

## EDITORIAL COMMENT

### THE SECURITY COUNCIL'S ROLE IN THE SETTLEMENT OF INTERNATIONAL DISPUTES

In the current debate about the role of the Security Council in the settlement of international disputes, it is generally accepted that the Council can only act if a matter has been referred to it by a state (under Article 35 of the UN Charter) or by the Secretary-General (under Article 99). This understanding is primarily based on Rule 6 of the Provisional Rules of Procedure of the Security Council, which reads as follows: "The Secretary-General shall immediately bring to the attention of all representatives on the Security Council all communications from States, organs of the United Nations, or the Secretary-General concerning any matter for the consideration of the Security Council in accordance with the provisions of the Charter." A careful reading of the Charter shows that this is not a correct or necessary assumption.

By Article 24 of the Charter, the members of the United Nations conferred on the Security Council "primary responsibility for the maintenance of international peace and security"; they authorized the Council to take "prompt and effective action" on their behalf. The Charter specifies further that the Council has these duties: to call upon the parties to a dispute to settle it by peaceful means (Article 33(2)); to investigate any dangerous dispute or situation (Article 34); to recommend appropriate procedures or methods of adjustment (Article 36(1)) or such terms of settlement as it may consider appropriate (Article 37(2)); and, if it determines that there is a threat to the peace, breach of the peace, or act of aggression, to make recommendations or binding decisions on measures to be taken to maintain or restore international peace and security.

These powers of the Council are independent ones; the Council can exercise them *sua sponte*, on its own initiative, without having to wait for the submission of the dispute or situation to the Council by one of the parties or by a member state. This is emphasized by the phrase in Article 33 that the Council shall call upon the parties to settle their dispute by peaceful means, "when it deems necessary"; and by the phrase in Article 36 that, "at any stage of a dispute" or situation whose continuance is likely to endanger international peace and security, the Council may recommend appropriate procedures or methods of adjustment.

It should also be noted that the provisions relating to the powers of the Security Council to call upon the parties to settle their dispute and to its power to conduct an investigation precede those dealing with submission of the dispute or situation to it by a member of the United Nations (Article 35(1)) or by a nonmember state that is a party to the dispute (Article 35(2)). Moreover, chapter VII does not specify at all that the Council should deal with a threat to the peace, breach of the peace or act of aggression only on the basis of a communication by a state. It seems clear, therefore, that the Council is the sole judge of the timing of its intervention in any dispute. Whenever "it deems

necessary," at "any stage" of the dispute, it may step in "to ensure prompt and effective action" to safeguard peace. Of course, if the parties are seeking to resolve the dispute by one of the means specified in Article 33, the Council is not likely to meddle; but if the situation starts to deteriorate, the Council has the duty promptly to consider what steps may be taken to preserve or restore international peace. It may choose any one of the measures specified in Articles 33–37 of the Charter and may even apply Articles 39–41.

In too many international disputes, however, the Council has taken no initiative but has waited, often impatiently, for somebody to submit the matter to it. Disputes are often allowed to drag on and get so inflamed that they are very difficult to resolve by the time they are submitted to the Council; and sometimes they are not brought before it at all. On occasion, the Council receives notes appraising it of a dispute or situation, but not asking it specifically to put the item on the agenda or to call a meeting to discuss it. In such cases, again, the Council takes no official action; it merely mentions them in its annual report to the General Assembly. (This happened, for instance, in 1973, when a Libyan airliner was shot down while flying over the Israeli-occupied Sinai; on the other hand, a similar incident in 1983, involving a Korean airliner in Soviet airspace, was immediately brought before the Security Council.)

We have already mentioned the limitation the Council imposed on itself in its Rules of Procedure that restricts its agenda primarily to items submitted by communications from states (Rules 6 and 7(2)). Another reason that the Council has been reluctant to exercise the initiatives authorized by the Charter seems to be the lack of other procedures for bringing matters before it. The limitations might be relaxed and the authority of the Security Council to act on its own initiative might be revived and strengthened, if steps could be taken to develop adequate procedures for monitoring disputes and situations likely to endanger peace and for reporting them to the Council.

For instance, the President of the Security Council is usually informed by the Secretary-General, by representatives of member states of the Security Council and by representatives of other states about the existence of disputes and situations that might be submitted to the Council. It might be useful if at the end of his month of service, the President presented a report to the Council summarizing its actions with respect to disputes and situations actually dealt with during the month and appraising the threat involved in some of the disputes and situations called to his attention. On the basis of this report, the Security Council might decide to take some action under Articles 33, 34 or 36 of the Charter, without waiting for submission by a state under Article 35. In view of the permissive language of the Charter (as noted above), a small change in the Rules of Procedure of the Security Council would enable it to put a matter on the agenda. For instance, Rule 7(2) could be changed by adding after the reference to items "brought to the attention of the representatives on the Security Council in accordance with Rule 6," a reference to "items suggested by the President of the Council in his monthly report." Just as the Secretary-General has the power to bring items to the attention of the Security Council (Article 99), so the President of the Council, in his official personal capacity rather than as a representative of a member state, could be given this power of initiative.

Another possibility would be to establish regional monitoring groups within the framework of the Security Council, to be composed of representatives of nonpermanent members from each region and representatives of as many states not members of the Council as might be needed to bring the membership of each group to five. As committees of the Security Council need not be restricted to its members, each regional group in the General Assembly might annually select several states not members of the Council for membership in the monitoring group, taking into account the experience of states that have previously served on the Council. This suggestion might provide a remedy to the one undesirable feature of the present system of rotation on the Security Council, namely, the precipitous departure of members who have developed their knowledge of its procedures and of the substantive problems faced by it over a 2-year period.

Each regional monitoring group would watch events in a particular region and, in cooperation with the Secretary-General, collect information on any situation likely to endanger peace. To these ends, the group would hold discussions with UN representatives of the governments directly concerned and, if necessary, visit the area for further discussions. It would also keep in touch with both the officers of the regional group in the General Assembly and the relevant regional organization (e.g., the Organization of American States, the Organization of African Unity). Should the situation approach a crisis, the regional monitoring group would present a report to the Security Council that would automatically be put on the agenda. The group would make its report in its personal capacity, without officially committing its member governments which might be reluctant to submit an issue involving their neighbors to the Council. (A similar system worked well in the League of Nations in connection with the protection of minorities; committees of three presented objective reports to the League's Council that frequently involved close allies of some of its members.)

Such a monitoring and reporting procedure would enable the Security Council to deal with issues of international peace and security as routine matters, without imposing on its members the burden of presenting a controversial issue against another of their number. This approach would be further facilitated if the regional monitoring groups reported to the Council on a monthly rotating basis. If a crisis later escalated, the Council would be equipped with sufficient background information and well-informed members. This would make quick action both easier and better adapted to the exigencies of the situation.

These two suggestions may enable the Security Council to work better, more promptly and, one hopes, more effectively. Although better procedure is not a substitute for the willingness of UN member states to fulfill their obligations under the Charter in good faith, very often a routinization of procedure enables states to comply with those obligations more easily. Following a routine procedure is always much simpler than requesting a departure from it. In the long run, the most important gain would be that the Council would be functioning continuously (as originally intended by Article 28(1) of the Charter) rather than only in times of crisis. Maintenance of peace would become for it a daily enterprise, increasing the cooperative spirit among its members and their understanding of the interdependence of the various components of world peace.

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