The Authority Of The United Nations To 'Intervene' Within The Meaning Of Article 2(7) Of The Charter.

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Volume III

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Chapter I

The Definition of Intervention in the Security Council

The Security Council holds a special position in the hierarchy of United Nations organs. It is the organ with primary responsibility for the maintenance of international peace and security.[1] In the execution of this function it operates on behalf of all the Members of the United Nations[2] which, by signing the Charter, have agreed to accept and carry out the decisions of the Council taken in accordance with the Charter.[3]

The powers with which the Security Council is specially endowed for the discharge of its particular responsibilities are enumerated in Chapters VI, VII, VIII and XII - The Pacific Settlement of Disputes, Action with respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression, Regional Arrangements and the International Trusteeship System. These specific powers are, of course, subject to the overriding Purposes and Principles on which the United Nations was founded and in accordance with which the Council is specifically directed to act.[4]

The principle of non-intervention in the domestic affairs of Member States is one of those overriding Principles and hence ostensibly affects all the actions of the Security Council. To this general principle there is, however, one important exception. The Security Council is permitted to intervene in the domestic affairs of Member States under Chapter VII of the Charter; i.e., should the domestic policy of a Member State be conducive to a threat to the peace, or have led to a breach of the peace or to an act of aggression, the Security Council is not prevented from dealing therewith under this Chapter just because the policy in question prima facie

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1. Art.24(1).
2. ibid.
3. Art.25.
4. Art.24(2).

falls essentially within the domestic jurisdiction of the State concerned.[1]

This, however, is the only exception to the general application of the principle of non-intervention to the functions of the Security Council and hence all its other powers are governed by it.

In relation to the Security Council, the records of the San Francisco Conference make it quite clear that by the term 'intervene' both discussion of and recommendations concerning the domestic affairs of any particular State were meant.[2] Thus, if the subject matter of an item brought to the attention of the Security Council under either Chapter VI or VIII falls essentially within the domestic jurisdiction of any State, the Security Council cannot deal with it.[3] It can neither hold substantive debates on it, study it nor adopt recommendations dealing with it. Where a matter is found to be essentially domestic, the Security Council is totally incompetent. Nor is there any room, in this instance, for the development of a more flexible interpretation of the word 'intervene' which, as in the case of the General Assembly, would allow the Security Council to exercise some of its functions with respect to such domestic matters. Non-intervention, in the case of the Security Council, means total incapacity with respect to domestic matters and no process of interpretation can alter this.

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1. See Oppenheim-Lauterpacht, op.cit.,p.417,para.168f(f).

2. See Vol.I, ch.VI.

3. The powers of the Security Council under Chapter XII are irrelevant for present purposes.
   As adopted by the San Francisco Conference, Article 2(7) was also intended to govern the functions of the Security Council under Chapter VII of the Charter, with the exception, that is, of enforcement measures. The Australian delegation, which framed the present form of Article 2(7), made it clear, that even under Chapter VII the Security Council could not adopt recommendations with respect to domestic matters. However, in practice, this interpretation has not found general application in the Security Council. It is now generally agreed that if a matter is dealt with under Chapter VII of the Charter it has long ceased to be a matter essentially within the domestic jurisdiction of any State. See Oppenheim-Lauterpacht, op.cit., p.418-419, para.168f(h).

The reason for the inability to develop a more flexible interpretation of intervention for the Security Council than for the General Assembly lies in the nature of the functions and powers of the two organs.

The General Assembly is given general powers of discussion and recommendation over everything within the scope of the Charter and it has already been stressed just how extensive that scope is. In one way or another the United Nations appears to be concerned with almost every aspect of inter and intra-State life, and it is through the General Assembly that it manifests this concern. The General Assembly is concerned not only with the maintenance of international peace and security, subjects which are manifestly international, but also with such things as human rights, standards of living and economic and social progress, which subjects remain, for many purposes, essentially within the domestic jurisdiction of the Members.

In the exercise of the functions conferred upon it by those wide provisions, the General Assembly is directed to refrain from intervening in the domestic affairs of the Members but because there is such an overlapping of jurisdictions between the United Nations and the Members severally, with regard to matters which many regard as essentially within their domestic jurisdiction, at least for some purposes, there has been considerable difficulty in elucidating the exact extent of this prohibition. Such things as the standards of living and economic progress of nations are dealt with by the Charter but are also regarded as essentially domestic.

The prohibition of intervention in the domestic affairs of Members cannot mean, as was pointed out earlier,[1] that the General Assembly cannot deal, in any way, with such things as human rights, standards of living and conditions of economic and social progress, etc. If this meaning were attached to Article 2(7), at least half of the functions of the United Nations would have to be taken as

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1. Vol.I, ch. I,p.22.

pro non scripto. Such an interpretation would reduce the United Nations to a peace keeping machine and one glance at the Preamble of the Charter makes clear that it was meant to be more than this (though, of course, the maintenance of peace is the sine qua non without which the other tasks of the United Nations could not be carried out).

The prohibition of intervention in the domestic affairs of Members had to be rationalized with the other provisions of the Charter and it was seen in Volumes I and II just how this was achieved. The General Assembly has been considered competent to deal with such subjects as human rights, social and economic progress, standards of living and full employment in a general as opposed to a specific way and to be empowered to discuss such subjects generally and to address recommendations dealing therewith to the generality of States, but not to specific members. Furthermore, as a result of a process of development, a tendency has emerged not to regard simple discussion of the domestic matters of a specific State, nor the adoption of certain kinds of recommendations thereon as intervention.

This development in the interpretation placed upon the word 'intervene' is reasonable because, and only because, the Charter does confer on the General Assembly certain powers with respect to matters which are regarded, for many purposes, as essentially within the domestic jurisdiction of the Members. The Charter includes within its scope subjects which, for many purposes, are still regarded as essentially within the domestic jurisdiction of the Members, and the prohibition of intervention was included in the Charter in order to restrict the functions of the United Nations with respect thereto to certain types of actions. However, although the functions which the General Assembly could perform with respect to these matters were strictly limited, there was no inherent reason why the spectrum of these could not be widened by a process of interpretation and development, provided that this interpretation was not in fundamental disagreement with the whole scheme of the Charter. In the case of the General Assembly the more flexible definition of intervention worked out in practice did not constitute

a fundamental violation of the scheme of the Charter because the General Assembly was, initially, given a certain authority over matters which, in many other respects remained outside its powers. Such a development would not have been possible had the Charter not included within its scope such matters as standards of living, etc. Had the Charter not dealt, in some respects, with matters which remained for many purposes within the domestic jurisdiction of the Members of the United Nations but been confined to such admitted international matters such as the settlement of international disputes, arbitration, etc., no problem of interpreting the word 'intervene' would have arisen. Indeed, if such had been the general scheme of the Charter, there would have been no need to include in the Principles which were to govern the operation of the United Nations a reservation of domestic matters from its intervention. Domestic matters would have formed no part of the scheme of the United Nations and hence there would have been no need to include a prohibition of intervention therein. Any dealings with an essentially domestic matter would have been totally proscribed. But because matters which are regarded as essentially within the domestic jurisdiction of Members are also covered to some extent by the Charter, and because the General Assembly is given certain powers with respect thereto, it has been possible, by a process of interpretation, to widen the scope of these already existing and internationally accepted powers. The gradual extension of the existing powers of any organization is always possible by a process of interpretation. This is amply demonstrated by, for example, the growth in the powers of the federal Government of the United States by the process of constitutional interpretation by the Supreme Court. In the case of the United Nations, such a process of interpretation has already been applied to the Charter by the International Court of Justice in the Reparations for Injuries case.[1] However, what no process of interpretation can do is to provide for powers which

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1. 1949 I.C.J. Reports, p.174 et seq.

are not only absent from the constitution but positively excluded therefrom.

This is the situation in which the Security Council finds itself. The Security Council has no jurisdiction at all over matters which in any respect can be considered as essentially within the domestic jurisdiction of a Member State. Its jurisdiction is entirely international. The Security Council cannot, for example, deal with questions of human rights and fundamental freedoms per se or with questions affecting the standards of economic progress and development within each State. The Security Council bears the primary responsibility for the maintenance of international peaceand security, and indeed, this is its only major responsibility. The maintenance of international peace and security is, par excellence, an international matter, not a domestic one.

As the jurisdiction of the Security Council is, by the Charter, so carefully confined to purely international matters, no basis could be found on which to establish an interpretation of Article 2(7) which would allow that body to exercise some of its functions over domestic matters.[1]

The full impact of this argument and the contrast between the positions of the Security Council and the General Assembly will be better appreciated if the terms of Chapter VI are considered in some detail.

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1. The jurisdiction of the Security Council being confined to purely international matters, the inclusion of the prohibition of intervention in domestic matters may be said to have been inserted ex abundanti cautela. The jurisdiction of the Security Council being confined to international matters, the Council could not, being a legal person, exercise powers which are not conferred, even by implication, upon it. Professor Lauterpacht even doubted whether this prohibition was relevant to the Security Council; see Oppenheim-Lauterpacht, op.cit.,p.418,para.168f(h): "In general, it is doubtful whether, in its present formulation, Article 2, paragraph 7, serves any legally relevant purpose. ... The action of the Security Council can legally extend to intervention, but seeing that, as a rule, that body is competent only with regard to matters which affect or constitute a threat to international peace and security, such matters, having become the subject of direct international concern, are no longer essentially within the domestic jurisdiction of a State and as such excluded from intervention on the part of the Security Council."

Article 33 states:

> 1. The parties to a 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 it necessary, call upon the parties to settle their differencies by such means.

Under what circumstances could the Security Council exercise its powers under this Article with respect to matters which were considered by a majority to be essentially domestic? Article 33 deals with a 'dispute'. But to fall under the terms of this Article that dispute has to endanger the maintenance of international peace and security. The Security Council is not empowered thereby to deal with any matter. Its functions are to be directed, in terms of the Charter, not to the settling of internal differencies but to the elimination of threats to the peace. Domestic matters could not be considered under this Article.

Article 34 states:

> 1. The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Under what circumstances could the Security Council exercise its powers under this Article with respect to matters which were considered by the majority to be essentially domestic? The functions of the Council under this Article are essentially inquisitory. Inquiry is the essential preliminary for any Security Council action on a subject. Before any action can be taken by the Security Council under this Chapter, the Council must first determine the existence of a dispute or situation the continuance of which is likely to endanger the maintenance of international peace and security. Such a situation may be self-evident in which case presumably no protracted preliminary inquiry will be necessary. Should such a situation be self-evident, or should the Security Council, as a

result of its inquiries come to the conclusion that there does exist a dispute which is likely to endanger the maintenance of international peace and security, it may continue to deal with the matter and take actions to ameliorate the situation. But should it come to the conclusion that the matter has no bearing upon international peace and security, it will, by the very terms of its own constitution, have to give up dealing with it.

Article 35 gives to Members and Non-Members of the United Nations the right to bring disputes or situations of the type referred to in Article 34 to the notice of the Security Council. Again, this Article in no way enables the Security Council to deal in any way with a matter which remains essentially within the domestic jurisdiction of a State. If the Security Council, after the investigation provided for in Article 34, comes to the conclusion that the dispute or situation does or is likely to endanger the maintenance of international peace and security, then the matter in question has ceased to be domestic. If, on the other hand, it should decide that there was no dispute, or that such dispute as there was did not and was not likely to endanger the maintenance of international peace and security, then the Council would have to declare itself incompetent.

Article 36 states:

> 1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of settlement.
> 2. The Security Council should take into consideration any procedures for settlement of the dispute which have already been adopted by the parties.
> 3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Matters which were admitted to be domestic could not be dealt with under this Article. The Council is given certain powers of recommendation under this Article, but they refer to situations which are patently international in character. The Council can recommend 'appropriate procedures or methods of adjustment', in any dispute or situation the continuance of which is likely to endanger the maintenance

of international peace and security. If the Council decides that such a recommendation is necessary, its resultant action can in no way be affected by the prohibition of intervention, seeing that the matter is international. In the event, however, that there is no dispute or situation of the nature referred to in Article 33, the Council would not be able to deal with it under this Article.

Exactly the same considerations apply to the powers of the Security Council under Articles 37 and 38. If the Council, for example, does recommend the terms of settlement to the parties, its action is in no way affected by Article 2(7). But if no dispute which endangered the maintenance of international peace existed, could the Council act? The answer is definitely in the negative.

This examination of the terms of Chapter VI will have made clear the impossibility of the Security Council exercising any of its functions thereunder with respect to matters which are admitted to be domestic. The Council's functions under this Chapter relate solely to matters which are, by definition, international. It has no functions to perform over matters which are in any way domestic. It is completely devoid of functions with respect thereto, a fact which makes it impossible for the prohibition of intervention to undergo any process of development. It cannot be argued with respect to the Security Council that, for example, the discussion of and formation of recommendations concerning matters which are essentially within the domestic jurisdiction of a particular State, does not constitute intervention. A matter can only be dealt with under this Chapter of the Charter if it in some way endangers international peace and security. If it does so endanger them, it <u>ipso facto</u> ceases to be domestic in nature. If, however, the Council should decide that a matter was both domestic in origin and in addition involved no threat to the maintenance of international peace and security, its jurisdiction would cease. It could not, under such circumstances, continue to discuss such a matter and formulate recommendations thereon for it would be unable to found its jurisdiction on any Article of Chapter VI which gave it this power. The Security Council,

unlike the General Assembly, does not have general powers of discussion and recommendation over the whole field of activity of the United Nations. Its functions are strictly limited to matters which are purely international in aspect, a fact which renders the concept of intervention, as far as it is concerned, static. What is important in the Security Council and subject to dynamic modifications with the development of international relations is not the concept of non-intervention but that of domestic jurisdiction. The range of matters which are considered to be domestic will vary with the passage of time and independently of the wording of the Charter. However, as long as the powers of the Security Council under Chapter VI are specified in their present form, no developments in the law of intervention will be possible in that body.[1]

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1. These arguments apply, pari passu, to the functions of the Security Council under Chapter VIII.

Chapter II

Inclusion and Jurisdictional Discussion

Just as in the case of the General Assembly the strictures of the extreme non-technical definition of intervention were tempered by the necessities of correct procedure, so too they are in the case of the Security Council. The argument that because an item deals with a matter which falls essentially within the domestic jurisdiction of a particular State, it cannot be included in the agenda of the Council and discussed by that body is as out of place here as it was in the case of the General Assembly.

First, inclusion of an item in the agenda of the Security Council cannot constitute intervention in the domestic affairs of any State. A subject may well fall essentially within the domestic jurisdiction of some particular State and therefore not be subject to the Security Council's authority, but this is a fact which can only, logically, be determined after inclusion of the item in question, not before. This holds true for the Security Council just as for the General Assembly. The decision that a matter falls essentially within the domestic jurisdiction of a State is itself a decision of the Council. It is somewhat illogical to assert that the Council must decide that it is not competent to discuss a certain subject before it is formally seized of that subject. Before the Council can begin to function at all, even to decide the preliminary matter of competence it must be seized of the item in question. Hence, the inclusion of any item on the agenda of the Security Council cannot, per se, constitute intervention in the domestic affairs of a Member State. Inclusion in the agenda is the sine qua non, without which even the protestation that the matter does fall essentially within the domestic jurisdiction of a Member State cannot be accepted.

Secondly, preliminary or jurisdictional discussion cannot constitute intervention in the domestic affairs of any State. Whether a matter does or does not fall essentially within the domestic jurisdiction of a particular State can only be

decided after some discussion. It is highly unlikely that the Security Council, acting as it must in such circumstances in a judicial capacity, could take a vote immediately after the inclusion of an item in the agenda on whether or not it fell within the domestic jurisdiction of a particular State and this without any discussion at all. It is highly unlikely that it would, and indeed would be most unjust if it did, refuse to hear statements from its own Members on this question of competence.

All discussion leading up to the decision on the question of competence is, of necessity, without prejudice to that decision. It is argued, for example, that if the Security Council were, after such a discussion, to decide that it had no competence to consider the item in question, it would in effect by the very fact of such a discussion have been exercising a competence which it never possessed. Such an argument is essentially unsound and is really a criticism of the judicial process itself rather than a reflection on the competence of the Security Council. When there is a dispute regarding the competence of any judicial or quasi-judicial body, that dispute has to be resolved, whether by that body itself or some higher authority. The resolution of the question requires that someone or somebody somewhere exercise the appropriate competence. But it is the competence to resolve the preliminary issue which is being exercised, not a competence with reference directly to the substance of the question, and any discussion which is part of this preliminary function does not in any way prejudice or interfere with the rights of the contestants. The alternative to this system is the automatic acceptance of the claim of one as the contestant that a court or, in this case, the Security Council, is without competence to entertain a certain type of claim. Such a system is the antithesis of the rule of law.

The argument that any discussion of a domestic matter by the Security Council - even to decide the question of competence - constitutes intervention in the domestic affairs of the State concerned is, quite apart from the general reasons given above,

singularly inappropriate for an organ of the nature of the Security Council. The matters with which it has to deal are extremely delicate and difficult of elucidation. The question of competence is seldom one which is self-evident. It usually requires a lot of study and discussion before any decision on it can be reached. If the Security Council were not able to go into the matters which are brought to its attention it would, more or less, have to work in the dark, a situation which no sensible person would advocate.

It is admitted that in many if not all cases the Security Council will have to tie the question of competence to that of the merits and leave a decision on competence until the substance of the matter has been fully discussed and elucidated. Nevertheless, it would still be wrong to assert that such full discussion was tantamount to intervention. Where full discussion of the substance of a claim is required in order to arrive at any decision on the competence of a particular body to hear it, such discussion does not amount to intervention just because the particular body or court might happen, in the end of the day, to decide that, after all, the subject matter does fall essentially within the domestic jurisdiction of a particular State. For, although the particular court or body is enquiring into the substance of the matter in such circumstances, it is doing so in virtue of its preliminary or jurisdictional competence, not in virtue of any substantive authority. Nothing which leads up to the decision that a court or body has no competence to entertain a certain question, nothing which is part of the preliminary process of deciding the often complicated question of competence can partake of the nature of a usurpation of authority. The alternative, as was pointed out above, is the abnegation of the judicial process and the rule of law.[1]

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1. It is, of course, possible to suggest that all such decisions and discussions in the Security Council should take place prior to the inclusion of the item on the agenda. In theory, this is not possible, as has been pointed out above. But apart from that, it seems somewhat petty to assert that such jurisdictional discussions can take place prior to the inclusion of an item on the agenda but not after. Either way the item is being discussed.

These considerations apply with particular force to the functions of the Security Council under Chapter VI, The Pacific Settlement of Disputes. Under the heading of Pacific Settlement of Disputes, the Security Council is given a wide variety of functions to enable it to assist parties to settle their differencies peaceably. Albeit that no State is obliged to submit its domestic matters to settlement under the Charter, whether or not such matters are the subject of an international dispute is something which can only be determined by the Security Council. Such a decision cannot be left to one of the contestants. To do this, the Council must have the power to include on its agenda any subject which is alleged to form the subject of such a dispute. The functions of the Security Council are such that unless it is able to discuss such subjects fully, it will not be in a position to make the value judgements it is called upon to make. The principle of effectiveness is valid when considering jurisdictional questions though it is not necessarily so when dealing with substantive functions.[1]

By Article 33(2), the Security Council is enjoined to call upon the parties to a dispute to settle it by means of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or other peaceful means of their own choice, when it deems this necessary. Albeit that a dispute may concern a question which in general international law falls prima facie within the domestic jurisdiction of one of the parties, if the Security Council is unable to discuss the matter it will be unable to decide whether or not it has any jurisdiction. If it cannot discuss the matter, it will not be in a position to "deem" anything. If it cannot discuss, it will not even be in a position to decide whether there is a dispute which is in need of settlement by one of the means specified in Article 33(1).

The Security Council has power, under Article 34, to investigate any dispute

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1. See Vol.I, ch.V, p.126, Article 2(7) and the Principle of Effectiveness.

or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security. If this Article is to be meaningful at all, this type of discussion cannot constitute intervention. The Council is enjoined here to investigate, not situations which do endanger the maintenance of international peace and security, but rather those which might conceivably do so. Albeit that a subject may, prima facie, be within the domestic jurisdiction of a particular State, nevertheless, if the Council is to carry out its inquisitory functions, it must be able to discuss any subject, irrespective of its ostensible nature.

Under Article 36, the Security Council may, at any stage in a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, recommend appropriate procedures or methods of settlement or adjustment. If the Council is unable to discuss a subject in order to ascertain if it is of such a nature as to endanger international peace and security, it will be unable to form an opinion on the basis of which to decide whether or not any recommendations from it are required.

Furthermore, all Members of the United Nations and, under certain conditions, non-members as well,[1] have the right to bring to the notice of the Security Council[2] any dispute or situation which might lead to international friction or give rise to a dispute. If a State does bring such a dispute or situation to the notice of the Security Council and assert that it has led to a threat to the maintenance of international peace and security, the Security Council is surely bound to investigate the matter to satisfy itself of the truth or falsity of the allegation. In some cases it is no doubt true that a situation endangering international peace and

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1. Art.35(1) & (2).

2. And to the notice of the General Assembly.

security or likely to endanger them will be so obvious that no question of domestic jurisdiction can arise. But it does not necessarily follow that all such situations are so patent. Where they are not, then the Security Council is duty bound to examine them in order to ascertain just exactly what the international interest, if any, in the matter is. This it cannot do if inscription in the agenda of a doubtful matter and the discussion thereof themselves constitute intervention.

Chapter VI deals with the pacific settlement of disputes which are likely to endanger the maintenance of international peace and security. The very terms of this function make it essential that the Security Council be competent to include on its agenda and discuss any subject brought to its attention, irrespective of its ostensible nature. A matter may, in general international law, be considered as domestic, but the minute one State alleges that this matter is the subject of an international dispute, or that the conduct of some State concerning this subject is endangering the maintenance of international peace and security, or is even likely to endanger the same, or to give rise to friction, that subject becomes the centre of bona fide doubts as to its domestic status. Such doubts can only be resolved by the Council itself. It may be, of course, that after a full discussion and investigation the Council may decide that there is no likelihood of a situation arising which will lead to international friction or to a dispute the continuance of which would endanger the maintenance of international peace and security. In this case, no further action can be taken, but the discussions leading up to this conclusion cannot constitute intervention.

It has been suggested by some delegations that in order to merit examination, any complaint brought before the Council must at least present a prima facie case. It is argued that unless there is a certain amount of evidence the Council should not entertain complaints. Such an argument is essentially unsound. There is no basis for it in the provisions of the Charter. The functions of the Security Council, in this respect, are essentially inquisitory and as the guardian of international peace and security, it has a duty to investigate any complaint in which

it is alleged that some danger to the peace of the world is likely to arise.

It would indeed be very difficult to make out a prima facie case in some instances. How, for example, do you make out a prima facie case for the claim that a certain dispute is likely to endanger the maintenance of international peace and security? Worse still, how can you make out a prima facie case for the claim that a situation exists which might lead to international friction or give rise to a dispute which in turn is likely to endanger international peace and security? The terms of Chapter VI are themselves problematical. It does not deal with definite threats to the peace, breaches of the peace and acts of aggression. Those are dealt with by Chapter VII.[1] Therefore, whenever a request is made that the Security Council examine a certain dispute or situation, the subject concerned must be included in the agenda and discussed. If the allegations turn out to be groundless, or even worse, frivolous, then the way to deal with them is by summary dispatch, but not by outright rejection from the very beginning.

In all the Articles of Chapter VI in which the Security Council is enjoined to do something, whether it be to call upon the parties to a dispute to settle it, or to recommend appropriate measures of settlement the Council is in fact directed to make, in the first instance, some kind of value judgement. It has to decide whether the political situation concerned does fall within one of the categories mentioned in this Chapter. It is directed to determine whether a certain situation could lead to strife of international importance. In order to make such an appraisal, it is essential that it be in full possession of the facts and to that end it is imperative that it be in a position to discuss and investigate any matter brought to its attention without having to contend with the red herring of

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1. Even in the case of a definite threat to the peace, etc., there still has to be some determination that the threat exists before the Council can act. Therefore, the arguments re inclusion and preliminary discussion are relevant also to Chapter VII.

intervention.

Considerations similar to those discussed in relation to the provisions of Chapter VI of the Charter apply pari passu to the functions of the Security Council under Chapter VIII. Under this Chapter of the Charter, the Security Council is directed to encourage the pacific settlement of local disputes through such regional arrangements or agencies as exist, though this provision does not prejudice the application of Articles 34 and 35.[1] This provision could have no meaning if Article 2(7) were held to eliminate jurisdictional discussions designed to explore the matter. If the Security Council were unable to discuss any local situation because of the supposed limitations upon its powers, how could it decide whether or not there was a local dispute the settlement of which it should encourage by the methods stated?

Thus, while it remains true that should the Security Council come to the conclusion that the item before it dealt with a matter which remained essentially within the domestic jurisdiction of a particular State (i.e., involved no considerations of international peace and security) it would thereby be precluded from conducting any further discussions thereon or adopting resolutions dealing therewith, the effects of this interpretation of Article 2(7) are greatly mitigated by the fact that the Council is not thereby precluded from thoroughly exploring any item brought before it in order to determine if this is indeed the case.

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1. Art. 52(3) & (4).

Chapter III

The Practice of the Security Council on the Adoption of the Agenda

The practice of the Security Council on the question of the adoption of the agenda and the relevance of this to the principle of non-intervention in the domestic affairs of Members does not present a very orderly picture. In the Security Council certain States, in particular the Permanent Members, have been guilty of espousing contradictory points of view on the question of the inclusion of items on the agenda and the effect this has on the rights of other States. These contradictions run right throughout the entire practice of the Council on this point and are of such magnitude as to justify the conclusion that few States have really approached this subject from a purely legal point of view. The continual equivocation of States on this question points to the subjection of the question of inclusion of items on the agenda to non-legal considerations whereas, of course, not being a political question it ought to be dealt with as a matter of principle and in accordance with the same rules in each case.

It is worthy of note also that not a little of this confusion seems to be due to the fact that States have been unable to make up their minds on the exact relationship between inclusion of an item on the agenda, discussion thereof, and the principle of non-intervention. There has not, for example, been a general acceptance of the views set out in Chapter II on this point. Rather, the same States have sought to justify the inclusion of items and their exclusion from the agenda using arguments which are invariably in complete contrast to the ones which they used on previous occasions.

In the period 1946-1962[1] thirteen cases have been brought to the attention of

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1. The published records of the United Nations are not, as yet, available in the United Kingdom after that date.

the Security Council in which there was some doubt as to its competence.[1] These cases were: the Spanish Question,[2] the Greek Question (I),[3] the Indonesian Question,[4] the Czechoslovak Question,[5] the Hyderabad Question,[6] the Greek Question (III),[7] the Anglo-Iranian Oil Company Question,[8] the Moroccan Question,[9] the Algerian Question,[10] the Hungarian Question,[11] the Question of Oman,[12] the Racial Question in South Africa,[13] and the Angolan Question.[14]

Of these thirteen cases four, the Greek Question (I), the Czechoslovak Question, the Anglo-Iranian Oil Company Question and the Hungarian Question were included in the agenda despite the fact that objections had been raised on the grounds of

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1. A fourteenth case, the Greek Question (II), (Case No.16 of the Repertory, see Repertory, Vol.I,p.112) also involved the question of the competence of the Security Council, and one of its subsidiary organs. However, the case is not strictly relevant to the present inquiry, see Repertory, Vol.I, p.112.
2. Case No.14 of Repertory; See Repertory, Vol.I, p.106.
3. Case No.15 of Repertory; ibid, p.111.
4. Case No.17 of Repertory; ibid, p.115.
5. Case No.18 of Repertory; ibid, p.123.
6. See Repertory, Vol.II, pp. 252-253.
7. Case No.19 of Repertory; ibid, Vol.I, p.124.
8. Case No.20 of Repertory; ibid, p.124.
9. Case No.21 of Repertory; ibid, p.126.
10. Case No.28 of Repertory; ibid, Supplement No.I, Vol.I, p.53.
11. The Repertory has not been continued beyond 31 August 1956. Hence this case is not dealt with by it.
12. As above.
13. As above.
14. As above.

Article 2(7).[1] Other four were deleted from the definitive agenda after objections had been raised to their inclusion on the grounds of Article 2(7). These four were: the Greek Question (III), the Moroccan Question, the Algerian Question and the

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1. In the Greek Question (I), the voting on the question of inclusion in the agenda was as follows; (see S.C., 1st Yr., 2 Series, No.7, 59 mtg., p.197)

In favour of inclusion:	China, Egypt, France, Mexico, Poland, USSR, USA.
Against Inclusion:	Netherlands, United Kingdom.
Abstaining:	Australia, Brazil.

In the Czechoslovak Question, the voting on the question of inclusion in the agenda was as follows: (see S.C., 3rd Yr., Nos. 36-51, 268th mtg., pp. 101-102)

In favour of Inclusion:	Argentina, Belgium, Canada, China, Colombia, France, Syria, United Kingdom, USA.
Against Inclusion:	Ukrainian SSR, USSR.

In the Anglo-Iranian Oil Company Question; the voting in favour of inclusion was as follows: (see S.C., 6th Yr., 559th mtg., para. 54)

In favour of Inclusion:	Brazil, China, Ecuador, France, India, Netherlands, Turkey, United Kingdom, USA.
Against Inclusion:	USSR, Yugoslavia.

In the Hungarian Question, the voting in favour of inclusion was as follows:

a) See S.C., 11th Yr., 746th mtg., para. 35:

In favour of Inclusion:	Australia, Belgium, China, Cuba, France, Iran, Peru, United Kingdom, USA.
Against Inclusion:	USSR.
Abstaining:	Yugoslavia.

b) See S.C., 11th Yr., 752nd mtg., para. 6:

In favour of Inclusion:	Australia, Belgium, China, Cuba, France, Iran, Peru, United Kingdom, USA, Yugoslavia.
Against Inclusion:	USSR.

c) See S.C., 11th Yr., 753rd mtg., paras. 1-3: the agenda was adopted without vote, although the Soviet Union registered her protest prior to its adoption.

Question of Oman.[1] Yet another four - the Spanish Question, the Indonesian Question, the Racial Question in South Africa and the Angolan Question - were included in the definitive agenda without objection, although it transpired during the substantive debates that some of the members of the Council had doubts as to the competence of the Council to deal with them.[2] The thirteenth case in this

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1. In the Greek Question (III), the voting against inclusion in the agenda was as follows: (see S.C., 5th Yr., No.35, 493rd mtg., p.30)

In favour of Inclusion:	USSR, Yugoslavia.
Against Inclusion:	China, Cuba, Ecuador, Egypt, France, India, Norway, United Kingdom, USA.

In the Moroccan Question, the voting against inclusion in the agenda was as follows: (see S.C., 8th Yr., 624th mtg., para.45)

In favour of Inclusion:	China, Chile, Lebanon, Pakistan, USSR.
Against Inclusion:	Colombia, Denmark, France, United Kingdom, USA.
Abstaining:	Greece.

In the Algerian Question, the voting against inclusion in the agenda was as follows: (see S.C., 11th Yr., 730th mtg., para. 85)

In favour of Inclusion:	Iran, USSR.
Against Inclusion:	Australia, Belgium, Cuba, France, Peru, United Kingdom, USA.
Abstaining:	China, Yugoslavia.

In the Question of Oman, the voting against inclusion in the agenda was as follows: (see S.C., 12th Yr., 784th mtg., para. 87)

In favour of Inclusion:	Iraq, Philippines, Sweden, USSR.
Against Inclusion:	Australia, Colombia, Cuba, France, United Kingdom.
Abstaining:	USA.
Present but not voting:	China.

2. Inclusion of the Spanish Question, see S.C., 1st Yr., 1st Series, No.2, 32nd mtg., p.122.

Inclusion of the Indonesian Question, see S.C., 2nd Yr., No.67, 171st mtg., p.1617.

Inclusion of the Racial Situation in South Africa, see S.C., 15th Yr., 851st mtg., para.8.

Inclusion of the Angolan Question, see S.C., 16th Yr., 943rd mtg., para.8. On this occasion, while no member of the Council actively opposed inclusion of the item in the agenda, several did speak in favour of its inclusion. There not being any direct negative to the proposal to include this item in the agenda, it was included without a vote.

category, the Hyderabad Question, was included in the definitive agenda by 8 votes to 0, with 3 abstentions. In this case, however, a considerable number of the delegates who spoke in the debate on the adoption of the agenda expressed the opinion that the inclusion of the item in the definitive agenda was, in any case, without prejudice to the question of the Council's competence and it would appear that this was the principal reason for the acceptance of this item.[1]

At first sight, the honours would seem to be fairly equally divided. Four cases were included in the definitive agenda despite the fact that objections on the grounds of Article 2(7) were raised. Four cases were excluded after debates in which similar objections had been raised. Other four were included without a vote being taken, despite the fact that it became evident during the course of the subsequent debates that several Members of the Council had doubts as to the competence of the Council to deal with these items.

However, a closer examination of the second group of cases reveals a somewhat different aspect. It is evident that in the questions of Greece (III), Morocco and Algeria some of the States which voted against inclusion did so on grounds other than Article 2(7).

In the Greek Question (III), China voted against inclusion inter alia because she felt that this item concerned human rights which do not, in her opinion, come within the province of the Security Council but rather within that of the Economic and Social Council. In addition China felt that the proposal of this item by the Soviet Union was a mere propaganda stunt.[2] Egypt voted against the inclusion of this item because the agenda was already crowded and she was of the opinion that nothing would ever be done if the agenda were overcrowded in that fashion.[3]

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1. Inclusion of the Hyderabad Question, see S.C., 3rd Yr., No.109, 357th mtg., p.11.
2. S.C., 5th Yr., No.35, 493rd mtg., p.8.
3. ibid, pp.2-3.

Cuba voted against the inclusion of this item because she felt that it had been proposed for reasons other than those stated by the representatives of the USSR.[1] The United States voted against it because she considered that the charges of "unceasing terrorism and mass executions in Greece" were unfounded.[2] Norway voted against inclusion because in her opinion, it had nothing to do with international peace and security.[3]

Thus, in the Greek case, no conclusion can be drawn on whether non-competence is a good ground for the exclusion of items from the agenda or not. If we subtract the votes of China, Cuba, Egypt, the United States and Norway we are left without a majority against inclusion.

In the Moroccan case, there was no majority either way and the item was rejected by default.

In the Algerian Question, China did not support inclusion because, as a political action, she did not think that it would do any good.[4] Yugoslavia was of the same opinion.[5] Peru opposed the inclusion of this item because she felt that France could be counted upon to find a solution to the question herself.[6] The United States felt that consideration of this matter by the Council at that particular time would not contribute to a solution of the question.[7]

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1. ibid, p.12.
2. ibid, p.24.
3. ibid, p.31. The arguments of the United States and Norway are, of course, just subtle ways of challenging the competence of the Council, However, these challenges were not made overtly on the basis of Article 2(7).
4. S.C., 11th Yr., 730th mtg., paras. 32-34.
5. ibid, paras.69-72.
6. ibid, paras.43-49.
7. ibid, paras.81-84.

If these facts are taken into account the practice of the Council on this point assumes a different aspect. Taking this analysis into account, it would seem that the Security Council does not normally reject an item because of a supposed lack of competence. Of the thirteen cases dealt with, it would seem that only one, Oman, was rejected because of a supposed lack of competence. Of the others, four were included despite objections based on Article 2(7) of the Charter; four were included without a vote, despite the fact that it appeared later on that several members of the Council had doubts as to the competence of the Council to deal with these; one was included because its inclusion was thought not to prejudice the question of the Council's competence; one was rejected by default, there being no majority either way; and two were rejected mainly on political grounds, although it must not be forgotten that doubts as to the competence of the Council to deal with these two did contribute to their exclusion from the agenda.

