

Chapter XI

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER

CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE	183
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLES 39 AND 40 OF THE CHARTER	
Note	184
PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER	
Note	188
PART III. CONSIDERATION OF THE PROVISIONS OF ARTICLES 42-47 OF THE CHARTER	
Note	193
PART IV. CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER	
Note	193
** PART V. CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER IN GENERAL	196

INTRODUCTORY NOTE

Chapter XI does not constitute a review of the action of the Security Council under Chapter VII of the Charter. In principle it presents the instances in the proceedings of the Council in which proposals placed before the Council have evoked discussion regarding the application of Chapter VII.¹ Appropriate cross references are given to chapter VIII to facilitate the consultation of the material in conjunction with the record of decisions contained in that chapter.

CHAPTER VII OF THE CHARTER: ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

Article 40

"In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures."

Article 41

"The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

Article 42

"Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

Article 43

"1. All Members of the United Nations, in order

¹ For observations on the method adopted in the compilation of this chapter, see: *Repertoire of the Practice of the Security Council 1946-1951*, Introductory Note to chapter VIII: II Arrangements of Chapters X-XII, p. 296.

to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

"2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

"3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes."

Article 44

"When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces."

Article 45

"In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee."

Article 46

"Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee."

Article 47

"1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

"2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently

represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

"3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

"4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees."

Article 48

"1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

"2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members."

Article 49

"The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council."

Article 50

"If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems."

Article 51

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLES 39 AND 40 OF THE CHARTER

NOTE

During the period under review, the Council has taken no decisions explicitly under Article 39 of the Charter, although on various occasions during this period the Council was requested to determine certain situations as constituting a threat to the peace² an act of aggression³ specifically in terms of that Article. The invocation of Article 39 in letters of submission and the employment of language derived from it in both of these letters⁴ and draft resolutions have given rise to discussions as to whether the situations under consideration by the Council were of the nature envisaged in Article 39. In several instances when this Article has been invoked, the Council has confined itself to expressing its grave concern over the prevailing situation, to urging the avoidance of activities that might aggravate an existing situation, and to encouraging the contending parties to settle their disputes by peaceful means.

As a guide to the decisions of the Council in this regard, reference should be made to the Analytical

Table of Measures adopted by the Council in chapter VIII, part I, and to chapter X of the present volume.

In two⁵ of the four cases presented below the Council's characterization of the situations under consideration as "seriously disturbing" rather than "endangering" international peace and security was interpreted as precluding the Council from acting within the framework of Chapter VII of the Charter.

In the third instance⁶ while there was general agreement on the extreme gravity of the situation, doubts were raised as to whether it could be said that an actual threat to international peace existed within the meaning of Article 39 of the Charter; the resolution adopted by the Council determined that the "continuance" of the situation "would" constitute a threat to international peace and security.

The employment of provisional measures under Article 40 of the Charter was recommended in one instance⁷ in the period under review. A resolution requesting both parties to desist from further hostile military action and to issue cease-fire orders to the military forces under their command as a first step toward a peaceful settlement of outstanding differences between the two countries was adopted by the Council.

During consideration of the complaint by Panama, a Member of the Council, while not mentioning Arti-

² See for example the India-Pakistan question (1113th meeting, paras. 10-13).

³ For discussions concerning allegations of aggression, see Complaint by Malaysia (1144th meeting, para. 62); Complaint by Cambodia (1121st meeting, paras. 60-64); Palestine question (1162nd meeting, paras. 10-16, 17, 42, 45).

⁴ The tabulation in part III of chapter X lists one instance of formulation of a question in which Article 39 was explicitly invoked, or in which the language derived from that Article was employed. See above, p. 175.

⁵ Cases 1 and 2.

⁶ Case 3.

⁷ Case 4.

cle 40 of the Charter, suggested that the Council adopt certain measures of an "emergency character" which might be applicable to the case at issue.⁸

CASE 1.⁹ THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA: In connexion with the Bolivian and Norwegian joint draft resolution: voted upon and adopted on 18 June 1964

[Note: During the discussion, the question was raised as to whether the situation in South Africa could be considered as constituting a threat to the peace within the meaning of Article 39 of the Charter. On the one hand, it was maintained that although the policies of apartheid had been universally condemned, it could still not be said with any certainty that the situation caused thereby constituted a threat to the peace. On the other hand, it was contended that any objective analysis of the situation would reveal that there was a threat to international peace and security. The Council adopted a draft resolution expressing its conviction that the situation was "continuing seriously to disturb international peace and security".]

At the 1129th meeting on 10 June 1964, the representative of Indonesia* noted that in the matter of the employment of economic sanctions against South Africa, only the Security Council had the power to authorize mandatory collective action of that kind and then only if it had first determined the existence of a "threat to the peace", a "breach of the peace", or an "act of aggression" according to the language of Article 39 of the Charter. However, as yet the situation in South Africa had not caused an actual breach of the peace, nor had any act of aggression been considered by the Council in that regard. Hence, a peaceful solution to the problem of inducing the Government of South Africa to abandon its apartheid policy hinged upon the Council's finding that the situation constituted a "threat" to the peace. However, when in August and December 1963 four African States had sought such a determination by the Council, three of the permanent members refused to concede that the situation in South Africa represented a threat to the peace within the meaning of Article 39 of the Charter. As a result, the Council resolutions of 7 August and 4 December 1963, instead of determining the situation a threat that was "seriously endangering international peace and security", declared it to be a situation that was "seriously disturbing international peace and security". In that connexion he pointed out that, in his view, the words chosen denoted an even graver situation than the words rejected, yet because Chapter VII of the Charter did not speak in terms of "disturbances to the peace", the resolutions were "powerless to unlock the Council's capacity for peace-keeping action under Articles 41 and 42". Noting that the situation had worsened since the December resolution, he wondered how far it should be allowed to deteriorate before it constituted a sufficient threat to the peace within the meaning of Article 39 to warrant Council action. The representative recalled that in previous debates¹⁰ certain members of the Council had sought

to distinguish the threat to the peace they admitted was inherent in the situation in South Africa from a threat to the peace that would, in their opinion, justify the Council's invoking measures provided for under Articles 41 and 42. Thus according to one permanent member, the phrase "disturbing the peace" referred to the underlying elements of a serious situation that, if continued, would be likely to endanger international peace and security. However, such a condition was quite different from "a fully matured threat to or breach of the peace". Implicit in that argument was the position that coercive measures could be invoked "only when the threat is so imminent as to require an emergency meeting of the Council in order to try to prevent bloodshed virtually the next day or even the next hour". Disputing that contention, he pointed out that the language of Article 39 clearly indicated that the terms of the Charter envisaged the definite time lag between a "threat" and a "breach" or else both words would not have been included. That being so, his delegation interpreted Article 39 as indicating that "the first duty of the Council is to safeguard the peace, to prevent the occurrence of an actual breach, rather than to restore the peace after a breach has taken place".

At the 1131st meeting on 15 June 1964, the representative of the United Kingdom recalling that the representative of Indonesia among others had recognized that "a pre-condition of the decision under Article 41 is the decision under Article 39 that there exists a threat to the peace, a breach of the peace or an act of aggression" maintained that in the prevailing situation in South Africa there was no question of a breach of the peace or an act of aggression nor could it be said that a threat to the peace existed at that time. Noting that the Government of South Africa had failed to heed the urgent request of the Council to desist from the policies of apartheid, he remarked that that in itself had not created the situation in which determination under Article 39 could be made. To make such a determination, it was necessary to look at the situation within South Africa itself, and although the racial policies of the Government there were the subject of world-wide condemnation it could not be said with any certainty that such policies endangered the maintenance of international peace and security. Consequently, at that stage of development, there were no elements discernible which would call for the kind of action appropriate in cases of threats to the peace, or breaches of the peace, under Chapter VII of the Charter.

