly to Article 33 in urging the parties concerned to continue determined co-operative efforts to achieve the objectives of the Security Council by availing themselves in a constructive manner of the current auspicious climate and opportunities.⁵ After the crisis of 1974, the Council urged the parties to accelerate these efforts.⁶ In 1976, the Council took a stronger stand regarding the stalemated situation in Cyprus and linked its call for accelerated efforts with an appeal to the parties to act with the utmost restraint to refrain from any unilateral or other action likely to affect adversely the prospects of negotiations for a just and peaceful solution.⁷

12. The Council adopted additional provisions regarding the situation in Cyprus. Thus, after the grave crisis had erupted in July 1974, the Council issued urgent calls to the parties to enter into or to resume negotiations for the restoration of peace in the area.⁸ The Council also requested the Secretary-General to undertake and to continue a mission of good offices making himself available to the parties in negotiations under his auspices.⁹ Furthermore, the Council expressed concern at the lack of progress in the intercommunal talks¹⁰ and took issue in the preambular part of several resolutions with various impediments to the successful pursuit of the negotiations under the Secretary-General's auspices.¹¹

13. In connexion with several other agenda items, the Security Council adopted calls for negotiations between the parties to promote a peaceful solution¹² and author-

⁴In these cases, the relevant material is treated in the Analytical Summary of Practice, paras. 34-46, below.

⁵This appeal is made in para. 2 of each of the following resolutions: S C resolutions 281 (1970) of 9 June 1970; 291 (1970) of 10 December 1970; 293 (1971) of 26 May 1971; 305 (1971) of 13 December 1971; 315 (1972) of 15 June 1972; 324 (1972) of 12 December 1972; 334 (1973) of 15 June 1973; 343 (1973) of 14 December 1973; and 349 (1974) of 29 May 1974.

⁶S C resolutions 364 (1974), of 13 December 1974, para. 3; 370 (1975) of 13 June 1975, para. 3; and 383 (1975) of 13 December 1975, para. 3.

⁷This paragraph, slightly modified, was employed in S C resolutions 391 (1976) of 15 June 1976, para. 3; 401 (1976) of 14 December 1976, para. 3; 410 (1977) of 15 June 1977, para. 3; 414 (1977) of 15 September 1977, para. 2; 422 (1977) of 15 December 1977, para. 3.

⁸The following resolutions contained an urgent call for negotiations: S C resolutions 353 (1974) of 20 July 1974, para. 5; 357 (1974) of 14 August 1974, para. 3; 360 (1974) of 16 August 1974, para. 3; 361 (1974) of 30 August 1974, para. 7; 414 (1977) of 15 September 1977, para. 5; and 440 (1978) of 27 November 1978, para. 3.

⁹The original mandate for the good offices mission is given in detail in S C resolution 367 (1975) of 12 March 1975, paras. 5-8. For the requests to continue this mission, see: S C resolutions 370 (1975) of 13 June 1975, para. 6; 383 (1975) of 13 December 1975, para. 6; 391 (1976) of 15 June 1976, para. 6; 401 (1976) of 14 December 1976, para. 6; 410 (1977) of 15 June 1977, para. 6; 422 (1977) of 15 December 1977, para. 6; 430 (1978) of 16 June 1978, para. 2; and 443 (1978) of 14 December 1978, para. 2.

¹⁰S C resolution 414 (1977) of 15 September 1977, para. 4.

¹¹See S C resolutions 391 (1976) of 15 June 1976, 4th-6th preamb. paras.; 401 (1976) of 14 December 1976, 4th-6th preamb. paras.; 410 (1977) of 15 June 1977, 4th-6th preamb. paras.; and 422 (1977) of 15 December 1977, 4th-6th preamb. paras.

¹²For calls for negotiations see: in connexion with the situation in Territories under Portuguese administration: S C resolution 322 (1972) of 22 November 1972, para. 3; in connexion with the situation in the Middle East: S C resolution 338 (1973) of 22 October 1973, para. 3; 363 (1974) of 29 November 1974, operative para. (a); and 438

ized or requested the Secretary-General to appoint a special representative to lend his good offices in the search for a solution.¹³ During the consideration of the situation in Timor, the Council requested the Representative of the Secretary-General to continue consultations with the various parties involved and called upon all States and parties to co-operate with the United Nations to achieve a peaceful solution.¹⁴ In another decision the Council reaffirmed the Charter principles regarding the pacific settlement of disputes.

14. The instances listed in the foregoing paragraphs show the variety of modes of peaceful settlement recommended by the Security Council during the period under review. There were at the same time instances in which proposals recommending peaceful means in settling certain conflicts were either rejected or failed of adoption. In connexion with the situation in the India/Pakistan subcontinent, the United States submitted a draft resolution¹⁵ under which the Council would have invited the Governments concerned to accept the proposal of the Secretary-General offering his good offices to secure and maintain peace in the area. The draft resolution was put to the vote and failed of adoption owing to a negative vote by a permanent member of the Council.¹⁷ During the consideration of the same question, Italy and Japan submitted a joint draft resolution¹⁸ which, among other things, would have had the Council call for immediate steps toward a comprehensive political settlement and decide to appoint, with the consent of India and Pakistan, a Council committee of three members to assist the parties in their efforts to bring about normalcy in the area of conflict and to achieve reconciliation. The draft was not pressed for consideration by the Council because another text had been prepared allowing the Council to take a unanimous decision.¹⁹

15. During the Security Council meetings in Addis Ababa, a draft resolution²⁰ was submitted by Guinea, Somalia and Sudan in connexion with the situation in Territories under Portuguese administration: its paragraph 4 would have reaffirmed the Council's demand for negotiations, on the basis of the right to self-determination and independence, with the genuine representatives of the people of the Territories with a view to the transfer of power. This provision was deleted from the revised draft resolution subsequently adopted by the Council.²¹

16. During the Security Council meetings in Panama City the representatives of Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan and Yugoslavia submitted a joint draft resolution regarding the question of the

(1978) of 23 October 1978, 3rd preamb. para.; in connexion with arrangements for the proposed Peace Conference on the Middle East: S C resolution 344 (1973) of 15 December 1973, 1st preamb. para., para. 3; and in connexion with the complaint by Iraq: S C resolution 348 (1974) of 28 May 1974, para. 2 (d).

¹³In connexion with the situation in the India/Pakistan subcontinent, see: S C resolution 307 (1971) of 21 December 1971, para. 5; and in connexion with the complaint by Iraq: S C resolution 28 February 1974, para. 5, and S C resolution 348 (1974) of 28 May 1974, para. 2.

¹⁴S C resolution 389 (1976) of 22 April 1976, paras. 3 and 5.

¹⁵In connexion with the complaint by Iraq: S C consensus of 28 February 1974, para. 2. See S C (29), *Resolutions and Decisions*, 1974.

¹⁶S C (26) Suppl. for Oct.-Dec., 1971, S/10416.

¹⁷The vote was 11 in favour, 2 against, with 2 abstentions. S C (26), 1606th mtg., para. 371.

¹⁸S C (26), Suppl. for Oct.-Dec. 1971, S/10541.

¹⁹For the reason why the sponsors did not pursue their draft, see S C (26), 1617th mtg.: Italy, paras. 33-34.

²⁰S C (27), Suppl. for Jan.-March, 1972, S/10607.

²¹S C (27), 1639th mtg., paras. 130-135. S/10607/Rev.1 was adopted as resolution 312 (1972).