From this, it is tempting to conclude that, in general, it is the practice of the Security Council not to exclude any item from the definitive agenda on jurisdictional grounds and that the Council accepts the theory that jurisdiction is something which can safely be dealt with once an item is inscribed on the agenda. It is tempting to conclude that, in Council practice, the question of whether an item is or is not domestic does not have any importance from the point of view of inclusion and discussion and that the views on this subject elaborated in Chapter III are generally accepted in that body.

Unfortunately, it is not possible to draw this conclusion. The adoption of an agenda containing an item the domestic status of which is in doubt is invariably the occasion for major attempts to obtain the deletion of such item, and the reason given is always the same. Some Member or Members of the Council invariably assert that inclusion and discussion of such an item would constitute intervention.

This, in itself, is regrettable. It is unfortunate that, at this late stage

in the development of the United Nations, the inclusion of an item on the agenda, the status of which is in doubt, should still give rise to disputes as to the exact legal effects of such an action. However, these defects of procedure could be overlooked and counted of little importance if, a) allegations that inclusion and discussion of such items constitute intervention were always overruled, and b) States, Members of the Security Council, adopted a consistent attitude towards this question, irrespective of the circumstances. Before any conclusion could be drawn from the Council practice on this point, both these conditions would have to be satisfied.

Unfortunately, this is not the case. Condition a) does, in general, appear to be fulfilled. Items are not, generally, excluded from the agenda on jurisdictional grounds, although, of course, this does happen which, in itself, indicates a certain indecision on the part of the Council Members, Condition b), however, is definitely not satisfied and it is this factor which renders virtually useless the practice of the Council as an aid to the interpretation and application of Article 2(7).

The Members of the Security Council, in particular the Permanent Members, have not adopted a consistent attitude towards the question of inclusion and discussion. They do not demonstrate a consistency of view as to the legal effects, if any, of this. On a closer examination of the agenda debates, it is found that States will support both the inclusion of items the domestic nature of which is in doubt and their deletion. To support the inclusion of such an item they will use arguments which are the negation of those which they used to urge the deletion of similar doubtful subjects on other occasions.

The continual equivocation of Members of the Security Council on this question points to the subjection of this entire matter to the political circumstances in which the various items are raised. The one striking feature of the debates about to be examined is the fact that the arguments used vary according to whose

affairs are being brought to the attention of the Security Council. The arguments vary according to the political circumstances, and little or no attempt has been made so far to deal with this question consistently, as a matter of principle. The result is that little weight can be attached to the apparent pattern of Council practice on this matter.

Chapter IV

Contradictions in Security Council Practice with regard to the Question of Inclusion and Discussion

The contradictions in the practice of the Security Council on this point are curious not only in themselves, but also when compared with the procedure followed and the statements made by the Members at the second meeting of this body held in London in 1946. At this meeting the Members of the Council had to consider whether or not to include in the agenda three items - a complaint by Iran against the Soviet Union,[1] a communication from the Soviet Union regarding the situation in Greece, which at this time was torn by civil war,[2] and a communication from the Ukrainian SSR., regarding the situation in Indonesia.[3]

The procedure at this early stage in the development of the Security Council was not at all formal, and all three items were included on the agenda without any opposition. What is interesting to note, however, is the attitude which the Members of the Council took towards the question of inclusion. Nobody opposed any of the items on the grounds, for example, that no prima facie case had been presented to the Council or that two of them dealt with matters which appeared to be within the domestic jurisdiction of the States concerned.

In particular, the Soviet Union did not oppose the inclusion of the item dealing with the Iranian complaint against her but on the contrary, almost seemed to welcome a discussion of the matter. Mr. Vyshinsky said:[4]

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1. S.C., 1st Yr., 1st Series, Suppl.No.1, Annex 2A, p.16.
2. ibid, Annex 3, p.73.
3. ibid, Annex 4, p.76.
4. S.C., 1st Yr., 1st Series, No.1, 2nd rtg., p.16. This case is not, of course, strictly relevant to the question of intervention by the United Nations in the domestic affairs of a State. Nevertheless, it does demonstrate a certain flexibility in the Soviet approach to the question of inclusion, a flexibility which was not so marked later on.

> There is one point I wish to clarify: that is the inclusion of the Iranian question on the Security Council's agenda. Does this mean consideration of the substance of the question or discussion of whether it should come before the Council at all?
>
> If this item is placed on the agenda so that we may discuss whether the question should be considered, then I have no objection to its inclusion on the agenda for the next meeting. I should like to explain my reasons. The Soviet delegation, on the authority of the Soviet Government, has put forward reasons proving that the statement of the Iranian Government should not be considered by the Security Council.
>
> It therefore seems to me that we should, in the first place, thoroughly discuss this matter, and, as the Chairman suggests, the Soviet delegation should in any case have the opportunity at the next meeting of putting forward its reasons why this question should not be considered by the Security Council.

There was no hint here of the argument that as the Iranian Government had not presented a prima facie case, the item could not even be included in the agenda. There was no suggestion that the Iranian charges against the Soviet Union were a complete fabrication and as such should not receive any consideration by the Council. In fact, Mr. Vyshinsky later in the debate went out of his way to stress the right which every member of the United Nations had to be heard at the Council table. He said:[1]

> I should like to avoid possible misunderstanding with regard to procedure. Every Member of the United Nations has undoubtedly the right to be heard by the Security Council. I am raising no objection to that. I only wish to bring to the Security Council's notice that the mere fact of discussing this or that complaint should not prejudice the question as to whether or not the Security Council will consider the declaration under discussion.

These views of the Soviet delegation were supported by the Chairman, Mr. Makin of Australia, who said:[2]

> In answer to the representative of the Union of Soviet Socialist Republics, I should like to say that the inclusion of the item in this agenda does give an opportunity for the Council to have a

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1. ibid, p.19; emphasis added.

2. ibid, p.16.

discussion, and that the USSR could, at the initial stage of that discussion, make such proposal as it might think proper. The inclusion would not deny to the USSR representative the opportunity of being able to move in whatever direction he might wish.

Great Britain adopted views similar to those of the Soviet Union, and while reciting them entails some repetition, they are important for they show how the attitude of Great Britain changed later on. Mr. Bevin, the Foreign Secretary, said:[1]

> I am very anxious, in all these cases, that complainants should be heard by the Council, whoever they may be. I think it is a mistake if a Government feels that, having a complaint against another Power, whether it be great or small, it cannot come to this Council and state its case. While the Government I represent has been included in subsequent charges of endangering peace, in so far as I am principally responsible or at least my Government is principally responsible, in the case of Greece, I shall offer no objection to the fullest investigation and discussion. In fact, I am so tired of these charges made by the Government of the Union of Soviet Socialist Republics in private assembly that no one will be happier than I shall be to see them brought out into the open and to see that the British Government has a chance to clear its conduct in connection with this country. (Greece).

Indeed Mr. Bevin went further, and seemed to suggest that the Council should be free to discuss any subject whatever, irrespective of jurisdictional questions. He said:[2]

> ... I think it ought to be settled now that, when we have heard a case, it is then open to discussion as to whether we should dispose of the matter or whether we should take any other steps to settle it. I do not want the situation to arise that, after we have gone through all the performance of hearing a case, somebody says that the Council cannot discuss it.
>
> I want the facts placed on the table and the Council to be free to discuss the case and arrive at a means of disposing of it in some way or other, and I want all countries concerned to be heard.

The attitude of the United States towards the question of inclusion was, at this stage, similar. Here the United States representative, Mr. Stettinius said:[3]

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1. ibid, p.16.
2. ibid, p.20.
3. ibid, p.18; emphasis added.

> I think the situation would be clarified in all our minds if we could agree on the question of these cases being put on the agenda for discussion at the next meeting of the Council.
>
> While I am speaking, I wish to make very clear that the United States Government believes that <u>any Member country of the United Nations which makes a complaint has a right to be heard at this table.</u>

Informality and co-operation were the key words at this meeting of the Security Council. It seems that, at this meeting at any rate, the three Great Powers here quoted considered that any State which made a complaint against another had a right to be heard at the Council table and that all items should therefore be included. Nothing was heard at this meeting of the argument: 'This matter is within the domestic jurisdiction of State X and therefore can neither be included in the agenda nor discussed by the Council'.

However, this conciliatory attitude did not continue for long and with its demise contradictory statements and attitudes began to accumulate.

For the sake of clarity, (or rather, to demonstrate 'clearly' the extent of the confusion to be found in the Security Council practice on this point) it will be most convenient to discuss the views of each State separately, rather than to deal with the views of all States in relation to a particular case.

1. <u>The Permanent Members of the Security Council</u>

(a) <u>The United Kingdom</u>

Mr. Bevin's laudable sentiment that all complainants should be heard by the Council, has not been followed by subsequent British delegations, and the United Kingdom has put forward a whole gamut of arguments relating to the question of inclusion and discussion, several of which are mutually exclusive.

<u>First.</u> <u>The subject matter is domestic and hence, as it cannot be discussed, cannot be included in the agenda. Discussion itself constitutes intervention in the domestic affairs of a member State.</u>

In four of the above cases, the British delegation has opposed the inclusion of items in the agenda solely because they dealt with matters which, in its opinion, fell within the domestic jurisdiction of a particular State. It was contended

that to discuss such matters would constitute intervention in the affairs of the State concerned. These cases were, the Greek Question (III), the Moroccan Question, the Algerian Question and the Question of Oman.

This can be designated as the a priori approach to the question of competence. What, in effect, the British and other delegations which adopted this approach, are saying is that decisions on the Council's competence should be taken by the Members of the Council individually, prior to the inclusion of the item on the agenda and without the benefit of any explanatory discussion. The resultant vote on inclusion or exclusion would thus merely reflect decisions taken by the Members of the Council in their individual capacities, not as Council Members.

In 1950, the representative of the USSR proposed that the item, "The unceasing terrorism and mass executions in Greece," be included on the agenda of the Council.[1] The item was not included, Great Britain being among the nations which voted for its exclusion.[2] In opposing inclusion of this item, Sir Gladwyn Jebb said that as the question was clearly one which fell within the domestic jurisdiction of Greece, it would be wholly improper to include it on the agenda of the Council, as the United Nations was forbidden by the terms of Article 2(7) from discussing such items.[3]

Again, in 1953, the same argument was put forward, this time in connection with the Moroccan Case. By a letter dated 21st August, 1953, the representatives of 15 states requested that an item, relating to the situation created "by the unlawful intervention of France in Morocco and the overthrow of its legitimate sovereign", be included in the agenda of the Council.[4] Here, Sir Gladwyn Jebb

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1. S.C., 5th Yr., No.35, 493rd mtg., pp.1-2.
2. Supra, Ch.III, p.21.
3. S.C., 5th Yr., No.35, 493rd mtg., p.22.
4. S.C., 8th Yr., Suppl. for July, August and September, p. 51, S/3085.

said:[1]

> In the view of Her Majesty's Government, the question is outside the competence of the Security Council. Therefore, even apart from practical considerations, the item should not be placed on the agenda. We submit, in fact, that consideration of the question would involve interference in the domestic affairs of a Member State, and such interference might have grave consequences, and might even have consequences which would be grave for the existence of our Organization.

In the Algerian Question, the British delegation stated that in its view, discussion per se constituted intervention where the subject matter of the item was within the domestic jurisdiction of a State. This question was brought to the attention of the Security Council in 1956 by the representatives of thirteen Member States of the United Nations who, in a letter dated 13 June, requested that it be included on the Council's agenda.[2] The item was not included in the agenda and in stating Britain's reasons for voting against inclusion, Sir Pierson Dickson said:[3]

> As the French representative has pointed out, the Security Council is precluded by the terms of the Charter from considering this matter, since to do so would be tantamount to intervening in the internal affairs of France. There can surely be no dispute on this point. Algeria is constitutionally an integral part of France; indeed it has been a part of Metropolitan France for over a hundred years. Any discussion, therefore, by the Council of the situation in Algeria would inevitably constitute interference in a matter lying essentially within the domestic jurisdiction of a Member State. The question is therefore clearly outside the competence of the Security Council.

A similar attitude was adopted when the question of Oman was brought to the attention of the Security Council in 1957. In this case, the representative of eleven Arab States requested that the Council consider the situation arising from "the armed aggression by the United Kingdom of Great Britain and Northern Ireland against the independence, sovereignty, and territorial integrity of the Imanate

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1. ibid, 620th mtg., para.16.
2. S.C., 11th Yr., Suppl. for April, May and June 1956, p.74, Doc.S/3609.
3. ibid, 730th mtg., para.52.

of Oman."[1] In opposing the inclusion of this item on the agenda, Sir Pierson Dickson said that the suppression of the armed uprising of the Iman of Oman against the Sultan of Muscat and Oman was a matter entirely within the domestic jurisdiction of that said ruler.[2]

"I am very anxious," said Mr. Ernest Bevin in 1946, "in all these cases that complainants should be heard by the Council, whoever they may be." The British Government would seem to have changed its opinion somewhat. This shift in opinion is all the more interesting because, of course, these four cases were all brought to the attention of the Security Council under Chapter VI, alleging the existence of a dispute or situation the continuance of which could have endangered the maintenance of international peace and security. The argument used by the British delegation on these occasions amounts to saying: "We don't think that any such dispute or situation exists and we are not prepared to listen to any evidence which might prove that it does".

Second. All Items Should Be Included

The greatest contradictions in British policy towards the criteria which have to be present before a question is admitted to the Security Council agenda can conveniently be grouped under this heading. They relate to a variety of arguments such as that a prima facie case has to be made out for the inclusion of an item; that inclusion does not prejudice the question of competence, and that in order to be sure on any question of competence, the matter has first to be discussed and hence included on the agenda.

In 1946 the Greek Question (I) was raised in the Security Council at the instance of the Ukrainian SSR. In a cablegram, the Foreign Minister of the Ukraine

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1. S.C., 12th Yr., Suppl. for July, August and September, S/3865 & Add. 1, p.16.
2. S.C., 12th Yr., 783rd mtg., paras. 27-59.

brought to the attention of the Security Council "the situation in the Balkans which has resulted from the policy of the Greek Government, and which endangers international peace and security...".[1]

Several delegations objected to the inclusion of this item on the grounds that it did not present a prima facie case. It was, in their opinion, an unsubstantiated allegation. Giving the British view, Sir Alexander Cadogan said:[2]

> ...Therefore I heartily endorse the proposal of the Netherlands' representative that the representative of the Ukraine be asked to recast and to amplify his communication.....
> ...What I wish to do now is to say that I support the representative of the Netherlands in his proposal to request the representative of the Ukraine to recast his communication in a different and better form.

Again, later in the same debate, replying to Mr. Gromyko, Sir Alexander said that he had no objection to the matter being discussed seriously. But he said, to merit serious discussion it had to be presented seriously, not in a frivolous manner and consist "simply of a number of unsupported charges which are flung recklessly in the air".[3]

Great Britain, in this instance, specifically demanded that before an item be included in the agenda, there be a prima facie case, though, of course, how the Council was to determine this prior to inclusion was not really explained, a fact which will be seen to be of importance when other British statements on this subject are examined below. Here Sir Alexander Cadogan said:[4]

> I want to make it quite clear... that my Government does not wish to put any obstacle in the way of discussion of any matter properly presented to the Council which calls for the attention of the Council.

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1. S.C., 1st Yr., 2nd Series, Suppl. No.5, pp.149-151, Annex 8, S/137.
2. ibid., No.4, 54th mtg., p.36.
3. ibid., p.39.
4. S.C., 1st Yr., Second Series, No.6, 58th mtg., p.162.

> ..... What does perturb my Government is the procedure adopted in the present case of using the Security Council for the purpose of obtaining wide dissemination of unsupported charges and of seeking thereby, at the outset, to cause prejudice against fellow Members of the United Nations.....
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> I hope, therefore, that the Ukraine representative may be persuaded to substitute for his recent paper a more sober and less colourful document, summarising briefly the evidence he has in support of his charges. It need not be a very full document, but I think that it should contain some evidence, enough to enable the Council to determine whether there is a prima facie case or not. I would be disposed to agree with the representative of the Netherlands, who said... that there might be two ways of drawing the attention of the Council to the matter.[1]
>
> One might be simply to ask the Council to consider a particular situation in some parts of the world, or one might put forward a complaint supported by sufficient evidence to establish a prima facie case. What I consider to be unjustifiable is to do neither of these two things, something in between, to raise a situation and then make a number of accusations without any supporting evidence.

It is important to note here, that the Ukraine contended[2] that "the principal factor conducive to the situation in the Balkans, as created by this policy of the present Greek Government is the presence of British troops in Greece and the direct intervention of the British military representatives in the internal affairs of this allied country in behalf of the aggressive monarchist elements, especially in the preparation of the referendum of 1 September 1946 which is to determine the form of government in Greece".

Two years later, in 1948, the shoe was on the other foot. This time Britain, along with other nations wished to investigate the circumstances of the change of government in Czechoslovakia. The matter was brought to the attention of the Security Council by the representative of Chile.[3] At the same time, he referred to the Council a communication from the former permanent representative of Czechoslovakia to the United Nations in which it was alleged that the USSR had intervened in the internal affairs of that country and that by the threat of

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1. ibid, pp.157-159.

2. S.C., 1st Yr., 2nd Series, Suppl. No.5, p.150, Annex 8, S/137.

3. By a letter dated 12 March 1948; S.C. 3rd Yr., Suppl. for January, February, March, S/694, pp. 31-34.

the use of force, had imposed a new political regime on Czechoslovakia, contrary to Article 2(4) of the United Nations Charter and other international agreements to which the Soviet Union was a party.[1]

It might have been expected here that the first thing the British representative would have done would have been to state whether or not he thought that there was here a prima facie case to examine. But the tenor of his argument is that because the charge was serious, it ought to be examined. Here, Sir Alexander Cadogan said[2] simply that the charge was a serious one. There was no question, he claimed, of the United Nations intervening here. What was being asked for was a discussion of a supposed violation by the Soviet Union of Article 2(4) of the Charter. The refutation of that charge by the Soviet Union was, he claimed, no answer in itself. It ought to be investigated and he would vote for its inclusion. He continued:[3]

> ... It is true that the representative of the USSR has said that this charge is pure invention, unfounded assertion and gross slander; but that is no reply and I should have thought that the proper thing for the Security Council to do would be to investigate this grave allegation, and give to those who have made it a chance of substantiating it and to the Soviet Union, the possibility of refuting it.

To state that a charge is an unfounded assertion is no reply, said Sir Alexander. Yet two years before he had said that the Ukrainian charge, that the situation in the Balkans was a danger to international peace and security and to which it was asserted, the presence of British forces contributed, was an unsupported allegation, an accusation without evidence, which could not be included on the agenda till such evidence was forthcoming. The reasoning of the two requests seem similar, yet the British delegation would appear to have found some reason for acting differently in the two cases.

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1. ibid, S/696, pp.34-37.
2. S.C., 3rd Yr., Nos.36-51, 268th mtg., pp. 93-94.
3. ibid.

The contradiction between the opinions put forward by the British Government in these two cases is all the more startling in view of the paucity of evidence which was available in support of the Chilean complaint against the Soviet Union. The Czechoslovakia situation was included in the agenda of the Council, but one of the factors which bedevilled all the discussions thereof was the lack of evidence. Lack of evidence had been the ostensible reason for the British opposition to the inclusion of the Greek question on the agenda in 1946, but it did not appear to deter the British delegation in the Czech case. Perhaps Sir Alexander Cadogan did possess sufficient evidence to convince him of the prima facie need for an examination of the Czech case, but if he did, then he kept it to himself, and chose to rely on a much broader ground for inclusion, i.e., the seriousness of the charge. It is indeed tempting here to conclude that one of the main reasons behind the British view was the political expediency of placing Russia in the dock.

The confusion, which will already be evident in the British Government's handling of this question of inclusion of items in the Security Council agenda, is heightened by the fact that even in the same debate, statements which are totally incompatible, have been made.

On the provisional agenda for the 493rd meeting of the Security Council in 1950,[1] there were, inter alia two items; (1) a Statement of the Central People's Government of the People's Republic of China concerning the invasion of the frontiers of the People's Republic of China by the United States Air Forces and the bombing and shooting up by those air forces of buildings, railway stations, rolling stock, people and aerodromes; and (2), the unceasing terrorism and mass executions in Greece.

Britain supported the inclusion of the former but not of the latter. With

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1. S.C., 5th Yr., No.35, 493rd mtg., p.1.

reference to the former charge, Sir Gladwyn Jebb said:[1]

> So far as the substance of the question is concerned, and the only substance we are discussing now is whether or not item 4 shall be placed on the agenda, all I can say is that my delegation will certainly not oppose its being placed on the agenda. It seems to me important, if I may say so, that the Security Council should look into this matter and try to establish the facts. That is what the Security Council is for and therefore, when we consider the matter next week, I hope that there will be some constructive suggestions submitted for this purpose.

If the function of the Security Council is to establish the facts, then why oppose the inclusion of the Russian complaint re Greece? Did Russia not have the right to have her case heard? Yet we find Sir Gladwyn almost in the same breath saying:[2]

> In any case, I do not propose to deal with the substance of item 5. (Greece) It is perfectly clear that the Security Council has no jurisdiction in the matter at all, and that it would be wholly improper for the item to be included in the definitive agenda. The matters with which the communication from the President deals, (the Soviet representative was President of the Security Council at this time) obviously do not constitute a threat to the peace. They are clearly within the sphere of Greek domestic jurisdiction and the United Nations under Article 2, paragraph 7 of the Charter is therefore precluded from discussing them.

If the matter was so clearly within Greek domestic jurisdiction and posed no threat to the peace why, it may be asked, was the Soviet representative so foolish as to request its inclusion? Presumably the Soviet Union is also aware of the limitations upon the powers of the Security Council in these matters. It is perhaps justifiable to ask why it was good for the Council to look into one allegation relating to the peace and security of the world and not another, however remote the British delegation may have felt that danger to be.

The complete converse of the above situation is represented by the Council's consideration of the Hungarian uprising of 1956. In this case it was the Soviet Union which was alleging that the matters were within the domestic jurisdiction of Hungary and therefore outwith the competence of the Council.

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1. ibid, p.22; emphasis added.

2. ibid; emphasis added.

In reply to this allegation Sir Pierson Dickson said:[1]

> ... Mr. Sobolev has claimed that the Council is not competent to consider the matter raised by the three delegations. He has argued that the matter at issue is one of domestic jurisdiction and that Article 2, paragraph 7, of the Charter debars the Council from intervention. But what is the situation in Hungary which we are asking the Council to consider? The letter from the three representatives makes this quite clear. It is - to quote the letter - 'the situation created by the action of foreign military forces in Hungary'. Foreign troops are fighting in Hungary. This is obviously a matter of international concern. It seems to me clear beyond any doubt that the Security Council is competent; nor have I any doubt, in view of the gravity of the situation, that it is the Council's duty to consider the situation.

The stand taken by the British delegation on the Soviet complaint regarding the unceasing terrorism and mass executions in Greece is diametrically opposed to that which it adopted towards the inclusion of the Hungarian question. Yet, both these approaches have one important point of contact. They were both uncompromising. In such cases as these, the United Kingdom has adopted a most uncompromising attitude. It has asserted, either that as the matter is obviously domestic, it cannot be included, or that as it is obviously a matter of international concern, it is the duty of the Council to examine it. No margin of error has been allowed for. In all cases where it has been asserted that the matter is domestic and hence outwith the competence of the Council, no allowance has been made for the fact that other Members of the Council, or other Members of the United Nations invited to take part in the Council's work after the adoption of the agenda, might have been able to present facts which would confer jurisdiction on the Council. In cases where it has been asserted that a matter is international, no allowance has been made for the presentation, subsequent to inclusion in the agenda, of facts which would tend to establish that, after all, the item did deal with matters which did fall essentially within the domestic jurisdiction of a particular State. British statements on such occasions have been made with an air of finality and in

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1. S.C., 11th Yr., 746th mtg., para.30.

the apparent expectation that their reasoning would be accepted by the other Members of the Council.

This hard, uncompromising attitude on the question of the inclusion of items on the agenda is difficult to understand, for three reasons. First, it allows for no margin of error. Secondly, situations such as those which prevailed on the frontiers of China, or in Greece or Hungary may, basically, be different politically. But for the purpose of inclusion in the agenda, they are all the same and are entitled to equal consideration. This is just what they cannot receive if snap decisions are taken on inclusion and (under this British view) impliedly on competence without the benefit of some enquiry. Thirdly, the United Kingdom does not always adopt such an uncompromising attitude on inclusion.

Sometimes, as already noted in the Czechoslovak case, the United Kingdom can take the position that as a matter is serious, it merits Council consideration. Alternatively, she has argued that the correct way to handle cases where doubt exists as to the facts of the situation, (and in which of the above cases did that doubt not exist?) is to include it on the agenda and give the parties a chance to substantiate or refute the charges. On yet other occasions the United Kingdom has been prepared to support the inclusion of items in the agenda, the domestic status of which was in doubt, on the understanding that the inclusion of such items did not prejudge the question of the Council's competence. She did this in the case of Hyderabad and of the Anglo-Iranian Oil Company dispute.

In 1948, the question of Hyderabad was brought to the attention of the Security Council. This was a case which concerned a complaint brought by the State of Hyderabad against India, alleging aggression. India contended that Hyderabad was not an international person and that the question of that State's accession to the dominion of India was a matter essentially with her domestic jurisdiction.[1] The United Kingdom, one would have thought, was in an excellent

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1. S.C., 3rd Yr., No.109, 357th mtg., pp.18-19; ibid, No.111, 359th mtg., p.7.

position to make, prior to the inclusion of this item on the agenda, an authorative statement on the validity of Hyderabad's claim to international personality. But, on this occasion, she did not do so and preferred to support the inclusion of the item on the agenda. On behalf of the United Kingdom, Sir Alexander Cadogan said:[1]

> ... I shall vote in favour of its adoption, but I should like to make it clear that I do so with a reservation in the sense indicated by the representative of France; that the adoption of the agenda does not decide or affect in any way the question of the Security Council's competence and that we should have the right to revert to that question, if that is necessary and if we so desire, at a later stage.

In 1951, in advocating the inclusion in the Council agenda of the Anglo-Iranian Oil Company case and the failure of Iran to comply with the provisional measures indicated by the International Court of Justice, which was also seized of the matter, the United Kingdom used arguments similar to those expressed in the Hyderabad case. Sir Gladwyn Jebb argued that the Members of the Council need not vote against the inclusion of the item just because they had doubts on the score of competence. This, he said, could always be settled later.

The use of this argument by the United Kingdom in this case is particularly interesting. The United Kingdom herself had no doubt whatsoever that the Council was competent to deal with the case. Nevertheless, here she did show some awareness of the doubts of other people. However, she argued that these doubts should not force Members of the Council to vote against the inclusion of the item in the agenda. The question immediately arises why the United Kingdom did not adopt a similar attitude in cases where she felt that the Council was not competent?

Explaining the British position in the Anglo-Iranian Oil Company case, Sir Gladwyn Jebb said:[2]

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1. ibid, No.109, 357th mtg., p.10.

2. S.C., 6th Yr., 559th mtg., paras. 14-20; emphasis added.

Let me say straight away that of course I entirely agree with what the representative of Ecuador has said, and which was substantiated by the representative of Turkey. I think we should all agree that the question of competence can, if necessary, be determined later and that if any representative should have doubts on the question of competence - that is the competence of the Security Council to discuss the question - that need not necessarily in itself be any reason for voting against the inclusion of this item in the agenda.

As regards what the representative of the Soviet Union has said, perhaps I need only say the following: In the first place, I should like to draw attention to the statement of the four sponsoring Governments made at San Francisco on 7 June 1945, that no individual member of the Council can alone prevent the consideration and discussion by the Council of a dispute or situation brought to its attention under what is now Article 35 of the United Nations Charter.

Nobody can deny that there is a dispute between the United Kingdom and Iran which, in conformity with the provisions of Articles 33 and 36 of the Charter, His Majesty's Government has already referred to the International Court of Justice. Moreover, in the finding on interim measures which the Court gave on 5 July last, it indicated very clearly that His Majesty's Government had a case which was, at least prima facie, internationally justiciable and not therefore a pure matter of domestic jurisdiction.

.....

Of course, I shall not at the moment go into the merits of the dispute between my country and Iran. The question before us is whether the item proposed by my delegation should be placed on the agenda. The formal basis of the present reference to the Council is that all Members of the United Nations have a right, under Article 35 of the Charter, to appeal to the Security Council in regard to any matter of the nature referred to in Article 34. No one can doubt - or I should have thought that no one could doubt - the essentially inflammatory nature of a situation of the kind which now exists in those parts of Iran which are affected (even given goodwill and restraint on the part of the governments concerned, such as has certainly hitherto been exhibited by my Government, at any rate) or the potential threat to peace which may be involved. In these circumstances, and quite apart from the decision of the Court on interim measures, which would alone, we think, justify the Council taking up the matter, there is a dispute, in our opinion, which should now receive the Council's urgent attention.

The contrast between the approach of the British delegation in these two cases and, for example, in those of Greece (III), Morocco and Oman will be readily apparent. It will, of course, be even more appreciated when once the corresponding statements of other States have been examined. Nevertheless, some comment can, with advantage, be made here.

If, as Sir Gladwyn Jebb said in his speech during the consideration of the Anglo-Iranian Oil Company Case, each State has a right to appeal to the Security

Council regarding a matter which, it is claimed, constitutes a 'dispute or situation which might lead to international friction or give rise to a dispute' the continuance of which might endanger international peace and security, how could the British delegation vote against the inclusion in the agenda of the Russian and Ukrainian complaints regarding the situation in Greece and the Arab complaints regarding the policy of France in her then North African possessions? Did not these States have the right of which Sir Gladwyn spoke in the Anglo-Iranian Oil Company case, and is it not inherent in that right that these appeals will at least be considered by the Council?

The British approach to the inclusion of the question of Hyderabad was apparently conditioned by her doubts as to the competence of the Council to deal with it. Her approach to the question of the inclusion of the Anglo-Iranian Oil Company dispute was apparently conditioned partly by her appreciation of the doubts of other States as to the competence of the Council. Why, it may be asked, did she not adopt the same attitude in all those other cases, where it must surely have been obvious, from the diversity of opinions expressed in the debates on the adoption of the agenda, that <u>bona fide</u> doubts existed as to the competence of the Council to deal with the matters? If it was in order, in two cases, for matters to be included despite doubts as to their status, and to leave the question of competence to be decided after inclusion, why was not this procedure adopted in all? To these questions there is no apparent answer, and it is tempting to conclude that the United Kingdom was willing to have the question of competence decided after inclusion where, as in the Hyderabad question, she had no vested interests at stake, or where, as in the case of the Anglo-Iranian Oil Company dispute, she wanted the item inscribed. It appears that where she did not want an item inscribed she was not prepared to make such concessions.

The complete antithesis of the views put forward by the British delegation to justify the inclusion of the Anglo-Iranian Oil Company dispute in the agenda

of the Council is represented by stand which the United Kingdom took on the question of the inclusion of the item dealing with Algeria. This item was raised before the Security Council in 1956, and in opposing its inclusion, Sir Pierson Dickson said:[1]

> I am bound to say that my delegation fully agrees that the Security Council should not consider this question, and it is evident that, if a delegation is opposed to consideration of an item, it must also be opposed on the prior question of inscription of the item.

How can this be reconciled with the assertion of Sir Gladwyn Jebb that the question of competence can, if necessary, be determined after inclusion, and that doubts on the question of competence need not lead to a State voting against the inclusion of an item in the agenda?[2]

This wealth of conflicting attitudes on the simple question of the inclusion of an item in the agenda of the Security Council in itself speaks volumes, and requires little further comment. However, to conclude this confused tale, one final set of examples is apposite.

During the discussion of whether or not to include the Anglo-Iranian Oil Company case in the Council's agenda, the point arose that the views of the Government of Iran had not been heard. To rectify this, the Yugoslav delegate suggested that the Iranian representatives be invited to take part in the debate on the adoption of the agenda.[3] To this suggestion, Sir Gladwyn Jebb objected. The Security Council had never, he claimed, called upon a non-member of the Council to help it in making up its mind in what was, in his opinion, a pure question of procedure.[4] Again, in 1956, in recording British support for the

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1. S.C., 11th Yr., 730th mtg., para.51.
2. See supra, p. 42.
3. S.C., 6th Yr., 559th mtg., para.48.
4. ibid, para.53.

inclusion of the Hungarian question in the Council's agenda, Sir Pierson Dickson referred to the inclusion of an item on the agenda as 'this procedural stage'.[1] In 1953, during the discussion of whether or not to include the Moroccan question in the Council's agenda, Sir Gladwyn Jebb objected to a proposal to invite the authors of the request for its inclusion to participate in the debate before the agenda was adopted. He said:[2]

> In other words, our first task, which should take precedence over everything else, is to decide whether to adopt the agenda. This is strictly a matter of procedure on which the Council alone must decide.

If the adoption of a matter onto the agenda is a pure matter of procedure why, it may be asked, has the United Kingdom systematically opposed the inclusion of items which she considered to be domestic on the grounds that the Council was forbidden by Article 2(7) from so doing. If inclusion is a procedural matter, as she herself has repeatedly asserted, then it cannot have any effect on the rights of the parties or render the Council guilty of intervention.

It unfortunately appears that in this matter, the United Kingdom has been trying to have her cake and eat it. This is amply demonstrated by the Moroccan case. In that case, it will be recalled, the United Kingdom opposed the inclusion of that item, on the grounds that it was within the domestic jurisdiction of France and that to discuss it would involve interference in the domestic affairs of France. Yet hardly had Sir Gladwyn Jebb said this,[3] when he asserted that the adoption of the agenda was a procedural matter.

The adoption of the agenda must either be a procedural matter or involve substantive effects on the rights of the parties. But it cannot be both. The

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1. S.C., 11th Yr., 746th mtg., para.28.
2. S.C., 8th Yr., 620th mtg., para. 31.
3. Supra, p.32.

United Kingdom, among other things, would seem to consider it as both.

Viewing these statements as a whole, it seems that the United Kingdom has six replies to choose from whenever a matter is brought to the attention of the Security Council. She may assert:

1. That the matter is domestic and hence cannot be included. This implies that discussion constitutes intervention;

2. That the matter is not domestic and hence can be included;

3. That the matter is serious and ought to be examined;

4. That the way in which to deal with cases in which there is doubt as to the facts of the situation is for the Council to investigate it;

5. That the inclusion of an item in the agenda is without prejudice to the question of competence, and hence members of the Council need not be deterred from supporting inclusion because of doubts on the question of competence; these two indicate that at least under some circumstances, the United Kingdom does not consider discussion as intervention;

6. That inclusion of an item on the agenda is a purely procedural step.

These various replies have been used either singly or in combination. It is submitted, however, that the existence of such a plethora of views on the one topic indicates either a lack of appreciation of the consequences of inclusion, or the conscious subjection of that question to political considerations. A gamut of arguments, such as these, several of which are mutually exclusive, cannot logically be held by one State.

It may perhaps be argued that, for example, argument 1 is not incompatible with numbers 4 and 5. To do so, however, would be to fall into the error of national egoism. To argue, as, for example, Sir Pierson Dickson did in the Algerian case, that if a country is opposed to the idea of the Council considering a certain item it must also oppose inscription of that item on the agenda, and at the same time to hold that this is not incompatible with, in particular, argument 4, is to place a great reliance on one's own judgement as a nation. To contend, as someone might possibly, that both these arguments are quite

compatible, is to place little faith in the judgement of other nations. Such an argument would amount to saying that the United Kingdom had complete faith in her own judgement on these matters, and in addition is not interested in that of anyone else. It would amount to saying that, in British opinion, when a matter is domestic, it is domestic, and when there is a doubt as to its status, then that doubt is valid. No allowance is made for the views of any other Member of the Council at all.

It is submitted that this cannot really be the considered approach of the United Kingdom towards this question. If this submission is correct, then it has to be realised that the British approach to this entire question has been characterised by continual contradictions which leave her open, in particular, to the charge of political opportunism.

(b) The Soviet Union

The Soviet Union is not, however, in any better a position in this regard, for she also has been guilty of the same equivocation on this point, though oddly enough, not to the same extent as the United Kingdom.