At the 1133rd meeting on 16 June 1964, the representative of Norway introduced a draft resolution¹¹ jointly submitted by Bolivia and Norway in the preamble of which the Council would have recalled its resolutions of 7 August 1963 (S/5386), 4 December 1963 (S/5471) and 9 June 1964 (S/5761), and expressed the conviction that "the situation in South Africa is continuing seriously to disturb international peace and security".

At the 1135th meeting on 18 June 1964, the President, speaking as the representative of the Ivory Coast, observed that while the principles and intentions of the draft resolution were praiseworthy, they seemed to be paralysed by the form in which they were to be expressed and put in practice. In any event

⁸ See 1086th meeting, para. 58. See also chapter X, Case 6, and chapter XII, Case 7.

⁹ For texts of relevant statements, see: 1129th meeting: Indonesia,* paras. 19-26; 1131st meeting: United Kingdom, paras. 89-91; 1132nd meeting: Ivory Coast (President), paras. 3-4; 1133rd meeting: Norway, para. 3; 1135th meeting: Ivory Coast (President), paras. 3-5, 8.

¹⁰ See, *Repertoire of the Practice of the Security Council, Supplement 1959-1963*, p. 266.

¹¹ S/5769, same text as S/5773, O.R., 19th yr., Suppl. for April-June 1964, pp. 249-251.

his delegation considered that the situation created by the policies of apartheid did not simply disturb the peace, but did in fact endanger international peace and security.

At the 1135th meeting on 18 June 1964, the draft resolution was adopted by 8 votes in favour, none against, and 3 abstentions.¹²

CASE 2.¹³ SITUATION IN TERRITORIES IN AFRICA UNDER PORTUGUESE ADMINISTRATION: In connexion with the joint draft resolution submitted by Ivory Coast, Jordan, Liberia, Malaysia, Sierra Leone and Tunisia and the amendment by Uruguay voted upon and adopted on 23 November 1965

[*Note:* A draft resolution affirming the situation resulting from Portugal's policy in African territories under its administration and the neighbouring States to be a threat to international peace and security, was opposed on the grounds that such a formulation implied the application of Chapter VII of the Charter, and because it was felt that non-permanent members of the Council were not in a position to impose a declaration of the application of that Chapter. As amended, the draft resolution characterized the situation as seriously disturbing international peace and security.]

At the 1255th meeting on 10 November 1965, the representative of the United Republic of Tanzania * urged the Council to pronounce in "unambiguous terms" that Portugal's behaviour in Africa was contrary to the Charter of the United Nations and was in fact a threat to international peace and security within the meaning of Chapter VII of the Charter.

At the 1266th meeting on 22 November 1965, the representative of Tunisia * introduced a draft resolution¹⁴ jointly sponsored by Ivory Coast, Jordan, Liberia, Malaysia, Sierra Leone and Tunisia under which the Security Council *inter alia*:

"1. *Affirms* that the situation resulting from the policies of Portugal both as regards the African population of its colonies and the neighbouring States endangers international peace and security".

At the same meeting, the representative of Portugal, * speaking in connexion with operative paragraph 1 of the draft resolution, noted that the policy of his Government in the territories under its administration was not directed against any outsider. Consequently, "if outsiders choose not to like our internal policy, and are seeking to force a change, it does not follow that it is Portugal that endangers international peace and security". On the contrary, the responsibility must be laid at the door of the outsiders. Moreover, when it was considered that Portugal had sought to maintain good relations with all its neighbours, if those States did not respond to its offer of friendship but chose instead to act in a manner hostile to Portugal aiding and encouraging violence against it, he wondered whether it could be said that it was Portugal which endangered international peace and security.

¹² 1135th meeting, para. 43; S/RES/191 (1964), *O.R.*, 19th yr., *Resolutions and Decisions of the Security Council, 1964*, pp. 13-15.

¹³ For texts of relevant statements, see: 1255th meeting: United Republic of Tanzania, para. 83. 1266th meeting: Portugal, * paras. 21-35; Tunisia, * paras. 4-19.

1267th meeting: Uruguay, paras. 70-71.

1268th meeting: Uruguay, paras. 3-4.

¹⁴ S/6953, 1266th meeting, paras. 4-19.

At the 1267th meeting on 22 November 1965, the representative of Uruguay, commenting on operative paragraph 1 of the draft resolution, observed that if the paragraph implied the application of Chapter VII of the Charter, his delegation was not ready to support it, since he did not believe that the non-permanent members of the Council could "impose a declaration or the application of Chapter VII of the Charter". Moreover, as he understood it, the three sponsors of the draft resolution that are members of the Security Council did not interpret operative paragraph 1 as implying the application of Chapter VII of the Charter.

At the 1268th meeting on 23 November 1965, the representative of Uruguay proposed an amendment whereby the wording in operative paragraph 1 would be changed from "endangers" to "seriously disturbs". The amendment was adopted by a vote of 10 in favour, none against, with 1 abstention,¹⁵ and the amended draft resolution was adopted by a vote of 7 in favour, none against, and 4 abstentions.¹⁶

CASE 3.¹⁷ SITUATION IN SOUTHERN RHODESIA: In connexion with the United Kingdom draft resolution: not put to the vote and with the Ivory Coast draft resolution: not put to the vote, and with the Bolivian and Uruguayan draft resolution voted upon and adopted on 20 November 1965

[*Note:* The contention that the unilateral declaration of independence of Southern Rhodesia had created a threat to international peace and security within the meaning of Article 39 of the Charter was disputed on the grounds that although developments there were serious, the most that could be said at that stage was that they had created a situation the continuance of which "could be" a menace to international peace and security. The resolution adopted by the Council determined that "the situation was extremely grave and that its continuance in time would constitute a threat to international peace and security".]

At the 1257th meeting on 12 November 1965, speaking on behalf of the African States, the representative of Ghana * observed that the unilateral declaration of independence of Southern Rhodesia had precipitated a serious crisis which posed a threat of immense proportions to the peace and security of the African continent and in fact of the world. Recalling that at a recent African summit conference a resolution was adopted calling upon the United Nations to regard the unilateral declaration of independence as constituting a threat to international peace, he explained that in pursuance of that resolution the African States had now come to the Security Council with the request that it take

"appropriate actions under Chapter VII of the Charter since events in Southern Rhodesia definitely

¹⁵ 1268th meeting, para. 15.

¹⁶ 1268th meeting, para. 30; S/RES/218 (1965), *O.R.*, 20th yr., *Resolutions and Decisions of the Security Council, 1965*, pp. 18-19.

¹⁷ For texts of relevant statements, see: 1257th meeting: Ghana, * paras. 40, 61. 1259th meeting: Ivory Coast, paras. 49-50, 71; Pakistan, * paras. 9, 12; United Kingdom, para. 31.

1263rd meeting: United Kingdom, para. 8.

1264th meeting: Jordan, paras. 13-15; Uruguay, paras. 5-9.

1265th meeting: President (Bolivia), para. 3.

constitute a threat to international peace and security." ¹⁸

At the 1259th meeting on 13 November 1965, the representative of Pakistan * recalling that in its resolution 2022 (XX) of 5 November 1965 the General Assembly had characterized the situation in Southern Rhodesia as one which "threatens international peace and security" stated that in the view of his delegation the situation in that territory constituted one of the eventualities for which Chapter VII of the Charter was drafted, "and no considerations of expediency should be allowed to thwart the determination of the world community to put an end to this situation which is a threat to international peace and security as recognized by the General Assembly in its resolution 2022 (XX)".

At the same meeting the representative of the United Kingdom submitted a draft resolution ¹⁹ under which the Security Council, having expressed its grave concern over the rebellious actions of the former régime in Southern Rhodesia would determine "that the continuance of the resulting situation is likely to endanger the maintenance of international peace and security".

At the same meeting the representative of Ivory Coast pointed out that the Council should conduct its deliberations under the only chapter of the Charter providing for sanctions, economic sanctions, namely, Chapter VII and under the terms of Articles 39-51. In this connexion, he introduced a draft resolution ²⁰ under which:

"The Security Council,

" . . .

"Convinced that this declaration of independence constitutes a threat to international peace and security,

" . . .

