

Chapter XI

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER

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INTRODUCTORY NOTE

In the previous volumes of the *Repertoire*, in chapter XI were presented instances in which proposals placed before the Security Council had evoked discussion regarding the application of Chapter VII of the Charter. The present *Supplement*, however, deals with the decisions of the Council which either constitute explicit applications of the provisions of Chapter VII or might be considered as instances of implicit applications thereof.

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 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 inter-

national 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-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence 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 Security Council has taken one decision¹ implicitly and two decisions² explicitly under Article 39. In one instance, a draft resolution containing an implicit reference to Article 39 was not adopted.³

Article 39 was explicitly invoked in a letter⁴ informing the Secretary-General of a situation the consideration of which by the Security Council was requested in a subsequent letter.^{5, 6}

¹ Resolution 221 (1966) of 9 April 1966; see Case 1.

² Resolution 232 (1966) of 16 December 1966, see Case 3; and resolution 253 (1968) of 29 May 1968; the adoption of the latter was not preceded by a constitutional discussion bearing on Article 39.

³ Case 2.

⁴ S/8592, *OR*, 23rd yr., *Suppl. for April-June 1968*, pp. 167-168.

⁵ S/8593, *ibid.*, pp. 168-169, in connexion with the complaint by Haiti. See also chapter X, part III, section C, No. 11, p. 193.

⁶ S/7285 and Add.1 and 2, *OR*, 21st yr., *Suppl. for April-June 1966*, p. 81; S/8454, *OR*, 23rd yr., *Suppl. for Jan.-March 1968*,

During the period under review, there was no decision of the Security Council which could be considered as falling implicitly or explicitly under Article 40 of the

pp. 258-259, in connexion with the situation in Southern Rhodesia; S/7419, *OR*, 21st yr., *Suppl. for July-Sept. 1966*, pp. 38-39; S/7423, *ibid.*, pp. 39-40; S/7540, *OR*, 21st yr., *Suppl. for Oct.-Dec. 1966*, pp. 28-29, in connexion with the Palestine question; S/7902, *OR*, 22nd yr., *Suppl. for April-June 1967*, pp. 118-119; S/7907, *ibid.*, pp. 124-125; S/8403, *OR*, 22nd yr., *Suppl. for July-Sept. 1967*, p. 69; S/8044, *ibid.*, pp. 70-71, in connexion with the situation in the Middle East (I); S/8207, *OR*, 22nd yr., *Suppl. for Oct.-Dec. 1967*, pp. 202-203; S/8208, *ibid.*, pp. 192-193; S/8484, *OR*, 23rd yr., *Suppl. for Jan.-March 1968*, pp. 278-279; S/8616, *OR*, 23rd yr., *Suppl. for April-June 1968*, pp. 167-168; S/8721, *OR*, 23rd yr., *Suppl. for July-Sept. 1968*, p. 113; S/8806, *ibid.*, pp. 241-242; S/8516, *ibid.*, p. 307; S/8517, *ibid.*, p. 307; S/8878, *OR*, 23rd yr., *Suppl. for Oct.-Dec. 1968*, p. 104; S/8879, *ibid.*, pp. 104-105, in connexion with the situation in the Middle East (II); S/7503, *OR*, 21st yr., *Suppl. for July-Sept. 1966*, pp. 132-133; S/8036, *OR*, 22nd yr., *Suppl. for July-Sept. 1967*, p. 63; S/8218, *OR*, 22nd yr., *Suppl. for Oct.-Dec. 1967*, in connexion with the situation in the Democratic Republic of the Congo; S/8360, *OR*, 23rd yr., *Suppl. for Jan.-March 1968*, p. 140, in connexion with the complaint by the United States (Pueblo incident).

Charter. A few incidental references⁷ to that Article were made in the discussions in the Security Council.

CASE I.⁸ SITUATION IN SOUTHERN RHODESIA: In connexion with the draft resolution submitted by the United Kingdom and amendments thereto submitted by Mali, Nigeria and Uganda; amendments not adopted on 9 April 1966; the draft resolution adopted on the same day.

[*Note:* It was maintained that the arrival at Beira of an oil tanker, and the approach of another one did not constitute in itself a threat to peace; those were only symptoms of the main problem—the situation in Southern Rhodesia—which constituted such a threat. The Security Council should therefore decide upon measures according to Chapter VII of the Charter which were wider than those provided for in the draft resolution. On the other hand, it was contended that the Southern Rhodesia crisis was an internal problem of the United Kingdom and consequently lying within its sole responsibility. The international problem was the lack of co-operation of some States with the United Kingdom which, however, was not of such a nature that the provisions of Chapter VII could be invoked.]