First. The Subject is domestic and hence, as it cannot be discussed, cannot be included in the agenda. Discussion itself constitutes intervention in the domestic affairs of a member State.

The Soviet Union has, on three occasions, tried to persuade the Members of the Security Council to delete items from the provisional agenda on the grounds that they dealt with matters which fell essentially within the domestic jurisdiction of the States concerned and were hence outwith the jurisdiction of the Security Council. These cases were Czechoslovakia, the Anglo-Iranian Oil Company case and Hungary.

In 1948, the Soviet Union tried to persuade the Council not to entertain the Chilean complaint regarding the purported Russian intervention in the domestic affairs of Czechoslovakia. Asking that this item be excluded from the definitive agenda, Mr. Gromyko said:[1]

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1. S.C., 3rd Yr., Nos.36-51, 268th mtg., p.90.

> Discussion of the Chilean communication would be crass interference by the Security Council in the internal affairs of Czechoslovakia, a Member of the United Nations....
>
> All States and all peoples must themselves settle their own domestic affairs, including the internal form of the government in their State. No one is entitled to intervene in the internal affairs of other countries or impose upon a particular nation a conception of State organisation held by other States or their ruling circles ....
>
> The formation of the new Czechslovak Government is the business of the people of Czechoslovakia, who are exercising their sovereign rights in their own country. Only the people of Czechoslovakia can determine the composition of their government and all other questions which are within the domestic jurisdiction of Czechoslovakia as a sovereign State.

These statements were, of course, largely beside the point. None of the delegations wishing to include this item on the definitive agenda denied that a change of government in another State was a matter of internal jurisdiction. But, in this case, it was alleged that the change in the government of Czechoslovakia had come about as a result of the intervention of the Soviet Union, which apart from being a violation of general international law, is a violation of the Charter. However, the Soviet reply to these charges was a bland denial coupled with the assertion that to discuss the affair would constitute intervention in the domestic affairs of Czechoslovakia.

The Soviet delegation adopted a similar attitude when the Anglo-Iranian Oil Company case was brought before the Council. Mr. Tsarapkin maintained that such questions as the nationalization of the oil industry in Iran were internal and that the United Nations could not intervene. He said:[1]

> Since a discussion of that question in the Security Council would constitute interference in the domestic affairs of Iran and a gross violation of the Iranian people's sovereignty, the USSR delegation considers it inadmissible for the Security Council to discuss the United Kingdom complaint against Iran in the Anglo-Iranian Oil Company case and objects to the inclusion of that question in the Council's agenda.

The Hungarian crisis naturally brought forth the same response from the Soviet delegation. Objecting to the inclusion of this item in the definitive

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1. S.C., 6th Yr., 559th mtg., para. 4.

agenda, Mr. Sobolev said:[1]

> .... The very wording of this item shows in itself that what the United States, the United Kingdom and France have in mind is an attempt, in defiance of the provisions of the United Nations Charter, at gross interference in the domestic affairs of the Hungarian People's Republic.
>
> .....
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> .... It is perfectly clear that all these actions of the Hungarian Government are an internal affair of the Hungarian State, and the United Nations, including the Security Council, is in no way entitled to interfere in these matters.
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> .....
>
> In their proposal for the inclusion of this item in the agenda the three Powers invoke Article 34 of the Charter as grounds for the discussion of this question in the Security Council. But that is entirely unwarranted. In point of fact, Article 34 of the Charter empowers the Security Council to investigate only disputes or situations of an international character, namely those arising in relationships between States. Accordingly, any situations arising inside a country and not affecting its relations with other States, as in the present instance, do not fall under Article 34. Both in itself, therefore, and in association with the provisions of Article 2, paragraph 7, of the Charter, which I have mentioned, and those of Chapter I of the Charter as a whole, the text of Article 34 makes it quite clear that this is the only possible correct interpretation of the question of the Security Council's competence. The United Nations Charter thus leaves no doubt that the Security Council is not competent to examine questions of this nature.

The Soviet Union, like the United Kingdom in other situations, here adopts the a priori approach to the question of competence. She too allows for no margin of error and appears to consider her own pronouncements on the question of competence as authoritative.

Second. All items should be included.

As is to be expected, however, the Soviet Union has not always adopted such a rigid attitude on the question of inclusion and discussion. In particular, her attitude has noticeably altered whenever matters arose which affected the interests of Western countries. In these cases Russia has tended to take the attitude that all items should be included and discussed, for otherwise the Council could not be sure that it was not competent.

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1. S.C., 11th Yr., 746th mtg., paras.12-24.

In 1946, the Soviet Union supported the request of the Ukrainian SSR that the question of Greece and the British intervention therein should be included on the agenda. It will be remembered that Great Britain, among others, maintained that the Ukraine had not presented any case for the Security Council to answer. Mr. Gromyko, in rebutting this, said:[1]

> .... In order to ascertain whether a statement by any Government appealing to the Security Council is right or wrong, it is necessary to examine the statement...
>
> How can we possibly say that the accusation put forward in the Ukrainian document regarding the present Greek Government and policy are unsubstantiated, unless we examine the Ukrainian statement. ...
>
> The Security Council should discuss and examine the serious questions placed before it carefully and with all seriousness. I repeat that it is an elementary truth that in order to come to any conclusion the Council should examine this question. Only after doing so can it reach any conclusions as to what measures it should take to do away with the situation which has been created in the Balkans and is fraught with serious consequences. ....How can Mr. Van Kleffens know at the present meeting of the Security Council that no such additional facts are in the possession of the Ukrainian Government whose representative we have not yet had a chance to hear in the Security Council.

Later in the same debate, replying to the statement of the United Kingdom representative that the Ukrainian allegations were unfounded and betrayed an attempt to use the Council for an improper purpose, he said:[2]

> .... On what basis does he arrive at such a conclusion? The British representative does not even want to discuss the question raised in the Ukrainian statement. He avoids such examination. How is it possible to arrive at such a conclusion and make the assertion that the presentation of such a statement in the Security Council is an attempt to use the Council in a manner in which it should not be used?

But two years later, the Soviet delegation sang a different tune, in relation to the Czechoslovak affair. This time, it was Mr. Gromyko who asserted that the Chilean allegations were unfounded and that there was nothing to discuss. In

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1. S.C., 1st Yr., 2nd Series, No. 4, 54th mtg., p.36-37.

2. ibid, 58th mtg., No.6, p.168.

opposing the inclusion of the Czechoslovak affair in the agenda, he said:[1]

> That document contains the completely unfounded and ridiculous allegation that the situation existing in Czechoslovakia can be termed a threat to international peace and security. Not a single fact, not a single circumstance has been adduced in support of this absurdly groundless argument - and that is no mere accident.
>
> The authors and instigators of this communication cannot bring forward a single fact to justify their provocative action. ....
>
> Only persons bereft of all power of thinking at all objectively, and incapable of distinguishing between truth and falsehood, can attach any importance at all to the assertions contained in the Chilean communication. ....
>
> As you know, the Chilean document asserts that the changes in the Government of Czechoslovakia were brought about by the intervention of the Soviet Union. Such assertions are pure slander against the USSR and the Soviet delegation flatly rejects them. If, notwithstanding their complete absurdity, such an assertion still figures in the Chilean communication, this merely shows that the authors and instigators of this move will stoop to any expedient to use the forum of the United Nations, and in this case, the Security Council, for further hostile attacks on the Soviet Union. There is no other way of looking at it.

Mr. Gromyko is here asserting that the United Nations was being used for an improper purpose, namely groundless and hostile attacks on the Soviet Union. In reply to his aspersions, we can only quote to him his own words: "On what basis does he arrive at such a conclusion?"[2] The inclusion of this item in the agenda seemed to irk Mr. Gromyko, but that, as he was quick to point out to Sir Alexander Cadogan in the Greek affair, was no reason to refuse to include it in the agenda.[3]

Continuing his attack on the inclusion of this item, Mr. Gromyko said:[4]

> In the present case the prerequisites justifying any sort of investigation are entirely absent. After all, the wish of the former Czechoslovak representative to the United Nations cannot serve to justify a demand for an investigation, even if his wish happens to coincide with that of someone else. In such cases as these we must

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1. S.C., 3rd Yr., Nos.36-51, 268th mtg., p.90 et seq.

2. Supra, p.50.

3. See Mr. Gromyko's speech in the first Greek Question, S.C., 1st Yr., 2nd Series, No.6, 58th mtg., pp.165-166.

4. S.C., 3rd Yr., Nos.36-51, 268th mtg.,pp.92-93; emphasis added.

be guided by objective criteria, and must not allow the Security Council to be used as a tool for schemers and adventurers. ....

The USSR delegation considers that, since the Chilean Government's statement is pure invention, it cannot be given consideration by the Security Council. The Council should condemn it like any other slanderous document.

The trouble is, as Mr. Gromyko has, on prior occasions, pointed out, that the Council really has no means of knowing that statements are slanderous till it has investigated the matter. Nevertheless, on this occasion he expressly opposed the view that the mere fact that an item had been raised made it necessary to discuss it, and indeed to a considerable extent echoed earlier arguments of the United Kingdom and others in the Greek affair that some prima facie case is necessary before any matter can be considered by the Council. On this point, he said:[1]

The United Kingdom representative's logic is simple. He asserts that, once a charge has been made that one State is intervening in the internal affairs of another, the very existence of such a statement and such a claim is enough to warrant the examination of that question. I cannot agree with that view. It is wrong. The United Nations does not call for action on, or an investigation of, all statements or all questions which even a State may bring before the United Nations.

Referring to the terms of Article 34, Mr. Gromyko continued:

.... That means that before any investigation can be undertaken certain definite conditions are necessary. If those conditions are absent, there can be no justification for deciding to hold an investigation.

Consequently, the mere fact that a demand is made or a desire expressed for an investigation, and that too by a private individual with no official standing, has no justification at all, even though the Chilean representative puts his signature to such a demand, for if we look at this view and assumed that the existence of a demand or desire for an investigation affords sufficient grounds for such an investigation, we should reach the completely absurd result and ridiculous conclusion that a State, or even, as in the present case, a private individual at whose request the whole affair has been concocted, need only lodge such a request, and the Security Council will consider the question of an investigation. If we adopt such a view we would cut away all solid ground from under our feet in the Security Council and the United Nations in general.

During the Security Council's consideration of the Hungarian question, the Soviet delegation took up substantially the same position and requested that the

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1. ibid, p.100-101.

sponsors of the item should explain their reasons for requesting the inclusion of this matter.[1]

In 1948, the same year as the Czechoslovak case, the Soviet delegation was again unwilling to support the inclusion of the Hyderabad question on the agenda until a reasonably clear case had been presented to the Council. Explaining the Soviet position, Mr. Malik adopted a very reasonable attitude and said:[2]

> The Security Council has at its disposal information from one party only. The other party, the Government of India, has not submitted any information on the substance of the question placed before the Council by the Hyderabad authorities. As a result the Security Council is not in possession of sufficiently full information with regard to the substance of the question or the status of Hyderabad.
>
> The delegation of the USSR considers that before the Security Council decides whether there are grounds for including the question of Hyderabad on its agenda, it is essential that it should first obtain complete, and not merely unilateral information, both on the substance of the question and on the status of Hyderabad. This information should, of course, include the question of the rights and obligations of both Hyderabad and India under the treaties between them. The receipt of this preliminary information would be extremely desirable.

The question of whether or not a prima facie case has to be presented in order to compel the Security Council to consider a matter, has already been dealt with. The Soviet arguments on this point are, for the reasons discussed above, considered to be wrong, despite the fact that they are not without a

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1. S.C., 11th Yr., 746th mtg., para.6, per Mr. Sobolev:
   "The Soviet delegation opposes the inclusion of this question in the agenda. It is, however, customary, in the Security Council, for delegations submitting an item for inclusion in the agenda to explain their reasons for doing so at the Council's meeting. Quite naturally, therefore, I should like first to hear what grounds there are for the Security Council to take up the question put forward by the delegations of the United States, France and the United Kingdom."
   It should be noted also, that none of the three delegations gave the explanation Mr. Sobolev asked for, though the United Kingdom did make a short reply; see supra, p. 39. Cf. the British attitude in the first Greek case, supra pp.34-35, where Britain supported the criterion of a prima facie case before a matter was included in the agenda.

2. S.C., 3rd Yr., No.109, 357th mtg., p.9.

certain degree of merit, particularly in the form in which they were presented in the Hyderabad case. However, irrespective of these considerations, the Soviet insistence in these cases upon the presentation of a prima facie case before any item could be included in the definitive agenda lies ill beside her other protestation in the Greek affair that "in order to ascertain whether a statement by any Government appealing to the Security Council is right or wrong, it is necessary to examine the statement". If it was necessary to examine the statement of the Ukrainian Government regarding the situation in Greece in order to decide whether it was right or wrong, why was it not necessary to do the same with the statements of the Government of Chile, in the Czechoslovak case, with that of the Governments of the United Kingdom, the United States and France in the Hungarian case and that of the Government of Hyderabad in the case of Hyderabad?

Contradictions in Soviet practice in the Security Council on this point do not, unfortunately, end there. During the discussion of the Czechoslovak question, Mr. Gromyko had stressed that the mere fact that a State brought a certain situation to the attention of the Council and called for an investigation thereof, was not sufficient to compel the Council to carry out such an investigation. In some cases, however, the Soviet delegation has made statements which suggest that Russia has changed her mind on this point. During the consideration of whether or not to place the Moroccan and Algerian questions on the definitive agenda, the Soviet Union made statements which suggest that in her opinion, the mere fact that a State does present such a request, does compel the Council to consider the item in question.

In the Moroccan case, Mr. Tsarapkin said:[1]

> The Security Council cannot refuse to consider the Moroccan question, particularly since the request is made by fifteen, that is, one quarter of the States Members of the United Nations, not counting the other Members

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1. S.C., 8th Yr., 621st mtg., para.55.

of the United Nations who are supporting or who may support the motion by these fifteen States.

What apparently swayed the Soviet delegation in this case was the number of States supporting the initial request for inclusion of the item. However, it is difficult to understand what difference it should make to the eligibility of a question for Security Council consideration that it was sponsored by fifteen nations. Surely it could hardly be argued that a single nation presenting a request should be viewed with suspicion whereas a group of States should automatically receive favourable treatment for the items which they sponsor? As Mr. Tsarapkin himself pointed out, a request for Security Council consideration may well have the tacit support of other Members of the United Nations.[1]

In the Algerian case, however, the Soviet delegation did not appear to lean so much on the fact that thirteen Members of the United Nations had requested the inclusion of this item in the agenda of the Council. What seemed to impress Mr. Sobolev most was the fact that this request for Council consideration asserted that the events in Algeria posed a certain threat to the peace. He said:[2]

> Clearly, the Security Council cannot disregard such a request from States Members of the United Nations, more particularly since these States maintain that there is a threat to the peace and security in the area concerned. In order to examine whether or not any such threat to peace exists, the parties must be heard, and the matter must be discussed in the Security Council.

With this example, it will clearly be seen that Soviet thinking on the question

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1. This is not the only case in which the numbers of those sponsoring an item has apparently impressed the Soviet delegation. In 1960, during the substantive debate on the Sharpville incident in South Africa, Mr. Sobolev said: S.C., 15th Yr., 851st mtg., para.20: "The Soviet delegation takes the view that in such circumstances, when twenty-nine Governments of Asia and Africa are asking the Security Council to discuss the alarming situation which has arisen in the African continent, there can be no question whether the Security Council should or should not examine the question. The Council is obliged to hear the views expressed by more than one third of the Organization's Members."

2. S.C., 11th Yr., 730th mtg., para.76.

of inclusion of items on the agenda of the Security Council and the discussion thereof, has turned full circle. In the beginning, in 1946, Mr. Gromyko had asserted, with reference to the situation in Greece, that the only way to determine whether a statement by a sponsoring Government was right or wrong was to include that item on the agenda and examine it. From this position, however, the Soviet delegation progressed, (or regressed, depending on one's point of view) to the argument that as a matter was essentially within the domestic jurisdiction of a particular State, it could not be discussed by the Council and hence could not be included by it in its agenda. Coupled with this reliance on Article 2(7) was the assertion that to merit inclusion on the agenda of the Council, some sort of prima facie case had to be presented by the sponsoring Governments. To merit investigation by the Council, it was not enough, Mr. Gromyko claimed, to invoke Article 34. Evidence had to be presented to show that it clearly applied. From this position, however, the Soviet Union seems to have to returned to the beginning with the assertion, in the Algerian case, that when a State asserts that a threat exists to the maintenance of peace and security, that assertion has to be examined. Which way will the Soviet Union turn next?

It is fair comment on Soviet practice in this matter, that the Soviet Union, like the United Kingdom, seems to have been guided not by principle but by the political necessity of opposing her cold-war partners.

(c) France

As is to be expected, French statements concerning the inclusion of matters on the Security Council agenda demonstrate the same curious tendency, noticed already when dealing with the United Kingdom and the Soviet Union, to favour one approach when France has a vested interest in not allowing a certain matter to be discussed in the United Nations, and another, completely different one,

when matters in which she has no vested interest, are brought to the attention of that body.

First. The subject is domestic and hence, as it cannot be discussed, cannot be included in the agenda. Discussion itself constitutes intervention in the domestic affairs of a member State.

In the cases of Morocco, Algeria and Oman, France voted against inclusion of items in the agenda of the Security Council because, in her opinion, the matters dealt with in those items were essentially within the domestic jurisdiction of the States concerned.

Explaining the French position on the Moroccan issue, the French delegate to the Security Council said:[1]

> Is the situation in Morocco one which can threaten the maintenance of international peace and security? I do not think that anyone in this building could seriously claim that it is.[2] The only neighbours of Morocco are France and Spain; I do not know that either of these countries feels that its relations with Morocco or with one another are threatened by the advent of the new Sultan. Nor do I see how that event, an internal one concerning Morocco only could threaten the security of any of the fifteen States which have signed the present request. .... Morocco whose new Sultan sees order and peace prevailing among the people who have freely chosen him as their religious and civil chieftan, cannot in any way be regarded as a party to a dispute or as the scene of a situation threatening the maintenance of peace and international security.

In these three cases, France adopted the a priori approach to the question of inclusion and obviously desired other members of the Council to do the same.

Second. All items should be included.

Where France has not had a vested interest in excluding an item from the agenda, she has adopted a much more flexible attitude. Her main approach

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1. S.C., 8th Yr., 619th mtg., para.32; for French views on the inclusion of the Algerian question in the Security Council agenda, see S.C., 11th Yr., 729th mtg., para.104; and in the case of Oman, see S.C., 12th Yr., 784th mtg., paras.25-33.

2. However, the fifteen states which requested the inclusion of this item on the agenda obviously thought so. These States were: Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Pakistan, Philippines, Saudi-Arabia, Syria, Thailand, Yemen.

has been two-pronged. She has maintained, on the one hand, that in order to decide whether or not a matter is domestic, it must first of all be included in the agenda, and on the other, that in any case, the inclusion of an item on the agenda of the Council does not prejudice the question of the Council's competence.

In 1946, France was in favour of including the Ukrainian complaint regarding the situation in Greece in the definitive agenda of the Council. In this case, the French delegation showed a distinct aversion to taking any decisions on the status of this item, prior to its inclusion in the agenda, decisions which would be based on some a priori assessment of the situation. Explaining the position of France, the French delegate said:[1]

> In my view to adopt the method of declining to place a question on the agenda involves serious disadvantages and risks. In the first place, I think this argument is a very strong one, it is somewhat of a contradiction to decide that a complaint is not sufficiently serious to be examined before having examined it. There is something contradictory about that which makes it unsatisfactory both in theory and in practice.
>
> Furthermore, on what grounds can it be decided that a complaint is without proper foundation? Does it mean that the Council would judge on the basis of its a priori knowledge of the general political situation? This is possible. It would seem to me however, somewhat dangerous for the Council to be guided by evidence of this kind, for how is it to assess such evidence? If it does not examine the question thoroughly, it is to be feared that it will be influenced by general political considerations rather than considerations of justice applicable to the particular case before it.
>
> If it is alleged that the claim is not properly presented, then judgement is being made purely on the basis of form which is far from satisfactory.
>
> Lastly, if it is alleged that not a shred of evidence has been submitted, I would point out that the time for bringing forward evidence is not when the complaint is first formulated, but during its discussion.

In the cases of Czechoslovakia, Hyderabad and the Anglo-Iranian Oil Company dispute, the French delegation adopted a similar attitude, favouring the inclusion and discussion of the subject before any decision was taken as to the nature of the subject matter.

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1. S.C., 1st Yr., 2nd Series, No.7, 59th mtg., p.190-191.

During the discussion of whether or not to include the Czechoslovak question on the Council's agenda, to which the Soviet Union objected, M. Parodi explained France's position thus:[1]

> .... More than once already, when dealing with questions which arose earlier, we have had occasion to discuss whether certain matters should be included in the agenda or not. We had this discussion, for instance, on the occasion of a complaint which was made by the Ukrainian SSR itself regarding the Greek Question. At that time also one of the members of the Security Council objected to the inclusion of the question in the agenda. The position which I took then, and which I see no reason to alter today, was that to be discussed, a question must first be included in the agenda; and if it is contended, as the representative of the USSR contended a moment ago, that a complaint submitted to the Council has no facts to support it, we must still be able to examine it to find out whether or not that is really the case; and to do that we must first of all include it in the agenda.
>
> .... The case would be different only if we had before us a complaint - I desire to make a reservation in respect of any such case - which was obviously frivolous or ill-informed. But the events referred to in the complaint made by the representative of Chile are of such a character that it is impossible to regard the complaint as frivolous.

It may well be asked why, if the objections of the Soviet Union to the inclusion of this subject were not valid, those of France to the inclusion of the subjects of Morocco and Algeria were? If one subject requires discussion in order to clarify the issues at stake, why not another?

In the same year, when the question of Hyderabad came before the Security Council, France again adopted the same views on the inclusion of an item in the agenda. Again, M. Parodi said:[2]

> If I am correct, we are faced with a difficulty which we have previously encountered: to know the exact implication of adopting an item of the agenda. It may be maintained that, in order that an item of the agenda may be adopted, the Security Council must have determined its competence to deal with the question.
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> It may, on the other hand, be thought that, in order to discuss its competency in the matter, the Council must first of all have decided to place the item on the agenda.

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1. S.C., 3rd Yr., Nos.36-51, 268th mtg., p.98.

2. S.C., 3rd Yr., No.109, 357th mtg., p.8.

> The French delegation has always considered the latter procedure to be more logical, and the more consistent with the good ordering of the work of the Council.
>
> I believe we have here one of these cases in which determination of the Council's competence is closely linked with substantive considerations and that, in order to decide our competence, we have first to study the documents before us and perhaps even to give hearings.
>
> In such circumstances, it seems to me preferable to place the item on the agenda, it being understood, as one of the members of the Council indicated ..... that while so doing we are at the same time reserving all subsequent decisions of the Council, including the possibility of its declaring itself incompetent in the matter.

It may no doubt have been true that in 1948 the French delegation had, up till that date, always adopted this stance on the question of inclusion. But it should be remembered when reading this lucid explanation by M. Parodi that as soon as the question of Morocco was brought to the attention of the Council, in 1953, France changed her tune, and quickly abandoned her flexible approach.

Finally, in 1951, during the discussion of whether or not to include the Anglo-Iranian Oil Company dispute on the Council's agenda, the French representative, putting the entire matter very neatly, said:[1]

> It seems to my delegation that this very divergence of views on the subject among the members of the Council clearly indicates the need for a debate.

Why then was there subsequently no need for a debate in the cases of Morocco, Algeria and Oman? The same divergence of views was present in those cases, both in the Council and among the members of the United Nations at large.

In the face of the lack of any reasonable answer to these questions, it can only be concluded that French practice in this matter has become infected with the same political considerations as that of the United Kingdom and the Soviet Union.

(d) China

The oriental contribution to the problem of inclusion of items on the

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1. S.C., 6th Yr., 559th mtg., para.27.

Security Council agenda has not been noted, either, for its clarity. The views of China have been just as confused as those of the other Permanent Members of the Security Council.[1]

China does not seem to be able to make up her mind whether or not the inclusion of an item in the agenda of the Council prejudices the question of competence and whether or not a prima facie case must be presented in order to justify inclusion.

In 1948, during the discussion of whether or not to include the question of Hyderabad on the agenda, Mr. Tsiang said:[2]

> .... While it is true that placing a question on the agenda of the Security Council does not prejudice the merits of the question, while that is true, it is not equally true that placing the question on the agenda does not involve a certain view of the competency of the Security Council in regard to that question.
>
> The Security Council is set up to guard international peace. The admission of a question to the agenda does imply a certain view of the juridical status of the parties to a dispute. I am not sure that even a ruling by the President on that aspect of this question can safely and completely guard the position of the Security Council with regard to the competency of the Council in relation to this matter. Certainly, in the absence of a presidential statement on that aspect of the question, my delegation feels that the adoption of the agenda does prejudice a very important aspect of this question.

The view that the inclusion of an item in the agenda does prejudice the question of competence to a certain extent indicates also a certain attachment to the related theory that before any item can be included in the Council agenda, a prima facie case has to be made out by those requesting its inclusion. This was the view adopted by the Chinese delegation in 1950 when the question of Formosa was brought up in the Security Council.

China opposed the inclusion of the question of Formosa in the Council agenda

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1. The views of China do not easily divide into the two sub-headings used so far and are therefore dealt with together.

2. S.C., 3rd Yr., No.109, 357th mtg., p.5.

because, she claimed, there was no prima facie case to discuss. On this occasion Mr. Tsiang said:[1]

> I wish now to state as briefly as possible the reasons for my objection. When a question is placed on the agenda of the Security Council, there must be at least some mild degree of a prima facie case. As regards this complaint, there is not even the flimsiest prima facie case. It would be very strange if the Security Council were to place on its agenda any flimsy complaint which anybody in the world would wish to offer here.
>
> Everybody knows that my Government is in effective control and administration of the island of Taiwan. ....
>
> My Government knows of no aggression on the part of the United States. My Government has no complaint to make.

Had China rested on this position, her views could have been criticised, but not indicated as examples of confused thought. However, in 1951, during the discussion of whether or not to include the Anglo-Iranian Oil Company case in the Council's agenda, Mr. Tsiang successfully obscured China's position on the effect inclusion has on the question of competence. On the one hand he seemed to say that no matter could be included in the agenda unless it was first decided that the Council was competent to deal with it. On the other he seemed to suggest that irrespective of the status of the item, it could be included in the agenda and discussed and, if necessary, removed from the agenda, should it be decided later that the matter fell within the domestic jurisdiction of Iran. His exact words were:[2]

> The question of the competence of the Security Council hinges, in our judgement, in regard to the nature of the matter, on whether or not it is within the domestic jurisdiction of Iran; that is the crux of the matter. If the Council should find that this matter is entirely within the domestic jurisdiction of Iran, then the Council has no business to put this item on the agenda.
>
> I am not sure of all the facts relating to this question. I should like to gather more facts to help me make up my mind. Therefore, I should like to see some amount of discussion here, with the distinct understanding that this Council, as well as any member of it, could at any moment say that this matter is within the domestic

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1. S.C., 5th Yr., No.34, 492nd mtg., p.3.

2. S.C., 6th Yr., 559th mtg., para.42; emphasis added.

> jurisdiction of Iran, and should therefore be removed from the agenda of the Security Council. I want to make that as emphatic as possible so as to leave no misunderstanding in regard to it.
>
> There is another part to this discussion. The adoption of the agenda as it stands, it appears to my delegation, leaves any member of this Council or anybody invited to participate in this debate free to raise that question of competency again and again, along with matters of substance. In spite of the fact that I think that there is a question in regard to competency, I will vote for this agenda. .....

It is difficult to appreciate how China can assert, on the one hand, that if a matter falls within the domestic jurisdiction of a particular state, the Council has no business putting it on the agenda, and on the other, that a matter can be included and discussed and then removed from the definitive agenda should the Council feel, after discussion, that it does fall within the domestic jurisdiction of Iran. The two positions are not compatible.

In two subsequent cases discussed by the Security Council, the Chinese delegation adhered to the view that the inclusion of an item in the agenda did not prejudice the question of competence, a view which she appeared to have advanced, along with others, during the discussion of the Anglo-Iranian Oil Company dispute. These cases concerned Morocco and Angola.

In the debate on the adoption onto the agenda of the Moroccan question, Mr. Tsiang said:[1]

> .... This question of competence is very complicated. I am not ready to deny the validity of the arguments used by the representatives of France and the United Kingdom. On the other hand, I do not believe that their arguments are conclusive. There remains, in my opinion, legitimate doubt on this point. ....
>
> The view of my delegation is that this item should be included in the agenda without prejudice to the question of competence. That question is in itself complicated. It is only after a more detailed consideration that we can decide finally whether this Council is competent or not. ....

In 1961, China still adhered to this point of view, this time in relation to the consideration by the Council of the situation in Angola. Indicating that

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1. S.C., 8th Yr., 621st mtg., para.88.

China would not oppose the inscription of this item, Mr. Tsiang said:[1]

> I would like to begin with a confession. Frankly, my delegation knows very little about conditions in Angola as my country has not had direct relations with that region. We are, therefore, not in a position to pass judgement on the nature of the problem presented or on the proper forum to have a discussion. However, it appears to my delegation that in this case as well as in all borderline cases, a discussion may afford us much useful information and much needed elucidation. Under the flexible procedures of the Security Council inscription by itself does not and should not prejudice the rights and claims of any party concerned. For these reasons my delegation is ready to defer to the wishes of the representative of Liberia for inscription of the item.

However, although Mr. Tsiang does, in the latter part of the paragraph just quoted, declare in terms that admit of no exception that inclusion of an item in the agenda does not prejudice the question of competence, earlier in his speech he does appear to suggest that where possible a State Member of the Security Council, should pass judgement on the nature of an item prior to inclusion on the agenda. Such views again demonstrate a strange dichotomy in Chinese thinking on this point.

Not only are there certain irreconcilable views present in the Chinese stand on the inclusion of the Angolan question, but in addition, between 1953 when Mr. Tsaing supported the inclusion of the Moroccan question, and 1961, when he again supported the inclusion of the Angolan question, both ostensibly on the grounds that the question of competence was complicated and that to include the items first and decide the question of competence afterwards was not in violation of the rights of any of the parties, Mr. Tsiang refused to support the inclusion of the Oman question because the Council did not have at its disposal sufficient information to enable it to take a decision even on the adoption of the agenda. In other words, between two statements supporting the view that inclusion was without prejudice to the question of competence, China fell back, in another case, on the theory that to justify inclusion, a prima facie case has to be presented.

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1. S.C., 16th Yr., 944th mtg., para. 3.

In 1957, during the discussion of Oman, Mr. Tsiang said:[1]

> .... In other words, as I understand the matter, the United Kingdom falls back on the Sultan of Muscat and Oman. The British case, therefore, is as good or as bad as that of the Sultan - no more and no less.
>
> It is in relation to that very point that my delegation finds the need for further clarification. My delegation is not certain exactly where the Sultan stands, in this whole matter. Whether or not the Security Council is competent to intervene in this matter depends on that point. My delegation does not quite appreciate the real nature of the Imamate as an institution. We know almost nothing of the peculiar conditions of this particular Imamate of Oman. Has the Imam enjoyed independent sovereignty in his dominions? That is a formal legal matter.
>
> Beyond that, I should like to know a little more about certain questions. Are the people in the Imamate a distinct nationality, distinct by virtue of race, religion and language? In other words, are the people there a distinct nationality, aside from the fact that today they could be considered as an independent State?
>
> The Treaty of Sib of 1920 has been quoted here. I find it rather difficult to interpret the terms of that Treaty for our present purposes, and I am not sure that the text as it appears in the papers is authentic in all respects.
>
> My delegation feels that it is premature for the Security Council to take a decision on this point, even on the adoption of the agenda. I should like to see this decision postponed. If the President finds it necessary to put the question of the adoption of the agenda to the Council this afternoon, my delegation will not participate in the vote because we consider such a vote to be premature.

If it was premature to vote on the adoption onto the agenda of the Oman question because not enough was known about the legal and political status of that territory, why was it permissible to support the inclusion of the question of Angola, where the same lack of information troubled the Chinese delegation? To these questions there are no immediately evident answers, and in this case it is not patent that Chinese actions were influenced by cold war politics. The Chinese position on the question of inclusion and its effects on the rights of the parties remains, to a considerable extent, inscrutable.

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1. S.C., 12th Yr., 784th mtg., paras.12-16.

(e) United States

Of all the Great Powers, the United States has presented views which are the most coherent, but unfortunately, even here certain inconsistencies exist.

First. The subject is domestic and hence, as it cannot be discussed, cannot be included in the agenda. Discussion itself constitutes intervention in the domestic affairs of a member State.

The United States has not sought to block the inscription of items in the agenda of the Security Council using this argument. Rather, United States statements on this subject can be grouped under the heading, 'All items should be included'.

Second. All items should be included.

As with the case of the other Great Powers, so too the statements of the United States on this point are somewhat contradictory. It is not clear whether the United States favours the inclusion of any item which is raised in due form, or whether, in her opinion, a prima facie case, entailing an a priori judgement, has first to be made out. Both points of view have found support in United States practice.

It has already been seen that in 1946, at the second meeting of the Security Council, the United States asserted the right of any State, which lodged a complaint with the Council, to be heard.[1] This view was maintained later in the same year, in the face of strong opposition from, inter alia, the United Kingdom, when the Ukrainian complaint concerning the situation in Greece came up for consideration. The American delegate asserted that the Council had a duty to examine any matter which was brought to its attention whenever there was some claim that there existed a threat to international peace and security. He said:[2]

The position of my Government has, consistently since the

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1. Supra, p.30

2. S.C., 1st Yr., 2nd Series, 59th mtg., No.7, pp.175-176; emphasis added.

> organization of this body, been that the Council cannot deny to a Member of the United Nations who states that a condition exists which is likely to threaten international peace and security, the opportunity to present its case..... The representative of the Ukraine has cited Article 35 in his communication to the Council. I have always understood that under Article 35 of the Charter, the Council's attention may be drawn to a situation either orally or in writing, <u>without the necessity of making charges.</u>
>
> My Government thinks, without prejudice to the merits of the complaint <u>or even to the good faith behind the complaint</u>, that the Council should place a minimum of technical requirements in the way of consideration of situations brought to its attention.
>
> I think therefore that the Ukrainian complaint should be put on the agenda of the Council. ..... In my opinion, the Council will be derelict in its duty if it does not examine the complaint and all that may be said and brought to substantiate the complaint, with the most rigid objectivity.

The opinion put forward here is couched in definite terms, and accords to any State the right to be heard whenever it alleges that a certain dispute or situation is likely to endanger the maintenance of international peace and security. No mention is made of the necessity of making a <u>prima facie</u> case before the item would be included in the agenda. It seems from this statement that all that was necessary, in American opinion, to justify inclusion, was the presentation of a request, inviting the attention of the Security Council to a situation of the type mentioned in Article 34 of the Charter. Upon the presentation of such a request, the Council became bound to consider it.

During the debate on the adoption onto the agenda of the Ukrainian complaint regarding the situation in Greece, several delegations had raised grave doubts as to the Council's competence to entertain the matter. It had been suggested that Article 2(7) prohibited the Council from dealing with it. The United States delegation did not deal with this point. But it is a reasonable inference from the views which she did state that she would not have considered the inclusion of an item in the agenda and its discussion as violations of Article 2(7), even if it were finally decided that the matter did fall within the domestic jurisdiction of Greece. The American point of view was that when a matter was raised it had to be investigated and discussed. Such an attitude would have been incompatible

with any other approach to the question of the legal effects of inclusion.