"1. Determines that the situation resulting from this declaration of independence constitutes a threat to international peace and security."

At the 1263rd meeting on 17 November 1965, commenting on the statements of the representatives of the African and Asian States, the representative of the United Kingdom maintained that the events in Southern Rhodesia could at that stage only be described as creating "a situation the continuance of which could be a menace to international peace and security". He added:

"It has not yet developed to a point where there is an actual breach of international peace—that is to say, where there is fighting between nations—and it is the intention of the United Kingdom Government to see to it that the rebellion is so dealt with that such a situation does not arise."

At the 1264th meeting on 19 November 1965, the representative of Uruguay, noting that the two draft

¹⁸ Similar views were expressed by a number of other representatives. For the text of their statements, see:

1258th meeting: Mali,* paras. 31-55; Nigeria,* paras. 77-91.

1259th meeting: Algeria,* paras. 34-46; Sierra Leone,* paras. 73-88.

1260th meeting: Ethiopia,* paras. 3-28; Malaysia, paras. 30-64; United Republic of Tanzania,* paras. 57-59; Zambia,* paras. 66-79.

1261st meeting: Mauritania,* paras. 4-31.

1262nd meeting: Jamaica,* paras. 9-34.

1263rd meeting: Somalia, paras. 43-58; Sudan, paras. 25-41.

¹⁹ S/6928, 1259th meeting, para. 31.

²⁰ S/6929, 1259th meeting, para. 70.

resolutions submitted by the United Kingdom and Ivory Coast, respectively, contained both formal and substantial differences which certain members of the Council had sought to reconcile to no avail, submitted a draft resolution ²¹ jointly sponsored by Bolivia and Uruguay, under which the Security Council would express its deep concern about the situation in Southern Rhodesia and would determine that

"the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia is extremely grave, that the Government of the United Kingdom of Great Britain and Northern Ireland should put an end to it, and that its continuance in time would constitute a threat to international peace and security."

In explaining the objectives of this draft resolution, he noted that it did not mention whether Chapter VI or VII of the Charter was brought to bear on the situation nor did it seek to define the criteria that might imply the use of armed forces in the prevailing circumstances. In effect the draft resolution sought to generalize the measures adopted by the Government of the United Kingdom and imposed upon other Members of the Organization the need for co-operation in order to ensure the effectiveness of those measures.

At the same meeting the representative of Jordan stated that in order to invoke Chapter VII of the Charter, the Council first had to determine under Article 39 whether or not there was a breach of the peace within the meaning of the Charter. "This is a question of fact, it is not a question of law. The determination of the situation as one falling within the meaning of Article 39 is not a question of legal interpretation, it is a question of evidence, a question of proof, a question of fact." The facts related to the matter, however, were uncontroversial in that an attempt was made by the "Ian Smith group" to alter by force the constitutional structure of the country and as a result of that, in the words of the General Assembly, "an explosive situation was created in Southern Rhodesia". Those facts alone, he felt, were enough to justify the finding that the situation constituted a threat to the peace. After referring to other developments as evidence of a rapidly deteriorating situation, he maintained that unless effective measures were taken, the African States might find themselves compelled to intervene. All those developments, therefore, fully justified the finding that a threat to the peace existed and the Council was thus called upon to take legitimate measures to check that explosive situation. Furthermore, the Council was expected "to determine that a breach of the peace does exist within the meaning of the Charter", after which it might request the United Kingdom to take all adequate and appropriate measures to maintain the peace.

At the 1265th meeting on 20 November 1965, the President (Bolivia), before proceeding to the vote explained that the sponsors of the joint Bolivia-Uruguay draft resolution had modified operative paragraph 1 to read "determines that the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia is extremely grave, that the United Kingdom Government should put an end to it and that its continuance in time constitutes a threat to international peace and security".

The resolution as modified was adopted by 10 votes

²¹ S/6955, O.R., 20th yr., Suppl. for Oct.-Dec. 1965, pp. 390-391.

in favour, none against and 1 abstention.²² In the light of the vote on the Bolivia-Uruguay draft resolution the representatives of the Ivory Coast²³ and the United Kingdom²⁴ did not press their respective draft resolutions to a vote.

CASE 4.²⁵ **INDIA-PAKISTAN QUESTION:** In connexion with the draft resolution submitted by the Netherlands, voted upon and adopted on 20 September 1965

[*Note:* Resort to Article 40 was suggested by the Secretary-General, who after reporting on his efforts to give effect to the Security Council resolutions calling for a cease-fire, noted that he had not succeeded in obtaining compliance. The representatives of India and Pakistan held differing views as to the relevance and applicability of that article under prevailing circumstances. However, it was felt that the Council should on the basis of this provision demand an immediate cease-fire as a first step, and a draft resolution to this effect was adopted.]

At the 1239th meeting on 17 September 1965, the Secretary-General in reporting on his efforts to give effect to the resolutions calling for the cessation of hostilities, noted that he had so far not succeeded in securing effective compliance by both sides. Thereupon he offered certain of his "own views" about the role of the Security Council in the crisis under consideration. He suggested that the Council

"might now do what it has done once before and successfully, in another dangerous conflict situation; it could order the two Governments concerned, pursuant to Article 40 of the Charter of the United Nations, to desist from further hostile military action and to this end, to issue cease-fire orders to their military forces. The Council might also declare that failure by the Governments concerned to comply with this order would demonstrate the existence of a breach of the peace within the meaning of Article 39 of the Charter."

With regard to the adoption of provisional measures under Article 40 the representative of India * felt that this proposal by the Secretary-General if adopted would place India and Pakistan "on the same footing": instead he suggested that the Council call upon Pakistan to desist from carrying out hostilities and to determine under Article 39 of the Charter the existence of an act of aggression by Pakistan.

²² 1265th meeting, para. 4; S/RES/214 (1965), *O.R.*, 20th yr., *Resolutions and Decisions of the Security Council, 1965*, pp. 8-9.

²³ 1265th meeting: Ivory Coast, para. 38.

²⁴ 1265th meeting: United Kingdom, para. 63.

²⁵ For texts of relevant statements, see:

1239th meeting: Secretary-General, paras. 16-20, India,* paras. 105-107.

1240th meeting: Pakistan,* para. 65.

1241st meeting: China, para. 107; Netherlands, para. 79.

1242nd meeting: Netherlands, paras. 44-51.

At the 1240th meeting on 18 September 1965, the representative of Pakistan * expressed doubt as to the necessity for action under Chapter VII of the Charter as contemplated by the Secretary-General. He recalled that previously all actions had been taken under Chapter VI and he observed: "It would be the first time in the history of the Kashmir dispute that the Security Council would be contemplating action under Chapter VII of the Charter... Departure from past practice would be a momentous decision, and its implications would have to be carefully weighed before the Security Council proceeds further in this matter."

At the 1241st meeting on 18 September 1965, the representative of the Netherlands asserted that the Security Council should, on the basis of Article 40 of the Charter, decide on a specific moment "in the nearest future" at which hostilities should cease, and at the same time offer its assistance for assuring the observance of the cease-fire. In taking that step for a short range solution, however, the Council should not lose sight of its long range objectives which were the elimination of the underlying political conflict. While the Council could not impose a specific solution to the conflict, it could set in motion the process to that end.

The representative of China observed that the application of Articles 39 and 40 may turn out "to be quite unnecessary"; however, under the circumstances it appeared to be a logical step to take in order both to uphold the authority of the Council and more especially to put an effective stop to a war which though "as yet local in nature may well escalate to such a scale as to endanger world peace".

At the 1242nd meeting on 20 September 1965, the representative of the Netherlands introduced a draft resolution²⁶ under which the Security Council:

"Having considered the reports of the Secretary-General on his consultations with the Governments of India and Pakistan;

"...

"Convinced that an early cessation of hostilities is essential as a first step towards a peaceful settlement of outstanding differences between the two countries on Kashmir and other related matters;

"1. Demands that a cease-fire should take effect on Wednesday, 22 September 1965 at 0700 hours GMT and calls upon both Governments to issue orders for a cease-fire at that moment and a subsequent withdrawal of all armed personnel back to positions held by them before 5 August 1965."