At the 1276th meeting on 9 April 1966, the representative of the United Kingdom introduced a draft resolution⁹ in which, in its revised form,¹⁰ it was provided:

"The Security Council,

"Recalling its resolutions 216 (1965) of 12 November 1965 and 217 (1965) of 20 November 1965 and in particular its call to all States to do their utmost to break off economic relations with Southern Rhodesia, including an embargo on oil and petroleum products,

"Gravely concerned at reports that substantial supplies of oil may reach Southern Rhodesia as the result of an oil tanker having arrived at Beira and the approach of a further tanker which may lead to the resumption of pumping through the Companhia do Pipeline Moçambique Rodésias pipeline with the acquiescence of the Portuguese authorities,

"...

"1. Determines that the resulting situation constitutes a threat to the peace;

"..."

At the same meeting, the representative of Uganda introduced¹¹ amendments submitted jointly with Mali and Nigeria,¹² to the United Kingdom draft resolution, which read:

"..."

"2. In operative paragraph 1 replace the words "the resulting situation" by the words "the situation prevailing in Southern Rhodesia" and after the word "peace" add the words "and security",

"..."

In the course of the discussion, the representative of Jordan maintained that the Security Council should invoke Chapter VII of the Charter. To do so, it would have, under Article 39, to determine whether or not there was a breach of the peace within the meaning of the Charter, which was a question of fact. The new development offered ample proof that there was a dangerous deteriorating situation in Southern Rhodesia which threatened peace and called for more effective action. The United Kingdom draft resolution after mentioning an oil tanker that had arrived at Beira and the approach of another tanker, stated in its operative paragraph that the resulting situation constituted a threat to the peace. In so doing, the United Kingdom had brought the situation within the scope of Chapter VII, but again the United Kingdom had not gone far enough. The threat to peace did not result from an oil tanker having arrived at Beira or from the approach of another tanker. These were but some of the manifestations of the main problem, which in itself constituted a threat to peace. If there was an agreement on this distinction, the Security Council must adopt wider measures, as provided for in the Charter.

The representative of France contended that the text of the United Kingdom draft resolution was based on the fact that the machinery for economic sanctions designed to bring about the downfall of the Rhodesian administration would be endangered by the arrival at Beira of one or more oil tankers of undetermined nationality. This fact should lead the Security Council to declare that the situation thus created constituted a threat to international peace. As a logical sequence, the Council, once this threat was established, would, according to Chapter VII of the Charter, have to adopt various measures which Governments, some of them designated by name, would be requested to apply, while at the same time, a partial blockade would be put into effect by the United Kingdom. As far as France was concerned, the Territory of Southern Rhodesia was currently the responsibility of the United Kingdom Government alone. It was this consideration which determined the French attitude towards the measures that should be adopted for the settlement of the Southern Rhodesia crisis and which established the limits of the United Nations intervention in this matter. Since this crisis was an internal affair of the United Kingdom, it was incumbent upon its Government to take all the action appropriate to the circumstances. Whenever that Government took such action, principally in economic matters, France, like some other countries, had put into effect the corresponding decisions. It was this method of combining essentially United Kingdom action with adequate support on the part of other countries which seemed the only reasonable one. However, the United Kingdom was obviously not satisfied with the co-operation of some States. The problem was an international one; but it would be artificial, and therefore without foundation to invoke in this connexion the provisions of Chapter VII. Thus, at the present time, the only genuinely international problem did not constitute a threat to peace, while the Southern Rhodesian question that was its deep and underlying

⁷ 1320th meeting, para. 93, in connexion with the Palestine question;

1343rd meeting (PV), pp. 33-35, in connexion with the situation in the Middle East (I);

1402nd meeting (PV), pp. 3-5;

1407th meeting (PV), p. 51;

1440th meeting (PV), p. 62, in connexion with the situation in the Middle East (II);

1392nd meeting (PV), pp. 31-32, in connexion with the question of South West Africa.

⁸ For texts of relevant statements, see:

1277th meeting: France, paras. 90-94; Jordan, paras. 82-85.

⁹ 1276th meeting, para. 12.

¹⁰ S/7236/Rev.1; same text as resolution 221 (1966).

¹¹ 1276th meeting, paras. 44, 49-56.