Subsequently, in 1948, the American delegation expressly supported the theory that the inclusion of an item on the agenda was without prejudice to the question of the Council's competence. In the question of Hyderabad, Mr. Jessup suggested, in the face of certain doubts as to the competence of the Council to deal with this question, that since the adoption of the agenda did not prejudice the question of competence, it should be adopted and the Security Council should proceed as far as it could at that stage, thus giving Members of the Council time to seek further instructions from their Governments in regard to any judgement or opinion which they may have been called upon to make on the question of competence or on the merits of the question.[1] He later added that in his opinion the appropriate way to investigate and discuss even the question of competence was to place the item on the agenda.[2]

The same attitude was taken with respect to the Chilean complaint regarding the purported Soviet intervention in the domestic affairs of Czechoslovakia in 1948, when the communist party came to power. The American delegate, Mr. Austin, indicated that the inclusion of an item on the Council's agenda did not prejudice the question of that body's competence and that in any case, the only way to investigate and decide on that question was to include the item on the agenda. He said:[3]

> A decision on the question now pending is not a decision on the substance and it would not constitute a judgement upon the merits of the question. But when a question is raised, as it is here, whether an item should be placed on the agenda for discussion or not, there must be a consideration of the character of the question in order to learn whether the competence of the Security Council reaches the item.

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1. S.C., 3rd Yr., No.109, 357th mtg., p.4.
2. ibid, p.11.
3. S.C., 3rd Yr., Nos. 36-51, 268th mtg., p.99.

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If these allegations are true, the matter would clearly not be essentially within the jurisdiction of Czechoslovakia, because it would be a situation resulting from illegal action by one Member of the United Nations against another. Consequently, in order to be able to determine whether the case comes within the meaning of Article 2, paragraph 7, the Security Council must consider the complaint, and of course, it cannot consider the Chilean complaint if it has not put it on the agenda.

In keeping with the policy outlined so far, the United States delegation supported the inclusion of the Formosan question on the Council's agenda in 1950, a question which had been raised by the Government of the People's Republic of China, alleging American aggression on Chinese territory.[1] No attempt was made by the United States representative to block the inscription of this item on the grounds that, for example, the charge was ridiculous as the Nationalist Government was in control of that island and that the American forces present there were there at the request of that Government.

Again in 1950 the United States supported the inclusion of an item directed against itself. This time the complaint, again from Communist China, concerned the Korean war and was phrased, 'Statement of the Central People's Government of the People's Republic of China concerning the invasion of the frontiers of the People's Republic of China by the United States air forces and the bombing and shooting up by those forces of buildings, railway stations, rolling stock, people

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1. S.C., 5th Yr., No.34, 492nd mtg., p.2. This item had originally been called, "Statement of the Central People's Government of the People's Republic of China concerning armed invasion of the territory of China by the Government of the United States of America and concerning the violation of the Charter of the United Nations...' The United States delegate said that if the wording of the item were changed to 'Complaint regarding Formosa' he would support its inclusion, which request was supported by the British delegation. (ibid, p.9) It was alleged that the original wording of the item prejudged the issue, since it set out the point of view of Communist China. It is submitted that such a rguments are not of much value, for after all, the Council does not, by the mere fact of including an item on the agenda, accept the veracity of the allegations contained therein. See infra, p.70.fn.2

and aerodromes."[1] Conditional upon changing the designation of the forces as those of the United States to those of the United Nations, the United States supported the inclusion of this item.[2]

Despite certain minor inconsistencies,[3] until this point American policy in the debates on the adoption of the agenda had been relatively coherent. In her opinion, any item correctly brought to the attention of the Security Council under an Article of the Charter ought to have been investigated by that body. States making a complaint had, in American opinion, a right to be heard, and the Council, a duty to hear them.

From this point, however, the United States began to modify her position somewhat. Also during 1950, and at the same meeting as that at which she supported the inclusion of the item regarding the invasion of China by United Nations forces, the United States opposed the inclusion of the Russian sponsored item, entitled "Unceasing terrorism and mass executions in Greece".[4] "Among all the wild charges

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1. S.C., 5th Yr., No.35, 493rd mtg., p.1.

2. While there were no doubt political reasons for wishing a change in the designation of the forces in question in this case, and for a change in the wording of the item concerning Formosa, such requests do point to a slight inconsistency in the American stand on the question of inclusion of items on the agenda of the Council. If, as the United States delegate said in 1946 with reference to the Ukrainian complaint regarding the situation in Greece, the Council would be derelict in its duty if it refused to examine a complaint brought forward under Article 35, why should there be any necessity to change the wording of any item? The inclusion of an item is, as the United States herself has asserted, without prejudice to the substance of the item. Inclusion of an item does not mean that the Security Council accepts as valid the premises on which the request for inclusion is based. If it did, then there would have to be some kind of investigation of complaints prior to their being sent to the Security Council. If a charge, as formulated in a request for inclusion, is false, then it would be better to let that falsity be exposed as a result of the Council's deliberations, rather than as a result of some preliminary deal to allow the item to go onto the agenda.

3. See supra, fn.2, and p.69, fn.1.

4. S.C., 5th Yr., No.35, 493rd mtg., p.27.

contained in this item," said Mr. Austin, "there is no single coherent suggestion that there is a threat to international peace or even an international dispute." The refusal of the United States to support the inclusion of this item, while it may have been justified on the grounds that the request was obviously frivolous, does not accord with prior United States statements. The United States may have thought that there was no coherent suggestion of a threat to international peace, but why else was the Soviet Union ostensibly raising it? The Soviet Union may have been acting in bad faith, and been seeking to use the Council for an improper purpose, but previously the United States had indicated that the good faith of the requesting state should not be an obstacle to inclusion.

During the discussion of the inclusion of the Anglo-Iranian Oil Company case, the United States further modified its previous position. Whereas, previously she seemed to deprecate the taking of any a priori decisions on the nature of the subject matter of the request, as domestic or non-domestic, here the United States seemed to move towards the ranks of those who wished to see some kind of prima facie case before they would vote for inclusion, i.e., towards those who were in favour of making some a priori decision on competence before any discussion in the Council ensued. On this occasion, Mr. Austin, supporting the inclusion of the item, said:[1]

> As I understand it, the objection raised by the representative of the Soviet Union concerns item 2 of the agenda, which reads, "Complaint of the failure by the Iranian Government to comply with provisional measures indicated by the International Court of Justice in the Anglo-Iranian Oil Company Case". Therefore, if the purpose of the Soviet Union and Yugoslavia is to raise the question of whether the matter is essentially within the domestic jurisdiction of Iran, such a matter depends upon a consideration of the very substance of this item. The United Nations does deny itself the right to interfere in essentially domestic matters. However, such denial follows the adoption of the agenda and consideration of the point raised; it does not precede - unless there are no opposing inferences. The Council cannot immediately take a decision on that constitutional question unless there are no opposing inferences as to the subject matter being

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1. S.C., 6th Yr., 559th mtg., paras.30-31, 37, emphasis added.

essentially within the domestic jurisdiction of a State.

> In this case the situation is just the reverse. Here, the weight of opinion already expressed shows that far more members of the Security Council believe that this is not a matter essentially within the domestic jurisdiction of the State. Certainly it appears that there is a prima facie case to be presented to the Security Council; and if the Security Council is going to deny to the United Nations the right to consider this item on the agenda, it must be only after studying the item and reaching a decision after thorough consideration. That does not, of course, as has been stated here repeatedly, decide the merits of the case.
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> .....
>
> I ought to add.... that my Government has no doubt about the competence of the Security Council to consider on its merits the dispute between the United Kingdom and Iran. I need only recall that it is the Security Council which has the primary responsibility for the maintenance of international peace and security, and that the very first step towards the exercise of that duty and performance of that function is to consider the dispute or the situation which may affect the maintenance of international peace and security.

This statement is itself somewhat equivocal. On the one hand, Mr. Austin adheres to the old American line that no decision can be taken on the question of Council competence till once the item has been included on the agenda. This is in keeping with the prior American statements to the effect that 'there must be a consideration of the character of the question in order to learn whether the competence of the Security Council reaches the item'. On the other hand, however, Mr. Austin added a proviso, which had not previously formed part of the American approach to this question. This proviso was to the effect that a decision on the competence of the Council could be taken prior to inclusion, if it could be inferred from the surrounding circumstances that the matter was essentially domestic.

The growing attachment of the United States to this practice of making some kind of a priori judgement on the situation without first hearing the parties concerned is demonstrated by her statements in the Moroccan Question. In this case, while the United States did not seek directly to block inscription of the item on the agenda by reference to its domestic nature she stated that, in her opinion, international peace and security were not endangered by the events in that country, which, of course, in this case, was substantially the same as saying that the matter was domestic.[1] In explaining why the United States would

1. In the Algerian Question, the United States voted against inclusion because, in her opinion, Security Council consideration would not contribute to a settlement of that problem: see S.C., 11th Yr., 730th mtg., paras.81-84.

not vote for the inclusion of this item, Mr. Cabot Lodge said:[1]

> In passing on the question of the inclusion of this item in the agenda we must decide whether the developments in Morocco constitute a situation the continuance of which endangers the maintenance of international peace and security. We are not asked to examine our position on colonialism or on other similar questions important though they may be.
>
> .... But it must be obvious to anybody who looks at the facts candidly that the situation in Morocco does not in fact endanger international peace and security, just as it must be clear to anyone who surveys the United Nations candidly that the surest way to undermine the position of the Security Council is to divert it from its primary mission of maintaining the peace of the world and use it instead to deal with all sorts of other questions under the pretext of safeguarding international peace and security.
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> I realise that the argument is made that the fact that sixteen nations object to recent events in Morocco in and of itself constitutes 'international friction' and therefore empowers the Security Council to investigate to see whether continuance of the situation is likely to endanger international peace. This line of reasoning would make it possible to break down the distinction between matters of domestic and international concern.
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> .....
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> It is our contention that the situation in Morocco does not endanger international peace and security, and therefore we shall vote against placing this question on the agenda.

Mr. Lodge's argument in the Moroccan case is not without a certain degree of merit but it is an argument which cannot stand beside the actual terms of the Charter, or indeed, the tenor of prior American statements on the question of inclusion of items on the agenda of the Security Council. In 1946, at the London session of the Security Council Mr. Stettinius, on behalf of the United States, expressed the view that any State making a complaint had the <u>right</u> to be heard at the Council table. Later in that year, in connection with the Ukrainian complaint regarding Greece, the American representative asserted that the Council could not deny to a Member State, who asserted that a condition existed which threatened international peace and security, the opportunity to present its case. Why, it may be asked, did the United States wish to deny to the sixteen States which requested the inclusion of this item, the opportunity to present their case?

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1. S.C., 8th Yr., 620th mtg., paras.9,10,12.

How, as prior American delegations had noted, could the Security Council know whether the allegations of the sixteen Afro-Asian States that there did exist a situation which endangered the maintenance of international peace and security, were true or not, unless it investigated them?

The complete reversal of earlier American policy on the adoption of the agenda is evident in the stand she took in the question of Oman. In this case, what in effect the American delegate, Mr. Lodge, said was that as he did not know what to make of the various charges and counter charges, he would abstain. Explaining his position he said:[1]

> The various statements that have been made, urging the inclusion of the proposed item in the agenda, have been heard by us with close attention. Equally close attention has been given to the statements of members who feel that the proposed item should not be considered by the Council. These statements and the other information available to us are not sufficient to justify the United States in committing itself for or against inclusion at this time. The United States accordingly will abstain in the vote on the inclusion of the item in the Council's agenda.
>
> The facts with respect to developments in the area are complex and not entirely clear, and the applicable laws as well as the identity of the real parties in interest is not free from doubt.

The contrast between this statement and that made by Mr. Austin in 1948 concerning the inclusion of the Czechoslovak question is striking. With reference to the Oman statement, it may be asked if these doubts which prevented Mr. Lodge from supporting the inclusion of this item would not have been resolved had the item been included and investigated?

It is easy to see that there exists a certain confusion in American policy towards the inclusion of items in the Council agenda. This confusion is deepened further, not by additional statements by American delegations in agenda debates, but rather by what they did not say. It has already been noted that the United States does not consider the inclusion of an item on the agenda of any United Nations body and the discussion thereof as intervention in the domestic affairs

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1. S.C., 12th Yr., 784th mtg., paras. 4-5.

of any State. What then, is the purpose of this growing attachment to the need of a prima facie case before the United States will vote for the inclusion of an item on the agenda? The demand for such a prima facie case is closely linked with the theory that inclusion somehow prejudices the question of the Council's competence. The United States, however, has made it very plain recently that the inclusion of an item on the agenda and its discussion by any United Nations body does not, in her opinion, constitute intervention in the domestic affairs of a Member State.[1] Why then does she apparently require to see a prima facie case before she will vote for the inclusion of an item in the Council's agenda? No answer to this is available in the agenda debates, and the substantive debates are not, as will be seen, of much help in this matter either.

The uncertainty which surrounds the American position on the inclusion of items in the Security Council agenda is accentuated by the fact that the variations in her policy do not seem to be the direct outcome of cold-war considerations. The United States has supported the inclusion of items in which she herself was implicated which other delegations, apart from that first session in London in 1946, have not. She has supported the inclusion of items in which her allies were implicated as well as those which concerned the affairs of members of the communist bloc. The reasons for the change in American policy cannot be formulated, it is submitted, in simple cold war terms.

The change in American opinion has been gradual and she has not been guilty of the marked fluctuations of opinion which, for example, punctuate the British approach to the question. It seems rather that American policy towards the inclusion of items on the agenda has hardened somewhat. It would be fairer to say that the United States has backed away from the flexible policy she espoused

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1. See Statement of U.S. delegate, F.T.P. Plimpton in 6th Committee on 3 December 1963. Reprinted in Dept. of State Bull., Vol.L, No.1283, January 27, 1964, pp.133-143, partic.pp.136-139.

at the beginning rather than that she has consciously run with the hare and hunted with the hounds. The reason for this hardening of approach may perhaps be due to what has seemed, in western eyes, to be the obstructionist tactics of the Soviet bloc in the Council and the attempted misuse of that body for propaganda purposes. Whether this is so or not cannot be said with any certainty. However, whatever the reasons, this change of approach is nonetheless regrettable for it does curtail the functioning of the Security Council in its principal area of operation, the pacific settlement of disputes.

(f) Conclusions.

The Permanent Members of the Security Council must, in general, bear the charge of political opportunism in this matter of admitting items to the agenda of the Security Council. To a greater or less extent, all have advanced arguments which are contradictory. Russia, the United Kingdom and the United States all subscribed to the right of any Member of the United Nations to be heard in the Security Council whenever they have a complaint. Yet, with the exception of the United States, all the Permanent Members have espoused views which vary markedly with the political circumstances in which the case is raised. The extent of this equivocation has been demonstrated above and it is not necessary now to repeat any of the instances. The justifiable conclusion is that, with the possible exception of the United States, the policy of the Permanent Members of the Security Council towards the inclusion of items on the agenda is not subject to any definable legal principles, but rather varies with the political exigencies of the times.

2. The Non-Permanent Members of the Security Council

The views expressed by the non-permanent Members of the Security Council cannot be classified with such facility. Not all of them have expressed themselves forcibly on this subject, and precisely because these Members are non-permanent it is not possible to trace the variations in their opinions in vastly differing

political circumstances.

(a) Certain western non-permanent Members and the contradictions in their pronouncements.

Of the western European or western orientated States which have been non-permanent Members of the Security Council, Belgium, Greece and the Netherlands have exhibited the same tendency to suit their views to the political situation, as the Permanent Members.

(i) Belgium

Belgium opposed the inclusion of the Algerian question on the agenda because in her view it fell outwith the competence of the Security Council, but she supported the inclusion of the Czechoslovak and Hungarian Questions. In the Algerian case, despite attempts to avoid giving this impression, what Belgium was in fact doing was making an a priori judgement without hearing the facts presented by the parties concerned, whereas in the Czechoslovak case, she espoused a completely contradictory view.

During the debate on whether or not to include on the Council's agenda the Chilean complaint regarding the purported Russian intervention in Czechoslovakia in 1948, the Belgian delegation espoused two points of view. First, she maintained that the inclusion of an item in the agenda did not prejudice the question of the competence of the Council to deal with it.[1] Here Mr. Nisot, the Belgian representative said:

> .... Moreover, inclusion in the agenda merely settles the question of admissibility and in no way prejudices a decision on the substance of the question, or even a decision regarding the competence of the Council.

Second, the Belgian representative maintained that once a question was raised in due form it had to be included in the agenda. The Council could not decline to deal with it. Mr. Nisot said:[2]

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1. S.C., 3rd Yr., Nos.36-51, 268th mtg., p.100; see also ibid, No.63, 288th mtg., p.18.

2. ibid, Nos.36-51, 268th mtg., p.100; emphasis added.

> In submitting this question to the Council, the representative of Chile has exercised a right accorded to him by the Charter, and the Security Council is not at liberty to refuse to include such an item in the agenda, once it has established that the request is made by a State Member and is based on an Article of the Charter.

Some years later, however,[1] Belgium opposed the inclusion of the Algerian Question on the agenda, even though its inclusion had been requested by thirteen Members States. On this occasion Mr. Nisot said:[2]

> Mr. Abdoh (the Iranian delegate) referred to the practice of placing a matter on the agenda in order that the question of competence may be discussed. It is true that this practice may offer some opportunity of elucidating the question of competence when this has not been discussed. On the Algerian matter, the question of competence of the United Nations was the subject of lengthy discussion last year.[3] The Belgian delegation would not be justified in acting here as though the subject had never been broached in the United Nations, as was the case in the matter which Chile brought before the Council in 1948. Once again, the question of competence has been considered at length; it was discussed again this morning.
>
> Hence the Belgian delegation sees no reason for holding a new debate on this subject, which would happen if it was placed on the agenda. In the Belgian delegation's view, therefore, there is no resemblance between the present situation and the situation before the Council in the case mentioned by the representative of Iran.

While there is a certain degree of merit to what Mr. Nisot says, it is submitted that his views are wrong and that they are inconsistent with his stand in the Czechoslovak affair. It is true that the subject of Algeria had been the subject of a debate in the General Assembly the previous year. However, the situation may well have changed since then. Mr. Nisot may not have been able to see any reason for holding a new debate on the subject, but as other delegations had pointed out on numerous other occasions, unless a subject is discussed no such reasons can be presented to the Members of the Council. Unless the Council does hold a debate it will not be in a position to appreciate whatever changes have occurred.

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1. 1956.
2. S.C., 11th Yr., 730th mtg., paras.67-68.
3. G.A., (X), Plen., 530th mtg.

in the situation. Furthermore, whether the situation had or had not changed, could not affect the right, which Mr. Nisot postulated in the Czechoslovak case, of a State to bring a matter before the Council and the duty of the Council to consider it. If, as is submitted, such a right does exist - and Belgium has agreed with this proposition - then she had no choice in the Algerian case but to vote for its inscription on the agenda. The fact that she did not do so is taken as indicating indecision on, or duplicity in, this question of inclusion, or both.

(ii) Greece

In the period under discussion, Greece was only once a member of the Security Council when this question was raised, i.e., in 1953, during a discussion of whether or not to include the Moroccan question on the agenda. On this occasion she abstained for political reasons. To some extent, however, it would seem, from the statement of the Greek representative on this occasion, that Greece favoured the policy of including all items in order that they might be discussed. The Greek representative, Mr. Kyrou said:[1]

> My Government unreservedly champions the principle of the 'open door'. The United Nations should, in our opinion, be willing to consider any problem within the purview of its purposes and activities provided, of course, that does not run counter to the relevant articles of the Charter. The duty of all Member States is to undertake the consideration of such a problem with a view to working out the most appropriate solution in the given circumstances.

However this statement is itself not too clear. It is not clear whether Mr. Kyrou really wants the door to be open to all comers, as he says, or whether he has made some provision here for an escape for those States which wish to oppose inclusion of a certain item. By making his reservation re matters which run counter to the articles of the Charter, is he here suggesting that such a matter has to be decided before inclusion, i.e., by some a priori judgement on

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1. S.C., 8th Yr., 621st mtg., paras.3-6.

the part of the Members of the Council, or does he just mean that such a decision would have to be taken after inclusion?

Previous action by Greece during the substantive debates on the Greek question in 1946 suggests that Greece would favour some a priori decision on the nature of a subject. Greece was not a Member of the Security Council in 1946 when the subject of her own 'internal' troubles came up. Upon the adoption of the agenda Greece was invited to participate in the substantive debate on the question whereupon, as well as dealing with the substance of the Ukrainian charges, she maintained that the matters concerned were entirely internal and that to discuss them constituted intervention in Greece's internal affairs.[1] The proposition that to discuss any matter constitutes intervention is synonymous with the request for an a priori decision on the nature of the subject matter concerned and as such is hardly compatible with the statement that Greece favours the policy of the open door. It is perhaps fair comment that Greece, like many other States, is willing to open the door to discussions of other people's affairs, but not of her own.

(iii) The Netherlands

The Netherlands was twice a member of the Council when this question was discussed-at the time of the Ukrainian request for the inclusion of the Greek situation on the agenda, and again in 1951 when Great Britain requested the inclusion of the Anglo-Iranian Oil Company case. The Netherlands opposed the inclusion of the Ukrainian request, but favoured the British request.

During the discussions of the Ukrainian request, Mr. Van Kleffens, the Dutch representative, was one of the principal opponents of the inclusion of this item, because he maintained, no prima facie case had been made out which

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1. S.C., 1st Yr., 2nd Series, No.9, 61st mtg., p.219.

showed the necessity of a debate.[1] However, during the discussions of the British request, the Dutch representative, apart from believing that a prima facie case had been presented, also spoke in terms which indicated support for the view that, in any case, the inclusion of a subject was without prejudice to the question of competence.[2]

No specific conclusions can be drawn from the Dutch statements, but it is unfortunate that these views should have been maintained in the political context of the cold war, which immediately makes them suspect.

(b) Attempts to circumvent the problem: Yugoslavia

Yugoslavia has been taxed with the problem of how to reconcile the need for accurate information on a certain subject to enable the Council to come to some decision on its own competence, with the question of inclusion and the criteria which have to be present in order to justify this. The answer supplied by this State was to invite any interested State, who was not a Member of the Council, to take part in the debates on the adoption of the agenda. This question had been the subject of a lengthy discussion in 1946, during the discussion of whether or not to include the Ukrainian complaint re Greece on the agenda. It had been alleged by several delegates that the Ukrainian complaint lacked specification and was too vague to merit inclusion in the agenda. It was therefore

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1. ibid, No.4, 54th mtg., pp.33-34; and ibid, No.7, 59th mtg., p.192.

2. S.C., 6th Yr., 559th mtg., paras.22-25, partic. 23-24:

> "In a further consideration, the Court states that the indication of measures in no way prejudices the question of jurisdiction of the Court to deal with the merits of the case; but the fact remains that the Court has seen fit to indicate provisional measures and has thereby suggested its competence in the matter so far. The Court, of course, is undoubtedly the greatest authority to pronounce on matters of competence.
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> In this respect, I may perhaps remind the Council of the fact that, thus far, the Council has not been asked to pronounce on the merits of the case and that we are dealing with exactly the same problem which faced the Court."

suggested that the Ukrainian delegation be invited to the table to expand on its written complaint, prior to any vote being taken on the question of inclusion.[1] It was decided,[2] despite protests from, inter alia, Britain and France, to invite the Ukrainian delegation to make a statement, but for reasons which are not clear from the records that invitation was never extended, prior to the vote on inclusion.

This idea was again raised by the Yugoslav delegate during the debate on whether or not to include the Anglo-Iranian Oil Company case on the agenda. Yugoslavia considered that the nationalisation of the Persian oil industry fell within the domestic jurisdiction of that country,[3] but did acknowledge that there was some dispute over that question. In giving the Yugoslav point of view, Mr. Bebler neatly reviewed the entire problem in these words:[4]

> There is a thesis before the Council that it is not competent to deal with this matter. The main argument of members of the Council against such a thesis was that the Council might decide at a later stage whether it was competent or not. In my opinion, such a position of member States implies that they also have doubts whether or not the Council is competent. That is my first point.
>
> My second point is that, when listening to the representative of the United Kingdom and his argument that there can be no doubt that there is a dispute, I thought that there is also a dispute on the question of our competence to deal with the dispute between the same two States - the United Kingdom and Iran. If we decide now on our agenda, prejudicing to a certain extent our competence to deal with this dispute by starting our discussions on the merits of the case, we shall take the decision on this aspect of the dispute without having heard one of the two parties, Iran. Besides, many delegations have argued that we should listen to the parties in any case, whether we are competent or not.
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> What is the way out of this contradiction: the desire of the Council to listen to the parties, to doubts whether it is competent or not and the dispute on its competency. I think that the only

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1. S.C., 1st Yr., 2nd Series, No.6 & 7, 58th and 59th mtgs.
2. ibid, No.6, 58th mtg., p.156.
3. S.C., 6th Yr., 559th mtg., paras. 9-10.
4. ibid, paras. 46-48.

> way out is to invite the Government of Iran to participate in our debate not on item 2 of our provisional agenda but item 1 - the adoption of this agenda - we shall thus really have dealt to a great extent with the question of our competence.[1]

There are considerable doubts as to the validity of such a procedure. Invitation to non-members of the Security Council to participate in debates depends on Articles 31 and 32 of the Charter, and one rule 37 of the rules of procedure. Rule 37 of the rules of procedure talks about 'the discussion of any question brought before the Security Council'; Article 31 has similar terms and Article 32 speaks of a 'dispute under consideration by the Security Council'. These terms can only mean that an invitation can be issued to a non-member of the Council once the Council is formally seized of a matter. Unlike the rules of procedure of the General Assembly, no provision is made for inviting non-members of the Council to participate in the discussion of the agenda, and it is doubtful, in view of the explicit terms of the Charter, if any such provision could be made. It has, in fact, become standard practice of the Council not to invite non-members

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1. The Yugoslav delegate continued: paras. 49-50,

> "I think that this would be in the spirit of our rules of procedure: under rule 37, any Member of the United Nations which is not a Member of the Security Council may be invited, as a result of a decision of the Security Council, to participate without vote in the discussion of any question brought before the Security Council, when the Security Council considers that the interests of that Member are specially affected. The statements of the Iranian Government which are universally known, make clear that it considers that its interests are specially affected by the Security Council or the International Court of Justice being seized of that question. The Iranian Government has contended too, that these international bodies are not competent.
>
> I think that such a procedure would, moreover, be in the spirit of our practice, especially in the General Assembly. Its General Committee hears the representative of a Member State when it debates the question of the inclusion in the agenda of a special item which affects the interests of that Member State. We always hear that State, and vote on the agenda; and we always, in the General Assembly, at least, consider that as being a decision on competence. We include an item when we consider that we are competent, and we do not include it when we consider that we are not competent. I think that we should act in accordance with those practices."

to take part in the debates on the adoption of the agenda.

The suggestion that non-members should be invited to participate in the debate on the adoption of the agenda is, it is submitted, a direct outcome of the confused state of thinking on the consequences of the adoption of the agenda. Were the inclusion of an item in the agenda recognised to be a matter of form, with no effects whatsoever on the rights of the parties, then these questions would be avoided in toto. That it is not so recognised has led to this continual dispute concerning its legal effect every time a matter is raised which seems to deal with a matter which touches in some degree upon the domestic jurisdiction of a particular State.[1]

(c) When can the Security Council consider a subject?

Among the non-permanent members of the Security Council, there has also been a tendency to urge the view that the Council is bound to consider any item which is raised before it and which asserts that there is in existence a dispute or situation the continuance of which is likely to endanger the maintenance of international peace and security.

For example, during the discussion of the Algerian question, it was asserted by the Iranian delegation that whenever there was doubt as to the existence of such a threat to the peace, that alone was sufficient to cause the Security Council to enquire into the matter. On that occasion the Iranian delegate said:[2]

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1. The view that the adoption of the agenda was a purely procedural matter has been expressed by Mexico (S.C., 1st Yr., 2nd Series, No.7, 59th mtg., p.177), Iraq (S.C., 12th Yr., 783rd mtg., para.5) the Philippines, (S.C., 12th Yr., 783rd mtg., para.60) and Ecuador (S.C., 16th Yr., 944th mtg., para.28). Mexico was also of the opinion that the Council was obliged to consider any matter brought to its attention under Articles 34 and 35 irrespective of any deficiencies of presentation (loc.cit.) Iraq, however, was of the opinion that though the adoption of the agenda was a procedural matter it was closely related to the question of competence. (loc.cit)

2. S.C., 11th Yr., 729th mtg., para.71, see further ibid, 730th mtg., paras. 8-9.

If, in spite of all that I have said, there are still certain members of the Council who are not absolutely certain that a threat to international peace and security exists here and now, they nevertheless cannot deny the possibility of such a threat. The Council, therefore, must include this question in its agenda so as to determine, as stipulated in Article 34 of the Charter, if, in its opinion, the continuance of this situation threatens the maintenance of international peace and security. It is quite evident that the Council cannot decide upon this until the question has been included in the agenda.

A similar position was adopted by the Philippines during the discussion of the question of Oman. In that case the Filippino delegate, Mr. Romulo, said:[1]

> We are faced with a question of whether or not to include the proposed item in the agenda of the Security Council. This, as we all know, is a simple matter of procedure and, in the view of my delegation, should not give rise to a lengthy procedural debate. Neither should we indulge in a discussion of the substance of the item before a decision has been reached by the Council to include it in the agenda.
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> It is alleged that armed aggression has been committed against the independence, sovereignty and territorial integrity of the Imamate of Oman. The mere allegation that aggression has been committed, withal by a Member State, is a matter of deep concern to the Organization. The fact that military intervention does not seem to be disputed gives colour to the seriousness of the charge. That the complaint is made by eleven Member States may also be said to reflect in a certain measure the gravity of the accusation.
>
> Article 39 of the Charter calls upon the Security Council to determine the existence of any act of aggression. It follows that the Council has no alternative but to consider the item if only to determine whether or not an act of aggression has been committed.
>
> It is further alleged that the extreme gravity of the situation in that part of the Arab world makes imperative immediate action by the Security Council. It is further contended that it is incumbent upon the Council to investigate such a situation in the exercise of its primary responsibility for the maintenance of international peace and security. .....
>
> Many controversial facts have been alleged here this morning by the representatives of Iraq and the representative of the United Kingdom. Complicated legal questions have been raised, particularly with reference to the status of the Treaty of Sib, which has heretofore governed the relations between the Sultan of Muscat and the Iman of Oman. .....
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> These are among the controversial points that must be clarified in order for us to get the correct perspective and to enable the Council to act fully and impartially. We therefore believe that our rules of procedure and requirements of the Charter should be

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1. S.C., 12th Yr., 783rd mtg., paras. 60-68. For similar Argentinian views, expressed in the Hyderabad case, see S.C., 3rd Yr., No.109, 357th mtg., p.10.

properly observed so that the issues may be studied on their merits.

Other States seemed inclined to the view that some kind of prima facie case must be made out in order to justify inclusion though they do not appear to attach strict criteria to this requirement. For example, during the substantive debate on the Czechoslovak case the Chilean delegate, Mr. Santa Cruz, said with reference to Article 34 of the Charter: 1

> In my opinion, all that is required to bring this provision into effect is the existence of sufficient evidence to indicate that events endangering peace have taken place.

Yet other States seem to attach considerable importance to the number of States requesting the inclusion of a certain item in the agenda. To them, this fact indicates the need for Security Council consideration. For example, during the discussion of the Moroccan question, the Lebanese delegate said:[2]

> It is required to prove that this is a matter that should be taken up by the Security Council. In order to prove this, we must show three things: first, that important events have occurred in Morocco which are likely to disturb the peace in that country; secondly, that these events entail international implications; and thirdly, that these implications are of a character likely to lead to international friction and to endanger the maintenance of international peace and security. If we prove these things, then we have proved the major thesis that this is a situation which should be examined by the Security Council.
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> .....
>
> ..... Surely fifteen nations feeling this and from their intimate knowledge of what goes on among their own peoples, having their own reasons for considering that this situation falls within the competence of the Security Council, must be believed and must be given a chance to expound their reasons. How can a decision be taken not to include this item in the agenda of the Security Council without first listening to these arguments in full.

Similar stress was laid on the numbers of those requesting the inclusion of an item, by Iran, in the Algerian question,[3] and by the Philippines[4] and

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1. S.C., 3rd Yr., Nos.36-51, 268th mtg., p.110. For Chilean views on the inclusion of the Moroccan question, see S.C., 8th Yr., 619th mtg.,para.39.
2. S.C., 8th Yr., 619th mtg., paras.72,119.
3. S.C., 11th Yr., 729th mtg., para.48.
4. S.C., 12th Yr., 783rd mtg., para.61.

Sweden[1] in the question of Oman.

(d) Inclusion is without prejudice to the question of competence: To decide the question of competence, the matter must first be included in the agenda.

Some of the non-permanent members of the Security Council have also espoused the view that the inclusion of a question in the agenda is without prejudice to the matter of the Council's competence and that in any case, in order to arrive at any decision on the question of competence, the matter has to be included in the agenda and discussed.

During the discussion of whether or not to include the Czechoslovak question in the agenda, the Syrian delegate said:[2]

> Without studying the matter, however, the Security Council cannot formulate any opinion on the question of whether the change in the Government of Czechoslovakia represented a spontaneous movement of the people themselves and their political parties, or whether it took place as a result of unlawful pressure from outside. Including the question in the agenda of the Security Council does not mean that the Security Council is expressing any opinion on the substance of the matter, or the question of whether events in Czechoslovakia are a matter of domestic jurisdiction or whether they may fall within the province of the Security Council. However, the matter ought to be studied, with the Security Council reserving the right to formulate an opinion when that study has been completed.

During the discussion of whether or not to include the Anglo-Iranian Oil Company case in the agenda, the delegate of Ecuador said:[3]

> Furthermore, in my opinion, in allowing the inclusion of this item in its agenda the Council would not be prejudicing the question of its competence, the merits or demerits of the case, or the substance of the events which have led to that state of affairs; neither would the Council be deciding the actual substance of the problem.
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> Consequently, after hearing the parties and devoting due attention and consideration to the problem, the Council could decide whether or not it is competent to settle the complaint,

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1. ibid, 784th mtg., para.11.

2. S.C., 3rd Yr., Nos.36-51, 268th mtg., p.95.

3. S.C., 6th Yr., 559th mtg., paras.6-7. Similar points of view were on this occasion supported by Turkey, see ibid, para.13. For similar Ecuadorean views on the Angola question, see S.C., 16th Yr., 944th mtg., paras. 28-30.

and could, if competent, take any decision or adopt any recommendation which it considered to be just, fitting and within its powers.

During the same procedural debate, the Indian representative, Sir Benegal Rau, said:[1]

> We do not yet know enough of the facts of the case. We have read about it from time to time in the Press and, of course, there has been circulated to the members of the Security Council a document (S/2239) containing a copy of the order of the International Court of Justice dated 5th July, but the order itself states that the Iranian Government was not represented at the hearing. Again, we have heard over the radio and read in the press that the Premier of Iran intends to be present here in person to put Iran's case before the Council. We may therefore now expect to have an opportunity of hearing both sides of the matter. After we have heard both sides, we can decide whether the Council is competent to act in this matter and if so, what action it should take.
>
> Even to decide the issue of competence, of jurisdiction, we should have all the facts from both sides before us. Therefore without prejudging any issue, keeping even the question of jurisdiction open, we can proceed to hear the parties. My delegation is therefore in favour of including the item in the agenda mainly for the purpose of giving the Iranian Government the opportunity of a hearing, which it apparently desires, and without prejudging the issue of jurisdiction or any other issue involved. In other words, my delegation's vote is not to be taken as a vote on the question of competence but only on the issue of whether we should discuss the subject for the purpose of deciding the question of competence, as well as any other questions that may be involved.

Similar points of view have been expressed by Lebanon,[2] Pakistan,[3]

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1. S.C., 6th Yr., 559th mtg., paras.39-40. It should be noted, however, that in the Hyderabad question, India contested the competence of the Security Council to be seized of the question. See S.C., 3rd Yr., No.111, 359th mtg., p.7. India was not a member of the Council at this time, and so did not take part in the debate on the adoption of the agenda. During the substantive debates, while she did not decline to give the information required to the Council, India did dispute the competence of the Council to deal with the matter, which is somewhat out of keeping with her assertion, noted above, that in order to decide the question of competence, the matter has first of all to be discussed. In addition, it does not accord with her protestations in the General Assembly that discussion and recommendation are not intervention.