At the same meeting the draft resolution was adopted by 10 votes in favour, none against, with 1 abstention.²⁷

²⁶ Same text as S/RES/211 (1965), *O.R.*, 20th yr., *Resolutions and Decisions of the Security Council, 1965*, pp. 14-15.

²⁷ 1242nd meeting, para. 69.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER

NOTE

During the period under review questions concerning the applicability of enforcement measures within the meaning of Chapter VII of the Charter were raised in two instances. In the first instance²⁸ discussion was

centred primarily on the question whether the Council could employ economic sanctions envisaged under Article 41 of the Charter in the absence of a specific determination by the Council that the situation in a Member State threatened international peace and security within the meaning of Article 39. The discussion

²⁸ Case 5.

in the second instance²⁹ concerned the question whether the Council should support the essentially non-military measures proposed by the Administering Authority or whether, in the light of the gravity of the situation, the Council should exercise its authority under Articles 41 and 42.

CASE 5.³⁰ THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA: In connexion with the Bolivian and Norwegian joint draft resolution voted upon and adopted on 18 June 1964

[Note: The view that whether, as a result of developments in South Africa, the Council could apply economic sanctions under Article 41 of the Charter was questioned by some delegations who were of the opinion that a determination under Article 39 of the existence of a threat to the peace or a breach of the peace was necessary before such action could be taken. Other delegations maintained that such a determination was implicit in previous Security Council resolutions, declaring the situation in South Africa as "seriously disturbing the peace" and therefore the Council could act under the aforementioned Article. The draft resolution adopted by the Council, after declaring the situation in South Africa as continuing seriously to disturb international peace and security, established an expert committee to undertake a technical and practical study of the feasibility, effectiveness and implications of measures which could be taken by the Council under the Charter and reaffirmed its call upon all States to cease the sale and shipment of all arms to South Africa.]

At the 1127th meeting on 8 June 1964, the representative of Liberia* asserted that the situation in South Africa represented a clear threat to international peace and security and in the words of previous Council resolutions was "seriously disturbing" to international peace. Noting that the Government of South Africa had rejected or otherwise failed to implement recommendations and decisions of the Council, he maintained that there was no other alternative than "to urge the Security Council to apply economic sanctions as the only peaceful recourse left open to resolve the issue and remove that threat to international peace and security".

The representative of Sierra Leone* recalling that in a resolution of 7 August 1963 the Council determined the situation in South Africa as "seriously disturbing international peace and security" maintained that the Council was consequently in a position to adopt measures in accordance with Articles 41 and 42 of the Charter of the United Nations. Such action was required if the trials and execution of certain national leaders were to be stopped. In the view of his delegation, the Council had the power under Article 41 of the Charter, to demand that the Government of South Africa reprieve those national leaders sentenced to death, and if that were not heeded, then the Council under the same Article had the power to impose economic sanctions

against the Republic of South Africa, since a continuation of the situation there would result in a breach of international peace and security.

At the 1129th meeting on 10 June 1964, the representative of Indonesia* expressed the view that the Council should consider the question of South Africa's racial policies under Chapter VII of the Charter, and supported appeals that it authorize the United Nations to apply "coercive measures provided under Articles 41 and 42" of that Chapter. He noted that the coercive measures envisaged were primarily economic sanctions listed under Article 41, backed if necessary, by a blockade which was a measure falling under Article 42. Thus he saw those sanctions as a method of persuading the South African Government to abandon the system of apartheid before the situation exploded into a breach of the peace. In that connexion, however, only the Security Council had the power to authorize mandatory collective action of that kind, "and under the terms of the Charter, the Security Council itself is empowered to make such a decision only when it has first declared the situation a 'threat to the peace' a 'breach of the peace', or an 'act of aggression' according to the wording of Article 39". Not until then could the Security Council consider measures under Chapter VII. Because, however, the situation in South Africa had not caused an "actual breach of the peace" nor was there as yet an act of aggression to be considered, the peaceful solution of the problem of inducing the Government of South Africa to abandon its apartheid policy, inescapably hinged upon the Council finding that the situation constituted a "threat to the peace". But in August and December 1963 when such a determination had been sought of the Council, three permanent members refused to concede that the situation in South Africa represented a threat to the peace within the meaning of Article 39 of the Charter. As a result, because Chapter VII did not speak in terms of "disturbances" of the peace, the resolutions of 7 August and 4 December 1963 declaring the situation as seriously disturbing international peace and security, were "powerless to unlock the Council's capacity for peace-keeping action under Articles 41 and 42" of the Charter.³¹

The representative of Tunisia* noting that the Charter embodied various measures and provisions to deal with a situation which was a threat to international peace and security, asserted that "under Chapter VII (Article 41) economic measures should be recommended by the Security Council".

At the 1131st meeting on 15 June 1964, the representative of the United Kingdom, noting that the group of experts³² had recommended *inter alia* that the Council "set in hand an urgent examination of the logistics of sanctions" contended that it was not for that group to recommend to the Council "so serious a step as the application of economic sanctions" since "a step of this nature is only properly to be taken in accordance with Article 41 of Chapter VII of the Charter" and as has been recognized by certain participants in the

²⁹ Case 6.

³⁰ For text of relevant statements, see: 1127th meeting: Liberia,* paras. 7, 71; Sierra Leone,* paras. 103-104.

1129th meeting: Indonesia,* paras. 12-22; Tunisia,* paras. 106-115.

1131st meeting: United Kingdom, paras. 86-99.

1132nd meeting, Ivory Coast (President), paras. 4, 17-19.

1133rd meeting: Norway, paras. 3, 37; United States, para. 30.

1134th meeting: Brazil, para. 13.

³¹ For discussion of this issue, see part I, Case 1.

³² Under the Security Council resolution S/5471 (4 December 1963), the Secretary-General was authorized to appoint a group of experts to examine "methods of resolving the present situation in South Africa through full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole... and to consider what part the United Nations might play in the achievement of that end". See *Repertoire of the Practice of the Security Council, 1959-1963*, chapter V, Case 4, p. 116.

debate, a pre-condition of the decision under Article 41 is a determination under Article 39 that there existed a threat to peace, a breach of the peace or an act of aggression. In the case under consideration, however, there was no breach of the peace or act of aggression and in the view of his delegation "no such threat to the peace exists at the present time". Essentially, the problem before the Council involved the failure of the Government of South Africa to comply with certain requests of the Security Council, but a failure to take steps in accordance with decisions of the Council did not in itself create a situation where determination under Article 39 could be made. Noting that the imposition of sanctions would be an experiment of "a most grave and dangerous nature", he wondered whether in the case of its failure the Council would be prepared to take action under Article 42 and attempt by force to compel South Africa to change its policies.

At the 1132nd meeting on 15 June 1964, the President, speaking as the representative of the Ivory Coast, asserted that the Security Council must determine that as a result of the situation in South Africa, there existed a threat to international peace and security in accordance with Article 39 of the Charter in which case the Council was obliged to assume its responsibility by taking appropriate decisions.

At the 1133rd meeting on 16 June 1964, the representative of Norway introduced a draft resolution³³ jointly submitted by Bolivia and Norway under which the Security Council:

" . . .

"*Convinced* that the situation in South Africa is continuing seriously to disturb international peace and security,

" . . .

"*Taking into account* the recommendations and conclusions of the Group of Experts,

" . . .

"3. *Notes* the recommendations and the conclusions in the report of the Group of Experts;

" . . .

"8. *Decides* to establish an expert committee, composed of representatives of each present member of the Security Council, to undertake a technical and practical study and report to the Security Council as to the feasibility, effectiveness and implications of measures which could, as appropriate, be taken by the Security Council under the United Nations Charter;

" . . .

"12. *Reaffirms* its call upon all States to cease forthwith the sale and shipment to South Africa of arms, ammunition of all types, military vehicles, and equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa."