Panama Canal.²² Under the draft resolution the Council would have recalled that it was a purpose of the United Nations to bring about adjustment or settlement of international disputes or situations which might lead to a breach of the peace. It would also (a) have taken note that the Governments of the Republic of Panama and the United States of America had agreed to reach a just and fair agreement with a view to the prompt elimination of the causes of conflict between them; (b) would have also taken note of the willingness shown by the two Governments to establish in a formal instrument agreements on the abrogation of the 1903 convention on the Isthmian Canal and its amendments and to conclude a new, just and fair treaty concerning the present Panama Canal which would fulfil Panama's legitimate aspirations and guarantee full respect for Panama's effective sovereignty over all of its territory; and (c) would have urged the two Governments to continue negotiations in a high spirit of friendship, mutual respect and co-operation and to conclude without delay a new treaty aimed at the prompt elimination of the causes of conflict between them. In the course of the discussion on the issue of the Panama Canal a large number of representatives stated their Governments' support for the pacific settlement of the issue, called upon the two parties to strive for a speedy conclusion of a new treaty and endorsed an urgent appeal by the Council, as proposed in the draft resolution, to the parties regarding the continuation of negotiations between the United States and Panama.²³ Other representatives also expressed support for a negotiated settlement but held that it was up to the two parties to decide how to proceed in their talks, and cautioned the Council not to intervene unduly in this bilateral matter.²⁴ The representative of the United States, invoking Article 33, stated: "While the Charter of the United Nations confers this responsibility on the Security Council, it also provides—indeed, in Article 33, it specifically enumerates—many ways to resolve international issues before such matters are brought directly before the Council",²⁵ and added that the Panama Canal question could best be resolved through direct negotiations between the parties rather than through involvement of the Security Council.²⁶ The draft resolution failed of adoption owing to the negative vote of a permanent member of the Council.²⁷

17. During the examination in 1973 of the situation in the Middle East pursued by the Council at its 1717th to 1726th and 1733rd to 1735th meetings, Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan and Yugoslavia submitted a draft resolution.²⁸ Under this draft the Council would have *inter alia* taken note of the Secretary-General's report²⁹ regarding the determined efforts of his Special Representative since 1967, deeply regretted that the Secretary-General had been unable to report significant progress either by himself or by his Special Representative in carrying out the terms of resolu-

tion 242 (1967), expressed serious concern at Israel's lack of co-operation with the Special Representative, requested the Secretary-General and his Special Representative to resume and pursue their efforts to promote a just and peaceful solution of the Middle East problem, decided to afford the Secretary-General and his Special Representative all support and assistance for the discharge of their responsibilities, and called upon all parties concerned to extend full co-operation to the Secretary-General and his Special Representative. While expressing general support for the exercise of good offices through the Special Representative, those representatives who made what might be considered implicit references to Article 33 addressed themselves to the issue of negotiations, direct or indirect, with or without prior conditions, between Israel and the Arab States. Several representatives stressed the need for negotiations to arrive at a peace settlement;³⁰ others rejected this approach and advocated instead the involvement of the Security Council in the search for further steps toward peace in the Middle East.³¹ The draft resolution (S/10974) failed of adoption owing to the negative vote of a permanent member of the Council.³²

18. During the consideration of the situation in the Comoros, a draft resolution³³ was submitted by Benin, Guyana, the Libyan Arab Republic, Panama and the United Republic of Tanzania under which the Council *inter alia* would have requested the Government of France to enter into immediate negotiations with the Government of the Comoros for the purpose of taking appropriate measures to safeguard the unity and territorial integrity of the State of the Comoros. The provision did not give rise to constitutional arguments about Article 33 or Chapter VI. The draft resolution failed of adoption owing to the negative vote of a permanent member of the Council.³⁴

19. Instances in which Article 33 or Chapter VI was invoked during debates in the Council are partly covered by the case histories in the Analytical Summary of this study. Generally Article 33 was invoked to support proposals for settlement through one or several of the measures listed in its paragraph 1. Chapter VI was referred to in order to remind the members of the Council of the important mandate for the pacific settlement of disputes. In cases other than those surveyed above or analyzed below there were a few incidental references to Article 33 as well as to Chapter VI. These references amounted to little more than general invocations of Article 33³⁵ or Chapter VI³⁶ without constitutional significance.

²² For texts of relevant statements, see: S C (28), 1717th mtg.: Israel, paras. 109-112; 1735th mtg.: Australia, para. 105.

²³ For texts of relevant statements, see: S C (28), 1717th mtg.: Jordan, para. 135; 1720th mtg.: Kuwait, para. 37; 1734th mtg.: Tunisia, para. 65.

²⁴ The vote was 13 in favour, 1 against, with one member not participating. S C (28), 1735th mtg., para. 97.

²⁵ S C (31), Suppl. for Jan.-March, 1976, S/11967.

²⁶ The vote was 11 in favour, 1 against, with 3 abstentions. S C (31), 1888th mtg., para. 247.

²⁷ In connexion with the question of Bahrain: S C (25), 1536th mtg.: France, para. 155; in connexion with the complaint by Senegal: S C (26), 1572nd mtg.: Somalia, para. 31; in connexion with the situation in the India/Pakistan sub-continent: S C (26), 1606th mtg.: Pakistan, para. 133; in connexion with the question concerning the islands of Abu Musa, the Greater Tunb and the Lesser Tunb: S C (26), 1610th mtg.: Iraq, paras. 256-257; in connexion with the situation in Namibia: S C (30), 1824th mtg.: France, para. 86; in connexion with communications from France and Somalia concerning the incident of 4 February 1976: S C (31), 1889th mtg.: Somalia, para. 26; in connexion with the complaint by the Prime Minister of Mauritius, current Chairman of the Organization of African Unity, of the "act of aggression" by Israel against the Republic of Uganda: S C (31), 1942nd mtg.: Panama, para. 5.

²⁸ In connexion with the question of race conflict in South Africa: S C (25), 1546th mtg.: Pakistan, para. 150; in connexion with the con-

²² S C (28), Suppl. for Jan.-March, 1973, S/10931/Rev.1. The original draft was submitted by Yugoslavia, Panama and Peru.

²³ For the texts of relevant statements, see: S C (28), 1697th mtg.: Argentina, paras. 63-67; 1698th mtg.: Costa Rica, para. 57; Panama, paras. 114-118; Venezuela, para. 42; 1699th mtg.: Indonesia, paras. 72-73; Trinidad and Tobago, paras. 15-17; Yugoslavia, para. 84; 1700th mtg.: Austria, para. 47; Guinea, para. 65; Kenya, paras. 25-28; 1701st mtg.: India, paras. 55-58.

²⁴ For the texts of relevant statements, see: S C (28), 1699th mtg.: Australia, para. 112; 1700th mtg.: Canada, para. 173; 1701st mtg.: France, para. 15; United Kingdom, para. 106.

²⁵ S C (28), 1701st mtg., para. 117.

²⁶ *Ibid.*, para. 121.

²⁷ The vote was 13 in favour, 1 against, with 1 abstention. S C (28), 1704th mtg., para. 66.

²⁸ S C (28), Suppl. for July-Sept., 1973, S/10974.

²⁹ S C (28), Suppl. for April-June, 1973, S/10929.

B. Action by the General Assembly

20. A resolution adopted by the General Assembly during the period under review contained an explicit reference to both Article 33 and Chapter VI. A second resolution invoked Article 33 explicitly, and a third referred explicitly to Chapter VI. In addition, the Assembly adopted a number of resolutions in which Article 33 or Chapter VI was implicitly referred to.

21. On 12 December 1974, the General Assembly adopted resolution 3283 (XXIX) entitled: Peaceful settlement of international disputes. At the 2307th plenary meeting of the General Assembly, on 6 December 1974, the representative of Australia introduced under agenda item 20: Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States, a draft resolution³⁷ co-sponsored by Australia, Canada, Colombia, Costa Rica, Fiji, Ghana, Italy, Japan, Netherlands, New Zealand, Philippines, Singapore, Sweden and the United Kingdom. In introducing the draft resolution, the representative of Australia frequently invoked both Article 33 and Chapter VI and urged the Assembly to broaden and intensify the application of the Charter principles of peaceful settlement.³⁸ The draft resolution was discussed at the 2307th, 2308th, 2313th, 2314th and 2316th plenary meetings. At the 2316th meeting, the draft was slightly revised in paragraph 4³⁹ and subsequently adopted by a vote of 68 to 10, with 35 abstentions, as resolution 3283 (XXIX). It reads as follows:

"The General Assembly,

"Noting that the Charter of the United Nations obliges Member States to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

"Recalling, in particular, that the Security Council is charged under the terms of Article 24 of the Charter with primary responsibility for the maintenance of

consideration of measures for the maintenance and strengthening of international peace and security in Latin America: S C (28), 1704th mtg.: President (Panama), para. 3; in connexion with the situation in the Middle East: S C (28), 1720th mtg.: Algeria, para. 53; in connexion with the relationship between the United Nations and South Africa: S C (29), 1801st mtg.: Madagascar, para. 4; in connexion with the complaint by Zambia against South Africa: S C (31), 1948th mtg.: United Kingdom, para. 10; in connexion with the admission of new members (Socialist Republic of Viet Nam): S C (31), 1972nd mtg.: Mexico, para. 7; in connexion with the situation in Cyprus: S C (33), 2081st mtg.: Cyprus, para. 3.