2. The Moroccan Question, S.C., 8th Yr., 619th mtg., paras.66,117; 622nd mtg., paras.4-30.

3. ibid, 622nd mtg., paras.48-65.

Iran,[1] Argentina,[2] and Chile.[3]

In the case of Angola, however, the Chilean delegation adopted a somewhat strange attitude. The Chilean representative announced that it was his Government's policy not to oppose the inclusion of items on the agenda of the Council. This statement, coupled with the earlier Chilean view, noted in the Czechoslovak case, would seem to indicate a desire on the part of Chile to see this item inscribed on the agenda. However, this was not so. Chile had doubts as to the competence of the Council to deal with this question and announced her intention of abstaining in any vote being taken on this subject. In doing so, Mr. Schweitzer explained that in his opinion it was not enough to engage the competence of the Council to recite Article 34 for in this case, in his opinion, that Article was far from being fulfilled.[4] This view seems to contradict that expressed in the Czechoslovak case.

(e) The Consensus among non-permanent members of the Security Council on the question of inclusion: miscellaneous views of some non-permanent members.

From the selection of views already presented, it will be apparent that there is no immediately evident consensus of view among the non-permanent Members of the Security Council on the question of the inclusion of subjects in the agenda and the criteria which have to be fulfilled before this can be allowed.

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1. The Algerian Question, S.C., 11th Yr., 729th mtg., paras.71,89.

2. The Hyderabad Question, S.C., 3rd Yr., No.109, 357th mtg., p.5.

3. The Angolan Question, S.C., 16th Yr., 944th mtg., paras. 4-7.

4. S.C., 16th Yr., 944th mtg., paras. 4-8. Mr. Schweitzer later indicated that his doubts were not centred on the competence of the United Nations, per se, to deal with this question, but rather on whether the General Assembly rather than the Security Council should deal with this question. See ibid, 946th mtg., para.70-75. In this case, Ecuador and Turkey had similar reservations as to the competence of the Security Council, and seemed to prefer that this item be dealt with by the General Assembly. See ibid, paras. 61, and 82-87 resp.

The number of non-permanent Members involved in debates in which this subject assumed some importance was 28. These States were: Argentina, Australia, Belgium, Brazil, Canada, Chile, Colombia, Cuba, Denmark, Ecuador, Egypt, Greece, India, Iran, Iraq, Lebanon, Mexico, Norway, Netherlands, Pakistan, Peru, Philippines, Poland, Sweden, Syria, Turkey, Ukrainian SSR, and Yugoslavia. Of these 28 States, four have expressed the view that the inclusion of items in the agenda was purely a matter of procedure, viz., Ecuador, Iraq, Mexico and the Philippines. Argentina, Chile, Ecuador, India, Iran, Lebanon, Philippines, Sweden, Syria and Turkey have all to a greater or less extent adopted fairly liberal views of the adoption of the agenda, though not without a certain degree of contradiction in some cases.

Among the other States represented here, a variety of views is to be found. Egypt used language during the agenda debate on the Greek question in 1946 which suggested that she too favoured a more or less automatic policy of inclusion in the agenda.[1] In yet another debate she opposed the inclusion of an item because she felt that the agenda was overcrowded.[2] In the debate on the inclusion of the question of Angola on the agenda, on the other hand, U.A.R. supported the technical definition of intervention and maintained that neither discussion nor the formation of recommendations constituted intervention.[3] In 1946, Poland proposed to invite the delegates of the Ukraine and Greece to take part in the debate on the adoption of the agenda in an attempt to get round the problems inherent in this question.[4] In the same year, Australia opposed the inclusion of the Ukrainian complaint regarding the conditions in Greece because she felt

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1. S.C., 1st Yr., 2nd Series, No.7, 59th mtg., p.194.
2. S.C., 5th Yr., No.35, 493rd mtg., p.3; The Greek Question (III).
3. S.C., 16th Yr., 943rd mtg., paras.42-43.
4. S.C., 1st Yr., 2nd Series, No.6, 58th mtg., p.152.

that it was too vague.[1] In this case, Australia supported the view that some sort of prima facie case was necessary in order to justify inclusion, a view which, in this case, was supported by Brazil.[2] In 1957, Australia also opposed the inclusion of the question of Oman because, in her opinion, Oman was not a sovereign State.[3]

In the Czechoslovak case, Colombia supported the then British point of view, (i.e., that the matter had to be included before any decision on competence could

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1. ibid, pp.159-161. Here Australia said;

> "....."The admission of an item to the agenda should be governed solely by two considerations.' The first of these was whether the question was within the scope of the Security Council's powers; and the second was whether it has been properly presented. At first sight it would seem that the question raised in the Ukrainian letter is within the scope of the Security Council's powers. As to the second question, whether it has been properly presented, our delegation has no hesitation in recognising that it has been addressed to the proper quarter and that it has come from a quarter which is a responsible quarter and which is entitled to make such complaints.
>
> But, when we talk of an item being properly presented, I think we are entitled to look for something more than the two requirements which I have mentioned. I think this Council is entitled to expect that any complaints should be couched in moderate and seemly language. ..... But what does give us some concern is the question that really relates to a matter of good faith. ...."
>
> The Australian delegate, Mr. Hasluck went on to give his country's views of the meaning of Article 34 and of the criteria which have to be present before that article is brought into operation. He said, p.160:
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> "..... Article 34 describes the situation as any situation which might lead to international friction or give rise to a dispute.
>
> There is much in the Ukrainian telegram which does not seem to be directed so much towards the description of a situation of that kind, as to bring accusations against other Members of the United Nations. We would like to say as plainly as possible that we do not think it is the business of this Council to spend its time in making investigations regarding plain accusations against other Members of the United Nations. Our business only concerns those situations of the kind described in Article 34."

2. ibid, p.163.

3. S.C., 12th Yr., 784th mtg., paras.17-24.

be taken).[1] In the Moroccan case, however, she supported the a priori approach, for here she opposed the inclusion of this item as it was, in her opinion, within the domestic jurisdiction of France.[2] The Ukrainian SSR opposed the inclusion of the Czechoslovak case on an a priori basis it being, in her opinion, within the domestic jurisdiction of Czechoslovakia.[3] Cuba felt that the items dealing with the unceasing terrorism and mass executions in Greece, and with the violations of the frontiers of China by the United Nations forces during the Korean war should not be included as they had been proposed, in her opinion, for purposes other than those stated by the Powers concerned.[4] She opposed the inclusion of the Algerian question and that dealing with Oman because these matters were, in her opinion, within the domestic jurisdiction of France and the Sultan of Muscat respectively.[5] Yugoslavia felt that the Anglo-Iranian Oil Company case should not be included in the agenda because it was a domestic matter of Iran,[6] and abstained in the vote on the inclusion of the Algerian question because she felt that the time was not opportune to debate this question.[7] In the Hungarian case, she both abstained and voted in favour of its inclusion on different occasions, her votes depending on her impression of the gravity of the situation.[8] Peru adopted a stand similar to that of Yugoslavia, in the Algerian case[9] and

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1. S.C., 3rd Yr., Nos.36-51, 268th mtg., p.95.
2. S.C., 8th Yr., 623rd mtg., para.4.
3. S.C., 3rd Yr., Nos.36-51, 268th mtg., p.96.
4. S.C., 5th Yr., No.35, 493rd mtg., p.12.
5. S.C., 11th Yr., 730th mtg., paras.35-42; and S.C., 12th Yr., 783rd mtg., paras.72-77.
6. S.C., 6th Yr., 559th mtg., paras.9-10.
7. S.C., 11th Yr., 730th mtg., paras.69-72.
8. S.C., 11th Yr., 746th mtg., para.35; ibid, 752nd mtg., para.6.
9. ibid, 730th mtg., paras.43-49.

voted in favour of the inclusion of the Hungarian case on the agenda, though in the latter case her reasons were not stated in the agenda debate.[1]

Amid this plethora of views, presented in widely different political circumstances, the only group which stands out in any degree is that composed of those States which have adopted a fairly liberal attitude towards the question of inclusion.[2] However, it is difficult to assess to what extent these views have prevailed in the Council, for it will be evident that an item could not be included in the agenda against the wishes of a majority of the Permanent Members since these Members would usually be supported by their allied States.

Furthermore, for present purposes, not too much importance can be attached to the fact that 12 non-permanent Members of the Security Council have, during their tenure of office, supported a fairly liberal approach to the question of inclusion. Precisely because these Members are non-permanent, it is not possible to examine how their views would have oscillated had they been Members of the Council when it was proposed to include some matter which they felt was within their domestic jurisdiction. Some guide to this is perhaps available from the views adopted by India and Iran - two States which have supported a more liberal approach to the question of inclusion - in the Hyderabad and Anglo-Iranian Oil Company cases. Both these States, in the substantive debates, have invoked Article 2(7) in bar of any examination of the matters concerned by the Security Council. This is, of course, a perfectly legitimate practice. The time to raise the question of domestic jurisdiction is during the substantive debates, not during the adoption of the agenda. Nevertheless, seeing the invocation of Article 2(7) in the substantive debates makes one wonder if it might not also have been invoked in the agenda debates had India and Iran been Members of the Council when their affairs

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1. ibid, 746th mtg., para.35; and ibid, 752nd mtg., para.6.

2. These States are enumerated on p.90 supra.

came before the Council.

(f) Criticisms of Great Power tactics in the Security Council regarding the question of the inclusion of items on the agenda.

Contradictions in the behaviour of the Great Powers and their allied States in the Security Council whenever this question of competence is raised, have not been lost on several of the non-permanent Members of the Council.

During the debate on the inclusion of the Moroccan Question on the Council's agenda, the Pakistani delegate, Mr. Hamdari, criticising the American position, said:[1]

> .... When one compares the previous cases with those of Tunisia and Morocco, one notices the significant fact that whereas in the earlier cases the United States was opposed to the view of the USSR, today it is France which is in the position of the USSR. Is one, then, to infer that had the USSR instead of France attempted domination over Morocco, Morocco would have attracted the whole-hearted support of the United States, the United Kingdom and even France and possibly gained its freedom long ago?

The precedents which Mr. Hamdari cited against the United States were rather discomfitting. He cited the American views in the Iranian case in 1946,[2] in the Ukrainian complaint regarding the situation in the Balkans, also in 1946,[3] and in the Czechoslovak Case, in 1948.[4] Similar criticisms were made of the American position in this case by the Lebanese delegation.[5] In the same debate, the Colombian delegate, Mr. Urrutia, said:[6]

> We feel some hesitation when we see certain Great Powers - I am mentioning the Soviet Union as an example - to which Mr. Malik (Lebanon) referred yesterday, have changed their points of view and in certain cases have advanced the same arguments and adduced the same principles in the Security Council in support of diametrically

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1. S.C., 8th Yr., 622nd mtg., paras.48-64.
2. Supra, p.30.
3. Supra, p.66.
4. Supra, p.68.
5. S.C., 8th Yr., 622nd mtg., paras.4-29.
6. ibid, 623rd mtg., para.20.

> opposed positions. This attitude of the Great Powers simply shows that they change their opinions in the light of their political interests, whereas we smaller countries have only one guiding light, that of principle.[1]

During the debate on whether to include the Algerian Question on the Council's agenda, the Iranian delegate said of the Great Power tactics in general:[2]

> My delegation cannot but note that the Council's refusal to include certain items on its agenda occurs whenever there is a conflict of interests between a great Power and a non-self-governing people; yet colonialism is contrary to the very spirit of the United Nations Charter, Article 37 of which recognizes the principle that the interests of the inhabitants of Non-Self-Governing Territories are paramount, and stresses that the aspirations of their peoples must be taken into account.

In the course of this statement, the Iranian delegate also made use of the conflicting Great Power statements to illustrate his point.[3]

3. Conclusions

This survey of the practice of the Security Council on the question of inclusion of items on the definitive agenda and the relevance of this to the question of intervention justifies, it is submitted, the statement made at the outset of Chapter III that this entire matter has been approached from a non-legal and essentially political point of view. Particularly with regard to the Permanent Members of the Council - the most important section of this organ - it is manifest that political considerations have had a considerable influence on their attitude towards these questions and that little attempt has been made to

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1. However, it is a fair comment on Mr. Urrutia's statement that the guiding light of principle has not guided Colombia very well either. For in the Czechoslovak case, she supported the view that before any decision on competence could be taken, that item had to be included on the agenda, whereas in the Moroccan case she seemed to support the view that competence could be decided from a priori considerations, prior to inclusion. In this case she opposed the inclusion of the Moroccan question, for in her opinion it was a domestic affair of France. See supra, p.92.

2. S.C., 11th Yr., 730th mtg., para.17.

3. ibid, para.22-29.

approach them from the point of view of sound principle. Because of these defects and also because of the contradictions discussed above it is not really possible to rely on the Council's practice on this matter as a pointer to the correct application of Article 2(7) to the Security Council.

It is submitted that the views set out in Chapter II offer the best way of ensuring the smooth running of the Council and that the functioning of this body would be facilitated by a policy of automatic inclusion of all items which are brought to its attention. Such a policy would obviate these tedious - and eroneous - wrangles over the effects of inclusion and whether it prejudices the question of competence or not. If, after inclusion, it was decided, for political reasons, not to consider the matter at that time, it could be deleted from the agenda and no harm would be done. Automatic inclusion would regularise the Council's procedure for dealing with challenges to its competence and it would be greatly to its advantage to do so.

Chapter V

The Substantive Debates of the Security Council

The practice of the Security Council in the substantive debates by and large supports the views set out in Chapter I. Of the thirteen items to the inclusion of which objections were raised on the grounds of Article 2(7), nine were included and in six of these no attempt was made in the ensuing debates to circumvent the strictures of the prohibition of non-intervention by arguing that discussion of and the adoption of some kinds of recommendations concerning domestic matters did not constitute intervention.

However, in three of these cases, there is evident a tendency to promulgate such arguments and as these views were put forward by, inter alia, France, the United Kingdom and the United States, all Permanent Members of the Security Council, it is thought necessary to deal with these cases in some detail.

It is submitted, however, that these attempts to formulate a more flexible definition of intervention for the Security Council are both invalid and particularly inept and that their existence does not lead to a need to alter the above submission. For it will be seen below that in attempting to establish this more flexible definition of intervention, all that the States concerned have achieved is their own confusion. In attempting to circumvent the strictures of intervention, as these apply to the Security Council, these States have succeeded only in tying themselves in knots and have not established any coherent body of practice which could, with any justification, be taken seriously.

The case hitories which follow have been divided into two groups - those which follow the orthodox and generally accepted definition of intervention and those in which different interpretations have been given.

1. The Orthodox Interpretation of Intervention

(a) Spain

In April 1964, the representative of Poland, invoking Articles 34 and 35 of

the Charter, brought to the attention of the Security Council the situation in Spain. In his communication, the Polish representative maintained that "the activities of the Franco Government already caused international friction and endangered international peace and security".[1] The matter was included in the agenda without discussion.[2]

The Franco Government of Spain was, at this time, almost universally condemned. This condemnation was due both to its origins, having been raised to power with the help of Nazi Germany and Fascist Italy, and also to its continuing Fascist character. The Franco regime represented, to many peoples, the last vestiges of a hated system which they had been at great pains to destroy. This almost universal condemnation had been responsible for the passing at the first part of the first General Assembly of a resolution[3] which, inter alia, endorsed the sentiments expressed at the San Francisco Conference on the subject of Franco Spain, according to which Article 4(2) of the Charter could not be held to apply to States whose regimes had been installed with the help of armed forces of countries which had fought against the United Nations, so long as those regimes remained in power.[4]

When the matter was brought to the attention of the Security Council, the vital question which had to be decided, prior to the Council taking any action thereon, was that of its competence. The political character of the regime in any country is a matter which is, prima facie, domestic. Hence, the Council had to decide on its competence before it could do anything.

The Security Council would have had competence to deal with this question if

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1. S.C., 1st Yr., 1st Series, Suppl. No.2, p.55, annex 3b (S/34): summary as per Repertory, Vol. I, p.106.

2. S.C., 1st Yr., 1st Series, No.2, 32nd mtg., p.122.

3. G.A., (I/1), Plen., 26th mtg., p.361, Res.32(I).

4. UNCIO Docs. Vol.6, Doc.1167, I/10, pp.127 & 136.

either, discussion of and the adoption of recommendations concerning such a domestic matter did not constitute intervention in the domestic affairs of Spain, or alternatively, if the matter was not essentially within the domestic jurisdiction of that State.

In the discussion which ensued, no attempt was made to get round Article 2, paragraph 7 of the Charter by arguing that discussion of and recommendations concerning a domestic matter do not in any case constitute intervention. All efforts were devoted to proving either that the matter was of international concern or, alternatively, that it was domestic. States which maintained that it was domestic were of the opinion that Article 2(7) forbade the Council to deal with it in any way. They adopted the extreme non-technical interpretation of the word 'intervene' and States which claimed that it was not domestic demonstrated no attachment to the technical definition.

Invoking Articles 39 and 41 of Chapter VII, the Polish representative introduced a resolution calling upon the Members of the United Nations to sever diplomatic relations with the Franco regime.[1] This resolution was opposed by the representatives of several States who pointed out that before this Chapter of the Charter could be invoked, evidence had to be produced of a definite threat to the peace, or of an actual breach of the peace or an act of aggression. This evidence was, in their opinion, lacking. Furthermore, because, in their opinion, the question of the nature of the political regime in Spain was a matter essentially within the domestic jurisdiction of that State, the Council could not even deal with it under Chapter VI.

A considerable amount of argument surrounded the question of the domestic status of the Spanish question, the details of which are not pertinent to this enquiry.[2]

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1. S.C., 1st Yr., 1st Series, No.2, 34th mtg., p.167.

2. For references thereto see Repertory, Vol.I, p.106, para.235.

However it is important to note that all this argument concerned the domestic status of the matter, and was not devoted to trying to give to the Council the kind of power which the General Assembly has assumed in dealing with matters the domestic status of which is in doubt. This is particularly pertinent to the present inquiry. The political nature of a regime is a matter which does, prima facie, fall essentially within the domestic jurisdiction of a particular State. However, it was contended in this case that certain factors brought the political nature of the Spanish Government into the field of international jurisdiction. There was bona fide doubt as to the status of this question. Yet no-one argued, as, for example, later in the year they did in the General Assembly during the discussions of this self same question and in those concerning the Indians in South Africa, that in any case a recommendation was not intervention. The general attitude seems to have been that the Council had full power, within the limits of Chapters VI and VII, or it had none.

The representatives of the Netherlands and the United Kingdom in this case were the principal exponents of the restrictive interpretation of the Council's powers.

The representative of the Netherlands, Mr. Van Kleffens, said:[1]

> ... we may not like the Franco regime, and we may not admit Spain as a Member of the Uni. d Nations as long as the Franco regime is in power there, but that does not mean that we must take positive action against that regime or that we are entitled to do so. If we are to interfere in Spanish affairs on the basis of such evidence as has been placed before us, I think we would establish a most regrettable and harmful precedent for all sorts of ill-founded intervention. We are discussing the matter fully, and that is certainly useful. The Franco regime is, as I said, a disturbing factor in this postwar world which does Spain no good as

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1. S.C., 1st Yr., 1st Series, No.2, 34th mtg., p.176-177. The discussion which Mr. Van Kleffens was prepared to allow here was purely of a preliminary nature, for the purpose of determining whether a matter was or was not essentially within domestic jurisdiction. He has made it clear elsewhere that while he approves of such discussion where necessary to decide that question, he does not approve of substantive discussion after that question had been decided in the affirmative; see Van Kleffens, Sovereignty in International Law, 82 H.R., p. 5 at 105 (1953).

a nation. But I cannot see that there are valid grounds, in the light of the Charter, to go beyond discussion.

So long as Franco does not really threaten international peace and security, whether Spain wants to keep that regime or not is a matter for Spain and for Spain alone. It is, in my opinion, in the language of the Charter, a matter which is essentially within Spain's domestic jurisdiction. ....

Giving the opinion of the United Kingdom, Sir Alexander Cadogan said:[1]

> It is perfectly within their rights in the United Nations for Members to go further and declare that they will not support the admission to the United Nations of a country subjected to such a regime, but before the Council embarks on collective action, it must be sure that it does so in conformity with the Charter and that its action is calculated to achieve the desired result.
>
> Previous speakers have called attention to paragraph 6 of Article 2 of the Charter, but I must point out that that paragraph is immediately followed by a further statement in paragraph 7, to the effect that nothing in this Charter authorises the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. The nature of the regime in any given country is indisputably a matter of domestic jurisdiction.
>
> .... The paragraph I have just quoted also lays down this principle, that is to say, the principle of non-intervention in matters of domestic jurisdiction shall not prejudice the application of enforcement measures under Chapter VII. ...
>
> The Polish representative has not sought to show that there is a case for the application of Chapter VII. He bases his appeal on Articles 34 and 35 of the Charter, which form part of Chapter VI. Therefore, it would appear that in spite of his reference to the 'existence.. of the Franco regime in Spain', what he claims is that the Spanish Government has taken or is taking measures which, in the words of Article 34, might 'lead to international friction or give rise to a dispute'.
>
> That is the question actually submitted to the Council, and I must say that I do not find the evidence submitted sufficiently convincing.

Because of the doubts surrounding the question of thedomestic nature of the matter, it was decided, on the initiative of Australia,to set up a sub-committee, composed of five Members of the Council to enquire into the matter. The sub-committee was directed to examine the statements made before the Security Council, to receive further statements and documents, and to conduct such inquiries as it might deem necessary.[2]

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1. S.C., 1st Yr., 1st Series, No.2, 35th mtg., p.181-182.

2. ibid, 39th mtg., pp.242-243. This resolution underwent certain drafting changes which did indicate a certain unwillingness to meet the question of the domestic nature of the matter head on. Details of these and further references can be found in Repertory, Vol.I, pp.107-108.

The sub-committee reported to the full Council that the matter was of international concern and that the Council was competent to deal with it under Chapter VI, though not under Chapter VII, since there was no actual threat to the peace.[1] In the opinion of the sub-committee the situation created by the existence of the Franco regime was one the continuance of which was likely to endanger the maintenance of international peace and security, within the meaning of Article 34 of the Charter.[2] The sub-committee found that:[3]

> ... the facts established by the evidence before the Committee are by no means of essentially local, or domestic concern to Spain. What is imputed to the Franco regime is that it is threatening the maintenance of international peace and security and that it is causing international friction. The allegations against the Franco regime involve matters which travel far beyond domestic jurisdiction and which concern the maintenance of international peace and security and the smooth and efficient working of the United Nations as the instrument mainly responsible for performing this duty.

The sub-committee then recommended, having regard to the important powers of the General Assembly in such matters under Article 10, that the following three steps be taken by the Council:[4]

> (a) The endorsement by the Security Council of the principles contained in the declaration by the Governments of the United Kingdom, the United States and France, dated 4 March 1946.
>
> (b) The transmitting by the Security Council to the General Assembly of the evidence and reports of the sub-committee, together with the recommendation that unless the Franco regime is withdrawn and the other conditions of political freedom set out in the declaration are, in the opinion of the General Assembly fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco regime be terminated forthwith by each Member of the United Nations.
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> (c) The taking of appropriate steps by the Secretary-General to communicate these recommendations to all Members of the United Nations and all others concerned.

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1. S.C., 1st Yr., Special Suppl., p.4, para.22.
2. ibid, p.5., para. 30(a).
3. ibid, pp.1 & 2, para.4.
4. ibid, p.61, para.31.

Australia proposed the adoption of the Sub-Committee's recommendations, subject to certain minor amendments.[1] This was opposed by some representatives, in particular that of the United Kingdom. Sir Alexander Cadogan again expressed his doubts as to whether the United Nations was competent to take corporate action against or to seek to exert corporate pressure on Spain for the purpose of forcing the Franco regime from power. He reminded the Council that it had no right to intervene in the domestic affairs of a country unless there was a clear threat to the maintenance of international peace and security. That threat being absent, the Council could not, in his opinion, take the measures called for in the recommendations of the Sub-Committee, since these were essentially enforcement measures. Furthermore he doubted whether the situation created by the existence of the Franco regime was likely to endanger the maintenance of international peace and security, and hence whether the Council could act under Chapter VI.[2]

The United Kingdom then proposed to delete from the Australian resolution paragraph (b) after the words 'reports of this Sub-Committee' and the addition of the words 'together with the minutes of the discussion of the case by the Security Council'. In other words, the United Kingdom was proposing that the Council should merely formally take note of the fact that the matter had been discussed by the Council and that certain opposing points of view had been expressed.

No resolution was adopted by the Council as none of the proposals obtained the required majority.

The fact that the United Kingdom proposed an amendment to the Australian resolution does not indicate, however, that the British delegation had abandoned

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1. See S.C., 1st Yr., 1st Series, No.2, 45th mtg., p.326. Australia proposed the addition to paragraph (b) after the words 'each Member of the United Nations' of the words 'or alternatively such other action to be taken as the General Assembly deems appropriate and effective under the circumstances prevailing at the time'.

2. ibid, 46th mtg., pp.344-348.

its interpretation of the word 'intervene' and was here tacitly supporting the view that not all recommendations necessarily constitute intervention. For it is evident from the content of the resultant resolution that all that would thereby have been dealt with would have been the three power declaration on the Spanish question together with the instructions to transmit to the General Assembly the evidence and reports of the Sub-Committee.

The Netherlands voted in favour of the Australian draft resolution.[1] However, it does not appear that in so doing she had any intention of abandoning her stand on intervention. In the explanation of her vote, she gave no indication of any such intention and in view of the previous definite stand taken on this point it would be unwise to draw any such conclusion. It has to be remembered that this vote came after the presentation of the report of the Sub-Committee which found that the Security Council had jurisdiction and while the Netherlands did not agree with this report in its entirety, its existence no doubt influenced her vote.

This entire discussion turned on the question of whether or not the matter of the Franco regime was a matter falling essentially within the domestic jurisdiction of Spain. It was raised under Articles 34 and 35, which Articles deal with situations or disputes which, because of their effect on peace and security are, ipso facto, within international jurisdiction. The only question which the Council had to decide was whether circumstances justified the invocation of these Articles. This it did. In the process of deciding this question, the only statements made on the question of intervention were favourable to the broad interpretation of that term. This case history is completely opposed to the theory that the Council could, in a domestic matter, hold discussions or make recommendations thereon.

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1. S.C., 1st Yr., 1st Series, No.2, 45th mtg., p.339.

(b) The Greek Question (I)

The substantive treatment of this subject by the Security Council provided no material which is relevant to the present discussion.

The matter was included on the agenda, despite objections raised on the grounds of Article 2(7).[1] During the course of the debate which followed, several resolutions were introduced, none of which were adopted.[2] The explanations of negative votes cast indicate that the reasons for so voting were not connected with Article 2(7). Hence this case is not relevant to the present discussion.

(c) The Czechoslovak Case

The Czechoslovak case also was productive of only one view of the meaning of intervention. In the opinion of the Governments of Czechoslovakia,[3] the Ukrainian SSR, and the USSR,[4] discussion of that country's internal affairs constituted intervention. As in the Spanish Question, the only matter which, in this respect, was in issue, was whether the events which had occurred in Czechoslovakia were or were not within the domestic jurisdiction of that country. All arguments were directed to showing that they were not, and that as a consequence the Security Council was competent to deal with it.

Considerable doubt surrounded the question of the domestic status of this matter and it will be remembered that one of the arguments used to justify the inclusion of this item on the agenda was the need to investigate the serious charges which had been made. In the debates which followed attempts were made to clarify this point to demonstrate the competence of the Council. To this end the delegation of Chile sponsored a resolution which authorised the setting up

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1. See supra, ch.III, p.20.
2. See S.C., 1st Yr., 2nd Series, Nos.13,15,16, 67th,69th & 70th mtgs.
3. S.C., 3rd Yr., Suppl. for April, 1948, S/718, p.6.
4. ibid, No.56, 281st mtg., p.19.

of a sub-committee of the Council to investigate the matter.[1] This resolution was not adopted having been vetoed by the Soviet delegation.[2]

Although the domestic status of this item was much in doubt, no one argued that even if it were admitted to be domestic, discussion thereof and the adoption of recommendations dealing therewith, would not constitute intervention. As before all argument was devoted to proving that the matter was not domestic and that the restrictions of Article 2(7) did not therefore apply.

(d) The Case of Hyderabad

Once this question was included on the agenda of the Council, the representative of India on several occasions made it clear that in his opinion the Security Council was not competent to deal with the matter as it fell within the domestic jurisdiction of his country. India contended that Hyderabad was not a sovereign State and hence had not the competence to bring a complaint to the notice of the Council. In her opinion the Council was not competent to be seized of this matter.[3]

The exact status of Hyderabad and her delegation at the United Nations became a subject of some confusion when it transpired that the Nizam of Hyderabad had instructed his representatives to withdraw the complaint.[4] This should have been the end of the matter, but some delegations questioned the validity of the Nizam's instructions and wondered if he had issued them of his own free will.[5] (Hyderabad had by this time been occuped by the Indian army and the Government of that State

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1. ibid, No.73, 303rd mtg., p.28.

2. ibid, p.29.

3. S.C., 3rd Yr., No.109, 357th mtg., pp.18-19; ibid, No.111, 359th mtg., p.7; and S.C., 4th Yr., No.28, 425th mtg., pp.2-7.

4. S.C., 3rd Yr., No.112, 360th mtg., pp.3-4.

5. e.g., Argentina, ibid, pp.6-9; and Syria, ibid, pp.5-6.

made subject to the authority of the Indian Commander.)

None of these facts are, however, relevant to the present line of enquiry. Again, as in the previous cases, no trace can be found of the argument that discussion and recommendations are not intervention. All efforts were devoted to ascertaining the exact status of Hyderabad, with the view in mind that if this question were found to be domestic, the Council was not competent to deal with it in any way.

(e) The Anglo-Iranian Oil Company Case

The discussions of this subject by the Security Council are, like the cases already dealt with, productive of only one definition of intervention - the broad one. Iran contended that the matter was within her domestic jurisdiction and that as a consequence the Security Council was forbidden to deal with it.[1] This contention was disputed by other States. However, as in other cases, their arguments were related to the non-domestic nature of the matter and not to 'intervention' as such.

After some discussion the Council decided to postpone further dealing with the question till after the International Court, which was also seized of the matter, had decided on the question of its own competence.[2] The Court decided that it had no competence to deal with the item, though on grounds not related to Article 2(7). The provisional measures, failure to observe which had been the cause of the application by the United Kingdom to the Security Council, thereupon lapsed and the matter was not dealt with further by the Security Council.

(f) The Hungarian Question.

The Hungarian question having been placed on the Council agenda, the Soviet

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1. S.C., 6th Yr., 560th mtg., paras.28 & 37.

2. ibid, 565th mtg., para.62.

delegation continued to argue that the matter was essentially within the domestic jurisdiction of Hungary, thus forbidding any Council proceedings at all.[1] In this he was supported by the representative of Hungary.[2]

As in other cases, no trace can be found of any argument which would give to the Council certain restricted powers in domestic matters. All discussion was centred on the question of the domestic nature of the matter.

The exact legal picture was somewhat confused by the arrival in New York of a communication from the Nagy Government of Hungary to the Secretary-General which announced that country's declaration of neutrality, her request to the Soviet Union to withdraw her troops from Hungary and at the same time requested the inclusion on the agenda of the General Assembly of the question of Hungary's neutrality and the defence of that neutrality by the Great Powers.[3]

At a subsequent meeting of the Council the Hungarian question was again included on the agenda over the objections of the Soviet Union.[4] However, nothing which is relevant to the present inquiry was added.

2. The Unorthodox Interpretation of Intervention

In contradistinction to the six cases considered in section 1 above, those about to be considered - The Racial Question in South Africa, the Angolan Question and the Indonesian Question - are noteable for the attempts which were made therein to draw a distinction between intervention and discussion and recommendation. There was evident here an attempt, similar to that made in the General Assembly, to endow the Security Council with certain limited powers over matters which are considered to fall essentially within the domestic jurisdiction of a Member. However, in

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1. S.C., 11th Yr., 746th mtg., para.14.
2. ibid, para.195.
3. G.A., 2nd Emergency Special Session, Annexes, a.i.5, p.1, A/3251.
4. S.C., 11th Yr., 753rd mtg., paras.1-3.

contradistinction to the practice on this subject in the General Assembly, that in the Security Council is poorly explained and no persuasive case has been made out for the proposition. None of the States which suggested that substantive discussion of or recommendations concerning domestic matters did not constitute intervention, explained on what Article of the Charter they based their contention. In the General Assembly, on the other hand, the argument had been that if a matter was covered in any way by the Charter, then even though it might remain, for many purposes, essentially within the domestic jurisdiction of Members, nevertheless because it was dealt with by the Charter the General Assembly, in virtue of Article 10, could discuss it and formulate recommendations thereon. No such general power of discussion and recommendation is given to the Security Council, the functions of which are confined entirely to matters which concern international peace and security.

It is submitted that little reliance can be placed on these statements. The manner in which they were presented suggests that they were made without too much thought as to their consequences or as to their proper legal foundation. In addition, in the Indonesian Case, where several resolutions were adopted without deciding the question of competence, which had been much in dispute, such confusion permeates the entire treatment of the subject that it would be unwise to place too much stress on it as a serious example of an attempt to widen the powers of the Security Council.

(a)The Racial Question in South Africa

This question was placed on the agenda without opposition and at the end of the debate a resolution was adopted urging the South African Government to promote racial harmony, based on racial equality and to abandon its policies

of apartheid.[1]

During the course of the debate, it was made clear that the majority of the members of the Council did not consider this to be a domestic matter. However, some delegates did not content themselves with resting their support for Security Council action on this subject on that argument alone, but went on

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1. S.C., 15th Yr., 856th mtg., para.56. The details of voting were as follows:
In favour: Argentina, Ceylon, China, Ecuador, Italy, Poland, Tunisia, USSR, USA.
Abstaining: France, U.K.

The text of the resolution was as follows: (see S.C., 15th Yr., Suppl. for Jan., Feb., and March 1960, p.64, S/4299)

The Security Council,

Having considered the complaint of twenty-nine Member States contained in document S/4279 concerning 'the situation arising out of large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa,'

Recognizing that such a situation has been brought about by the racial policies of the Government of the Union of South Africa and the continued disregard by that Government of the resolutions of the General Assembly calling upon it to revise its policies and bring them into conformity with its obligations and responsibilities under the Charter of the United Nations,

Taking into account the strong feelings and grave concern aroused among Governments and peoples of the world by the happenings in the Union of South Africa,

1. Recognizes that the situation in the Union of South Africa is one that has led to international friction, and, if continued, might endanger international peace and security;

2. Deplores that the recent incidents in the Union of South Africa should have led to the loss of life of so many Africans and extends to the families of the victims its deepest sympathies;

3. Deplores the policies and actions of the Government of the Union of South Africa which have given rise to the present situation;

4. Urges the Government of the Union of South Africa to initiate measures, aimed at bringing about racial harmony based on equality in order to ensure that the present situation does not continue or recur and to abandon its policies of apartheid and racial discrimination;

5. Requests the Secretary-General, in consultation with the Government of the Union of South Africa, to take such measures as would adequately help in ensuring that the purpose and principles of the Charter shall be respected and to report to the Security Council whenever necessary and appropriate.

to suggest that in any case discussion and even recommendation were not intervention in the domestic affairs of a member State.