The representative of the United States, noting that during the debate much had been said about the question of sanctions, stated that while the situation in South Africa was charged with dangerous implications, his Government did not believe that the then prevailing situation provided a basis under the Charter for the application by the Security Council of coercive measures.

At the 1135th meeting on 18 June 1964 the draft

³³ S/5769, same text as S/5773, *O.R.*, 19th yr., *Suppl.* for April-June 1964, pp. 249-251.

resolution was adopted by 8 votes in favour to none against, with 3 abstentions.³⁴

CASE 6.³⁵ SITUATION IN SOUTHERN RHODESIA: In connexion with the Jordanian draft resolution, voted upon and adopted on 12 November 1965; with the United Kingdom draft resolution, not put to the vote; with the Ivory Coast draft resolution not put to the vote; and with the Bolivian and Uruguayan draft resolution voted upon and adopted on 20 November 1965

[*Note:* During the discussions it was contended that the measures proposed by the Administering Authority, essentially of an economic and financial nature, were inadequate to deal with the situation created by the unilateral declaration of independence in Southern Rhodesia. It was further contended that the Council should in addition to supporting those measures take additional measures of its own, and if necessary the full range of measures under Articles 41 and 42. On the other hand, doubts were expressed as to whether the nature of the situation warranted the adoption of measures under Chapter VII, particularly the use of force.]

At the 1257th meeting on 12 November 1965, the representative of the United Kingdom explained that his Government proposed to deal with the illegal declaration of independence in Southern Rhodesia by taking a series of measures of a political, financial and economic nature. He urged that the Council should lend all the weight of its authority to the United Kingdom's request for support of the measures outlined.

At the same meeting, speaking on behalf of the African States, the representative of Ghana * stated that the situation in Southern Rhodesia was "a serious crisis which poses a threat of immense proportions to peace and security in the world" and urged the British Government "to use every means at its disposal to restore law and order in Southern Rhodesia, including the use of armed force". At the same time he called upon the Council "to order full sanctions against the Ian Smith régime in accordance with Chapter VII of the Charter".

At the 1258th meeting on 12 November 1965, after the Council had adopted an amended draft resolution³⁶ submitted by the representative of Jordan, under which the Council condemned the unilateral declaration of independence made by the racist minority in Southern Rhodesia and called upon all States not to recognize

³⁴ 1135th meeting, paragraph 43; S/RES/191 (1964), *O.R.*, 19th yr., *Resolutions and Decisions of the Security Council*, 1964, pp. 13-15.

³⁵ For texts of relevant statements, see:

1275th meeting: Ghana, * paras. 40, 61, 70; Jordan, paras. 109, 148-149; United Kingdom, paras. 10-36.

1258th meeting: India, * paras. 71-72; Jordan, paras. 4-8; Mali, * paras. 51-52; USSR, paras. 121, 133.

1259th meeting: Ivory Coast, paras. 47-69; Pakistan, * paras. 12-13; Sierra Leone, * paras. 63-88; United Kingdom, paras. 15-32.

1260th meeting: Ethiopia, * paras. 4, 19, 21; Guinea, * paras. 121-124; Malaysia, paras. 88-105; Netherlands, paras. 80-86; United Republic of Tanzania, * paras. 57-59; Zambia, * paras. 67-86.

1261st meeting: Gambia, * paras. 55-58; Mauritania, * paras. 29-31; Uruguay, para. 45.

1262nd meeting: Jamaica, * paras. 18-20, 34.

1263rd meeting: Somalia, * paras. 44-45; Sudan, * paras. 38-39, 41.

1264th meeting: Ghana, * paras. 22, 32; Jordan, paras. 13-16; Uruguay, paras. 8-9.

³⁶ 1258th meeting: para. 29; S/RES/216 (1965), *O.R.*, 20th yr., *Resolutions and Decisions of the Security Council*, 1965, p. 8.

the illegal authorities there, and to refrain from giving any assistance to that régime, the representative of Mali * maintained that the situation constituted a serious threat to international peace and security, and that effective measures to deal with it should be taken by the Council. In this connexion, he felt that the only proper way to examine the matter was in terms of Chapter VII of the Charter, bearing in mind the nature of the sanctions advocated by the representative of the United Kingdom. In view of the urgency of the situation, he urged that the Council should take quick action, first, by inviting the United Kingdom to take effective measures "including recourse to force" to restore normal conditions in Southern Rhodesia, and in addition should itself take the steps provided for in Chapter VII of the Charter to prevent the situation from becoming worse and spreading, specifically the application of Articles 41, 42 and 43 of the Charter.

At the same meeting, noting that the situation created by the unilateral declaration of independence posed a serious danger to international peace, the representative of India * expressed the hope that the measures announced by the United Kingdom "will be vigorously and immediately enforced". At the same time he felt that the seriousness of the situation demanded "sterner measures", and was thus of the view that political, economic and even military measures should be applied in order to deal effectively with the situation.

The representative of the USSR, referring to the steps suggested by the United Kingdom contended that the programme was nothing but a programme of "half measures" and it was thus the responsibility of the Council to apply political, economic and other sanctions in conformity with the Charter.

At the 1259th meeting on 13 November 1965, the representative of Pakistan * stated that while the passing of a resolution was the first step in the direction of achieving a solution of the situation, the Council should simultaneously start considering concrete steps to be implemented within a specific period of time. His delegation was of the view that the Council should seriously consider the possibility of taking appropriate action under Chapter VII of the Charter.

At the same meeting, the representative of the United Kingdom introduced a draft resolution³⁷ which provided that

"The Security Council,

" . . .

"Noting the measures taken by the United Kingdom Government to deal with the situation created by the unilateral declaration of independence,

" . . .

"1. Refuses to recognize such a unilateral declaration of independence as having any legal validity;

"2. Reiterates its call to all States to refuse to recognize the illegal and unconstitutional régime in Southern Rhodesia;

"3. Calls upon all States to refrain from any action which could give aid and comfort to that régime, and, in particular, to refrain from supplying arms, equipment, or war material to it;

"4. Calls upon all States to lend all necessary assistance and support to the United Kingdom Government in making effective the measures taken by

that Government, including the financial and economic measures, to bring the rebellion in Southern Rhodesia to an end."

At the same meeting, the representative of Ivory Coast, noting that the United Kingdom had asked the Council to endorse the economic sanctions which it was about to apply against Rhodesia, expressed the opinion that the Council was obliged to discuss the problem "under the only Chapter of the Charter providing for sanctions, economic sanctions, namely Chapter VII". Consequently, deliberations should be conducted under the terms of Articles 39-51 of Chapter VII. Moreover, because it had been demonstrated that the question fell within that Chapter, Article 2, paragraph 7 concerning non-intervention in the internal affairs of a State could not prevent the Council from carrying out enforcement action. As far as the use of force was concerned, his delegation believed that Great Britain must be invited to take more effective measures "which would not exclude the use of force and which would bring the rebellion to an end in the shortest possible time". Moreover, the Security Council should not limit itself to merely taking note of the statements made by the United Kingdom, but should support the measures already proposed by that Government and add certain other measures thereto under Chapter VII of the Charter. Nor should it hesitate "to advocate the application of Articles 41, 42 and 43 and thus to take measures which will be considered as decisions of the Security Council and which therefore will be binding on all Member States". To this end he submitted a draft resolution³⁸ under which:

"The Security Council,

" . . .

"Convinced that this declaration of independence constitutes a threat to international peace and security,

"Noting that the measures envisaged by the United Kingdom Government will be ineffective without the use of force,

" . . .

"1. Determines that the situation resulting from this declaration of independence constitutes a threat to international peace and security;

" . . .

"4. Further calls upon the United Kingdom Government in addition to the measures it has proposed to take with regard to the situation in Southern Rhodesia, to suspend the 1961 constitution;

"5. Calls upon all States not to recognize the racist minority settler régime and to withdraw recognition of any State recognizing that régime;

" . . .

"8. Calls upon all States to enforce on the illegal régime in Southern Rhodesia a complete interruption of economic relations, including an embargo on supplies of oil and petroleum products, and of rail, sea, air, postal telegraphic, radio and other means of communication and severance of diplomatic and consular relations, in accordance with Article 41 of the Charter.