³⁷G A (29), Annexes, a.i. 20, A/L.749 and Add.1. The draft resolution was slightly revised before adoption as G A resolution 3283 (XXIX).

³⁸G A (29), Plen. 2307th mtg.: Australia, para. 45. The representative of Australia also invoked Articles 12, 14, 24 and 52. During the discussion in the plenary, Article 33 and Chapter VI were explicitly referred to as follows: Article 33: 2314th mtg.: Cyprus, para. 274; 2316th mtg.: India, para. 289; Mexico, p. 141; USSR, p. 161; Chapter VI: 2314th mtg.: Egypt, para. 303; Netherlands, p. 132; 2316th mtg.: India, para. 290 and 291; USSR, para. 334. See also G A (26), Annexes, a.i. 20, A/9695, especially pp. 33-41, for numerous suggestions by a number of Member States regarding further strengthening of the Charter machinery of peaceful settlement and several explicit references to Article 33 and Chapter VI.

³⁹At the 2316th plenary meeting, the representative of Australia, on behalf of the sponsors of the draft resolution, revised the words "Requests the Secretary-General to prepare an up-to-date report on the implementation of the provisions of the Charter relating to the peaceful settlement . . ." in operative paragraph 4 to read: "Requests the Secretary-General to prepare an up-to-date report concerning the machinery, established under the Charter for the peaceful settlement . . ." The draft resolution, as revised, was then adopted.

international peace and security, and that disputes may be brought to the attention of the Council for purposes of peaceful settlement under the provisions of Chapter VI of the Charter,

"Recalling also that Article 33 of the Charter directs that parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice,

"Recalling further that the International Court of Justice is the principal judicial organ of the United Nations and, as such, is available to Members for the settlement of legal disputes, that it has recently amended the Rules of Court with a view to simplifying its procedure so as to avoid delays and simplify hearings, and that it may establish chambers to hear and determine cases by summary procedure allowing for the speediest possible settlement of disputes,

"Mindful of the existence of other facilities and machinery available for the settlement of disputes by mediation, conciliation, arbitration or judicial settlement, including the Permanent Court of Arbitration at The Hague and established regional agencies or arrangements,

"Reaffirming that recourse to peaceful settlement of international disputes shall in no way constitute an unfriendly act between States,

"Mindful also of the continuing threat to international peace and security posed by serious disputes of various kinds and the need for early action to resolve such disputes by resort in the first instance to the means recommended in Article 33 of the Charter,

"1. Draws the attention of States to the machinery established under the Charter of the United Nations for the peaceful settlement of international disputes;

"2. Urges Member States not already parties to instruments establishing the various facilities and machinery available for the peaceful settlement of disputes to consider becoming parties to such instruments and, in the case of the International Court of Justice, recognizes the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the Court in accordance with Article 36 of the Statute of the Court;

"3. Calls upon Member States to make full use and seek improved implementation of the means and methods provided for in the Charter of the United Nations and elsewhere for the exclusively peaceful settlement of any dispute or any situation, the continuance of which is likely to endanger the maintenance of international peace and security, including negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, good offices including those of the Secretary-General, or other peaceful means of their own choice;

"4. Requests the Secretary-General to prepare an up-to-date report concerning the machinery established under the Charter for the peaceful settlement of international disputes, inviting his attention in particular to the following resolutions of the General Assembly:

"(a) Resolution 268 D (III) of 28 April 1949, in which the Assembly established the Panel for Inquiry and Conciliation;

“(b) Resolution 377 A (V) of 3 November 1950, section B, in which the Assembly established the Peace Observation Commission;

“(c) Resolution 1262 (XIII) of 14 November 1958, in which the Assembly considered the question of establishing an arbitral procedure for settling disputes;

“(d) Resolution 2329 (XXII) of 18 December 1967, in which the Assembly established a United Nations register of experts for fact finding;

“(e) Resolution 2625 (XXV) of 24 October 1970, in which the Assembly approved the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;

“5. *Invites the attention* of the Security Council, the Special Committee on Peace-keeping Operations, the International Court of Justice and the Secretary-General to the present resolution.”

22. On 17 December 1970 the General Assembly, at its 1933rd meeting, adopted resolution 2749 (XXV),⁴⁰ entitled: “Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction”. Its paragraph 15 contains an explicit reference to Article 33 and reads as follows:

“The General Assembly,

“ . . .

“Solemnly declares that:

“ . . .

“15. The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established.”

There was no constitutional discussion regarding this provision in the declaration, as far as the period under review is concerned.⁴¹

23. At the twenty-sixth session, during the consideration of agenda item 34 regarding the implementation of the Declaration on the Strengthening of International Security, the General Assembly, at its 2029th plenary meeting, on 21 December 1970, adopted resolution 2880 (XXVI).⁴² The seventh preambular paragraph of this resolution, invoking Chapter VI together with Chapter VII explicitly, reads as follows:

“The General Assembly,

“ . . .

“*Emphasizing* that the Declaration, which constitutes an organic whole, needs to be implemented in its entirety, through the full use of the United Nations machinery and capabilities, including those provided for in Chapters VI and VII of the Charter and the dispatch of special missions by the Security Council,”.

⁴⁰By letter dated 24 November 1970 (A/C.1/L.542 (mimeographed)) the Chairman of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction transmitted to the Chairman of the First Committee the draft declaration which was subsequently adopted without change. The vote in the Assembly was 108 to none, with 14 abstentions.

⁴¹There were references to Article 33, including two explicit ones during the discussion in the First Committee: G A (25), 1st Com., 1781st mtg.: El Salvador, para. 29; 1786th mtg.: Lebanon, para. 54.

⁴²At the 1856th mtg. of the First Committee on 16 December 1970, Venezuela and Zambia, on behalf of the fifty-seven sponsors, introduced draft resolution A/C.1/L.604 and Corr. 1, which was somewhat revised at the next meeting and approved in the First Committee. The General Assembly adopted the draft resolution at its 2029th meeting by 96 votes to 1, with 16 abstentions.

The deliberations in the First Committee did not contain any constitutional discussion, but Chapter VI and Article 33 were explicitly referred to.⁴³

24. During the period under review, the General Assembly adopted a number of resolutions with implicit references to Article 33.

25. At the twenty-fifth session, in connexion with agenda item 85, “Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States”, the General Assembly, at its 1883rd plenary meeting, on 24 October 1970, adopted resolution 2625 (XXV), which contained in its annex the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. One of the seven principles elaborated in the Declaration is the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered. The principle is elaborated as follows:

“Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

“States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

“The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

“States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

“International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

“Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.”

The deliberations leading to the adoption of the Declaration were based on the report on the 1970 session of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation

⁴³For invocations of Chapter VI, see: G A (26), 1st Com., 1807th mtg.: Lebanon, para. 113; 1856th mtg.: Venezuela, para. 7. For references to Article 33 see: G A (26), 1st Com., 1806th mtg.: Brazil, para. 26; 1808th mtg.: India, para. 37; Pakistan, para. 74.

among States.⁴⁴ Since the principle of peaceful settlement had been elaborated during earlier sessions of the Special Committee, the proceedings in 1970 did not involve any constitutional discussion of this important principle or of Article 33, but the Article was referred to a few times.⁴⁵

26. During the twenty-fifth session, in connexion with the consideration of measures for the strengthening of international security: report of the Secretary-General, the General Assembly, at its 1932nd plenary meeting, on 16 December 1970, adopted resolution 2734 (XXV), entitled Declaration on the Strengthening of International Security.⁴⁶ Its paragraph 6 contains an implicit reference to Article 33 and reads as follows:

"The General Assembly,

" . . .