The first of the States to do this was the United States. The American delegate, Mr. Cabot Lodge recognized the legal complexities of the problems involved and the conflict extant between Article 2(7) and Articles 55 and 56. However, he went on to say:[1]

> Since various comments have been made on the question of competence, let me state briefly our view on this matter. The United States' views on the interpretation and application of Article 2, paragraph 7, of the Charter have been clearly established. I myself stated, in the discussion of the question of Tibet at the Fourteenth session of the General Assembly:
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> > 'In the years since the establishment of the United Nations certain principles and rules concerning the application of Article 2, paragraph 7, have emerged. It has become established, for example, that inscription and then discussion of an agenda item do not constitute intervention in matters which lie essentially within domestic jurisdiction.'[2]
>
> We hold the same views with respect to the Security Council as we do in the General Assembly. When a question such as the present one is involved, Article 2, paragraph 7, must be read in the light of Articles 55 and 56. .....
>
> During the thirteenth session of the General Assembly, Mr. George Harrison, the United States representative in the Special Political Committee, expressed the United States policy on these Articles in connection with the discussion on 'apartheid'. He said:
>
> > 'No Member of this Organization could justifiably seek purposely to escape its pledge. No Member could justifiably be excused from endeavouring to fulfil its pledge. We believe that the United Nations can legitimately call attention to the policies of Member Governments which appear to be inconsistent with their obligations under the Charter and earnestly to ask Members to abide by the undertakings that they have accepted in signing the Charter.
> >
> > We all recognize that every nation has a right to regulate its own internal affairs. This is a right acknowledged by Article 2, paragraph 7 of the Charter. At the same time, we must recognize the right - and the obligation - of the United Nations to be concerned with national policies in so far as they affect the world community. This is particularly so in cases where

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1. S.C., 15th Yr., 851st mtg., paras. 26-28.

2. See G.A., (XIV), Plen., 832nd mtg., para.83.

international obligations embodied in the Charter are concerned.'[1]

This American support for the idea that even in domestic matters, the Security Council has some power, is not unequivocal. Mr. Lodge does indicate that substantive discussion is not intervention. However, in quoting the statement made by Mr. Harrison, he does not make it clear to what extent the United States supports the proposition that even some kinds of recommendations are not intervention in domestic affairs. For, in his statement, Mr. Harrison, on the one hand, supports the right of the United Nations to call the attention of Governments to policies which appear to be inconsistent with their Charter obligations, (and we know just how vague these obligations, especially those under Article 55, are) and, on the other, goes on to qualify that right by specifying that the national policies to which the attention of Governments may be directed must be such as to 'affect the world community'. That the United States does appear to support some form of limited power for the Security Council even in domestic matters seems to be reasonably certain. But the extent of those powers is not clearly defined.

The Ceylonese delegation as well as maintaining that the matter was not domestic contended that the word 'intervene' meant dictatorial interference.[2] In support of this proposition it cited the work of Professor Lauterpacht[3] and also the Report of the United Nations Commission on the Racial Situation in South Africa.[4]

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1. This statement was made on 16th October, 1958, at the 90th meeting of the Special Political Committee, the official records of which are only published in summary form.

2. S.C., 15th Yr., 852nd mtg., paras.14-16.

3. Lauterpacht, H., International Law and Human Rights; no detailed reference was given.

4. G.A., (VIII), Suppl. No.16, Part I, Ch.II, para.136.

In connection with this submission, one comment in particular must be made. In ascribing to the Security Council general powers of discussion and recommendation over all and any matter, the part of the Report on the Racial Situation in South Africa on which Ceylon heavily relied readsas follows:[1]

> The General Assembly, or any other competent organ, is authorised to discuss human rights, address recommendations of a specific nature to the State directly concerned, and undertake or initiate a study of the problem. There is, however, no legal obligation to accept any such recommendation. The prohibition in Article 2(7) refers therefore only to direct intervention in the domestic economy, social structure or cultural arrangements of the State concerned but does not in any way preclude recommendations or even enquiries conducted outside the territory of the State concerned.

This passage can haraly be relied on for the proposition that discussion of and recommendations concerning domestic matters by the Security Council do not constitute intervention therein. The Security Council is not, in this regard 'any other competent organ'. The Security Council is not competent to discuss or adopt recommendations concerning human rights, except in so far as a policy relating thereto leads to international friction or to a dispute or situation within the meaning of Chapter VI, or to a threat to the peace, a breach of the peace or to an actual act of aggression within the meaning of Chapter VII. If the policy of a particular State leads to any dispute or situation within the meaning of either of these two Chapters, then it has ceased to be a matter essentially within the domestic jurisdiction of a particular State and the prohibition of intervention ceases to apply. But what the Security Council is not authorised to do is to discuss human rights and fundamental freedoms <u>per se</u>. It is only authorised to deal with them in so far as they relate to international peace and security - matters which are not essentially domestic.

Thus, while it might still have been possible that the Ceylonese contention re the meaning of intervention was correct this particular authority which she cited in support of her views is not apt.

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1. ibid.

The delegation of Guinea adopted a similar stand,[1] and in support of her arguments quoted passages from the same report.[2] Again, however, the passages quoted by Guinea refer to the powers of the General Assembly and its subsidiary organs. Such quotations are of little use in trying to substantiate the argument that the Security Council has the same powers over human rights and other matters dealt with in Chapter IX of the Charter.

During the course of the debate the delegation of China twice dealt with this problem. It seems reasonably clear from the statements made that China does not consider discussinn and certain kinds of recommendations as intervention in the domestic affairs of a nation. On the first occasion when he dealt with this question, Mr. Tsiang said:[3]

> As to the competence of the Security Council, I will leave that question aside for the time being. I too make a distinction between competence to discuss and competence to intervene. In the complicated situation which we face, as well as the somewhat contradictory provisions of the Charter, I believe that that distinction is valid and useful. If, however, I should find it necessary, in connection with proposals which might be put before us, to go into the question of competency, I will do so at a later stage.

Mr. Tsiang did find it necessary to return to the question of competence, and his remarks though rather long, are worth noting in detail, for as in the case of previous speeches, they indicate the same tendency to confuse the powers of the General Assembly with those of the Security Council. He said:[4]

> Now, in paragraph 4, we use the phrase 'calls upon'. I am not sure of the exact meaning of this phrase. It has been used frequently, but I personally, would prefer such a word as 'appeal' or 'urges' or 'recommend'.
>
> The problem of 'apartheid' concerns us because that policy is a contradiction of human rights and fundamental freedoms. Unfortunately for us, the Charter does not authorise all kinds of action in that respect. The Charter has not created an organization to enforce respect for and observance of human rights.

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1. S.C., 15th Yr., 853rd mtg., para. 81.
2. For passage referred to see G.A. (VIII), Suppl. No.16, Part III,Ch.IX,para.895.
3. S.C., 15th Yr., 853rd mtg., para. 126.
4. ibid, 855th mtg., paras.83-93.

Mr. Tsiang then read out Articles 13(1)(b), and 55 and stressed that the United Nations was enjoined therein to 'promote' certain ends and was directed to use its powers to persuade. He then went on:

> I personally regard this aspect of the Charter as a defect. I think the importance of human rights and fundamental freedoms cannot be exaggerated. I would even go so far as to say that respect for and observance of human rights and fundamental freedoms should be an essential part of our programme for peace. In other words, I believe that human rights and fundamental freedoms are important in themselves, but they are important also because they do contribute to the promotion of peace.
>
> My country and my delegation would favour the creation of a special organ of the United Nations to supervise and enforce respect for human rights and fundamental freedoms. But we face the Charter as it is, and it authorises us to take action of a certain type and no more. Therefore my conclusion regarding this whole debate is the following. Those who requested the consideration of this item in the Security Council have a very solid moral case, an indisputable moral case. Unfortunately, our legal foundations are somewhat uncertain; if I may be permitted to say so, the Union of South Africa has no case from the point of view of morals, or even political wisdom, but I regret that I have to say that the Union has a pretty good legal case.
>
> Therefore, in view of this situation, I feel that it would be much better for the Security Council to continue that line of action which the United Nations in its affairs has always taken, namely, to stay within this sphere of promoting, persuading, recommending and pleading. The wording of the draft resolution seems to step a little beyond the limits of our previously self-imposed limitations. Therefore, although I do not call for an amendment, I would have a reservation on the words 'calls upon' if it is retained, and I will say that my delegation would prefer the other phrase 'appeals' or even 'urges'.
>
> The maximum contribution and the most effective one that any United Nations organ can make is to mobilize to the full extent world public opinion against racist policies and the practice of 'apartheid'; and to plead with and to urge the Government of South Africa to mend its ways. If we should step beyond those limits I think we should be weakening our own stand.

It seems reasonably clear that in the opinion of China the Security Council was competent to adopt a recommendation appealing to South Africa to modify its policies, even though she considered that a good case could be made out for the proposition that the matters being dealt with were essentially within the domestic jurisdiction of South Africa. However, it will be noticed that in coming to this conclusion the Chinese delegation, like other delegations, lent on the fact that the General Assembly was given general powers of discussion and recommendation

over a wide range of matters, which for many purposes remain within domestic jurisdiction. The Chinese delegation seems to assume that because the General Assembly is directed in Articles 13 and 55 to promote certain ends, the Security Council can do the same thing. But such an argument is quite unsound. On what Article of the Charter can the Security Council found in adopting such an attitude? The only thing which the Security Council can do is deal with disputes and situations likely to endanger or which have endangered the maintenance of international peace and security. It is not even given power to promote peace and security generally by devoting itself to the study of matters which may, hypothetically, lead to international trouble. Its functions are limited to concrete cases or allegations. In asserting that the Security Council has general powers of discussion and recommendation over matters which may fall within the domestic jurisdiction of a member State, it is of no avail to refer to the Articles of the Charter which direct the United Nations generally to promote human rights, fundamental freedoms, higher standards of living, etc. It is quite clear from the Charter in its entirety that this generality of power, even in such an international matter as promoting international peace and security, is devolved, not upon the Security Council, but upon the General Assembly. The only exception to this appears to be contained in Article 26 and relates to the regulation of armaments.

Thus with respect to the views expressed by the Chinese delegation the same question arises, viz., if the Security Council has the power to discuss and make recommendations of a certain type concerning domestic matters, on which Article of the Charter can it found in doing so?

India also subscribed to the view that discussion of and recommendations concerning domestic matters do not constitute intervention therein.[1] It may well

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1. ibid, para.58.

be wondered, however, just how this can be squared with the assertion of India in the Hyderabad Case that the Security Council was not competent to be seized of that matter because it fell within her domestic jurisdiction.

The position adopted by the United Kingdom in this case is a little obscure. In the substantive debates on prior subjects the United Kingdom had usually supported the orthodox interpretation of intervention. In this case, however, it is possible to deduce from what the United Kingdom representative said that she does not consider substantive discussion as intervention.

Immediately after the adoption of the agenda, Sir Pierson Dickson told the Council that although his delegation had not opposed the inclusion of this item, this did not mean that the United Kingdom had altered her views that the United Nations was not authorised to intervene in the domestic affairs of Members.[1] However, at the end of the debate, explaining his abstention from voting, he said:[2]

> I stated in my intervention yesterday, the attitude of Her Majesty's Government in the United Kingdom towards the general problem. I have nothing to add to what I then said. I made it plain in the course of that intervention that in our view there are limits within which the Council can properly and usefully act.
>
> In the view of Her Majesty's Government, this resolution goes beyond the scope of the proper functions of the Council. In our view, it would have been wiser and more effective for the Council to content itself with leaving the weighty discussion we have had to make its own impact. It was for these reasons that I abstained in the vote on the draft resolution.

The exact purport of this statement is not clear - and perhaps was not intended to be. But it seems to be indicated here that the United Kingdom did not take violent exception to the substantive discussion which had taken place in the Council.

(b) The Angolan Case

In supporting the inclusion of this item on the agenda of the Council, the United Arab Republic, apart from maintaining that the matter was not domestic,

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1. ibid, 851st mtg., para.10.

2. ibid, 856th mtg., paras.57-58.

contended that discussion and recommendation of the matter could not be construed as intervention in the domestic affairs of Portugal.[1] The Egyptian delegate quoted, in support of his proposition, the definition of intervention given by Professor Rousseau in his work 'Droit International Public'.[2]

No other State which spoke in this debate supported this point of view. However, some States did oppose the consideration of this item by the Security Council because, in their opinion, it was not the correct forum to conduct the discussion.

The subject matter of the item under discussion was fundamentally one of human rights. In indicating his country's desire to see the Council seized of this question, the Liberian delegate had drawn attention to the fact that "authorative reports from Angola indicate that fundamental human rights are, contrary to the Universal Declaration of Human Rights, being violated in Angola, and this is likely to endanger the maintenance of international peace and security".[3]

Had the events in Angola really endangered international peace and security, the Security Council would definitely have been competent to deal with them. However doubts were expressed on this score by Ecuador, Chile, China and Turkey.

None of these States considered that the violations of human rights referred to were of such a nature as to constitute a situation endangering international peace. Moreover, none of them considered that the violations of human rights referred to fell essentially within the domestic jurisdiction of Portugal. It may well be asked, in that case, why they objected to the consideration of this

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1. S.C., 16th Yr., 943rd mtg., paras.42-43.

2. Paris, 1953, Librairie de Recueil Sirey, p.321: "Intervention means the taking by a State of any action constituting an intrusion into the domestic or external affairs of another State in order to demand the performance or non-performance of a specific act. The intervening State acts through its authorities in seeking to impose its will, to exert pressure and compel compliance with its views." Trans. per S.C.O.R., supra fn.1.

3. S.C., 16th Yr., 934th mtg., para.9.

item by the Security Council? They did so because in their opinion, the correct forum for the consideration of questions of human rights where no question of international peace and security was involved, was the General Assembly, not the Security Council.

In giving the views of Ecuador on this subject, Mr. Benites-Vinueza said:[1]

> First of all, I should like to make it clear, that these doubts are in respect, not of the competence of the United Nations, but of the specific competence of the Security Council. Nor do they in any way imply our acceptance of the argument that the affairs of Angola fall within the domestic jurisdiction of Portugal or that the exception mentioned in Article 2, paragraph 7, of the Charter applies to them. My Foreign Ministry's doubts relate to the competence of the Council within the limits prescribed by the Charter. ....

Mr. Benites-Vinueza explained that as there was, in his opinion, no situation of the kind mentioned in Article 34, or for that matter in Chapter VII, the Council had no jurisdiction. However, this did not mean, he explained, that the United Nations as a whole had no jurisdiction. His objections were centred on the internal division of powers of the various organs of the United Nations rather on fundamental objections as to the competence of the entire organization.

The objections of Ecuador were echoed by Chile[2] China[3] and Turkey.[4]

The formulation of these objections lends support to the views set out above that any attempt to interpret the word 'intervene' in relation to the functions of the Security Council so as to empower that body to deal with domestic matters is doomed to failure. If any consideration of a matter of 'international concern', but which does not endanger the maintenance of international peace and security, by the Security Council is ultra vires of that body, how much more must any

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1. S.C., 16th Yr., 946th mtg., para.61.
2. ibid, paras, 70-75.
3. ibid, paras. 76-81.
4. ibid, paras, 82-87.

consideration of domestic matters be. In the case of domestic matters, 'intervene' can only have the meaning of 'deal with'. The objections of Ecuador, Chile, China and Turkey seem to support this view.

The first time the question of Angola was raised in 1961 in the Security Council no resolution was adopted.[1] However, later in the year the matter was again brought to the attention of that body and this time a resolution was adopted.[2] On this occasion, Ecuador, Chile, China and Turkey voted for the resolution. This fact does not mean however, that they had revised their views as to the limitations upon the competence of the Council. What hadhappened was that the situation had so deteriorated that, in their opinion, the matter now fell within the competence of the Security Council in virtue of its powers to deal with matters which endangered international peace and security.[3]

The attitude of the United Kingdom was more consistent on this occasion, though here too, there are one or two elements of uncertainty. The United Kingdom did not oppose the inclusion of the item on the agenda on either occasion despite the fact that she had considerable doubts as to the competence of the Security Council to deal with it. Upon the inclusion of the item on the agenda the first time, Sir Patrick Dean indicated that his delegation still attached great weight to the provisions of Article 2(7). In his opinion the proposers of the item still had to present a prima facie reason why the Security Council should be seized of this item. The British delegation, he said, had not seen any evidence that convinced it that the events complained of could properly be said to endanger

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1. ibid, para.165.

2. ibid, 956th mtg., para.159.

3. For the statement of Ecuador to this effect, see ibid, 955th mtg., para. 19 & 20; Chile, ibid, para.49; and China, ibid, 956th mtg., para.4. Turkey does not appear to have made this explicit, but in view of her silence on the point it must be taken that her views on competence had not altered.

the maintenance of international peace and security. Sir Patrick indicated that in the absence of such evidence the United Kingdom would consider the Council without competence.[1] As sufficient evidence was not presented, the United Kingdom voted aga inst the draft resolution.

The second time the matter was included on the agenda, the attitude of the United Kingdom was basically the same. Sir Patrick indicated that his delegation still had doubts as to whether the matters under consideration could really be said to endanger international peace and security and consequently as to the competence of the Council.[2]

The United Kingdom statements throughout this case had been, until this point, entirely consistent. If the matter was within the domestic jurisdiction of Portugal, then the Council was not competent. However, then Sir Patrick made a digression which to a certain extent introduces an element of uncertainty into British practice in this case.

At the fifteenth session, the General Assembly had set up a Sub-Committee to study the Angolan question.[3] The United Kingdom abstained in the vote on the resolution setting up this Sub-Committee because she felt doubts as to the competence of the General Assembly to deal with a matter of this kind. However, during the consideration of the Angolan question in the Security Council a year later, Sir Patrick Dean announced that since the Sub-Committee had been set up his delegation supported its work and hoped that Portugal would co-operate with it. He added that if Portugal co-operated with the Sub-Committee the United Nations would be in a better position to discharge the responsibilities which it had assumed, both in the Security Council and in the General Assembly.[4]

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1. S.C., 16th Yr., 944th mtg., paras.14-15; and ibid, 946th mtg., paras.57-58.
2. ibid, 955th mtg., paras.5-7.
3. G.A., Res.1603 (XV).
4. S.C., 16th Yr., 955th mtg., para.11.

The question arises how the United Kingdom could support the work of a committee set up to study the Angolan situation if she maintained, as she indicated in the Security Council debates, that the matter was still, in her view, essentially within the domestic jurisdiction of Portugal? Did this mean that the General Assembly could, in her view, study the domestic affairs of a member State? If so, what effect would this have on the United Kingdom interpretation of intervention in Security Council practice?

The inclusion of this statement in the speech of the United Kingdom delegate does rather confuse the issue. It is true that earlier in his speech Sir Patrick Dean had indicated the presence of certain international elements in the case, viz., interference by other states in Portugal's internal affairs, which conferred a certain competence on the Council.[1] However, this should not have affected, to any extent, his attitude towards the Assembly Sub-Committee which would be examining not only the international aspects of the question, but also the internal affairs of Angola, to which his delegation had previously strongly objected. This part of Sir Patrick's statement is difficult to reconcile with his previous attitude on the question of intervention.

The practice of the Council on this point is, as demonstrated above, not plentiful. Such statements as have been made do not demonstrate any awareness of the consequences of allowing the Security Council to exercise such a limited competence over domestic affairs, whereas, in the case of General Assembly practice on this point, States had obviously given much thought to the consequences of allowing that body to exercise such powers. Again, in contradistinction to the General Assembly, no attempt was made to demonstrate a legal basis for the view that discussions and recommendations by the Security Council concerning essentially domestic matters did not constitute intervention. No State espousing this view

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1. ibid, 955th mtg., para.8.

made out that, for example, unless the Council could do these things, it would not be able to do the job it was set up to carry out. No State was able to indicate an Article of the Charter which would give the Council some justification for the assumption of such powers.

Such evidence as exists in these two cases does not present a convincing case for the proposition, and does not demonstrate the need to revise the views set in Chapter I.

In contradistinction to these two cases, however, the Indonesian case presents an apparent wealth of practice which would support the conferment on the Security Council of limited competence in domestic matters. But the statements made in the course of debates on this subject demonstrate such a disregard for the terms of the Charter and such confusion of procedure and thought that they are not a sound basis on which to construct any theory as to the powers of the Security Council in domestic matters.

(c) The Indonesian Question

(i)

In 1947 the delegations of Australia and India brought to the attention of the Security Council the situation created by the hostilities then in progress between the forces of the Netherlands and the Republic of Indonesia.[1] Australia invoked Article 39 of the Charter, India, Article 35.

This question concerned the liquidation of the Dutch Empire in the East Indies. Out of its empire in that part of the world, the Netherlands intended to create a federal state, the United States of Indonesia, of which the Republic of Indonesia was to be part. The Republic of Indonesia was already in being, having been organized towards the end of the Second World War with the assistance of the Japanese occupation forces.

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1. S.C., 2nd Yr., Suppl. No.16, S/447 and S/449, pp.150 & 149.

Hostilities had broken out between the forces of the Dutch Government and those of the Republic of Indonesia, which hostilities the delegations of India and Australia wished to see terminated. To this end they both called on the Security Council.

Australia introduced the following resolution:[1]

> The Security Council,
> Noting with concern the hostilities in progress between the armed forces of the Netherlands and the Republic of Indonesia, and
>
> Having determined that such hostilities constitute a breach of the peace under Article 39 of the Charter of the United Nations,
>
> Calls upon the Governments of the Netherlands and the Republic of Indonesia, under Article 40 of the Charter of the United Nations, to comply with the following measures, such measures to be without prejudice to the rights, claims or position of either party:
>
> (a) To cease hostilities forthwith, and
> (b) To settle their disputes by arbitration in accordance with Article XVII of the Lingadjati Agreement, signed at Batavia on 25 March 1947.

The Security Council could deal with a situation such as this under either Chapter VI or Chapter VII.

To deal with it under Chapter VI, it would have had to show that there was a dispute or situation the continuance of which might endanger the maintenance of international peace and security. Any action by the Security Council under this Chapter would have had to be prefaced by a decision on the nature of the dispute or situation. The Council would have had to decide that the situation in Indonesia did endanger the maintenance of international peace and security before it could take any action under this Chapter.

To deal with it under Chapter VII the Council would have had to determine the existence of a threat to the peace, or of an actual breach of the peace or of an act of aggression.

If the Council had done either of these things, i.e. decided that there was in existence a situation the continuance of which might have endangered

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1. S.C., 2nd Yr., No.67, 171st mtg., p.1626.

international peace and security, or that there was an actual threat to the peace, or a breach of the peace or an act of aggression, the prohibitions of Article 2(7) would have become, as a consequence, of no importance. By taking either of these decisions, the Council would, in effect, have been saying that the matter was international, and not essentially within the domestic jurisdiction of the Netherlands. If such a decision had taken, no problem of intervention would have arisen.

The draft resolution submitted by the Australian delegation successfully side stepped the restrictions of Article 2(7). In that resolution the Council would clearly have decided that there had been a breach of the peace, thus freeing itself from the restrictions upon its powers.

This resolution was not adopted, in this form, by the Security Council. Immediately after it had been introduced, the delegation of the Netherlands contended that the military measures taken by the Dutch Government were not such as to be of concern to the Security Council. They were, the Dutch representative claimed, merely police measures to restore law and order and to protect lives and property in the territory under the titular jurisdiction of the Republic of Indonesia. Mr. Van Kleffens claimed: a) that the Republic of Indonesia was not a sovereign state, but a constituent part of the Netherlands; that what was being dealt with was, therefore, essentially within the domestic jurisdiction of that State, and that the Council was forbidden to deal with such matters by the Charter; b) that while the matter was of international 'concern', that did not of itself bring it within the jurisdiction of the Security Council; and that Chapter VII was not applicable to the case because the disturbances were taking place within the territory of the Netherlands and hence there was no threat to international peace.

There naturally ensued a great deal of discussion as to whether the situation in Indonesia was a) essentially within the domestic jurisdiction of the Netherlands

and b) a threat to the peace of the world in the sense in which that term is used in Chapter VII.

The question of whether the matter was essentially within the domestic jurisdiction of the Netherlands centred to a considerable extent on the status of the Republic of Indonesia. If it could have been shown that the Republic of Indonesia was a sovereign independent State, then the matter could not possibly have been within the domestic jurisdiction of the Netherlands. If on the other hand, it could have been shown that the Republic of Indonesia was not a sovereign independent State, then the task of showing that the matter fell within international jurisdiction would have been much greater.

The Council did not, in the entire length of this tedious case, decide clearly any of these legal questions upon which the exercise of its functions depended. It did not decide, clearly, upon the status of Indonesia. Instead it tried to sidestep this aspect of the question. It did not decide on the nature of the situation which existed in Indonesia. It did not decide that there existed a dispute or situation the continuance of which might have endangered international peace and security, nor did it decide that there had been in fact an actual threat to the peace, a breach to the peace or an act of aggression. Instead, several of the Members tried to side step these issues with the effect that the juridical status of the subsequent Council action is extremely dubious.

Despite the failure to decide these important legal issues on which the powers of the Security Council depended, the Council did adopt a resolution calling upon the parties to cease hostilities. The resolution ultimately adopted was as follows:

> The Security Council
> Noting with concern the hostilities between the armed forces of the Netherlands and of the Republic of Indonesia,
> Calls upon the parties
>
> a) To cease hostilities forthwith, and
> b) To settle their dispute by arbitration or by other peaceful means and keep the Security Council informed about the progress of the settlement.

The adoption of such a resolution by the Security Council could mean one of two things. One, it could mean that the Members of the Security Council, tacitly, and without the need to make clear on which Article of the Charter they were basing their action, considered that the matter was essentially international. Two, it could mean that the Members of the Council considered that they could adopt such a resolution despite the fact that the matter was domestic.

Both these points of view were put forward, but it is naturally with the second that we are interested. During the course of the debates on this subject over a period of four years several Members contended that the adoption of such a resolution, calling upon certain parties to cease their hostilities, and to settle their disputes, was without any effect on the question of the Council's competence to deal with the matter. They asserted that the Security Council could adopt such a resolution and at the same time leave the question of the Council's competence to do so undecided, which is the same thing as saying that such a resolution does not contravene the restrictions placed upon the powers of the Council by Article 2(7).

The practice on this point stretches over a period of four years, and it is tempting to conclude therefrom that the Security Council can, in certain instances, adopt resolutions dealing with domestic matters, or matters the status of which is in doubt and still not be guilty of intervention in the domestic affairs of the State concerned. However, to draw such a conclusion from these debates would be a dubious procedure. The statements of the various Members supporting this point of view are such a mass of confusions, and show such little awareness of the import of the Articles of the Charter with which they deal that it would be unwise to found upon them in advocating the theory that in domestic matters the Security Council has a certain limited competence,

The material on this subject is lengthy, and deals with several different legal points at the same time. It is often, therefore, difficult to follow exactly

what is going on. Nevertheless, it has been decided not to separate each of the several points and to follow them separately through the tangled scheme of practice. They were brought up by the various speakers at one and the same time, and it is considered better to present them as they arose, as thereby the necessity of keeping the issues straight and of taking decisions clearly will be demonstrated. Had the issues been clearly presented and decisions taken thereon clearly, founding on specific Articles of the Charter, most of the following story would have been avoided.

The representative of Belgium initially upheld the views of the Netherlands.[1] Mr. Van Langenhove recalled that the Netherlands had claimed that the Security Council had no right to intervene in this matter, and added that he had not heard any argument which had convinced him to the contrary. He said that in his opinion, before the Council could even call upon the parties to cease hostilities, it had to make sure of its power to 'intervene'. It is implicit in the Belgian representative's speech that any resolution of the type sponsored by Australia would be intervention in the domestic affairs of the Netherlands, until such time as the Council had clarified its power to act.

The delegate of the United Kingdom noted the objections to the competence of the Council voiced by the Dutch representative based on Article 2(7) but announced that he did not intend, at that juncture, to comment on that question.[2] However, Mr. Lawford, the British representative, went on to say that while in his opinion Article 39 of the Charter might not have been applicable, it could not be denied that the repurcussions of the events in Indonesia in neighbouring Asia and Australia had been very serious, and that the situation was one which could conceivably at any time actually endanger the maintenance of international peace

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1. S.C., 2nd Yr., No. 68, 172nd mtg., p.1653.

2. ibid, pp.1655-7.

and security. In his view, it was not Article 39 which was applicable to the Indonesian question but rather Articles 34 and 35. These Articles were applicable, he said, not because the case concerned a dispute between the Netherlands and Indonesia, but because fighting was in progress which could well have led to a situation creating international friction.

The United Kingdom delegate may not have intended to comment on the question of the competence of the Security Council, but this is in fact what he had done, though it became evident from later speeches that he was unaware of this fact. Mr. Lawford said:[1]

> .... In our view, therefore, it is not Article 39 but rather Articles 34 and 35 which would be applicable to this case, not, as a dispute between the Netherlands and the Indonesian Republic, but because the fighting in progress may well create a situation leading to international friction.

By saying this, by contending that Articles 34 and 35 were applicable to this situation, was not Mr. Lawford contending that the matter was not essentially within the domestic jurisdiction of the Netherlands? Can Articles 34 and 35 be applied to a situation which is not international? The answer to this is certainly in the negative. Would the British Government support any attempt to apply those Articles to a situation which was not international? Again, the answer is almost certainly in the negative.

The United States delegate, Mr. Johnson, also expressed views which exhibit the same curious inability to appreciate the effect of an assumption of competence by the Security Council.[2] In his speech Mr. Johnson advocated the adoption of a resolution by the Security Council calling for the immediate cessation of hostilities. However he claimed that such a resolution in no way prejudiced the question of the Council's competence to deal with the matter. He claimed

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1. loc.cit.

2. ibid, pp.1657-8.

that such a resolution could be adopted, and still the Council might be able to come to the conclusion at a later stage that the Dutch objections to competence were well founded. He seemed to suggest, in fact, that the Security Council could adopt some kind of resolution even though the subject matter thereof was essentially domestic.

Mr. Johnson's remarks are rather long but merit close analysis, as they set out in some detail this rather curious approach. He said:[1]

> The Australian resolution as it is now worded, is a document which, in the understanding of my delegation, has an objective with which we have great sympathy. The invocation of Articles 40 and 39, however, raises very complex and serious questions of law. The question of sovereignty, and the question of the competence of this Council to deal with the case, have been brought up by the representative of the Netherlands, and in our opinion, also merit the respectful attention of the Council. These are very important questions. The fact that there is shooting, and that men are being killed in that region of the world is also very important. Thus it is a legitimate concern of the Security Council, no matter what concept of sovereignty is involved or what may ultimately be decided to be fact.
>
> The scale on which the shooting is taking place is one of the criteria which the Council may take into consideration in deciding what action it ought to take. For instance, in unsettled times, a band of wicked and purposeful men might very well be armed and gain control over a large territory. They might have such complete control that the people of that region would have no recourse against them. They might even set themselves up and call themselves a State. I do not think that even the most humanitarian and peace-loving Members of the United Nations would argue that the lawful and legitimate Government of that region might not use arms to put down that band of wicked and lawless men and to release the people of that territory from their tyranny and oppression. It would be no argument to say that those men had constituted themselves into a State and that it was war. No one, I believe, would take such an argument seriously.
>
> In this case, however, we have a region which is called the Republic of Indonesia. It is planned that, later on, it should be one of the constituent subsidiary States of a larger federal republic of Indonesia. It seems to me quite unneccessary for the Council to decide now on the complex question of the sovereignty of the Netherlands Government. My Government, after careful study of this case, might decide that the Netherlands Government's contention was entirely correct in law. I am taking no stand and making no commitment on that point at the present time. I do think, however, that the Council must take cognizance of fighting on such a scale and in such conditions that the peace of that region and ultimately of the world might be put in danger.

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1. loc.cit., emphasis added.

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I think, however, that the Security Council's sentiment, as I have heard it expressed today and also at the hundred and seventy first meeting, is that it wants the fighting there stopped without prejudice to the position which any member of this Council may feel that he must take on the important juridical principles involved.

At this point Mr. Johnson introduced the following amendment to the draft Australian resolution:

The Security Council,

Noting with concern the hostilities in progress between the armed forces of the Netherlands and of the Republic of Indonesia,

Calls upon the parties,

(a) To cease hostilities forthwith, and

(b) To settle their disputes by arbitration or other peaceful means.

Of this amendment, Mr. Johnson said:

In this amendment to the Australian resolution.....there is no mention of any Article of the Charter, and there is no commitment regarding the sovereignty of the Netherlands over the region in question. All of those questions are left open and without prejudice to any determination which the Council may reach later. ....

I respectfully submit that amendment to the judgement of the Council. My delegation believes that if we can pass that simple statement quickly, we may then go into the legal issues involved at a subsequent time, when our various delegations on this Council will have had time to study and to think of all indications (sic. implications[1]) which might follow our adopting any one of the juridical principles.

It is submitted that in making this statement and this suggestion, Mr. Johnson had not thought out clearly its implications. How could the Security Council be bound to take cognizance of fighting on such a scale that the peace of that region and even of the whole world might have been endangered and at the same time be free to come to a decision later on that the contentions of the Netherlands Government were correct in law? On what grounds can the Security Council call upon the parties to cease hostilities, if these are not of such a nature as to endanger the maintenance of international peace and security? If the contentions of the Netherlands Government re its sovereignty over Indonesia and the character of the fighting taking place there were correct in law, then the matter would be essentially

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1. In the French text, the word used is "consequences".

within the domestic jurisdiction of the Netherlands. If it were essentially within the domestic jurisdiction of the Netherlands, how could the Security Council concern itself with it?

Mr. Johnson did not claim that the matter was essentially domestic. He expressly reserved his position on that. Yet, at the same time, he maintained that fighting on such a scale, in which men were being killed, was the legitimate concern of the Security Council. If a matter is the legitimate concern of the Security Council, is this not the same thing as saying that it is an essentially international matter? If this conclusion is not correct, then on what Article of the Charter was the American appeal to be based? Mr. Johnson had carefully excised any reference to any Article of the Charter from his draft amendment, under the apparent impression that this solved something. This action is not appreciated. Action by the Security Council must be based on some Article of the Charter.

The statement of the United States delegate is, in fact, rather contradictory and it is patent that these contradictions are due to this attempt to side step the issue of competence.

Belgium now joined the fray. In an earlier statement, the Belgian delegate had indicated that till the question of competence was decided the Council could not 'intervene' in this matter. Now, however, Mr. Van Langenhove announced that in his country's opinion, the matter of competence was best left open.[1] However, this, he claimed, was not the result of the United States and Soviet[2] amendments to the Australian draft resolution. In his opinion, the best thing the Council could do was to await the outcome of the mediation which the United States had agreed to carry out in the matter.[3]

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1. ibid, p.1666.

2. see ibid, p.1665.

3. The United States had offered to mediate between the parties, which had been accepted by the Netherlands, see ibid, p.1655.

In reply to the Belgian contention, Mr. Johnson said[1] that his draft proposal did leave the question of competence open. He recalled that the wish of almost the entire Council was to see the hostilities brought to an end. He claimed that the adoption of his resolution would accomplish this and at the same time would not prejudice the legal position of any Member of the Council or even of the Netherlands. Mr. Johnson continued:[2]

> The only way to stop hostilities is to ask that they be stopped and not to give any reasons for it, but simply to express the Council's view, its wish and its will entirely in conformity with the spirit of the Charter of the United Nations. We do not have to decide any legal questions in order to make such a determination, nor do we have to prejudice the opinions of anybody or of any delegation by doing so. They would have ample opportunity to air their opinions afterwards.

The United Kingdom then added her contribution to the confused debate. Mr. Lawford said that he did not share the views of the United States on the effect of her proposed amendment.[3] In his opinion, the American amendment did prejudice "the legal position, because to call on parties to cease fighting is definitely to imply that Article 2, paragraph 7, of the Charter does not apply".

Mr. Lawford now seemed to be worried at the prospect of the Security Council passing some resolution, lest it contravene the strictures of Article 2(7). Yet earlier in the debate he himself had announced that, in the opinion of his delegation, Articles 34 and 35 were applicable to the situation under discussion. If those Articles were applicable to the case, where did Article 2(7) come in?