"9. Decides to take all the enforcement measures provided for under Articles 42 and 43 of the Charter against the racist minority settler régime."

³⁷ S/6928, 1259th meeting para. 31.

³⁸ S/6929, 1259th meeting, para. 70.

The representatives of Ethiopia, * Guinea, * Mauritania, * Gambia, * Zambia, * Jamaica, * Sierra Leone, * Sudan, * Somalia * and Ghana * stated at the 1259th to 1264th meetings that the situation in Southern Rhodesia was a threat to international peace and security and that economic measures against Southern Rhodesia would not be effective. Only force or a combination of force and economic sanctions would produce immediate and favourable results. As proposed by the United Kingdom, the economic measures were not comprehensive enough, since they did not include an embargo on petrol and oil, the essential commodities for Southern Rhodesia. Consequently, they felt it was incumbent on the Security Council to act under the provisions of Chapter VII and adopt the draft resolution submitted by the Ivory Coast.

At the 1260th meeting on 13 November 1965, the representative of the United Republic of Tanzania * maintained that by ruling out the use of force and advocating economic and financial sanctions which were inadequate, the United Kingdom Government had failed to respond to the gravity of the situation. The Council should therefore invoke the provisions of Chapter VII of the Charter and, in particular, bring into immediate effect Article 42. Such action was necessitated because the situation in Southern Rhodesia was such a dangerous threat to international peace and security that the provision of Article 41 could not suffice. Furthermore, it had already been stated why it was felt that it was too late to test the efficacy of economic sanctions and, whereas Members in accordance with Article 41 were being asked to effect immediately "a complete interruption of economic relations of rail, sea, air, postal and other means of communication", these would still not be enough since the situation admittedly demanded action as advocated by Article 42 of the Charter. Consequently, the Council should on the basis of the evidence before it, declare that the measures proposed by the British Government were inadequate. "A threat to international peace and security and an act of aggression have been committed by the rebels and traitors in Southern Rhodesia Therefore, a clear case has been made for the application of Article 42, of Chapter VII of the Charter". Noting that under that Article the Council was entitled to consider the taking of such action by air, sea, or land force as may be necessary to restore international peace and security, he suggested that "such action" may include demonstrations, blockade and other operation by air, sea or land force of the Members of the United Nations.

The representative of the Netherlands stated that measures of a non-military character, provided they were effectively applied, would force "the Smith régime" to end the rebellion. He called for concentration not on those issues on which there was difference of opinion, but on those measures on which there was general agreement and in that connexion supported the draft resolution submitted by the United Kingdom.

The representative of Malaysia suggested that it would have been helpful if the United Kingdom had indicated the degree to which the measures it had adopted was hurting the economy of Southern Rhodesia. "This is the relevant information which we need, information vital to the Security Council so that it may consider, in the language of Article 42 of the Charter, whether the measures provided for in Article 41 can be adequate". He maintained that "sanctions

as such, to be of any significance for the purpose of Article 41, can only be those that will bring pressure to bear as promptly and effectively as the situation demands".

At the 1261st meeting on 15 November 1965, the representative of Uruguay observed that whereas his delegation understood that in the present situation Chapter VII of the Charter should be applied, it was not ready to support a draft resolution imposing the use of armed force under prevailing conditions in order to ensure the implementation of that resolution. The Charter of the United Nations did not go that far. Article 41 merely created faculty and empowered the Security Council. The use of force called for the affirmative vote of the five permanent members of the Security Council, but to show the world that that unanimity did not exist would have weakened the attitude of the Council in confronting those who had provoked its meetings.

At the 1264th meeting on 19 November 1965, the representative of Uruguay, noting that there were both formal and substantive differences between the United Kingdom and Ivory Coast draft resolutions, submitted a draft resolution³⁹ jointly sponsored by Bolivia and Uruguay under which:

"The Security Council,

"Noting that the United Kingdom Government has taken certain measures to meet the situation and that to be effective these measures should correspond to the gravity of the situation,

"

"4. Calls upon the United Kingdom Government to quell this rebellion of the racist minority;

"5. Further calls upon the United Kingdom Government to take all other appropriate measures which would prove effective in eliminating the authority of the usurpers and in bringing the minority régime in Southern Rhodesia to an immediate end;

"6. Calls upon all States not to recognize this illegal authority and not to entertain any diplomatic or other relations with that illegal authority;

"7. Calls upon the United Kingdom Government, as the working of the Constitution of 1961 has broken down, to take immediate measures in order to allow the people of Southern Rhodesia to determine their own future consistent with the objectives of General Assembly resolution 1514 (XV);

"8. Calls upon all States to refrain from any action which would assist and encourage the illegal régime and, in particular to desist from providing it with arms, equipment and military material, and to do their utmost in order to break all economic relations with Southern Rhodesia including an embargo on oil and petroleum products;

"9. Calls upon the United Kingdom Government to enforce urgently and with vigour the measures it has announced, as well as those mentioned in paragraph 8 above;

"

"11. Decides to keep the question under review in order to examine what other measures it may deem it necessary to take."

After explaining the objectives of the draft resolution, he pointed to the fact that it did not mention

³⁹ S/6955, O.R., 20th yr., Suppl. for Oct.-Dec. 1965, pp. 390-391.

Chapters VI or VII of the Charter, or attempt to define any criterion that might imply the use of armed force under the prevailing circumstances. What it hoped to do, however, was to reconcile the conflicting views existing in the Council and ensure the support of the Security Council and other Members of the Organization for the effective implementation of the measures adopted by the United Kingdom.

At the 1265th meeting on 20 November 1965, the draft resolution was adopted by 10 votes in favour, none against with 1 abstention.⁴⁰

⁴⁰ 1265th meeting, para. 4; S/RES/217 (1965), *O.R.*, 20th yr., *Resolutions and Decisions of the Security Council, 1965*, pp. 8-9.

At the same meeting, the representative of the Ivory Coast stated that in view of the Council's decision, he would not press for a vote on his draft resolution.⁴¹ However, if the situation in Southern Rhodesia was not brought to an end, and if the Council had to resume discussion on it in order to consider what measures it might take to end the rebellion, the Council would then be called upon carefully to consider a draft resolution within the framework of Articles 41 and 42 of Chapter VII of the Charter. The representative of the United Kingdom likewise did not press for a vote on his draft resolution.⁴²

⁴¹ 1265th meeting, para. 38.

⁴² 1265th meeting, para. 63.

Part III

CONSIDERATION OF THE PROVISIONS OF ARTICLES 42-47 OF THE CHARTER

NOTE

It will be noted that in the previous section Articles 41 and 42 have been treated jointly. This was due to the fact that both in the consideration of the question of race conflict in South Africa and the situation in Southern Rhodesia invocation of Article 42 had been made in connexion with the application of Article 41. Those members favouring the employment of enforcement measures contended that the limited economic sanctions advocated by some were unlikely to be effective, and consequently, it was incumbent on the Council to employ a full range of sanctions, including if necessary, the use of force to insure their successful implementation. The principal issue in this regard, therefore, centred not so much on the constitutionality of the use of force provided in Article 42 of the Charter, but on its efficacy in dealing with the urgent situations under consideration, as well as its implications and consequences for the Organization. Consequently, the reference to Articles 42 and 43 of the Charter have not been developed in separate case histories, as no constitutional discussion was involved.

Part IV

CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER

NOTE

The three cases presented in this part concern those instances in which action by a Member State claimed to have been taken in self-defence gave rise to discussion of the provisions of Article 51 of the Charter and the rights and obligations of Members under that Article. In two instances⁴³ the discussion centred on the distinction between the right of self-defence as defined in Article 51 of the Charter and "the right of retaliation" referred to by certain representatives. In another instance⁴⁴ it was maintained that the Council should pronounce itself on whether the resort to military action by a Member State termed by it to be "an emergency defence measure" could be considered as an exercise of the right of self-defence within the meaning of Article 51.