"6. Urges Member States to make full use and seek improved implementation of the means and methods provided for in the Charter for the exclusively peaceful settlement of any dispute or any situation, the continuance of which is likely to endanger the maintenance of international peace and security, including negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, good offices including those of the Secretary-General, or other peaceful means of their own choice, it being understood that the Security Council in dealing with such disputes or situations should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court;"

During the discussion of the agenda item in the First Committee, several draft resolutions were introduced containing explicit or implicit references to Article 33,⁴⁷ and that Article as well as Chapter VI were frequently invoked without giving rise to a constitutional discussion.⁴⁸

⁴⁴See G A (25), Supplement No. 18. For information regarding the consideration of this item during the twentieth to twenty-fourth sessions, see *Repertory, Supplement No. 3*, Vol. II, under Article 33, paras. 6-7. See also G A (25), Supplement No. 8, paras. 16-17, where it is reported that the consensus regarding the principle of peaceful settlement was formulated in 1966 and remained unchanged despite further deliberations during the 1967 session of the Special Committee. For the proceedings in the Sixth Committee during the twenty-fifth session, see: G A (25), Annexes, a.i. 85, A/8082. The Sixth Committee considered the item at its 1178th to 1184th meetings; the General Assembly dealt with it at the 1883rd plenary meeting.

⁴⁵For explicit references to Article 33, see: G A (25), 6th Com., 1180th mtg.: United Kingdom, para. 33; and 1181st mtg.: Greece, para. 32.

⁴⁶The vote in the First Committee was 106 to 1, with 1 abstention. The General Assembly adopted the Declaration by 120 votes to 1, with 1 abstention.

⁴⁷G A (25), Annexes, a.i. 32, A/8096, para. 5: A/C.1/L.513, para. 7 (Article 33 implicit); A/C.1/L.514, para. 4 (Art. 33 explicit). Since four draft resolutions were before the First Committee, the Committee, at its 1739th meeting, authorized its Chairman to consult with sponsors and other interested parties in order to arrive at a single text. With the help of a drafting committee a single text was drafted and introduced by the representative of Brazil at the 1795th meeting of the First Committee. The draft declaration A/C.1/L.558 was somewhat amended, but these revisions did not affect the implicit reference to Article 33 in its paragraph 6.

⁴⁸The agenda item was discussed in the First Committee at its 1725th to 1739th, 1795th and 1797th meetings. It was also discussed at the 1932nd plenary meeting of the General Assembly. There were numerous explicit and implicit references to both Article 33 and Chapter VI in all these meetings. For explicit references to Article 33 see: G A (25), Plen., 1932nd mtg.: India, para. 128; 1st Com., 1726th mtg.: Italy, para. 33; 1728th mtg.: Yugoslavia, para. 99; 1730th mtg.: Kenya, para. 54; 1732nd mtg.: Australia, para. 38; 1734th mtg.: Cyprus, para. 311; Romania, para. 49; United Kingdom, para. 128; 1737th mtg.: Philippines, para. 72; 1739th mtg.: Pakistan, para. 46. For explicit references to Chapter VI, see: G A (25), 1st Com., 1725th

27. During the twenty-sixth session, the General Assembly adopted resolution 2799 (XXVI) in connexion with the situation in the Middle East (agenda item 22); under paragraphs 3, 4 and 8, it requested the Secretary-General to reactivate the mission of the Special Representative to the Middle East under Security Council resolution 242 (1967), expressed full support for the activities of the Special Representative and asked the Secretary-General to report to the General Assembly and the Security Council on the progress made by the Special Representative. This implicit reference to Article 33 was not accompanied by discussion in the Assembly reflecting on its constitutional aspects.⁴⁹

28. On several occasions during the period under review, the General Assembly discussed the question of Cyprus and adopted resolutions containing implicit references to Article 33. During the twenty-ninth session, the Assembly, in its resolution 3212 (XXIX), adopted at the 2275th plenary meeting, on 1 November 1974, commended the contacts and negotiations taking place on an equal footing, with the good offices of the Secretary-General, between the representatives of the two communities, and called for their continuation with a view to reaching freely a mutually acceptable political settlement.⁵⁰ In subsequent years the Assembly reiterated its request for the Secretary-General to continue to provide his good offices,⁵¹ and called upon the parties to resume the negotiations in a meaningful and constructive manner.⁵² The deliberations on the Cyprus question did not give rise to constitutional discussions.⁵³

29. During the thirtieth session, the General Assembly adopted resolution 3432 (XXX)⁵⁴ in connexion with the question of Belize (agenda item 23); in paragraph 4 the Assembly called upon the Government of the United Kingdom, as the administering Power, acting in close consultation with the Government of Belize, and upon the Government of Guatemala, to pursue urgently their negotiations for the earliest possible resolution of their differences of opinion concerning the future of Belize. This provision might be considered as an implicit reference to Article 33. The call for continued negotiations was reiterated in Assembly resolutions adopted during the thirty-first to thirty-third session.⁵⁵ There was no

mtg.: Brazil, para. 89; 1727th mtg.: Canada, para. 21; Poland, para. 44; 1728th mtg.: France, para. 40; 1731st mtg.: Brazil, para. 125; 1733rd mtg.: Ecuador, para. 76; 1734th mtg.: Kuwait, para. 266; Pakistan, paras. 101, 104-105; 1736th mtg.: Madagascar, para. 57; 1738th mtg.: Ireland, para. 25.

⁴⁹Agenda item 22 was discussed at the 1999th to 2002nd, 2004th, 2006th, 2008th to 2010th, and 2012th to 2017th plenary meetings of the General Assembly. See G A (26), Annexes, a.i. 22 for the various draft resolutions and amendments submitted under this item. A/L.650/Rev.1, subsequently adopted as G A resolution 2799 (XXVI), was considered together with two other draft resolutions, both of which also referred implicitly to Article 33. Draft resolution A/L.650/Rev.1 was adopted at the 2016th plenary meeting by 79 votes to 7, with 36 abstentions. Draft resolution A/L.651 and Add.1 was not put to the vote. Draft resolution A/L.652/Rev.1 was rejected by a vote of 56 to 18, with 47 abstentions.

⁵⁰G A resolution 3212 (XXIX), para. 4.

⁵¹See G A resolution 31/12, para. 4. The resolution was adopted at the 65th plenary meeting of the thirty-first session, on 12 November 1976. See also G A resolution 33/15, para. 4. This resolution was adopted at the 49th plenary meeting of the thirty-third session on 9 November 1978.

⁵²See G A resolution 32/15, para. 3. The resolution was adopted at the 64th plenary meeting of the thirty-second session, on 9 November 1977. See also G A resolution 33/15, para. 6.

⁵³There were, however, occasional references to Article 33 in connexion with the consideration of the question of Cyprus, such as G A (33), Plen., 22nd mtg.: Cyprus, para. 18.

⁵⁴G A resolution 3432 (XXX), adopted at the 2431st plenary meeting, on 8 December 1975.

⁵⁵Resolution 31/50, para. 4, adopted at the 85th plenary mtg. of the thirty-first session on 1 December 1976; resolution 32/32, para. 3,

constitutional discussion in connexion with the Belize question, but Article 33 and Chapter VI were occasionally explicitly invoked.⁵⁶

30. In connexion with the question of the Comorian island of Mayotte, the General Assembly, at its thirty-first and thirty-second sessions, adopted resolutions which contained implicit references to Article 33. During the thirty-first session the Assembly, in its resolution 31/4, paragraph 6, called upon the Government of France to enter into negotiations with the Government of the Comoros.⁵⁷ In its resolution 32/7, the Assembly renewed its call to the Governments of France and the Comoros to seek a just and equitable solution for the problem of the Comorian island of Mayotte and mandated the Secretary-General to take any initiative in favour of negotiations between the two Governments.⁵⁸ The consideration of the question of Mayotte did not involve any constitutional discussion.