The problem of reconciling his previous statement with his present fears of intervention did not appear to bother Mr. Lawford. Having previously, seemingly, indicated that the matter was international, here he seemed to feel that it was domestic, - else how was Article 2(7) applicable? However, though he

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1. S.C., 2nd Yr., No.68, 172nd mtg., p.1668.
2. loc.cit., emphasis added.
3. ibid, 173rd mtg., p.1674.

now apparently considered the matter as domestic, this did not prevent him from indicating that he was willing to support some kind of resolution. Mr. Lawford indicated that he would be prepared to support a resolution which limited itself to noting the United States offer of mediation. From this, is it to be concluded that, even though the matter was held to be domestic, the United Kingdom did not, on that score alone, consider that all recommendations were necessarily intervention? Had this been the only utterance of the United Kingdom on the subject, the tendency would be to assume that this was indeed the United Kingdom's considered opinion. But can much reliance be placed on a statement which in itself is somewhat controversial, and in addition, is in complete contrast to one made earlier in the same debate? It is submitted that it cannot.

The representative of France, M. Parodi, now took the floor. He indicated that France would be prepared to support an appeal to the parties to cease hostilities provided that it was made on humanitarian grounds and clearly indicated that no attempt was being made thereby to prejudice the question of the Council's competence.

France has been a noteable opponent of intervention by the Security Council, or indeed any organ of the United Nations. However, this statement would seem to indicate that in her opinion, not all resolutions can be classed as intervention even though they deal with matters which are essentially within the domestic jurisdiction of a State. M. Parodi said:[1]

> I do not quite see on what grounds the Security Council is competent to deal with the Indonesian question. ....
> We cannot be competent to deal with this question unless there is a threat to the peace. The events taking place in Java and Sumatra might constitute such a threat either if - being considered to be of an internal nature - they were liable to give rise to international complications, on account of their repurcussions on external affairs. (I do not think that this is so; and, in any case, I cannot with my present knowledge consider that it is so) or if, upon examination of the facts themselves, we were to consider them as acts of war between two distinct and sovereign States.

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1. ibid, pp.1676-1678, emphasis added.

> The explanations given yesterday show that, with regard to the second alternative - the existence of two sovereign States - the answer is, to say the least, extremely doubtful.
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> .....
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> I have just said that I thought it would be difficult to leave aside legal or technical questions. On the other hand, if the Council considers that they can and should be left aside completely, I would understand and I would support the proposed decision provided it were submitted fully and very clearly in the spirit I have just indicated.
>
> .....The Australian representative has just said that he thought that for the time being we should leave aside all technicalities and deal with only part of his original resolution. In submitting his amendment ..... the United States representative told us that it was in the same spirit that he was proposing his text, and that he did not intend to prejudge the question of the Security Council's competence.
>
> On this ground, I agree with the proposals which have been made, but I should like them to be expressed clearly, in conformity with the spirit which has just been indicated. ....
>
> .... First of all, I want us to state clearly that we are leaving completely aside the problem of the Security Council's competence and that we should make it plain that the appeal we are making is on humanitarian grounds, and not on legal or political grounds. In addition, I think we should go further, and since this delicate legal question has been raised, and since it is an essential one, we should take steps to settle it. I should like the Security Council to decide to submit our difficulty to the International Court of Justice and to obtain an opinion as to whether or not the Council is competent, in this matter, to take a decision beyond the appeal proposed to us now.

There is no doubt that the French delegation was here supporting the view that not all resolutions dealing with matters essentially within the domestic jurisdiction of a State are necessarily intervention. The matter was, in the opinion of France, essentially domestic, and yet she was prepared to propose the following draft resolution:[1]

> The Security Council,
>
> Noting with concern the hostilities which are taking place in Java and Sumatra,
>
> Reserving entirely the question of the Council's competence as regards the application of the Charter but prompted by a wish to see the cessation of bloodshed in the two islands,
>
> Calls upon the parties concerned to put an end to hostilities.

The one question which, of course, the French delegation did not answer, was on what basis it thought that the Security Council was competent to take this

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1. loc.cit.

action. The Security Council does not have any competence to deal with humanitarian matters. On what then was its power to take this action founded? This question the French delegation did not even attempt to answer.

The French suggestions were accepted by the United States which incorporated them into its own amendment, as follows:[1]

> The Security Council,
> Noting with concern the hostilities in progress between the armed forces of the Netherlands and of the Republic of Indonesia, and without in any way deciding the juridical question concerning the competence of the Security Council in this regard,
> Calls upon the parties,
> (a) To cease hostilities forthwith, and
> (b) To settle their disputes by arbitration or other peaceful means.

Presenting this revised amendment to the Australian draft resolution, Mr. Johnson reminded the Council that his Government reserved entirely its position on the legal aspects of the case. Thus, irrespective of the contradictions inherent in the totality of Mr. Johnson's utterances on this subject, it seems reasonably clear from this that he did not consider this resolution as intervention in the domestic affairs of the Netherlands. Even if his Government eventually decided that the matter was within the domestic jurisdiction of the Netherlands, it appears that it would still have been prepared to vote for such a resolution.

The reservations inserted into the United States draft resolution regarding the competence of the Council were welcomed by the Dutch representative,[2] whose fears on the score of intervention seemed to be allayed thereby.

With these suggestions, Mr. Gromyko completely disagreed. He maintained that to write such a reservation into the resolution would reduce its weight as a decision of the Council. In addition it would, he asserted, constitute a most undesirable precedent for it would mean that the Council considered itself competent

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1. ibid, p.1687.

2. ibid, pp.1688-9.

to consider a particular question even though it was not certain that it came within its jurisdiction.[1]

The Colombian delegation appeared to agree with the doubts of Mr. Gromyko.[2] Mr. Lopez appeared to consider that the Council was competent to call upon the parties to cease hostilities. However, he disapproved strongly with the idea that the Council, to satisfy the doubts of certain Members, should include in the text of its resolutions a statement that it doubted its own competence to adopt the resolution. In his opinion, if the Council thought that it was not competent to pass a resolution, then it should not pass it. Furthermore, if it was necessary to discuss at great length whether or not the Council was competent, then it would have been better, in his opinion, to devote the appropriate time to such a discussion rather than adopt a resolution on the clear understanding that it was not sure as to its competence to do so.

Replying to this, Mr. Van Kleffens of the Netherlands pointed out that the Council impliedly declared itself competent to deal with a subject unless it included in any resolution a reservation to the effect that its competence was at least doubtful.[3]

The views of the Dutch representative were supported by M. Parodi of France who said:[4]

> I do not think there is any real contradiction between the fact of reserving the question of competence and the fact of calling upon the parties concerned. Of course we cannot at a later stage proceed to more authorative decisions without having settled the question of competence. But we are now at quite a preliminary stage; we are calling upon the parties concerned; I think that can be done even if we reserve the question of competence.

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1. ibid, p.1692.
2. ibid, p.1693.
3. ibid, p.1695.
4. pp.1695-6; emphasis added.

> I want to stress again that a real contradiction would exist if we did not reserve the question of competence, when various members of the Council - all very emphatic, eloquent and persuasive - stated throughout the meetings held yesterday, this morning and this afternoon that we should leave aside technical questions, legal and juridical questions and particularly questions of competence, but should nevertheless take a decision because of the urgency of the matter.
>
> If we do not formally reserve the question of competence now, an essential and very serious contradiction will really exist which, I think, will detract considerably from the value of the Council's decision.
>
> In order to proceed more rapidly, because of the circumstances and because blood is being shed, we have decided that we should make an appeal. We have admitted that in order to save time we should leave aside legal questions. We have not discussed them. In fact we have done absolutely nothing to clear them up.

It is submitted that statements such as these would have been impossible if France had not in this case supported the view that not all recommendations are necessarily intervention where the subject matter thereof falls essentially within the domestic jurisdiction of a State. However, while French support for such a resolution was clear and unequivocal, she still did not indicate on what Article of the Charter the Council's right to make such an appeal was based.

The views of France were seconded by the United Kingdom.[1] Mr. Lawford pointed out that several of the Members of the Council had doubts as to the competence of the Council to deal with this matter. However they were ready to join in an appeal to the parties, provided the question of competence was safeguarded. He did not agree with the Colombian delegation that as much time as was necessary should be spent on the question of competence, prior to any decision being taken. The decision on the question of competence might have taken, Mr. Lawford said, a long time to procure, and meanwhile blood was being shed. It is perhaps justifiable again to ask how a legal person, which has doubts as to its powers to do a certain thing, can nevertheless go ahead and do it any way?

When it came to the voting stage, the United Kingdom proposed that the

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1. ibid, p.1696.

reservation concerning the question of competence should be voted on first. However this suggestion, though an eminently sensible one, was not accepted.[1]

The reservation contained in the first paragraph of the American amendment to the Australian draft resolution was not passed.[2] Belgium, Brazil, France, the United Kingdom and the United States voted in favour of it, but were opposed by the other Members of the Council.

While this part of the resolution was not adopted, nevertheless, this debate shows that at this early stage in the practice of the Security Council, there was quite a lot of support for the idea that not all resolutions necessarily constituted intervention in the domestic affairs of a State because they dealt with matters which either fell within that jurisdiction, or of which the status was at least in doubt.

(ii)

It might have been expected that as the reservation concerning the competence of the Council had not been accepted, those who had supported it would have pressed for an immediate decision on the question of competence, which would have settled once and for all that vexed question or would have accepted the adoption of the resolution as an expression of competence. Unfortunately, however, no such decision was taken. This in itself was unfortunate, but was not the only matter in this debate which is unsatisfactory. Those States which had supported the reservations in the previous debate now asserted that the resolution which had been adopted appealing to the parties to cease hostilities was subject to those reservations, despite the fact that they had not been accepted by the Security Council. Those States tried to assert that the entire proceedings in the Council concerning this matter were without prejudice to the question of the

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1. ibid, p.1700.

2. ibid, p.1702.

competence of the Council to deal with it.

By adhering to this view those States led the Council into a ridiculous position. For the next three years, the Council continued to deal with this matter, and yet still some Members of the Council tried to pretend that all the Council's actions were without prejudice to its competence to deal with the matter. It could perhaps be conceded that the Security Council could issue an appeal to parties to a dispute to cease hostilities, even though it was not sure of its competence to do so, provided this was viewed purely as a provisional measure which was to be followed by an authorative determination of the legal status of the matter by the International Court of Justice. Such a procedure, though not provided for by the Charter would not be out of keeping with the general principles of justice, most systems of law providing for provisional measures while the matter of jurisdiction is being settled. This idea had been broached by the French delegation when he proposed to write into the resolution a reservation of the Council's competence. However, on that occasion he had proposed his resolution on humanitarian grounds, giving the impression that the Council was somehow authorised to act on that basis. Had he proposed to appeal to the parties as a provisional measure and at the same time made provision for an authorative determination of the question of jurisdiction by the International Court, he would have been on sounder ground. However, such provisional measures could hardly last for a period of three years, during which the Council continued to deal with the question. To deal with a question over such a period of time and at the same time to contend that the question of jurisdiction was not settled is plainly an impossibility.

Not long after the appeal by the Security Council to the parties to cease hostilities, the matter was again taken up, and the Indian delegate gave a full account of events which had taken place in Indonesia since the surrender of the

Japanese forces.[1] The Dutch representative immediately objected to this discussion of the internal affairs of the Netherlands and although some of the statements made by the Indian delegate were not, in his opinion, accurate he declined to deal with this aspect of the matter.[2] Soon after Australia introduced a draft resolution which would have set up a commission which would have been sent to Indonesia to act as the agent of the Security Council and as an observer of the situation.[3]

Immediately after the submission of the Australian draft resolution, the question of inviting the representatives of Indonesia to participate in the work of the Council was raised. The question of the invitation of Indonesia was intimately connected with the question of competence. Under Article 32 of the Charter, any 'State', a party to a dispute, could be invited to take part in the work of the Council dealing with that dispute. The terms of that Article suggest, prima facie, that to be invited thereunder, the political organization must bear the characteristics of a State according to international law, whatever these may be - and there was a considerable amount of discussion of this point during the debates which followed, the details of which we need not consider. Hence, a presumption seems to be raised that any political entity invited to participate under the terms of that Article in the work of the Security Council, fulfills the prerequisites of being considered as a State. An invitation to Indonesia to participate in the work of the Charter under the terms of that Article would seem, prima facie, to invest her with Statehood, and hence in effect decide the question of competence. If Indonesia were to be considered as a State for the purposes of Article 32, then it could hardly be maintained that the matter was still essentially within the domestic jurisdiction of the Netherlands.

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1. ibid, No.72, 178th mtg., pp.1841-48.
2. ibid, pp.1848-51.
3. ibid, No.74, 181st mtg., pp.1917-8, fn.2.

The Netherlands strongly objected to the Republic of Indonesia being invited to participate in the work of the Council. Mr. Van Kleffens stressed that Indonesia was not a sovereign independent State and hence could not be invited under Article 32.[1] India considered that to be invited it was not necessary to be fully sovereign, but that de facto existence was sufficient.[2] Poland maintained that Indonesia was a sovereign State. The Polish representative recalled that the Netherlands contended that the matter was essentially within her domestic jurisdiction. The views of the Council, he claimed, were quite different. He maintained that by placing the item on the agenda under Article 39, the Council recognised the international nature of the problem. He then recalled that although certain reservations as to competence had been made by various Members of the Council the resolution as such contained no reservation. He added that a resolution calling for the cessation of hostilities could not have been adopted containing any such reservation as to the recognition of the Republic of Indonesia as a sovereign independent State.[3] The Polish representative implied that a reservation as to the competence of the Council to deal with the matter would have been tantamount to a reservation as to the status of Indonesia as a sovereign state. He then claimed that the Council could not adopt such a reservation and at the same time appeal to Indonesia to cease hostilities.

The United States adopted a different attitude. While others were arguing about the status of Indonesia as a sovereign independent state, Mr. Johnson said that whether Indonesia was a State or not within the meaning of Article 32, it should still be invited to take part in the work of the Council, in the interests of justice. He claimed that by deciding to invite Indonesia to the Council table, the Council would not be thereby giving to Indonesia any international status or

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1. ibid, pp.1920-1923.
2. ibid, pp.1923-26.
3. ibid, pp.1926-28.

position to which she would not otherwise have been entitled.[1] It may justifiably be asked on what basis Mr. Johnson proposed to invite Indonesia to the Council table? The Charter makes provision for the invitation of 'States' to participate in its work, but not for invitations to any political entity which, in the interests of justice, ought to be heard. This is perhaps unfortunate, but that is how the Charter is framed. It is submitted that an invitation to Indonesia under that Article would accord her a certain international position.

The Soviet Union took up a position similar in some respects to that of the United States.[2] Mr. Gromyko claimed that although Indonesia might not be fully independent, it was independent and sovereign enough "to be allowed to express the opinions, thoughts and feelings of the Indonesian people on a question which affects its vital interests". Mr. Gromyko then went on to deal with the general question of competence. He claimed that the mere fact that the Council took up the discussion of this question, and in addition, adopted a resolution upon it, completely negated the arguments of the Netherlands regarding the competence of the Council.

This last question and the question of the effect of the reservation of the Council's competence, which had been defeated, was taken up by the French representative.[3] M. Parodi claimed that the appeal to the parties to cease hostilities had been taken on purely sentimental and humanitarian grounds and had completely reserved the question of the Council's jurisdiction. He insisted that that reservation, though not adopted, somehow bound the Council. Referring to the Polish contention that the Security Council impliedly asserted its jurisdiction when it adopted that resolution, he emphatically denied that this was the case.

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1. ibid, pp.1931-33.
2. ibid, pp.1933-34.
3. ibid, pp.1936-39.

It was not so, he claimed, because the question of jurisdiction was 'formally and very clearly' reserved. M. Parodi went on to deny that the Security Council could invite Indonesia to participate in the work of the Council. He maintained that only States which answered the tests of international law could be heard by the Council. Indonesia did not meet those requirements and hence she could not be invited. He pute his point of view rather forcefully. He said:

> .....If Indonesia is not a State in international law, I think the Security Council is certainly not competent to deal with the matter of which it has taken cognizance.

Thus, on the one hand, M. Parodi maintained that Indonesia was not a State in international law and that as a consequence the Security Council was not competent to deal with this matter. On the other, he still appeared to uphold the validity of the resolution which had been adopted, he claimed, on sentimental and humanitarian grounds.

The logic of these statements is not really understood. It is submitted, in fact, that in the face of the contradictions in France's views, any attempt to formulate a legal theory as to her opinions on intervention out of the above statements would just be an attempt to clothe in legal garb political statements which do not bear much legal analysis.

The impression that French statements on this occasion do not bear much legal analysis is strengthened by further statements of M. Parodi. After going to such lengths to stress the lack of competence of the Security Council he announced that, despite this, the Council could not really turn its back at this stage in its dealings with this question. He was of the opinion that even though Indonesia could not be heard under Article 32, nevertheless some means should be found of hearing her side of the tale. Under the circumstances, he felt that an invitation to her under Rule 39 of the rules of procedure would be in order.[1] However, he did not explain how the rule of procedure could be applied

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1. Rule 39 states: The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence.

to the case in hand.

Despite all these uncertainties, and legal complexities, which were not dealt with fully and in a manner which befitted the seriousness of the situation, Indonesia was invited to attend the meetings of the Council.[1]

At this point the President of the Council, Mr. El-Khouri of Syria, stated that the invitation to the Republic of Indonesia was without prejudice to its status and that the invitation did not bind any State to recognise Indonesia.[2] This latter point is undoubtedly correct, but legitimate doubts can be expressed as to the first. If the majority of the Council were not convinced that Indonesia had sufficient of the attributes of sovereignty to make her a State in the sense in which that term is used in Article 32, how could they go ahead and invite her anyway?

Such matters did not appear to worry the representative of the Netherlands. Mr. Van Kleffens said that he had raised no objection to the invitation of Indonesia[3] since it had been made clear that that invitation was without prejudice to any Government and was not based on Article 32 or Rule 39 of the Rules of Procedure. He added that he hoped that the other constituent parts of the proposed United States of Indonesia, the Republics of East Indonesia and Borneo, would also have a chance to address the Council on this basis.

Mr. Van Kleffens, like the representative of France, was trying to keep up the myth that by taking these decisions the Council was not impliedly establishing its own competence. But it may with justice be asked, if the invitation to the Republic of Indonesia was not based on Article 32 or on Rule 39 of the Rules of Procedure, on what was it based?

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1. S.C., 2nd Yr., No.74, 181st mtg., p.1940.

2. ibid, pp.1939-1940.

3. This assertion was, of course, not true; see supra, p.142.

This last point was taken up by the representatives of the Soviet Union and Poland.[1] Mr. Gromyko said that he had voted in favour of the invitation to Indonesia on the basis of Article 32. The Polish representative pointed out that an invitation by the Security Council had to be based on either Article 32 or Rule 39. He added that as they had invited a Government, it was under Article 32 that the invitation had been issued. Rule 39, he pointed out, applied to persons or members of the Secretariat and could not apply to the invitation of a Government.

The United States then took the floor. The United States had voted in favour of the invitation to Indonesia. However, Mr. Johnson stressed that neither the Council, nor his delegation, was taking any decision on any juridical question.[2] The question arises, if the Council was not taking a decision on a legal question, what was it doing? As the representative of Poland had pointed out, such an invitation could only be issued pursuant to Article 32 and this applied only to States. Hence, for Council purposes, Indonesia was a State and the invitation to her to attend its meetings was express recognition of the fact.

The next matter to arise was the question of invitations to the Philippines, and to the Republics of East Indonesia and Borneo, the latter both being constituent parts of the proposed United States of Indonesia, to participate in the work of the Council. The invitation to the Philippines was issued without disagreement,[3] but that to the other parts of the proposed United States of Indonesia was again the centre of much controversy.[4] The discussions leading up to the refusal to invite those two parts of the United States of Indonesia to participate in the

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1. p.1941-2.
2. p.1943.
3. ibid, No.76, 184th mtg., p.1980.
4. ibid, pp.1981-1992.

Council's deliberations are, indeed, masterpieces of 'double-think'. Here the full consequences of disregarding the Charter provisions relating to the invitation of States, in the case of the Republic of Indonesia, became apparent. Some delegates contended that the Republic of Indonesia had been invited to the Council table under Article 32, but that since the other two were not 'States' like Indonesia, they could not be invited to take their place alongside their sister 'State'. Nor, it was claimed, were they involved in this dispute. Other States equally asserted that Indonesia had not been invited under Article 32 and that to be fair, the other parts of the proposed federal entity ought to be invited as well. Some delegations wished to rely, for this purpose, on Rule 39 of the Rules of Procedure, but in this instance, the United Kingdom pointed out that no State could be invited under that rule to participate in a Council discussion.

The most remarkable fact about this debate is that the opposing sides changed arguments - those who before had opposed the invitation to the Republic of Indonesia now supported that to the other two parts of the federal State, using arguments which bore a marked similarity to those which, in the previous meeting, had been used by those who supported the invitation to the Republic of Indonesia, and vice versa. To make this confusion worse, we then had the United States announcing that she would be quite prepared to invite those two 'States' to the Council, on the same basis as that on which the Republic of Indonesia had been invited, in the belief that to do so was in keeping with the spirit of Article 32, and in no way implied a decision or ruling on any juridical question.[1] It would perhaps have been beneficial for the Council if Mr. Johnson had explained just what that basis was, for so far there seemed to be a distinct lack of consensus on that point.

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1. ibid, p.1986.

When the debate was resumed, the Netherlands again addressed herself to the question of competence. It is perhaps pertinent here to quote the words of her representative at length as they demonstrate rather graphically the situation into which the Council had manoeuvred itself. Mr. Van Kleffens said:[1]

> .... I submit that we cannot go on day after day, meeting after meeting, as if the Council had jurisdiction in this case, when there are grave doubts, to say the least, whether the Council has any jurisdiction at all.
>
> This all-important question of jurisdiction arises in connection with the Australian resolution. It seems to me that there are some members of the Council who are inclined to make the United Nations act even if it has no right to act, simply because people like the United Nations to act.
>
> The United Nations scored a success with the cease-fire invitation. You know that we accepted that on humanitarian grounds, not because we recognised the jurisdiction of the Council. We are glad when the Council is useful, but let the Council and the Governments represented on the Council, be content with that success. Let them not overstep the limits of the Council's jurisdiction. .....
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> .....
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> We think it is a most dangerous precedent to see the Council being led step by step towards an assertion of full jurisdiction which it so manifestly does not possess. First, the Council was requested to ask for a 'cease-fire'. Now, the Council has been asked to appoint a commission to supervise this or that and to report on the situation in Indonesia. What will be the next step? Will the Council be asked to pronounce upon the merits of the question which gave rise to our action? I submit that the very dangerous technique - that step-by-step technique - is being inaugurated here, and it is a technique to the application of which the Netherlands Government will not be a party.

Mr. Van Kleffens' attack on the competence of the Council was taken up by the representative of Poland.[2] Mr. Katz-Suchy said it was difficult to understand why this question had been raised again. He recalled the argument that as the Council was already seized of the question and had taken certain steps in connection therewith, further legal debates should be avoided. In his opinion, the continual reference to the question of competence was merely an attempt to delay further action by the Security Council.

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1. ibid, No.77, 185th mtg., pp.2011-2012.

2. ibid, pp.2014-2017.

At this point, the President of the Security Council, Mr. El-Khouri of Syria, made an important statement regarding the competence of the Council, which set the debate off on a fairly prolonged and important side-track.[1] Mr. El-Khouri recalled that the Dutch representative had attacked the competence of the Security Council to deal with this matter, but pointed out that he had not made any formal proposal, supported by any member of the Council to have formal action taken on his objections. He pointed out that six or seven meetings had already been devoted to the Indonesian question. He claimed that no one could consider that the Council had no jurisdiction unless presentation was made of a formal proposal which stated that since the Indonesian question did not come under the jurisdiction of the Security Council, it should be deleted from the agenda. He added that if such a proposal were presented it would be discussed and a decision taken concerning it.

This statement of the position regarding the Council's competence was challenged almost immediately.

The Belgian representative announced that his country contested the Council's competence to adopt a resolution such as the one submitted by Australia and reminded the President that an action emanating from an incompetent authority is ultra vires. He added that he did not quite understand the meaning of the President's statement on competence, and said that as a precaution he reserved fully his country's position on that question.[2]

The United States doubted the rectitude of the procedure outlined by the President of the Council for dealing with the question of competence. Under that procedure, the American representative pointed out, in order to procure a decision that the Council had no competence, it would be necessary to obtain the

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1. ibid, pp.2017.

2. ibid, pp.2024-5.

votes of all the Permanent Members. Under this procedure, one Permanent Member, by means of one veto, could give the Council jurisdiction. In the opinion of the United States, this procedure seemed to be rather inverted. Mr. Johnson then added that he did not think the placing of an item on the agenda had any bearing on the question at all. The Council, he said, must place a matter on the agenda in order to discuss its competence to hear it.[1]

Mr. Johnson seemed to suggest here that the Council was still in the preliminary stages of deciding on the competence of the Council. And yet if this were so, how could the Council have called upon the parties to cease fire. The only possible way this could have been done was to have considered this as a provisional measure, pending the outcome of the decision of competence. But as pointed out above, the appeal to cease fire was not issued on that basis.

In reply the President repeated substantially what he had said before.[2] He said that they would continue to allow the subject and resolutions concerning it to be discussed in the Council, unless some formal proposal was made to the contrary. If such a proposal were made it would be discussed and voted upon.

In reply, the American delegate stressed the point of view which he had expressed earlier, that it would be quite inequitable if the Council were considered competent to deal with a subject once it was admitted to the agenda, unless those challenging competence could be assured of the votes of the five Permanent Members in order to remove it therefrom.[3]

The Australian delegate joined the fray and recorded his disagreement with the American delegate. He said that the Council sat on the assumption that it was competent. If any Member wished to challenge that view, then he had to

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1. ibid, p.2025.
2. ibid, p.2025.
3. ibid.

present a motion to that effect, for the passage of which he had to procure seven votes.

At this point the meeting was adjourned. It is rather surprising that at this stage of the proceedings the Council, after having called upon the parties to cease hostilities and to settle their dispute peaceably, should still have been haggling over the question of competence. It is remarkable that in the middle of a debate on a substantive measure, delegates should have been continually sidetracked by the question of competence. It is submitted, however, that this was a direct outcome of the dubious procedure adopted by the Council at the outset. No clear decision was taken on competence, for which the United States, the United Kingdom, France and Belgium must bare a large responsibility. For, by their support for the argument that an appeal to the parties to cease hostilities could be adopted without any prejudice to the competence of the Council, they led the Council into the position in which it now found itself - gaily continuing to act in a matter where at least a third of the Council disputed its competence to do so.

When the debate was resumed at the 187th meeting, the question of competence was still to the fore. This time, however, it was China which took up the point and she announced that she did not much care about this question.[1] Mr. Tsiang said that he had hoped that the question of competence would not be discussed further in the Council. If a decision on that question had to be taken he would have preferred that it be taken by the International Court of Justice. He recalled that in ordering the cease fire the Dutch Government had made it clear that it had not done so because it accepted the competence of the Council. However, he added, all he was interested in was the cessation of hostilities and he did not much care about the motives and reasons behind the

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1. ibid, No.79, 187th mtg., p.2067.

actions of the parties. Mr. Tsiang then moved an amendment to the Australian draft resolution and in doing so said that he was moved by a desire for a quick settlement to the problem 'without going into the thorny legal problems'.

After some substantive discussion, the question of competence raised its head again. The Netherlands again disputed the jurisdiction of the Council.[1] Not long after, the President of the Council again said that if anyone was opposed to the Council's assuming jurisdiction, their arguments would be considered if a formal proposal were presented to that effect.[2] With this statement, the competence wrangle broke out again. France asserted that the inclusion of an item on the agenda had no affect whatsoever on the question of jurisdiction.[3] With this the President expressed his complete agreement, but added that for any decision to be taken on the matter, some formal proposal had to be presented. The Council could not, he said, continue to consider the question of competence on the basis of the opposition of the Netherlands alone.

It should be clear, (so far as anything in this debate is clear) that this statement of the President led exactly nowhere. He was merely adhering to the position he had adopted earlier that before an item could be deleted from the agenda a formal vote had to be taken on a proposal to that effect. Otherwise, the item would remain on the agenda and be dealt with, on the assumption that the Council was competent.

At this point a short debate was again held on whether or not to invite the delegates of East Indonesia and Borneo to participate in the work of the Council, but a decision was taken in the negative.[4] At the same meeting various additional

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1. ibid, No.82, 192nd mtg., pp.2144-5.
2. ibid, p.2148.
3. ibid, pp.2149-50.
4. ibid, No.82, 193rd mtg., pp.2170-72.

draft resolutions were presented which provided for the establishment of commissions to go to Indonesia and for the appointment of arbiters.[1]

These draft resolutions having been presented, the United States took up the question of competence again. After having been one of the principal participants in the protracted debate on that question, which had just terminated, and in which he seemed to be most concerned lest it be considered that the question of competence had been settled, Mr. Johnson announced that in his opinion the Security Council was competent to make the appeal to the parties to cease hostilities, but was careful to add that in making this appeal the Council was not prejudicing the question of the status of Indonesia. He said:[2]

> As I have had occasion to mention once before to the Council, my Government's view is that there are two very definite and different aspects of the question before the Council. The first relates to the problems which arise in connection with the cessation of hostilities. My Government believes that the Security Council acted properly and in entire conformity with the Charter in calling upon the parties to cease hostilities. We consider that, so far as the Charter is concerned, paragraph (a) of the Council's resolution of 1 August 1947, is a provisional measure under Article 40. In our view that decision was properly taken and did not prejudice the contentions of the parties with regard to whether or not the Indonesian Republic was an independent State under International Law.
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> In our view, the Council's jurisdiction rested on the fact that large-scale hostilities were being carried on in Indonesia, the repurcussions of which were so serious that they amounted to a threat to international peace and security.
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> In the view of the Government of the United States, the Security Council has ample power to send observers, if necessary, to supervise its cease fire order and to make certain that new hostilities do not break out which would threaten international peace and security.
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> .....
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> My comments relate to the second main aspect of the serious problem before the Security Council, as viewed by the United States delegation. I refer to the problem of reaching a solution of the constitutional issues which are in dispute between the parties; this solution has a direct bearing on the long range, and, we hope, permanent solution.
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> The United States believes that it is the parties themselves who ultimately bear the responsibility for determining the term of constitutional settlement and the method by which it may be reached.

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1. ibid, pp.2173-4.

2. ibid, pp.2175-2179; emphasis added.

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The view of the United States delegation is that there is legitimate room for doubt as to the Council's jurisdiction in so far as a settlement of the constitutional issues of the Indonesian question is concerned. My Government would not be prepared, under the existing circumstances, to support action by the Council based on the conclusion that it has such jurisdiction. Consequently, we shall be forced to abstain from voting on any resolution of that nature.

However, we also recognize that the very real doubts which several members of the Council have expressed regarding the Council's jurisdiction in the case before us, might very well be substantially resolved by an advisory opinion from the International Court of Justice. While the International Court was deliberating, the Council would, of course, remain free to take such action in conformity with the Charter as it might deem necessary to maintain international peace.

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We are disappointed that the parties themselves have not made greater efforts, since the Council called upon them in paragraph (b) of the resolution of 1 August to settle their disputes by arbitration or by other peaceful means, to reach at least initial agreement on the necessarily long and arduous task of finding a solution of their dispute. We believe the Council should not only remind the parties of their responsibilities under this provision of the Council's resolution, but should, in addition, do everything it properly can do to induce the parties to take the first step in that direction.

We suggest that the Council should tender its good offices to the parties. Due to the nature of the offer of good offices such a solution would not necessarily raise any question whatsoever as to the Council's competence or jurisdiction in the matter. Since whatever service the Council might render the parties would be upon the express request of the parties themselves, the question of the Council's jurisdiction would not arise at any stage in the exercise of such good offices.

When this speech of Mr. Johnson is read, one wonders just why there had been such controversies over the question of competence, the effect of including an item in the agenda, and whether or not the Security Council could pass a resolution containing a reservation of its competence to deal with a matter.

Quite plainly, Mr. Johnson did not, here, consider the question to fall essentially within the domestic jurisdiction of the Netherlands. The invocation of Article 40 cuts down that defence and it is not understood why he continued even there to attach so much importance to avoiding taking any decision on the question of the sovereignty over the Republic of Indonesia. With the invocation of Article 40 that question ceased to have any importance, by the express terms of the Charter. If any matter, albeit that it is prima facie within the domestic jurisdiction of a particular State, leads to a breach of the peace, as that term is understood in Chapter VII, then the Security Council has jurisdiction to intervene therein.

Such matters, by the operation of Chapter VII, cease to be essentially within domestic jurisdiction and fall under the mandatory jurisdiction of the Security Council.

Considering the American views here quoted, it is not understood why Mr. Johnson had earlier placed so much stress on not mentioning any Article of the Charter in the resolution of 1st August 1947. If the Security Council had this competence under Article 40, the situation would surely have been clarified by including a reference to that Article.

Shortly after Mr. Johnson had delivered the views of the United States, Poland took up the cudgels of competence and asserted that that question had been settled when the matter was admitted to the agenda. He added that if the Security Council now took a different view it would mean that it had been dealing with an item with which they had no right to deal.[1]

In an attempt to settle this question once and for all the Belgian delegation introduced a resolution requesting the International Court for an advisory opinion on the matter.[2] However, even this attempt to clarify the situation was marred by the assertion that the adoption of this procedure would not prevent the Security Council from adopting an American resolution offering the good offices of the Security Council in an attempt to settle the dispute.[3] In other words, even if the International Court did decide that the matter was within the domestic jurisdiction of the parties, in Belgian opinion, the Security Council was still competent to adopt a resolution which in some measure dealt with it.

The ridiculousness of such an assertion is demonstrated by the terms of the American draft resolution. It said:[4]

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1. ibid, p.2187.
2. ibid, No.83, 194th mtg., pp.2193-4.
3. For text of Belgian res. see p.2193, fn.1.
4. ibid, No.82, 193rd mtg., p.2179, fn.1.

The Security Council,

Resolves to tender its good offices to the parties in order to assist in the pacific settlement of their dispute, in accordance with paragraph (b) of the resolution of 1 August 1947. The Council expresses its readiness, if the parties so request, to assist in the settlement through a committee of the Council consisting of three members of the Council, each party selecting one, and the third to be designated by the two selected.

It is not understood how Belgium, on the one hand, could propose to have the matter of competence adjudicated upon by the International Court and at the same time support this resolution. This resolution used the very words of Chapter VI - the pacific settlement of a dispute. Can such a resolution be passed and still maintain that a matter is within the domestic jurisdiction of a State? If there is a dispute between two parties which requires pacific settlement under the Charter can such a dispute be outwith the jurisdiction of the Council? In these circumstances is there any point in asking for an opinion from the International Court on the question of the competence of the Security Council? What is the point of asserting that the Security Council can promote the pacific settlement of a dispute, and at the same time express doubts as to the competence of the Council to even deal with the matter?

The Belgian proposal was not adopted.[1] In opposing it, Mr. Gromyko said that it would be incomprehensible if the Security Council, after taking decisions on the Indonesian question, now adopted a resolution which would cast doubt on the validity of all its actions.[2] In opposing the Belgian proposal, rather odd reasons were given by the Chinese delegation.[3] Mr. Tsiang said that if this proposal were adopted it would be the first time such a procedure had been adopted by the Security Council. Moreover, he claimed that to apply to the International Court for an opinion on such a subject would be a 'leap in the dark', and in his

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1. ibid, No.84, 195th mtg., p.2224.
2. ibid, No.83, 194th mtg., pp.2210-2211.
3. ibid, No.84, 195th mtg., p.2217.

opinion, the Security Council should be very careful of taking such leaps in the dark. He said that an opinion rendered by the International Court might turn out to be a legal straight jacket which the Security Council might find very inconvenient when it had to deal with the rapidly changing conditions of the modern world. Australia opposed this proposal because the matter was not domestic, and in any case was not a purely legal question, but one with grave political implications which affected world security.[1] This opinion was supported by India.[2]

France supported it. M. Parodi said that the entire dealings of the Council with this questionhad been governed by the prior question as to whether the Council was competent. He asserted that this question had been reserved by the Council and that it had now gone as far as it could without taking a decision on it. France, he said, had gone as far as she could in accepting the measures proposed, and had only done so as long as they did not involve any question of competence.[3] The United Kingdom[4] and the United States[5] also supported it, the latter out of courtesy to other Members of the Council who had doubts on the point.