CASE 7.⁴⁵ COMPLAINT BY YEMEN: In connexion with the joint draft resolution submitted by Ivory Coast and Morocco voted upon and adopted on 9 April 1964

[*Note:* Discussion of this complaint centred on the question whether the action taken by the United Kingdom against the Yemen Arab Republic was an act of self-defence under Article 51 of the Charter or an act of reprisal that had been censured in the

⁴³ For the text of relevant statements see:

1106th meeting: Iraq,* paras. 64-69; UAR,* para. 111; USSR, paras. 79-80; United Kingdom, paras. 34, 38, 51, 54.

1107th meeting: Iraq,* paras. 13-18, 20, 21, 41.

1108th meeting: Ivory Coast, paras. 50-54; Morocco, paras. 25-26, 42.

1109th meeting: Iraq,* paras. 55-58; Morocco, paras. 99-100; Syria,* paras. 75, 79; United Kingdom, paras. 25-31.

1110th meeting: Czechoslovakia, paras. 23-25; Morocco, para. 39.

1111th meeting: China, para. 12.

⁴³ Cases 7 and 8.

⁴⁴ Case 9.

past by the Council. A draft resolution condemning reprisals as being incompatible with the principles of the United Nations was adopted by the Security Council.]

At the 1106th meeting on 2 April 1964, the representative of the United Kingdom replying to a Yemeni allegation that the United Kingdom had committed aggression against the Yemen Arab Republic contended that Yemeni authorities had committed a series of deliberate acts of aggression and provocations against the Federation of South Arabia. The United Kingdom Government had seen no alternative but to make a defensive response to the Yemeni attacks in order to preserve the territorial integrity of the Federation of South Arabia for whose defence it was responsible.

The representative of Iraq * maintained that the British "counter-attack" was a retaliatory action which in the past had been rejected by the Security Council. Turning to the disparity between the action alleged to have been initiated by Yemen and the counter-action taken by the United Kingdom, he stated that the Council should take action to condemn "the theory of retaliation" as a violation of the Charter and therefore as being inconsistent with the obligation of Member States under it.

The representative of the United Arab Republic * contended that the action by the United Kingdom was not merely a counter-attack, locally ordered and approved, but a retaliation which had been refuted in the past by the Council, including the United Kingdom.

At the 1107th meeting on 3 April 1964, the representative of Iraq * noted that the Council was called upon to decide whether an attack of the kind complained of involving the violation of the air space of a Member State of the United Nations and the destruction of facilities inside its frontiers was permissible under the Charter. The British Government had tried to justify its attack by contending that it was an act of self-defence. But, under the Charter, measures of self-defence were permitted "when and if an armed attack occurs against a Member of the United Nations". It was thus clear that Article 51 of the Charter envisaged an emergency situation where interim measures would be taken pending actions by the Security Council. There had been no acts of which the United Kingdom complained that could be considered as a type of armed attack with which Article 51 of the Charter was concerned. The attack against Yemen was a premeditated act of retaliation planned well in advance and sanctioned at the highest levels of the British Government. Even if alleged incursions by Yemeni aircraft and helicopters into the territory of the Federation were admitted, a proper defensive measure against such action "would have been to try to chase the aircraft and helicopters or even shoot at them if they had indeed violated the air space of the Federation Instead a whole day passed and then eight aircraft were sent from Aden to demolish the police station at Harib" in Yemen. Noting that on several occasions in the past the Council had strongly disapproved of the theory and practice of retaliation, he was of the opinion that in the present circumstances the Council could do no less than to "condemn" the retaliatory action as inconsistent with the obligations under the Charter.

At the 1108th meeting on 6 April 1964 the representative of Morocco expressed the view that the action

by the United Kingdom against Yemen was a retaliatory action and took the position that the "resort to a punitive expedition when no state of war exists between two countries is intolerable by any standards of international conduct". The Council therefore could have no doubt about the responsibility of the United Kingdom in that regard and should thus "condemn this attack and the recourse to retaliation as being incompatible with the United Kingdom's obligation under the Charter".

The representative of the Ivory Coast was of the view that the counter-attack by the United Kingdom against Yemen could not be justified under the principle of self-defence or on the ground of provocation; therefore it would be appropriate for the Council to condemn it as being contrary to the purposes of the Charter.

At the 1109th meeting on 7 April 1964, the representative of the United Kingdom declared that the action against Yemen "was not a retaliation or a reprisal. On the contrary, the action was taken in response to an urgent request from ministers of the Federation to protect the interests and integrity of their country. It was a measure of defence". He went on to explain that in existing law there was a clear distinction between the two forms of self-help. One, which was of a retributive, or punitive nature, was termed retaliation or reprisal; the other which was to expressly contemplated or authorized by the Charter was self-defence against armed attack. The term "counter-attack" previously used by his delegation might have led to some misunderstanding and might have implied action of the nature of reprisals only. However, the use of force to repel or prevent an attack, "that is, legitimate action of a defensive nature", might sometimes have to take the form of a counter-attack. The territory of the Federation had been subjected to a series of acts of aggression over a considerable period of time and against which its people had asked to be defended. In that connexion the destruction of the fort at Harib "with the minimum use of force, was therefore a defensive measure proportionate and confined to the necessities of the case", and lacked the essential element of vengeance or retribution. It was the latter use of force which was condemned by the Charter "and not the use of force for defensive purposes such as warding off future attacks".

At the same meeting, the representative of Iraq * contended that the Harib attack was inconsistent with the obligations of Member States under the Charter, since it was completely disproportionate to the immediate cause which, according to the United Kingdom "was the flying of a helicopter, and a few days before that, the raid by a few aircraft".

The representative of Syria * after citing the provisions of Article 51, maintained that self-defence could not be exercised unless an armed attack occurred against a Member of the United Nations. However, the Federation of South Arabia was not a Member of the United Nations. "Consequently, even if it were possible to prove that the action taken by the United Kingdom forces . . . was justified, such proof is not juridically or legally admissible by reason of the very fact that the action does not fall within the purview of Article 51 of the Charter—because the so-called Federation is not a Member of the United Nations". Under the Charter "if someone is to be defended

against attack, that someone must be a Member of the United Nations".

The representative of Morocco maintained that self-defence excluded the right of counter-attack. If the reprisal of 28 March had been interpreted as a case of self-defence, then respect for territorial integrity and the use of military means for self-defence would legitimately create "a right of belligerence which the United Kingdom so far eschews".

At the 1110th meeting on 8 April 1964, the representative of Czechoslovakia maintained that if the alleged attack had been carried out by an isolated aircraft and helicopter, the only immediate defence should have been directed against those craft. However, what was attacked by a superior air force was a land objective which had nothing to do with the alleged raids. The scope of the action against Harib had exceeded the dimensions of the incident and could not qualify as self-defence under Article 51.

At the same meeting, the representative of Morocco introduced a draft resolution⁴⁶ submitted jointly by the Ivory Coast and Morocco under which the Council

"...

"Having considered the complaint of the Yemen Arab Republic regarding the British air attack on Yemen territory on 28 March 1964 (S/5635),

"...

"1. Condemns reprisals as incompatible with the purposes and principles of the United Nations;

"2. Deplores the British military action at Harib on 28 March 1964."

At the 1111th meeting on 9 April 1964, the representative of China noted that paragraph 1 of the draft resolution "condemns reprisals" without having defined the terms. He was therefore assuming that as used in the paragraph, the term "reprisals" denoted a response involving the use of force, since there are different types of reprisals, some of which might take the form of political and economic pressures which were not necessarily incompatible with the principles of the Charter. Moreover, the Council's condemnation of reprisals in general should not be interpreted to mean that the Council overlooked or condoned acts of international delinquency that were calculated to provoke reprisals. At the same meeting the draft resolution was adopted by 9 votes to none, with 2 abstentions.⁴⁷

CASE 8.⁴⁸ COMPLAINT BY THE UNITED STATES (TONKIN GULF INCIDENT): In connexion with a United States complaint of an armed attack against naval vessels in international waters

[Note: During consideration of the complaint, the contention that the actions taken by the United States against North Viet-Nameese torpedo boats and supply facilities were acts of self-defence in accordance with Article 51 of the Charter was disputed on the grounds

⁴⁶ S/5649, same text as S/5650, O.R., 19th yr., Suppl. for April-June 1964, p. 9.