31. During the thirty-second session the General Assembly adopted resolution 32/20 regarding the situation in the Middle East. In this resolution it called for the reconvening of the Geneva Peace Conference on the Middle East and urged the parties to the conflict and all other interested parties to work towards the achievement of a comprehensive settlement aiming at the establishment of a just and lasting peace in the region.⁵⁹ This debate did not lead to any relevant constitutional discussion.

32. Article 33 and Chapter VI were invoked explicitly during the twenty-fifth,⁶⁰ twenty-sixth,⁶¹ twenty-

adopted at the 83rd plenary mtg. of the 32nd session on 28 November 1977; and resolution 33/36, para. 3, adopted at the 81st plenary mtg. of the 33rd session on 13 December 1978.

⁵⁶For explicit references to Article 33, see: G A (30), 4th Com., 2163rd mtg.: Guatemala, para. 43; G A (31), 4th Com., 26th mtg.: Guatemala, paras. 12, 21, 66; G A (33), Plen., 17th mtg.: Guatemala, para. 247; *ibid.*, 19th mtg.: Guatemala, para. 166. Chapter VI was explicitly invoked once, see: G A (31), Plen., 85th mtg.: Guatemala, para. 28.

⁵⁷G A resolution 31/4 was adopted at the 39th plenary mtg. of the thirty-first session on 21 October 1976.

⁵⁸G A resolution 32/7 was adopted at the 55th plenary mtg. of the thirty-second session on 1 November 1977. Article 33 is implicitly referred to in paragraphs I-3.

⁵⁹G A resolution 32/20, in particular paras. 3-5. The resolution was adopted at the 82nd plenary mtg. of the thirty-second session on 25 November 1977.

⁶⁰During the twenty-fifth session, Article 33 was invoked as follows: in connexion with the opening of the session: G A (25), Plen., 1839th mtg.: Liberia, para. 24; in connexion with the general debate: *ibid.*, 1846th mtg.: Colombia, para. 37; Thailand, para. 89; 1856th mtg.: Belgium, paras. 229 and 230; 1857th mtg.: Italy, para. 82; Pakistan, para. 282; in connexion with the review of the role of the International Court of Justice: *ibid.*, 6th Com., 1210th, 1212th to 1214th, 1216th and 1217th mtgs., for a large number of explicit as well as implicit references. In connexion with the need to consider suggestions regarding the review of the Charter of the United Nations, see: *ibid.*, 6th Com., 1238th mtg.: Philippines, para. 8; 1239th mtg.: Iraq, para. 3; Lebanon, para. 25; 1240th mtg.: United States, para. 13; 1242nd mtg.: Romania, para. 9; also in connexion with the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, see: *ibid.*, Spec. Pol. Com., 748th mtg.: Poland, para. 6. Chapter VI was referred to as follows: in connexion with the general debate: G A (25), Plen., 1841st mtg.: Brazil, paras. 29 and 30; 1851st mtg.: Madagascar, para. 17; 1853rd mtg.: Ghana, para. 151; in connexion with the Middle East: *ibid.*, 1890th mtg.: United Arab Republic, para. 163; United States, para. 66; in connexion with the policies of *apartheid* of the Government of South Africa: *ibid.*, Spec. Pol. Com., 701st mtg.: Mexico, para. 31; 709th mtg.: Mali, para. 27; in connexion with the comprehensive review of the whole question of peace-keeping operations in all their aspects: *ibid.*, 715th mtg.: Mexico, paras. 50 and 53; 721st mtg.: Brazil, para. 45; and in connexion with a.i. 88: *ibid.*, 6th Com., 1240th mtg.: Italy, para. 6.

⁶¹During the twenty-sixth session, in connexion with the review of the role of the International Court of Justice, see: G A (26), 6th Com., 1277th, 1279th to 1284th, and 1294th mtgs. for a large number of explicit as well as implicit references to Article 33 and Chapter VI; for references to Chapter VI in connexion with the policies of *apartheid*, see: *ibid.*, Spec. Pol. Com., 773rd mtg.: Madagascar, para. 35.

seventh,⁶² twenty-eighth,⁶³ twenty-ninth,⁶⁴ thirtieth,⁶⁵ thirty-first,⁶⁶ thirty-second⁶⁷ and thirty-third ses-

⁶²During the twenty-seventh session Article 33 was explicitly referred to as follows: in connexion with the general debate: G A (27), Plen., 2057th mtg.: Cyprus, para. 132; in connexion with the non-use of force in international relations and permanent prohibition of the use of nuclear weapons: *ibid.*, 2081st mtg.: Romania, para. 117; in connexion with the strengthening of the role of the United Nations: *ibid.*, 2088th mtg.: Argentina, para. 35; in connexion with the implementation of the Declaration on the Strengthening of International Security: *ibid.*, 1st Com., 1917th mtg.: Cyprus, para. 76; in connexion with the importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights: *ibid.*, 3rd Com., 1965th mtg.: United Kingdom, para. 29; in connexion with the review of the Charter: *ibid.*, 6th Com., 1375th mtg.: Iraq, para. 5; and in connexion with the review of the role of the International Court of Justice: *ibid.*, 1384th mtg.: Japan, para. 48; USSR, para. 58; 1385th mtg.: Australia, para. 25; Belgium, para. 16; Canada, para. 10; United Kingdom, para. 9. Chapter VI was explicitly invoked as follows: in connexion with the general debate: G A (27), Plen., 2052nd mtg.: Colombia, para. 62; in connexion with the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: *ibid.*, 2074th mtg.: Nepal, para. 19; in connexion with a.i. 24: *ibid.*, 2087th mtg.: Egypt, para. 42; 2088th mtg.: Sweden, para. 49; 2089th mtg.: Iran, para. 146; in connexion with a.i. 25: *ibid.*, 2082nd mtg.: Lebanon, para. 67; 2084th mtg.: Jordan, para. 103; 2093rd mtg.: Ivory Coast para. 97; in connexion with the question of peace-keeping: *ibid.*, Spec. Pol. Com., 843rd mtg.: Brazil, para. 11; in connexion with a.i. 89: *ibid.*, 6th Com., 1380th mtg.: Madagascar, para. 15; in connexion with a.i. 90: *ibid.*, 1385th mtg.: Belgium, para. 16.

⁶³During the twenty-eighth session there was one reference to Article 33 in connexion with the review of the role of the International Court of Justice: G A (28), 6th Com., 1458th mtg.: USSR, para. 23; and Chapter VI was referred to in connexion with the question of peace-keeping, see: *ibid.*, Spec. Pol. Com., 900th mtg.: Liberia, para. 42.

⁶⁴During the twenty-ninth session Article 33 was explicitly referred to as follows: in connexion with the general debate (a.i. 9): G A (29), Plen., 2259th mtg.: Australia, para. 149; in connexion with the implementation of the Declaration on the Strengthening of International Security (a.i. 36): *ibid.*, 1st Com., 2042nd mtg.: Cyprus, p. 27; in connexion with the question of peace-keeping (a.i. 39): *ibid.*, Spec. Pol. Com., 936th mtg.: Byelorussian SSR, para. 17; in connexion with the review of the role of the International Court of Justice (a.i. 93): *ibid.*, 6th Com., 1466th-1468th, 1470th and 1492nd mtgs. for a large number of explicit and implicit references to Art. 33. Chapter VI was invoked as follows: in connexion with a.i. 39: *ibid.*, Spec. Pol. Com., 936th mtg.: Brazil, para. 30; in connexion with the report of the Special Committee on the Question of Defining Aggression (a.i. 86): *ibid.*, 6th Com., 1472nd mtg.: Austria, para. 31; in connexion with the review of the Charter (a.i. 95): *ibid.*, 1517th mtg.: Ghana, para. 24.

⁶⁵During the thirtieth session Article 33 was explicitly invoked as follows: in connexion with the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (a.i. 23): G A (30), Plen., 2418th mtg.: Canada, para. 75; *ibid.*, 4th Com., 2163rd, 2170th, 2171st, 2174th-2178th mtgs. for a large number of explicit references especially regarding the question of Spanish Sahara. Chapter VI was referred to in *ibid.*, 6th Com., 1753rd mtg.: Iran, para. 3 in connexion with strengthening of the role of the United Nations, and report of the *Ad Hoc* Committee on the Charter of the United Nations.