¹² S/7243, *OR*, 21st yr., *Suppl. for April-June 1966*, pp. 32, 33.

cause was an internal United Kingdom problem, and in consequence, the responsibility of its Government alone.

At the 1277th meeting on 9 April 1966, the three-Power amendment was not adopted,¹³ the result of the vote being 7 in favour, none against, with 8 abstentions. The draft resolution submitted by the United Kingdom was adopted¹⁴ by 10 votes in favour, none against, with 5 abstentions, as resolution 221 (1966).

CASE 2.¹⁵ SITUATION IN SOUTHERN RHODESIA: In connexion with the draft resolution submitted by Mali, Nigeria and Uganda: voted upon and not adopted on 23 May 1966.

[*Note:* In connexion with the provision in operative paragraph 1 of the draft resolution according to which the Security Council would determine that "the situation in Southern Rhodesia continues to constitute a threat to international peace and security", it was maintained that the Council in its previous resolution 217 (1965) of 20 November 1965 and 221 (1966) of 9 April 1966, had not stated explicitly that the situation in Southern Rhodesia constituted a threat to international peace and security. For this reason, operative paragraph 1 of the draft resolution before the Council, implying that such a determination had already been made by the Council, did not correspond to the facts. It was also pointed out that in the current situation, it was more appropriate for the Council not to decide upon compulsory measures but to make recommendations.]

At the 1279th meeting on 17 May 1966, the representative of Nigeria introduced¹⁶ a draft resolution¹⁷ jointly sponsored with Mali and Uganda, in which it was provided:

"The Security Council,

"Recalling its resolutions 216 (1965) and 217 (1965) of 12 and 20 November 1965, respectively, and 221 (1966) of 9 April 1966, and in particular its call to all States to do their utmost to break off all economic relations with Southern Rhodesia, including an embargo on oil and petroleum products,

"Noting with concern that this call has not been heeded by all States and that economic measures have failed to bring down the racist régime of Salisbury,

"Pointing out that the grave threat to international peace and security inherent in the situation in Southern Rhodesia has already induced it to authorize the use of force by its resolution 221 (1966) of 9 April 1966, in the exercise of the powers which Chapter VII of the United Nations Charter alone confers upon it,

"...

"1. Determines that the situation in Southern Rhodesia continues to constitute a threat to international peace and security;

¹³ 1277th meeting, paras. 174-178.

¹⁴ *Ibid.*, para. 179.

¹⁵ For texts of relevant statements, see:

1278th meeting: Senegal, para. 45; Zambia, para. 12; 1279th meeting: Algeria, para. 22; Nigeria, para. 53; Sierra Leone, paras. 79, 83, 84;

1280th meeting: USSR, para. 101; 1281st meeting: Uruguay, paras. 29-31;

1285th meeting: Argentina, paras. 17, 18; Uruguay, para. 24.

¹⁶ 1279th meeting, para. 42.

¹⁷ S/7285/Add.1, *OR*, 21st yr., *Suppl. for April-June 1966*, pp. 82, 83.

"..."

In the course of the discussion, at the 1281st meeting on 18 May 1966, the representative of Uruguay stated that in resolution 217 (1965) of 20 November 1965, the Security Council had declared that "... the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia is extremely grave... and that its continuance in time constitutes a threat to international peace and security". This wording did not bestow on the provisions contained in that resolution the same mandatory character as implicit in decisions taken under Chapter VII of the Charter. Further, the Security Council, in operative paragraph 1 of resolution 221 (1966) of 9 April 1966, stated that in the very specific and limited case under consideration, "the resulting situation constitutes a threat to the peace". A declaration of the Council to the effect that a situation was a threat to international peace and security placed the matter within the purview of Chapter VII of the Charter and enabled the Council to apply coercive measures. However, the Security Council had not yet stated explicitly that the general situation in Southern Rhodesia constituted a threat to international peace and security, although it took two steps in that direction. This implied that Members as well as non-members of the United Nations had not been under any binding obligation to carry out the Council's decisions.

At the 1285th meeting on 23 May 1966, the representative of Argentina expressed the view that the situation in Southern Rhodesia constituted a threat to international peace and security. Once such a determination had been made, the Council had two possibilities open to it in accordance with Article 39: either to make recommendations or to adopt binding measures. At this moment, it seemed to be appropriate to choose an appeal rather than to decide upon compulsory measures whose consequences, if they did not accomplish what was decided, would undoubtedly be more and more intolerable.