⁴⁷ 1111th meeting, paragraph 24, S/RES/188 (1964), O.R., 19th yr., Resolutions and Decisions of the Security Council, 1964, pp. 9-10. For discussion concerning prevalence of Charter obligations over provisions of protective treaties, see chapter XII, Case 11.

⁴⁸ For texts of relevant statements, see:

1140th meeting: United Kingdom, paras. 78-81; United States, paras. 33, 40, 44-46.

1141st meeting: Czechoslovakia, paras. 27-32; USSR, paras. 81-84; United States, paras. 49, 52.

that these actions went beyond the requirements of self-defence and were in the nature of reprisals previously condemned by the Council.]

At the 1140th meeting on 5 August 1964, the representative of the United States after describing a series of incidents between 2 and 3 August 1964 and the warning of his Government to "the authorities in Hanoi" of the grave consequences that would result from any further unprovoked offensive military action, stated that on 4 August two United States destroyers were again subjected to an armed attack by an undetermined number of torpedo boats of the North Viet-Nameese navy. In response, certain aerial strikes had been carried out against North Viet-Nameese torpedo boats and their supply facilities. He emphasized however, that "this action was limited in scale... its targets being the weapons and facilities" against which the United States had been forced to defend itself. It was "a limited and measured response fitted precisely to the attack that produced it". Such action taken in self-defence was within the provisions of the Charter of the United Nations.

The representative of the United Kingdom stated that the United States had a right in accordance with the principle of self-defence in international law to take action directed to prevent the recurrence of attacks on its ships. "Preventive action in accordance with that aim is an essential right which is embraced by any definition of that principle of self-defence." Therefore, the action taken by the United States seemed to be fully consistent with Article 51 of the Charter, and, as the United States representative had emphasized, its action "was a limited response tailored to the circumstances". It was the right of every nation whose ships were subjected to acts of aggression on the high seas to take immediate measures to that end in accordance with the right of self-defence. It was also right that the United States representative should have reported to the Council the measures which his Government had felt compelled to take in exercise of that right. In that connexion members of the Council had an obligation to uphold the right of self-defence recognized in Article 51 of the Charter.

At the 1141st meeting on 7 August 1964, the representative of Czechoslovakia pointed out that the alleged attack by North Viet-Nameese torpedo boats against United States destroyers and the United States response which had been defended as an act of legitimate self-defence under Article 51 of the Charter, exceeded the definition of self-defence in that Article. According to the United States version of the incident, the alleged Viet-Nameese attack was immediately followed by an equally alleged act of self-defence, thereby repelling the initial attack. There was, therefore, even in the United States version "no place for any further United States military action in terms of self-defence, and consequently, the attack by the United States against the territory of the Democratic Republic of Viet-Nam could not be considered as an act of legitimate self-defence. At the most, it could be qualified as an act of reprisal; and the Security Council, by its resolution of 9 April 1964⁴⁹ condemned all reprisals as incompatible with the principles of the United Nations".

The representative of the United States replying to the contention that the counteraction by his Government went beyond the requirements of self-defence, asserted that the action taken in self-defence was

⁴⁹ S/5650, O.R., 19th yr., Suppl. for April-June 1964, p. 9.

limited to the provocation and directed only against the boats and the supporting bases in response to a deliberate assault against the armed forces of the United States.

The representative of the USSR drew attention to the difference between the right of self-defence and the "right of retaliation" and stated that "the recognition of the right of self-defence in Article 51 of the United Nations Charter *ipso jure* precludes the right of retaliation". Consequently, the actions which culminated in the bombing of the territory of the Democratic Republic of Viet-Nam could not have been done in self-defence or covered by that concept.

The meeting was adjourned following the suggestion of the President (Norway) that the next meeting be called after consultation with the members of the Council.⁵⁰

CASE 9.⁵¹ THE PALESTINE QUESTION: In connexion with the Moroccan draft resolution voted upon and rejected on 17 December 1964 and with the joint draft resolution submitted by the United Kingdom and the United States voted upon and rejected on 21 December 1964

[*Note:* The contention that certain air strikes by Israel against Syria were acts of legitimate self-defence was disputed on the grounds that the actions went beyond the terms of Article 51 of the Charter. It was asserted that while the right of self-defence was a basic prerogative of States, decisions to exercise that right and the way such decisions were applied should be open to investigation and adjudication by the Council.]

At the 1162nd meeting on 16 November 1964, the representative of Israel * explained that the action by his Government against Syria had been taken as a last resort after the shelling of its villages had continued for forty-five minutes and after an appeal by the United Nations representative for a cease-fire had been accepted by Israel but ignored by the Syrians. The purpose of the air strike was to suppress gun positions which were operating at the time against the Israel population and territory. His Government accepted full responsibility "for this defensive measure." It had been left with no alternative course of action in discharge of its obligation to defend the State against attack.

At the 1164th meeting on 27 November 1964, the representative of Syria * disputing Israel's assertion that the action against Syria was "an emergency defence measure" or a "measure taken in the last resort", recalled that the literature on Article 51 of the Charter, dealing with self-defence was quite extensive and that "terms such as 'exploratory self-defence', 'preventive self-defence,' . . . have already found their

way into the highest councils dealing with armed aggression". He maintained that although self-defence and self-preservation remained the sole prerogative of States, the decisions to resort to them and the way that decision was applied should be open to investigation and adjudication and that was what the Council was being requested to undertake. He was thus of the view that the plea of "emergency defence measure" or "measure taken in the last resort" employed by Israel to justify the air attack against Syria was "at best an abuse of right".

At the 1169th meeting on 8 December 1964, the representative of Morocco introduced a draft resolution⁵² under which the Security Council

"*Noting with concern* that Israel, in the course of its aggression on 13 November 1964 against the Syrian Arab Republic, used its air force to bomb peaceful villages and defensive positions in Syrian territory, and the violation of the Syrian air space on 13 and 14 November 1964,

"1. *Condemns* the air action undertaken by the armed forces of Israel against the territory of the Syrian Arab Republic on 13 November as constituting a violation of the cease-fire provisions of the Security Council's resolution of 15 July 1948 and as being both incompatible with the obligations binding upon the parties under the terms of the General Armistice Agreement and contrary to the Charter of the United Nations;

"2. *Expresses* the most severe condemnation with regard to this action, which is of such a nature as to endanger peace in that area."

At the 1179th meeting on 11 December 1964 the draft resolution was voted upon and rejected by 3 votes in favour, none against, with 8 abstentions.⁵³

At the same meeting, the United States introduced a draft resolution⁵⁴ jointly submitted by the United Kingdom and the United States under which the Security Council,

"*Having heard* the statements by the representative of Israel and the Syrian Arab Republic,

" . . .

"1. *Deplores* the renewal of military action on the Israel-Syria Armistice Demarcation Line on 13 November 1964 and *deeply regrets* the loss of life on both sides".

At the 1182nd meeting on 21 December 1964 after certain amendments to the draft resolution were adopted, the amended draft resolution failed of adoption by a vote of 8 in favour and 3 against, one of the negative votes being that of a permanent member of the Council.⁵⁵

⁵⁰ 1141st meeting, para. 88.

⁵¹ For texts of relevant statements see:

1162nd meeting: Israel* paras. 59, 100; Morocco, paras. 92, 93.

1164th meeting: Syria* paras. 117-120.

1169th meeting: Morocco, para. 11.

⁵² S/6085/Rev.1, O.R., 19th yr., Suppl. for Oct.-Dec. 1964, p. 209.

⁵³ 1179th meeting, para. 28.

⁵⁴ S/6113, O.R., 19th yr., Suppl. for Oct.-Dec. 1964, pp. 318-319.

⁵⁵ 1182nd meeting, para. 41.

Part V

** CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER IN GENERAL