⁶⁶During the thirty-first session Article 33 was referred to explicitly as follows: in connexion with the general debate (a.i. 9): G A (31), Plen., 16th mtg.: Jamaica, para. 129; 20th mtg.: Mauritania, para. 90; 25th mtg.: Senegal, para. 131; 32nd mtg.: Morocco, paras. 254 and 258; in connexion with the implementation of the Declaration on the Strengthening of International Security (a.i. 33): *ibid.*, 1st Com., 57th mtg.: Cyprus, p. 61; in connexion with the question of peace-keeping (a.i. 54): *ibid.*, Spec. Pol. Com., 34th mtg.: Ireland, para. 16; in connexion with the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (a.i. 110): *ibid.*, 6th Com., 44th mtg.: German Democratic Republic, para. 4; 48th mtg.: Indonesia, para. 3; in connexion with the conclusion of a world treaty on the non-use of force in international relations (a.i. 124): *ibid.*, 6th Com., 50th mtg.: Bulgaria, para. 93; 51st mtg.: Italy, para. 18; 52nd mtg.: Israel, para. 23. Chapter VI was explicitly invoked as follows: in connexion with a.i. 9: G A (31), Plen., 30th mtg.: Cyprus, para. 67; in connexion with a.i. 54: *ibid.*, Spec. Pol. Com., 34th mtg.: Cyprus, para. 51; in connexion with a.i. 110: *ibid.*, 6th Com., 45th mtg.: Israel, para. 53; in connexion with the situation arising out of unilateral withdrawal of Ganges waters at Farakka (a.i. 121): *ibid.*, Spec. Pol. Com., 20th mtg.: Bangladesh, para. 1; in connexion with a.i. 124: *ibid.*, 6th Com., 50th mtg.: United States, para. 70; 53rd mtg.: France, para. 31.

⁶⁷During the thirty-second session Article 33 was explicitly referred

sions⁶⁶ in the General Assembly and its committees on a wide range of agenda items without giving rise to constitutional arguments or leading to the formulation of relevant draft resolutions.

II. ANALYTICAL SUMMARY OF PRACTICE

A. In the Security Council: The question of the extent to which parties to a dispute are obligated to seek a pacific settlement before recourse to the Security Council

33. During the period under review, consideration of the obligation of the parties to seek a pacific settlement of their differences arose in the context of proposals to encourage the parties to seek settlement by direct negotiations, international inquiry and through the good offices of the Secretary-General.

1. DECISION OF 22 NOVEMBER 1972 IN CONNEXION WITH THE SITUATION IN TERRITORIES UNDER PORTUGUESE ADMINISTRATION

34. The draft resolutions successively submitted by Guinea, Somalia and Sudan⁶⁹ contained paragraphs calling upon the Government of Portugal to enter into negotiations with the other parties involved. Thus, draft resolution S/10834, which was subsequently withdrawn, under paragraph 6, would have called upon the Government of Portugal to enter into negotiations with the national liberation movements of Angola, Guinea (Bissau) and Cape Verde, and Mozambique with a view to arriving at a solution of the conflict. This text was replaced by a new draft (S/10838) which underwent a

to as follows: in connexion with the conclusion of a world treaty on the non-use of force in international relations (a.i. 37): G A (32), 1st Com., 56th mtg.: Chile, p. 58; in connexion with the report of the International Law Commission on the work of its twenty-ninth session (a.i. 112): *ibid.*, 6th Com., 36th mtg.: Sweden, para. 23; 38th mtg.: USSR, para. 42; 43rd mtg.: India, para. 26; 65th mtg.: Bulgaria, paras. 24 and 25; Mexico, para. 11; 67th mtg.: Spain, para. 112.

⁶⁸ During the thirty-third session Article 33 was explicitly referred to as follows: in connexion with the general debate (a.i. 9): G A (33), Plen., 22nd mtg.: Cyprus, para. 18; in connexion with the question of Palestine (a.i. 31): *ibid.*, Plen. 73rd mtg.: Argentina, paras. 45-47; in connexion with the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (a.i. 24): *ibid.*, 4th Com., 27th mtg.: Senegal, para. 61; 29th mtg.: Morocco, para. 90; in connexion with the report of the Special Committee on the Charter (a.i. 117): *ibid.*, 6th Com., 20th mtg., 21st mtg., 24th-26th mtgs., and 28th-30th mtgs. for a large number of explicit references; also in connexion with the report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations (a.i. 121): *ibid.*, 6th Com., 50th mtg., 54th-57th mtgs., and 59th mtg. for a substantial number of explicit references to Article 33. Chapter VI was also explicitly invoked in connexion with a.i. 117: *ibid.*, 6th Com., 20th mtg.: Madagascar, para. 27; 24th mtg.: Sierra Leone, para. 34; 28th mtg.: India, para. 60; 29th mtg.: Ivory Coast, para. 62; Turkey, para. 18; in connexion with a.i. 121: *ibid.*, 55th mtg.: Jamaica, para. 15; 57th mtg.: Ecuador, para. 41; also in connexion with the implementation of the Declaration on the Strengthening of International Security (a.i. 50): *ibid.*, 1st Com., 66th mtg.: Cyprus, p. 91; in connexion with the question of the composition of the relevant organs of the United Nations (a.i. 57): *ibid.*, Spec. Pol. Com., 27th mtg.: Sierra Leone, para. 4; and in connexion with the review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session (a.i. 125): *ibid.*, 1st Com., 15th mtg.: Cyprus, p. 32. For an explicit reference to Chapter VI during the tenth special session see G A (S-10), Plen., 13th mtg.: Ethiopia, para. 48.

⁶⁹ S C (27), Suppl. for Oct.-Dec., 1972, S/10834 and S/10838.

few further changes (S/10838/Rev.1) and was subsequently adopted as resolution 322 (1972).⁷⁰ The resolution read in its paragraph 3 as follows:

"The Security Council,

"

"Calls upon the Government of Portugal, in accordance with the relevant provisions of the Charter of the United Nations and General Assembly resolution 1514 (XV), to enter into negotiations with the parties concerned, with a view to achieving a solution to the armed confrontation that exists in the Territories of Angola, Guinea (Bissau) and Cape Verde, and Mozambique and permitting the peoples of those Territories to exercise their right to self-determination and independence;"

During the consideration of the issue in the Security Council, numerous speakers urged the Portuguese Government to accept the call of the liberation movements in the Territories under its administration for negotiations toward a peaceful settlement as a result of which these Territories would gain their independence; these negotiations should be initiated in accordance with the provisions for peaceful settlement under the Charter. Besides general calls for negotiations, several representatives offered more specific proposals. Some of these envisaged restricting the subject of the negotiations to the mode of transferring governmental authority to the independence movements in the Territories; others emphasized the need for unconditional open talks. Most of the speakers in the debate suggested a strong involvement of the United Nations in getting the negotiations started and even in mediating between the parties during the actual negotiating process.⁷¹

2. DECISIONS OF 21 OCTOBER 1973, 15 DECEMBER 1973 AND 29 NOVEMBER 1974 IN CONNEXION WITH THE SITUATION IN THE MIDDLE EAST

35. Following the outbreak of hostilities in the Middle East in October 1973, the Council issued several calls for the immediate start of negotiations between the parties, the first being S C resolution 338 (1973). The two sponsors of draft resolution S/11036, the USSR and the United States, affirmed resolution 242 (1967) as the main instrument for the settlement of the conflict in the Middle East and urged the parties and the members of the Council to initiate the search for a peaceful settlement through negotiations in accordance with the Charter of the United Nations and under appropriate auspices. Spokesmen for the parties involved differed as to the goals and the procedures of the suggested negotiations, one side advocating direct talks, the other side rejecting direct negotiations at that time and favouring mainly the involvement of the United Nations.⁷² Under the draft resolution which was adopted as resolution 338 (1973),⁷³ the Security Council *inter alia*:

⁷⁰ S/10838/Rev.1 was unanimously adopted as S C resolution 322 (1972) at the 1677th meeting (S C (27), 1677th mtg., para. 83).