Although certain of the Members of the Council had serious doubts as to the competence of the Security Council to deal with this matter, nevertheless, they were prepared to support, not only the American draft resolution,[6] but also a joint Australian-Chinese proposal which went much further than a mere tender of

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1. ibid, pp.2215-2217.
2. ibid, pp.2219-21.
3. ibid, p.2214.
4. ibid, pp.2218-19.
5. ibid, p.2221.
6. see supra, p.156.

good offices. This draft resolution was in the following terms:[1]

> Whereas the Security Council on 1 August 1947 called upon the Netherlands and the Republic of Indonesia to cease hostilities forthwith, and
>
> Whereas communications have been received from the Governments of the Netherlands and of the Republic of Indonesia advising that orders have been given for the cessation of hostilities, and
>
> Whereas it is desirable that steps should be taken to avoid disputes and friction relating to the observance of the cease fire orders, and to create conditions which will facilitate agreement between the parties,
>
> The Security Council,
>
> 1. Notes with satisfaction the steps taken by the parties to comply with the resolution of 1 August 1947;
>
> 2. Notes with satisfaction the statement issued by the Netherlands Government, on 11 August, in which it affirms its intention to organize a sovereign, democratic United States of Indonesia in accordance with the purposes of the Ling-adjati Agreement;
>
> 3. Notes that the Netherlands Government intends immediately to request the career consuls stationed in Batavia jointly to report on the present situation in the Republic of Indonesia;
>
> 4. Notes that the Government of the Republic of Indonesia has requested the appointment by the Security Council of a commission of observers;
>
> 5. Requests the Governements members of the Council which have career consular representatives in Batavia to instruct them to prepare jointly for the information and guidance of the Security Council reports on the situation in the Republic of Indonesia following the resolution of the Council on 1 August 1947, such reports to cover the observance of the cease-fire orders and the conditions prevailing in areas under military occupation or from which armed forces now in occupation may be withdrawn by agreement between the parties;
>
> 6. Requests the Government of the Netherlands and of the Republic of Indonesia to grant to the representatives referred to in paragraph 5 all facilities necessary for the effective fulfilment of their mission;
>
> 7. Resolves to consider the matter further should the situation require.

This resolution was adopted by 7 votes to 4,[2] being supported inter alia by France, Belgium and Brazil, States which had voted in favour of the reservation of the question of competence in the resolution of 1 August 1947 and which also with the exception of Brazil supported the resolution requesting an advisory opinion from the International Court on the question of competence.[3]

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1. ibid, No.82, 193rd mtg., p.2173, fn.3.

2. ibid, No.83, 194th mtg., p.2200.

3. ibid, No.84, 195th mtg., p.2224.

China, one of the co-sponsors of the resolution said, prior to its adoption, that it was designed to avoid the question of competence.[1] This contention would seem to have been accepted by the delgations of at least France and Belgium. They had both voiced their doubts on that score yet were able to vote for this resolution. In their opinion, therefore, it could not have amounted to intervention, irrespective of whether the question was domestic or not.

The United States proposal offering the good offices of the Security Council was adopted by 8 votes to 0, with three abstentions.[2] In this case, inter alia, France, Belgium and the United Kingdom voted for it. Presumably then, in this instance, the United Kingdom, which had voted in favour of the reference of the question of competence to the International Court, felt that this resolution did not amount to a usurpation of jurisdiction.

Considerable doubts may be expressed as to the validity of this procedure. The wording of both these resolutions seems completely to establish that the Security Council was competent to deal with the matter as an international one. How could the Security Council address itself to the 'Republic of Indonesia' unless such entity were a party to a dispute within the jurisdiction of the Council? Could the Security Council address itself to the problem of procuring a pacific settlement to a dispute unless that dispute were of such a nature as to make it the legitimate concern of that body? These questions did not seem to bother the United Kingdom, France and Belgium which must be taken, therefore, here at least, to have supported the view that not all Security Council action is necessarily banned because the domestic status of a particular item is in doubt.

The peculiarity of the whole situation is thrown into relief by the fact that at the end of these proceedings, the Security Council confirmed the original

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1. ibid, No.83, 194th mtg., p.2199.

2. ibid, p.2209.

cease-fire resolution, but in this vote the United Kingdom abstained.[1] All other members of the Council voted for this proposal. Even the Netherlands indicated that provided its adoption would not prevent her from taking forceful measures necessary for humanitarian purposes, she had no objection to its adoption.[2] This abstention must be taken to mean that the United Kingdom is prepared to support an offer by the Security Council of its good offices to parties to a dispute of a belligerent nature, but does not feel that this body is competent to call upon those parties to cease hostilities as a preliminary to the finding of a solution to the underlying problems. The logic behind this move is not understood, particularly as the resolution making the offer of good offices referred to the original cease fire resolution. The offer of good offices implies a desire to see a settlement of a particular dispute. Where the dispute is of a belligerent nature, it implies a wish to see a termination of hostilities, usually as a preliminary measure to further negotiations. If the Security Council has power, without contravening the rights of any State, to offer its good offices, in the present circumstances, to a Member of the United Nations in the interests of promoting the pacific settlement of a dispute between such Member and another political entity, why cannot it call upon the parties to cease hostilities? In what way is one such action by the Security Council more permissible than the other?

The Good Offices Commission provided for in the resolution of 25th August, 1947 was set up, the Netherlands appointing Belgium to be her nominee.[3] The Netherlands also informed the Secretary-General that she would provide the career consuls in Batavia with the facilities necessary to enable them to carry out the functions allotted to them under the other resolution of 25th August. However

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1. ibid, No.84, 195th mtg., p.2232.
2. ibid.
3. ibid, No.92, 206th mtg., p.2481, S/545.

she added that while she did this she did not accept the competence of the Council in this matter. Nevertheless although the Netherlands Government did not acknowledge the right of the Council to deal with this matter, it informed the Secretary-General that the general tendency of the Council resolutions on the subject was acceptable.[1]

However, despite the formation of the observation commission of the career consuls and the Commission of Good Offices, and the call to both parties to observe a cease-fire, it was not long before the question of the continued hostilities between the two was again brought before the Council. Along with the substantive question, the question of competence also arose.

At the 218th meeting of the Council, in reply to the Colombian delegate who had expressed certain doubts as to the general competence of the Council to deal with the Indonesian question, the President of the Council, Mr. Austin of the United States, made the following statement:[2]

> In answer to the representative of Colombia, I wish to say that no action has been taken by the Security Council on the question of general jurisdiction. No decision whatever has been made upon the challenge of competence or jurisdiction of the Security Council in this matter.
>
> On the contrary, whatever action has occurred because of decisions taken in the Security Council has been characterised by a definite understanding in the record that no such decision is being made. On that understanding, the very first decision on 1 August, which was of a provisional character, called upon the parties '(a) to cease hostilities forthwith, and (b) to settle their disputes by arbitration, or by other peaceful means and keep the Security Council informed about the progress of the settlement'. Subsequently, the action taken on 25 August was with the distinct reservation that no decision was being made upon the general jurisdiction of the Security Council in this case. That action was taken with the consent, assent and agreement of both parties, who actually participated in it to the extent of nominating members of the Committee of Good Offices.
>
> We now come to the present resolution. That resolution does not decide that the Security Council has no competence or jurisdiction. The resolution does not decide that the Council has competence or jurisdiction beyond the point of adopting this as another provisional measure which undertakes to carry out the previous two provisional

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1. ibid, S/537.

2. ibid, No.103, 218th mtg., p.2732.

> measures. Therefore, I understand that the general question of the Council's jurisdiction regarding the different aspects of the case is not being passed upon by this resolution. The President has no doubt that the Security Council has jurisdiction to act as indicated in this resolution.[1]

Here again is to be seen this curious insistence that all actions of the Council so far had been without prejudice to the question of competence. On this occasion Mr. Austin was speaking as President of the Security Council, which fact renders his statement all the more confusing. It is not understood how he could assert that the Council had distinctly reserved the question of its competence when it had rejected an express clause to that effect in its vote on 1 August 1947 and had rejected the Belgian draft proposal to have the matter referred to the International Court.

Mr. Austin here asserted that the question of competence was not compromised because the parties had consented to the action already taken by the Security Council. This assertion is hardly correct. The Republic of Indonesia never doubted that the Council had competence in the first place. And the Netherlands co-operated with the Security Council in its efforts to secure a cease fire, but all the time disputed the competence of the Council to deal with the matter. Her co-operation was more a gesture of good will than an acceptance of the jurisdiction of the Council.

Mr. Austin asserted that the proposed action of the Council under consideration (to call upon the parties again to cease hostilities) was another 'provisional measure'. What did he mean by this? In previous American statements on this subject, the United States delegate had said that the original resolution of 1 August 1947 was a provisional measure under Article 40. Was this also a provisional measure under Article 40? If it was how could the President assert that such a provisional measure did not prejudice the question of competence? The invocation

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1. The Security Council had before it a Polish proposal dealing with the situation and also the one to which the President referred, prepared by a sub-committee of the Council which took note of the situation in Indonesia and called upon the parties to cease hostilities: for details of the sub-committee and the text of the resolution, see ibid, No.103, 218th mtg., p.2723.

of Chapter VII as a basis of action surely nullifies any such contention. If this was not a provisional measure under Article 40, on what was it based?

Apart from these inconsistencies and confusions, it is not understood how an American President of the Council could make such statements when one of his predecessors, in his capacity as delegate of the United States, had asserted that the Security Council hadabsolute competence to call upon the parties to cease fire. In a previous speech, Mr. Johnson had stressed that the Council had competence to deal with the question of hostilities because fighting was taking place on such a scale as to cause a threat to international peace and security. Admittedly, in the present instance, Mr. Austin was speaking as President of the Council, while Mr. Johnson had been speaking in the capacity of representative of the United States. Nevertheless, the contradiction between their two stands is striking. Mr. Johnson had asserted the competence of the Council to deal with the matter as it constituted a threat to international peace. Now Mr. Austin told the Council that all actions of the Council were without prejudice to the question of competence. Did that mean that previous actions had not been based on Chapter VII?

The United States would appear to have turned full circle with this statement, for after having asserted at the outset that the resolution of 1 August 1947 did not prejudice the question of competence, she then asserted that the Council had the competence under Chapter VII to do what it had done. Now, once more, we are back at the beginning with a fresh assertion that all these actions were being done without deciding on whether or not the Council could really do them.

This statement naturally drew forth a response from delegates with opposing views as to the competence of the Council. Mr. Gromyko said that it was not quite clear to him how the question of the competence of the Security Council had been brought up again.[1] In his opinion, that problem had been dealt with at the outset

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1. ibid, No.103, 219th mtg., pp.2734-35.

of the entire consideration of this question. Referring to the defeated Belgian proposal to have the question of competence submitted to the International Court, Mr. Gromyko recalled that only four out of the eleven Members of the Council had voted for it. He concluded that the question of competence had thereby been decided in the affirmative, for if the opposite view were to be taken the Council would be forced to adopt the completely absurd conclusion that it had been dealing with the matter for a period of three months, with neither the right nor the power to do so. Mr. Gromyko thus recorded his complete disagreement with the remarks made by Mr. Austin and said that he presumed that they had been made in his capacity as representative of the United States, not as President of the Security Council. The President, he said, had no power to make rulings of this sort, and while individual representatives of the Council could hold the views they pleased on the question of competence, these views did not bind the Council.

In reply, Mr. Austin, as President of the Council, said that he felt it was his duty to clarify the exact question which was before the Council.[1] He said that the only question now before the Council was the resolution on the Indonesian situation proposed by the sub-committee appointed by the Council at its 217th meeting. No other question was before the Council and in his opinion, it was entirely out of order to discuss the question of general jurisdiction. No one had raised a preliminary issue of general jurisdiction. Mr. Austin said that the remarks of the Colombian delegate had accounted for his previous statement. He went on to say that any Member who wished to discuss the question of jurisdiction because it had a bearing upon the resolution before the Council had a perfect right to do so. But as there was no issue pending before the Council regarding the general jurisdiction of the Security Council over the Indonesian question, he asked Members to refrain from entering that field.

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1. ibid, p.2736.

Despite this statement that no issue concerning the general jurisdiction of the Council was now pending before it, the question of competence continued to be discussed in the subsequent dealings of the Council on this subject.

Early in 1948, an agreement had been signed between the parties under the auspices of the Good Offices Commission, on board the vessel the Renville, known as the Renville Agreement which provided for a truce and general co-operation between the parties in a Netherlands-Indonesian Union.[1]

However, the truce was not observed and the negotiations between the parties for the setting up of a federal State and the proposed Netherlands-Indonesian Union broke down in July 1948. In December 1948 the matter was again before the Security Council, and along with it, the question of competence.

The representative of the Netherlands gave a long exposition of the situation in Indonesia and the reasons for renewed Dutch military activity against the Republic of Indonesia and then came to the inevitable question of competence. He denied, completely, the competence of the Council to deal with this matter.[2] He said that the Committee's good offices had been accepted by the Netherlands in August 1947 in a spirit of accommodation and in the hope of reaching an agreement. The Dutch Government, he asserted, had made it clear that it had been motivated by a spirit of good will in its acceptance of the actions of the Council, but that it could not accept even by implication that the competence of the Security Council in the matter was valid. The Council, he said, now faced a very serious situation. It had to ask itself whether it could take further action with regard to the Indonesian question, and in his opinion the answer was definitely in the negative. He maintained that the Council was not competent for the following reasons: (these have been given previously, but it is perhaps pertinent to remind ourselves of them

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1. S.C., 3rd Yr., Special Suppl. No.1.

2. S.C., 3rd Yr., No.132, 388th mtg., pp.24-25.

at this stage) 1) Indonesia was not a sovereign State and the Charter was designed to apply only between sovereign States; 2) Indonesia being not a sovereign State, it was essentially a domestic matter, and the United Nations was prohibited by Article 2(7) from intervening therein; and 3) the events in Indonesia were not such as to constitute a threat to or breach of international peace. They were a breach of internal peace and as such were of no concern to the United Nations.

Mr. Jessup, of the United States, announced[1] that he did not intend to take up the question of competence. However, he did quote with approval a previous American statement to the effect that to call for a cease fire was a provisional measure and did not prejudice the contentions of the parties, and that it was justified because there were hostilities which could threaten international peace and security.[2] He went on to say that again, armed conflict was taking place and the Council's own cease-fire order was being contravened. This, he claimed, was a matter which the Council had to deal with without waiting for any further reports from the Good Offices Committee. In his opinion, the Council was obliged by the Charter, at this stage in its deliberations, to order an immediate cessation of hostilities in Indonesia and to require the armed forces of both parties immediately to withdraw to their own sides of the demilitarized zones which had been delineated in the truce agreement. The Council's cease-fire resolution was, in Mr. Jessup's opinion, binding on both parties.

Not long before this a previous American delegate had asserted that no decision had been taken by the Council on the general question of jurisdiction. Mr. Jessup himself appeared to make the same reservation at the beginning of his speech. But the substance of what he said seemed definitely to indicate that

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1. ibid, 389th mtg., pp.42-49.

2. See the statement of Mr. Johnson, S.C., 2nd Yr., No.82, 193rd mtg., pp.2175-79, supra p.153.

the Council had, in the opinion of the United States, competence to deal with the question. If it had not, how could it issue a cease-fire order. If it had no competence to deal with the matter, how was its resolution binding on the parties? If the cease fire resolution of the Council was binding on the parties, i.e. if it was in fact a decision of the Security Council which the Members were bound to respect and carry out in accordance with the terms of Article 25 of the Charter, how could it be asserted that such a 'resolution' did not prejudice the question of the Council's competence and to some extent the contentions of the Netherlands? The Netherlands asserted that the matter involved only a disturbance of internal peace. The United States had repeatedly asserted that a provisional measure taken under Article 40 would not prejudice the contentions and rights of the parties. This is in some respects true. A provisional measure under that Article would not prejudice the question of the sovereignty over Indonesia. But equally the invocation of that Article makes the question of the legal status of Indonesia irrelevant. The invocation of Article 40 clearly gives the Council competence to deal with a matter under Chapter VII, and necessarily follows the determination that there exists a threat to the peace, or a breach of the peace or an act of aggression.

The United States, by trying on various occasions to keep up the myth that no decision had been taken on the general question of competence had placed itself in a ridiculous position where she was asserting that Chapter VII was relevant to a situation and at the same time pretending not to be deciding any legal question.

The competence quadrille was continued, those states which believed that the matter was international now taking the floor.

Mr. Hsia of China opposed the Dutch objections to competence.[1] He said that the question of competence had been decided the previous year when the subject

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1. S.C., 3rd Yr., No.133, 390th mtg., pp.2-3.

had first appeared on the Council agenda. He reminded the Council that the Dutch delegate had called the attention of the Council to the fact that the Netherlands Government had never recognised the competence of the Council in the matter, and that in fact the question of competence had never been decided by the Council. Mr. Hsia was unable to accept that the question of competence had never been decided. In his opinion, the fact that the Council had declined to include a reservation of that question in the resolution of 1 August 1947 implied that the Council had competence. He then added that it seemed rather academic to him to be discussing the question of competence at this stage in the deliberations of the Council when it had been dealing with the matter for eighteen months.

Australia added that the Council was competent, not only because Indonesia was a State according to the prerequisites of International Law, but also because the matter directly affected the whole of South East Asia and his country. It caused, he asserted, strife, strikes and turmoil, loss of vital raw materials essential for the rehabilitation of the world and loss of trade and commerce. The repurcussions of the war in Indonesia were such that they could well cause a breach of international peace, and so the United Nations had to act.[1]

In the opinion of Syria, Indonesia enjoyed sufficient of the attributes of sovereignty to confer on her the right to appeal to the Security Council. In any case, the Syrian delegate added, after dealing with the matter for nineteen months, it was hardly appropriate for the Council to return to a consideration of its competence.[2]

The Soviet delegate echoed the sentiments of China and Syria. He remarked that the Indonesian question had been on the Council's agenda for nearly three years, and recalled that nearly sixty meetings had been devoted to it. And yet

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1. ibid, pp.5-13.

2. ibid, No.133, 391st mtg., p.22.

still the Council was plagued by the question of competence.[1]

The next delegate to plague the Council with this seemingly inexhaustible subject was that of the United Kingdom. First of all, Mr. Denning appeared to consider that the Council was competent to deal with the matter.[2] He recalled that the Netherlands appeared to feel that the interruption of her rule in the East Indies during the war did not justify other nations, either individually or collectively, though the Security Council, intervening in the affair or attempting to lay down the manner in which she should accord independence to Indonesia. Mr. Denning wondered if this attitude of the Netherlands was realistic. The fact was, Mr. Denning said, that ever since the beginning of the trouble in Indonesia, this question had had, rightly or wrongly, repurcussions in many parts of the world, and had been brought before the United Nations on more than one occasion. However, he was not prepared, he said, to add anything more on the question of competence than had already been said by other members of his delegation at previous meetings,[3] other than to say that in his opinion the situation in Indonesia was surely one which, in the terms of the Charter, might have led to international friction and that it had, for some time past, shown signs of doing so.

The tendency of this statement seemed to be to indicate that the matter definitely fell within the competence of the Council. If a matter is likely to lead to international friction, the Council has authority to make recommendations thereon. However, it must be noted that the reference to prior statements by United Kingdom delegates is not exactly conducive to clarity for it will be remembered that these two speeches were completely contradictory.

However, no sooner had Mr. Denning given the impression that in the opinion

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1. ibid, pp.39-40.

2. ibid, No.134, 392nd mtg., pp.5-7.

3. He referred specifically to speeches made at the 172 & 173rd meetings, see supra, pp.128 & 133.

of the United Kingdom, theSecurity Council was competent to deal with it than he turned round and began to twitter about the lack of competence of the Council. Mr. Denning said that his Government intended to support the draft resolution which had been sponsored jointly by the delegations of the United States, Syria and Colombia,[1] but that in doing so it did not commit itself to any of the views on thelegal issues which had been argued on both sides as regards the competence of the Council or the particular clauses of the Charter which authorised this or that action. In other words, Mr. Denning was still pretending that the adoption of resolutions dealing with this matter did not prejudice the question of whether or not the Council was competent to deal with it. But no sooner had he said this than he remarked that in his Government's opinion, the state of the world was too serious for a conflict of this nature to be allowed to continue with all its incalculable consequences. As a parting joust he said that his Government believed that if the Council adopted this resolution, which inter alia requested the parties to withdraw their troops behind the demilitarized zones and called on the Dutch Government to release the Indonesian President and other political prisoners, it would avoid the reproaches of both sides in this competence dispute - it would avoid washing its hands of a situation which cried out for a remedy and also exceeding its powers in matters which were solemnly protected by the domestic jurisdiction clause of the Charter.

What conclusion can be drawn from this? Is the United Kingdom saying that in a case where the status of an item is doubtful the Security Council can nevertheless take certain action, which, of course, is tantamount to saying that irrespective of the domestic status of an item, certain types of action are allowed because they are not intervention? On the other hand, was the United Kingdom really of the opinion that the matter was international and fell within the ambit of the Security

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1. S/1142.

Council's functions, at least under Chapter VI? It is not possible to say with any certainty what is being asserted here.

The French delegate contended again that Indonesia was not a State at International Law and that this matter was not covered by the Charter. He commented that the action which the Security Council had already taken had been confined to that which was acceptable to the parties, implying that on this score it did not contravene the terms of the Charter. This contention is, not, of course, strictly accurate for the Netherlands, while she had co-operated with the Council had made it clear that she in no way accepted that the Council was competent to do what it had done. M. Parodi added that if the Council departed from the present course of action, in which it confined itself to offering good offices, it would run up against all the prohibitions of the Charter.[1]

Belgium then returned to the by-now well worn theme, that although the matter was domestic nevertheless the Council could offer its good offices, but no more. In the process, however, Mr. Van Langenhove added to the already not inconsiderable confusion on the subject.[2] He recalled that Belgium had proposed to refer the question of competence to the International Court, but that that proposal had been defeated. He then added that in view of the uncertainty of the powers of the Security Council, and the regularity of its action, the question of its competence had been expressly reserved and that this had been taken into account in all subsequent action by the Council.

How Mr. Van Langenhove could make this assertion is not understood, for those reservations had been defeated in an open vote in the Council. It could hardly be asserted that the Council became bound by proposals which it had defeated. Yet this was not the first time, in this wearisome debate, that this assertion had been made.

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1. S.C., 3rd Yr., No.134, 392nd mtg., pp.7-10.

2. ibid, pp.25-27.

However, while Belgium had doubts on the score of competence, she supported the action which the Council had taken so far. Mr. Van Langenhove said that Belgium would continue to associate itself with the actions of the Council, provided it remainded within the framework of previous resolutions.

At this point the Security Council adopted, with certain amendments, the draft resolution proposed by the delegations of the United States, Syria and Colombia.[1] A consideration of its terms certainly gives rise to various questions. For example, can it with reason be maintained, even supposing that it is possible for the Security Council to adopt resolutions and at the same time reserve completely the question of its competence, that this resolution does not impliedly decide the question of competence? Can the Security Council reasonably maintain that it can call on a State to release political prisoners without impliedly deciding that it has the competence to do so? Is such an action not an implicit declaration of competence? Surely it could hardly be maintained that the Council could have, for example, called on the United Kingdom to release Chief Enahero unless it was sure that that matter was international. The further the Council proceeded in the Indonesiancase, the more difficult it became to maintain the myth that it

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1. ibid, pp.28-38; The details of voting on the resolution as a whole were as follows:

   In favour: Argentina, Canada, China, Colombia, Syria, U.K.,U.S.A.,
   Abstaining: Belgium, France, Ukrainian SSR, USSR.

   The final text of the resolution was as follows:
   The Security Council,
   Noting with concern the resumption of hostilities in Indonesia, and
   Having taken note of the reports of the Committee of Good Offices,
   Calls upon the parties
   (a) To cease hostilities forthwith; and
   (b) Immediately to release the President and other political prisoners arrested since 18 December,
   Instructs the Committee of Good Offices to report to the Security Council fully and urgently by telegraph on the events which have transpired in Indonesia since 12 December 1948, and to observe and report to the Security Council on compliance with sub-paragraph (a) and (b) above.
   This resolution was adopted on 24th December 1948.

had reserved completely the question of its competence to deal with it, and indeed, the more ridiculous became any such assertion.

At the next meeting of the Council, the Netherlands announced that although she did not accept the competence of the Security Council in this matter she had taken note of the resolution of 24th December, 1948, and was taking measures to put it into effect, although at the time of speaking she had not fully complied with it.[1]

However, despite this statement, the debate dragged on and with it the question of competence.

The Ukrainian delegate, in the course of his intervention, introduced a resolution calling for the withdrawal of Dutch forces to the position which they had occupied before the present military operations against Indonesia had commenced.[2]

The Soviet Union presented a draft resolution which 'ordered' the Netherlands to cease military operations in Indonesia within 24 hours.[3]

On these two proposals a fairly long debate took place, in which the question of the status of Indonesia again played a prominent part. The Netherlands still maintained that the entire matter was within her domestic jurisdiction. On the other hand, Syria asked what right the Netherlands had to take and to continue to take military operations against the Republic of Indonesia?[4] It is hard to refrain from commenting that if only that question had been settled authoratively once and for all by such a body as the International Court, much of this wrangle might have been avoided.

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1. ibid, No.135, 393rd mtg., p.2.
2. ibid, p.6.
3. ibid, pp.7-8.
4. ibid, pp.9-10.

There was considerable dissatisfaction expressed that the military operations had not ceased and that the Netherlands had apparently not released the President of the Republic of Indonesia, although she had taken note of the resolution calling upon her to do so. Several States also objected to the fact that the Council's 'orders' were being flouted. However, on this objection, the following comments might be made: a) only a decision of the Security Council is binding on a member of the United Nations; b) a decision of the Council has to be taken under Chapter VII; c) it was not certain under what Chapter of the Charter the Security Council's measures had been taken; indeed care seemed to have been taken to avoid mentioning any Article of the Charter at all; d) the Security Council's measures were phrased as resolutions, not as decisions, and so, prima facie, were not binding on the Netherlands, and e) the Netherlands did not accept the competence of the Security Council in this matter, and no steps had been taken to determine that competence once and for all. If the Netherlands did not observe, to the letter, the resolutions of the Security Council, it is hard to avoid the impression that the Council only had itself to blame.

Neither the Ukrainian nor the Soviet resolutions were adopted.[1]

Although the Council defeated these two draft resolutions on the Indonesian situation, the quest for some acceptable resolution continued. At its 395th meeting the Council had before it two resolutions, sponsored by Colombia and China respectively. The resolution sponsored by Colombia was in the following terms:[2]

> The Security Council,
> Requests the consular representatives in Batavia referred to in paragraph 5 of the resolution adopted at the 194th meeting of the Council [S/525(I)] to send as soon as possible, for the information and guidance of the Security Council, a complete report on the situation in the Republic of Indonesia, covering in such report, the observance of the cease fire orders and the conditions prevailing in

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1. ibid, p.35.

2. ibid, No.136, 395th mtg., p.80.

areas under military occupation or from which armed forces now in occupation may be withdrawn.

The resolution sponsored by China was as follows:[1]

> The Security Council,
> Noting that the Netherlands Government has not so far released the President of the Republic of Indonesia and all other political prisoners, as required by the resolution of 24th December 1948,
> Calls upon the Netherlands Government to set free these political prisoners forthwith and to report to the Security Council within twenty four hours of the adoption of the present resolution.

Both these resolutions were adopted.[2]

During the debate on the adoption of these two resolutions, several interesting statements were made on the question of competence. Australia, noting the failure of the Dutch Government to comply with previous resolutions calling for the release of political prisoners, said:[3]

> .... It is clear that there has been a violation of this further resolution of the Security Council, and I again remind the members of the Council of Article 25 of the Charter which states that a Member of the United Nations shall respect, adhere and abide by any decision of the Security Council, irrespective of any question of jurisdiction or competence. ....

This is certainly a new slant to the application of the Charter. Article 25 speaks of decisions taken by the Security Council in accordance with the provisions of the Charter. It does not bind Members to obey decisions taken irrespective of those provisions which is what Australia would seem to imply here. An additional criticism of this Australian statement is that it was by no means clear that the resolutions adopted by the Security Council were decisions of that body. This, indeed, had been the main bone of contention during this long wrangle over competence. There was just no agreement in the Council on whether a decision was being taken or not.

The question of competence was again brought into relief by the French and

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1. ibid, p.51.

2. They were adopted on 28th Dec.1948; for the voting on the Colombian draft, see ibid, p.83; and on the Chinese draft, ibid, p.67.

3. ibid, p.62.

Belgian delegates who stated their intention of voting in favour of the Colombian draft because it did not, in their opinion, involve this question. Belgium even reiterated the assertion that prior resolutions of the Council had fully reserved the question of the Council's competence.[1] Both States indicated their intention of voting for this resolution because it was an extension of the work of good offices undertaken by the Council. Thus it appears that while they both doubted the power of the Council to 'intervene' in this matter, they nevertheless felt that it could act as a conciliator in this dispute, even though its power to do so was denied by one of the principals.

With the beginning of a new year, the resolution of the question of competence was no nearer. At its 402nd meeting, the Council had before it a proposal sponsored by the delegations of China, Cuba, Norway and the United States. But before the merits of the proposal were discussed Belgium again embarked on a long dissertation on the question of competence.

The Belgian delegate, M. Nisot, reminded the Council that the Netherlands had contested the question of competence ever since the matter had been submitted to the Council. In so disputing this competence, the Netherlands had not been alone and he referred in particular to the statements made at the 392nd meeting by the French delegate. He reminded the Council that Indonesia was still under the sovereignty of the Netherlands, which fact was, he claimed, admitted by both parties "as well as by the members of the Council" - a quite erroneous assertion. M. Nisot further reminded the Council of the French conclusion that the matters with which the Council proposed to deal were internal not international and that international peace and security were in no way endangered.

He then went on to recall the defeat of the Belgian resolution which, if adopted, would have submitted the question of competence to the International Court.

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1. ibid, p.78.

The defeat of this resolution left the question of competence unsolved he claimed. He further asserted, again, that it was expressly agreed that the question of competence could not be prejudiced by any of the decisions which the Council might take on the Indonesian question. The Security Council had thus, he said, been operating for more than seventeen months on an ambiguous basis.

However, while he had these serious doubts as to the competence of the Council he did not therefore conclude that all of its actions were totally ultra vires. He said:[1]

> While the Security Council may be said to have incurred the risk of overstepping its powers, it cannot rightly, in what it has done hitherto, be accused of complete lack of caution. On the whole it has taken care not to do more than the exercise of good offices. By its resolution of 25 August 1947 [S/525 II] it offered its good offices to the parties concerned, who accepted them. It confirmed this offer by its resolution of 28 February 1948 [S/678]. In remaining within the limits of good offices, the Council has shown wisdom. The solutions to which its good offices may lead owe their validity to the fact of acceptance by the parties concerned. This acceptance of solutions proposed, in particular by the Security Council, may to a large extent remedy any defect in respect of lack of competence attached to the measures taken by the Council.
>
> In my opinion, the Council should not depart from this cautious attitude in its forthcoming attempt to find ways of settling the Indonesian question. ....

While the Belgian delegate does appear to suggest here that even in domestic matters the Council can at least offer its good offices without contravening the terms of the Charter, the way in which he does so on this occasion is somewhat feeble. All that in fact M. Nisot is saying here is that subsequent acceptance had cured a prior lack of competence-not a very happy foundation on which to build the practice of the Council or on which to recommend further action.

This analysis of the Council's jurisdiction was not accepted by the United States. On this occasion, Mr. Jessup said that in the light of recent events, the Council was faced with a situation with which it had to deal and on which it had to make recommendations. As matters stood he was sure that the majority

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1. S.C., 4th Yr., No.6, 402nd mtg., p.4.

of the Members of the Council would agree that they had an obligation to continue their efforts to find a solution to the problem.[1]

Mr. Jessup's assertion, that the majority of the Council felt that they had an obligation to deal with this matter, would appear to have been substantially true. Even the United Kingdom stopped trying to evade the issue of competence and supported overtly action by the Council to put an end to the struggle in Indonesia.[2]

And yet, despite the almost complete agreement that because of the situation that now prevailed in Indonesia, the Council had the competence to deal with it, still remnants of the previous competence debate remained. Argentina still was reluctant to admit that the Council had full competence to deal with the matter. Yet she did not, on that account, think that the Council was powerless. Mr. Munoz said:[3]

> We continue to believe that the best way of attaining those aims (the termination of colonialism) is to make use of the United Nations' powers of mediation. To go beyond those limits would be dangerous, especially at a time when, as we have said on various occasions, the differences between the great Powers are hampering the normal development of the Council's work and preventing it from meeting situations which require a singleness of purpose and international harmony which it has not yet achieved. We therefore think that the use of the good offices of the Security Council in seeking agreement between the parties and trying to bring them together when possible is the best way of reaching a satisfactory result.
>
> The objections of the various delegations concerning the Council's competence to deal with this matter will acquire greater weight if these limits are exceeded. On the other hand, when this body acts within the limits of its mediatory capacity, the weight of such objections is diminished; the parties themselves, as we

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1. ibid, p.7. Similar statements had been made at the 400th mtg., by the delegate of the United Kingdom; see ibid, No.4, 400th mtg., p.16. In the opinion of the British delegate the Council was faced with a situation in which it was compelled to act. Prior British doubts on competence had been overruled by the course of events.

2. ibid, No.4, 400th mtg., p.16; and ibid, No.7, 403rd mtg., pp.15-16.

3. No.9, 406th mtg., p.3.

have seen in practice, submit implicitly, or explicitly to the mediating action of the Council, thus allowing the elements of the problem to take shape, and, in turn, the peaceful settlement of the dispute to be expedited.

At the end of this debate, the Council adopted a resolution, the operative part of which recommended that negotiations be undertaken between the parties on the basis of the Linggadjati and Renville Agreements for the purpose of establishing an interim federal government, to arrange for holding elections to a constituent assembly and to arrange for the transfer of sovereignty over the territory to the United States of Indonesia.[1]

On the basis of this resolution negotiations were held which were successful. Sovereignty over the territory in question was transferred to the United States of Indonesia[2] and on September 28, 1950 Indonesia was admitted to the United Nations.[3]

3. Conclusions

The above treatment of these case histories will demonstrate the fundamental objections which exist to any definition of intervention in relation to the Security Council other than the orthodox one. In the later years of Security Council practice, little can be found to support the view that that body can discuss and make recommendations on matters which remain within the domestic jurisdiction of Members. With the exception of the treatment of the Racial Question in South Africa, and to a very minor extent, of Angola the definite consensus of opinion appears to be that the Council either has full powers under Chapters VI and VII or none at all. The entire emphasis in most cases was on the domestic status of the item, with the inference that if it were domestic the Council would have to leave well alone. Practically nothing was said about the concept of intervention and that which was said was not favourable to the unorthodox view.

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1. ibid, pp.19-33.
2. For details of the negotiations see S.C., 5th Yr., Special Suppl. No.1.
3. G.A., Res.491 (V).

with the example of the Indonesian case before us the reason for this will be quite plain. In the Indonesian case those States which did try to circumvent the strictures of the orthodox interpretation tied themselves in knots in the process. Seldom, in the records of the Security Council, can there have been such a confused debate and it is greatly to their discredit that the western Permanent Members were principally responsible for this disorder. However, this confusion is at least productive of one good result. It demonstrates better than any abstract hypothetical argument could do just why intervention in relation to the Security Council means the discussion of or the adoption of recommendations concerning domestic matters. The Security Council can have nothing to do with such things and the Indonesian case demonstrates the folly of trying to ignore this.

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