⁷¹ For texts of relevant statements see S C (27), 1672nd mtg.: Ethiopia, para. 164; Sierra Leone, para. 63; 1673rd mtg.: Somalia, para. 117; United Republic of Tanzania, para. 5; Mr. Dos Santos, para. 36; 1674th mtg.: Belgium, para. 75; 1676th mtg.: Italy, para. 30; Somalia, para. 63; Yugoslavia, para. 3; 1677th mtg.: France, para. 47; India, para. 16; Japan, para. 30; Panama, para. 3; Somalia, para. 78; United Kingdom, para. 64; United States, para. 76.

⁷² For the texts of relevant statements see S C (28), 1743rd mtg.: Egypt, para. 23; Israel, para. 60; United States, para. 4; 1747th mtg.: USSR, para. 11; United States, paras. 5-10.

⁷³ Draft resolution S/11036 was adopted by 14 votes to none, with one member not participating, as resolution 338 (1973). See S C (28), 1747th mtg., para. 170, for the vote.

"2. *Calls upon* the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts;

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

36. In accordance with resolution 338 (1973) steps were taken to start negotiations between the parties. The Council convened to discuss the arrangements for the proposed Peace Conference on the Middle East and adopted resolution 344 (1973)⁷⁴ which read in relevant parts as follows:

"The Security Council,

"*Considering* that it has decided by its resolution 338 (1973) of 22 October 1973 that talks among the parties to the Middle East conflict for the implementation of resolution 242 (1967) of 22 November 1967 should be held under "appropriate auspices",

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

"1. *Expresses the hope* that the Peace Conference will make speedy progress towards the establishment of a just and durable peace in the Middle East;

"2. *Expresses its confidence* that the Secretary-General will play a full and effective role at the Conference, in accordance with the relevant resolution of the Security Council and that he will preside over its proceedings, if the parties so desire;

"3. *Requests* the Secretary-General to keep the Council suitably informed of the developments in negotiations at the Conference, in order to enable it to review the problems on a continuing basis; . . ."

During the debate several speakers stated that the phrase "under appropriate auspices" in resolution 338 (1973) referred to those of the United Nations, that the arrangements for the Peace Conference on the Middle East were not sufficient to implement the phrase in resolution 338, and that the new resolution constituted an attempt to involve the United Nations and, in particular, the Council in this upcoming conference directly related to the responsibility of the Council for the maintenance of peace and security. One of these speakers went further by stating that his Government could not accept the abdication of this responsibility by the Council; in his opinion the Council would have to give its approval to the final peace settlement by accompanying it with suitable guarantees, but resolution 344 (1973) failed to spell out the link between the negotiations and the Council or to establish the conditions under which the Secretary-General would be invited to the Conference and under which he would keep the Council informed. Others abstained in the vote because they held that the text adopted could not be supported at that moment since negotiations regarding invitations to the conference were still in progress and since previous resolutions contained the whole framework for the conference and the peace negotiations.⁷⁵

⁷⁴Draft resolution S/11156, submitted by the ten non-permanent members of the Council, was adopted at the 1760th mtg. by 10 votes to none, with 4 abstentions, and with one member not participating in the vote, as resolution 344 (1973). See S C (28), 1760th mtg., para. 11.

⁷⁵For texts of relevant statements see S C (28), 1760th mtg.: China, para. 30; France, para. 13; Guinea, para. 4; United Kingdom, para. 22; United States, para. 24.

37. In connexion with the renewal of the United Nations Disengagement Observer Force for another six months, the Council included the report of the Secretary-General⁷⁶ in the agenda. The Secretary-General, in orally introducing his report in the Council, emphasized the urgency of a negotiated settlement between the two parties involved. Several representatives expressed the hope that the peace negotiations would be renewed and called urgently for a resumption of the Peace Conference in Geneva as the most suitable forum for the conduct of the peace talks under resolution 338 (1973). The President, speaking as representative of the United States, stated that his Government shared the sense of urgency and would make every effort to advance step by step towards peace in the area.⁷⁷ The draft resolution (S/11565) was jointly submitted by Austria, Indonesia, Kenya, Mauritania, Peru and the United Republic of Cameroon and was adopted as resolution 363 (1974),⁷⁸ which "called upon the parties concerned to implement immediately Security Council resolution 338 (1973)."

3. DECISIONS OF 28 FEBRUARY 1974 AND 28 MAY 1974 IN CONNEXION WITH THE COMPLAINT BY IRAQ

38. During the debate concerning frontier incidents involving Iran and Iraq, all speakers urged the use of peaceful means in settling these incidents and called for bilateral negotiations between the parties involved. While one party insisted on strictly bilateral exchanges through normal diplomatic channels, the other sought to employ also judicial settlement and third party involvement in the search for a solution. Following the mission of the Special Representative of the Secretary-General and the report of the Secretary-General thereon,⁷⁹ the Council resumed the discussion. Most representatives explicitly acknowledged the important third party role played by the United Nations and emphasized the use of the good offices of the Secretary-General through his Special Representative in bringing about the agreement among the parties regarding the next stages of the process of resolving the issue of the frontier incidents. Two members of the Council pointed out that the Secretary-General should seek the agreement of the Council regarding the nature and extent of his assistance to the parties in the exercise of his good offices.⁸⁰

39. At the 1764th meeting, on 28 February 1974, the President read a statement⁸¹ representing the consensus of the members of the Council, which provided *inter alia*:

"2. . . . The Council reaffirms the fundamental principles set out in the Charter regarding respect for the territorial sovereignty of States and the pacific settlement of disputes . . .

⁷⁶S C (29), Suppl. for Oct.-Dec., 1974, S/11563, dated 27 November 1974.

⁷⁷For texts of relevant statements see S C (29), 1809th mtg.: Byelorussian SSR, para. 122; France, para. 102; Peru, para. 14; President (United States), para. 145; USSR, para. 39; United Republic of Cameroon, para. 64; Secretary-General, para. 7.

⁷⁸Draft resolution S/11565 was adopted at the 1809th mtg. by 13 votes to none, with two members not participating in the vote, as resolution 363 (1974). See S C (29), 1809th mtg., para. 24.

⁷⁹S C (29), Suppl. for April-June, 1974, S/11291.

⁸⁰For texts of relevant statements see S C (29), 1762nd mtg.: Iran, paras. 35, 106, 113; Iraq, paras. 6, 92, 112; 1764th mtg.: China, para. 5; President, para. 3; 1770th mtg.: Byelorussian SSR, para. 74; China, para. 30; Iran, paras. 95, 111; Iraq, paras. 103, 112; President (Kenya), para. 3; USSR, paras. 7, 17; United Kingdom, para. 36; United States, para. 47.

⁸¹S C (29), Suppl. for Jan.-March, 1974, S/11229.

"3. From the information available to the Council, it appears that the cause of the events lies, *inter alia*, in the fact that the legal basis for the delimitation of the boundary between the parties is contested.

"4. The Council has noted the recent exchange of ambassadors between the two States and hopes that this could constitute a channel through which problems affecting relations between the parties might be resolved.

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

"—to appoint as soon as possible a special representative . . . and

"—to report within three months."

On 20 May 1974, the Secretary-General submitted his report⁸² in accordance with the consensus of the Council, in which he communicated to the Council the points of agreement between the parties arrived at through his Special Representative, acting in exercise of the good offices of the Secretary-General.

40. At its 1770th meeting on 28 May 1974, the Council considered this report and adopted a draft resolution which had emerged as a result of prior consultations as resolution 348 (1974).⁸³ The relevant parts read as follows:

"The Security Council,

"Recalling its consensus adopted on 28 February 1974 (S/11229),

"1. Takes note with appreciation of the Secretary-General's report, which was circulated to the Security Council on 20 May 1974 (S/11291);

"2. Welcomes the reported determination on the part of Iran and Iraq to de-escalate the prevailing situation and to improve their relations and, in particular, the fact that both countries have agreed through the Secretary-General's Special Representative, acting in the exercise of the Secretary-General's good offices, to the following points:

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

"4. Invites the Secretary-General to lend whatever assistance may be requested by both countries in connexion with the said agreement."

4. DECISIONS OF 20 JULY 1974, 14 AUGUST 1974, 16 AUGUST 1974, 30 AUGUST 1974, AND 13 DECEMBER 1974 IN CONNEXION WITH THE SITUATION IN CYPRUS

41. During the debates in the Council concerning the crisis of summer 1974, numerous speakers called for negotiations between the parties directly involved and among the guarantor States to seek a just and lasting peaceful settlement of the intercommunal issues dividing the island republic and the neighbouring States. Most representatives invoked the principles of the Charter of the United Nations for the pacific settlement of disputes and indicated that the continued involvement of the United Nations, in particular in the person

⁸²S C (29), Suppl. for April-June, 1974, S/11211.

⁸³S/11299 adopted without change at the 1770th meeting by 14 votes to none, with one member not participating in the vote, as resolution 348 (1974). See S C (29), 1770th mtg., paras. 31 and 32.

of the Secretary-General and his Representative, was highly desirable and useful. One representative called for negotiations under the chairmanship of the Secretary-General and proposed the principal participation of the Security Council in the search for a solution. The representative of Cyprus raised the question whether negotiations could be fair and open while the invader was occupying large parts of the territory.⁸⁴

42. At the 1781st meeting, on 20 July 1974, the Council adopted resolution 353 (1974) which had emerged as a result of consultations among members of the Council.⁸⁵ Its paragraph 5 reads as follows:

"The Security Council,

" . . .

"5. Calls upon Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland to enter into negotiations without delay for the restoration of peace in the area and constitutional government in Cyprus and to keep the Secretary-General informed;"

43. At the 1792nd meeting, on 14 August 1974, the Council adopted resolution 357 (1974), originally submitted by the United Kingdom⁸⁶ and revised during consultations among members of the Council.⁸⁷ Its paragraph 3 reads as follows:

"The Security Council,

" . . .

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

44. At the 1794th meeting, on 16 August 1974, the Council adopted⁸⁸ resolution 360 (1974), which had been submitted by France⁸⁹ and had been twice revised.⁹⁰ It provided under paragraph 3:

"The Security Council,

" . . .

"3. Urges the parties to resume without delay, in an atmosphere of constructive co-operation, the negotiations called for in resolution 353 (1974) whose outcome should not be impeded or prejudged by the acquisition of advantages resulting from military operations;"

45. At the 1795th meeting, on 30 August 1974, a draft resolution sponsored by Austria, France and the United Kingdom⁹¹ was voted upon and adopted as resolution 361 (1974);⁹² it provided *inter alia*:

"The Security Council,

" . . .

⁸⁴For texts of relevant statements see S C (29), 1779th mtg.: paras. 28, 88; 1780th mtg.: United States, para. 120; 1781st mtg.: Austria, para. 145; United Kingdom, paras. 41, 243; United States, para. 53; 1782nd mtg.: United States, para. 103; 1792nd mtg.: United Kingdom, para. 8; 1794th mtg.: President (USSR), para. 83; 1810th mtg.: Cyprus, para. 16; United States, para. 219.

⁸⁵Draft resolution S/11350 was adopted unanimously without change at the 1781st mtg. as S C resolution 353 (1974).

⁸⁶S C (29), Suppl. for July-Sept., 1974, S/11446.

⁸⁷Revised draft resolution S/11446/Rev.1 was adopted unanimously without change at the 1792nd mtg. as S C resolution 357 (1974).

⁸⁸Adopted at the 1794th mtg. by 11 votes to none, with 3 abstentions and one member not participating in the vote, as S C resolution 360 (1974).

⁸⁹S C (29), Suppl. for July-Sept., 1974, S/11450.

⁹⁰Revised draft resolution S/11450/Rev. 2 was adopted without further change as S C resolution 360 (1974).

⁹¹S/11479.

⁹²Draft resolution S/11479 was adopted unanimously without change at the 1795th mtg. as S C resolution 361 (1974).

"1. Expresses its appreciation to the Secretary-General for the part he has played in bringing about talks between the leaders of the two communities in Cyprus;

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

"7. Calls upon all parties, as a demonstration of good faith, to take, both individually and in co-operation with each other, all steps which may promote comprehensive and successful negotiations;"

46. In connexion with the extension of the mandate of UNFICYP at the 1810th meeting on 13 December 1974, the Council adopted resolution 364 (1974) which had emerged from consultations among members of the Council.⁹³ It provided *inter alia* as follows:

"The Security Council,

"Noting further that resolution 3212 (XXIX) enunciates certain principles intended to facilitate a solution to the current problems of Cyprus by peaceful means, in accordance with the purposes and principles of the United Nations,

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

5. DECISIONS OF 22 OCTOBER 1975 AND 6 NOVEMBER 1975 IN CONNEXION WITH THE SITUATION CONCERNING WESTERN SAHARA

47. At the 1850th meeting, on 22 October 1975, the Council adopted by consensus resolution 377 (1975),⁹⁴ which had been agreed upon in the course of informal consultations and read *inter alia* as follows:

"The Security Council,

"1. Acting in accordance with Article 34 of the Charter of the United Nations and without prejudice to any action which the General Assembly might take under the terms of its resolution 3292 (XXIX) of 13 December 1974 or to negotiations that the parties concerned and interested might undertake under Article 33 of the Charter, requests the Secretary-General to enter into immediate consultations with the parties concerned and interested and to report to the Security Council as soon as possible on the results of his con-

⁹³Draft resolution S/11573 was adopted at the 1810th mtg. by 14 votes to none, with one member not participating in the vote, as S C resolution 364 (1974).

⁹⁴For the President's declaration and the adoption by consensus of S C resolution 377 (1975), see S C (30), 1850th mtg., para. 19.

sultations in order to enable the Council to adopt the appropriate measures to deal with the present situation concerning Western Sahara;"

48. At the 1854th meeting, on 6 November 1974, after informal consultations, the Council adopted by consensus resolution 380 (1975).⁹⁵ It read *inter alia* as follows:

The Security Council,

"3. Calls upon Morocco and all other parties concerned and interested, without prejudice to any action which the General Assembly might take under the terms of its resolution 3292 (XXIX) of 13 December 1974 or any negotiations which the parties concerned and interested might undertake under Article 33 of the Charter of the United Nations, to co-operate fully with the Secretary-General in the fulfillment of the mandate entrusted to him in Security Council resolutions 377 (1975) and 379 (1975)."

49. During the Council's deliberations concerning Western Sahara, the meaning of the explicit reference to Article 33 of the Charter in resolution 377 (1975) was discussed. Some representatives insisted that the letter and spirit of Article 33 required that the interested parties should try to settle their conflicting views about Western Sahara through negotiations as espoused in the Charter. Another representative held that the particular issue before the Council needed to be dealt with by the Council and that the interested parties had to carry out any decisions taken by the Council in fulfilling their obligations under the Charter's provisions for the peaceful settlement of disputes. A third position was taken by another representative who demanded that the Council take forceful action to block, or put an end to, the aggressive action that threatened peace and security in the region; in doing so the Council would fulfill its obligations under Articles 33 and 34.⁹⁶

****B. In the General Assembly**

**1. THE QUESTION OF THE OBLIGATION OF THE PARTIES UNDER ARTICLE 33 (1) IN RELATION TO THE INTERVENTION OF THE GENERAL ASSEMBLY

**2. THE QUESTION OF THE APPLICATION OF ARTICLE 33 THROUGH PROCEDURES OF A GENERAL CHARACTER INSTITUTED BY THE GENERAL ASSEMBLY

⁹⁵For the President's statement and the adoption of the draft resolution (S/11870) as S C resolution 380 (1975), see S C (30), 1854th mtg., para. 6.

⁹⁶For texts of relevant statements and explicit references to Article 33, see S C (30), 1849th mtg.: Morocco, para. 40; 1850th mtg.: Algeria, paras. 5, 118; Morocco, para. 93; Spain, para. 108; 1852nd mtg.: Mauritania, para. 97; 1854th mtg.: Morocco, para. 28. There were numerous other references to Article 33 and Chapter VI throughout the debate concerning Western Sahara at the 1849th, 1850th, 1852nd and 1854th meetings.