At the same meeting, the representative of Uruguay reiterated that the Security Council had not determined that the general situation in Southern Rhodesia constituted a threat to international peace; for this reason, operative paragraph 1 of the three-Power draft resolution, stating that "the situation in Southern Rhodesia continues to constitute a threat to international peace and security", with the implication that the Council had already previously made such a determination, did not correspond to the real situation.

At the same meeting, the three-Power draft resolution was not adopted,¹⁸ the result of the vote being 6 in favour, 1 against, with 8 abstentions.

CASE 3.¹⁹ SITUATION IN SOUTHERN RHODESIA: In connexion with the United Kingdom draft resolution and the amendments by Mali, Nigeria and Uganda thereto: the draft resolution, as amended, voted upon and adopted on 16 December 1966.

¹⁸ 1285th meeting, para. 33.

¹⁹ For texts of relevant statements, see:

1331st meeting, United Kingdom, paras. 21, 24; 1332nd meeting: Argentina, paras. 53-55; 1333rd meeting: Japan, para. 47; United States, paras. 17, 19-21; 1335th meeting: Pakistan, para. 79; 1337th meeting: Netherlands, paras. 82-85; 1340th meeting: Jordan, para. 3; Uruguay, paras. 32, 33.

[*Note:* In the course of the discussion it was maintained that since the Security Council had already determined in a previous resolution that the continuance in time of the situation in Southern Rhodesia constituted a threat to the maintenance of international peace and security, it was for the Council to reaffirm this determination. On the other hand, it was contended that such a determination must contain an explicit finding according to the terms of Article 39 and not only an implicit statement referring to that previous resolution and to Article 39. It was further maintained that although the responsibility concerning the rebellion in Southern Rhodesia as a domestic matter rested with the administering Power of that Non-Self-Governing Territory, the consideration of its request for the action of the Council under Chapter VII of the Charter was within the competence of the Council.]

At the 1331st meeting of the Security Council on 8 December 1966, the representative of the United Kingdom introduced²⁰ a draft resolution²¹ in which it was provided:

"The Security Council,

"Reaffirming its resolutions 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965 and 221 (1966) of 9 April 1966, and in particular, its appeal to all States to do their utmost in order to break off economic relations with Southern Rhodesia,

"Deeply concerned that this call has not brought the rebellion in Southern Rhodesia to an end,

"...

"Acting in accordance with Articles 39 and 41 of the United Nations Charter, [preamble, para. 4]

"..."

In introducing the draft resolution, the representative of the United Kingdom stated that in its resolution 217 (1965) of 20 November 1965, the Security Council had determined that the "continuance in time" of the situation resulting from the unilateral proclamation of independence by the illegal authorities in Southern Rhodesia had constituted a threat to international peace and security. That situation had continued for more than a year, and it was against that background that the United Kingdom Government came before the Council with a request that it reinforce, with a resolution under Chapter VII of the Charter the measures of economic pressure which hitherto had been applied on a voluntary basis by Members of the United Nations. The illegal declaration had led to the most far-reaching consequences. The dangers to peace and stability in the whole region of central and southern Africa were acute. A small group of men there had provoked a most critical situation with great and growing danger of interracial strife and bloodshed throughout Southern Africa. The Security Council could not permit the situation to deteriorate further. The combination of circumstances flowing from the initial action of the Smith régime affected not only the stability of Rhodesia's immediate neighbours but also the maintenance of international peace and security. The situation thus created was such that the Council should invoke certain measures under Articles 39 and 41.

At the 1332nd meeting on 9 December 1966, the representative of Argentina maintained that the situation in

Southern Rhodesia had become a threat to the peace in the sense of Article 1 (1) and Article 39 of the Charter. There were two reasons why a threat to the peace in the sense of the Charter existed in this case. The first was that the continued existence of the grave situation resulting from the unilateral declaration of independence had already been described as a threat to international peace and security in resolution 217 (1965). That situation continued and perhaps was becoming even more serious. The second reason was that, regardless of the passage of time, the factual circumstances in themselves showed that there was at any moment a latent state of a breach of the peace. It was thus difficult to understand why the United Kingdom draft resolution did not specifically mention that the situation was a threat to the peace. Furthermore it was not sufficient to state this by implication through a mentioning of resolution 217 (1965) and Article 39. When action in the context of Chapter VII of the Charter was involved, the Security Council's primary obligation under Article 39 was to determine "the existence of any threat to the peace, breach of the peace or act of aggression" and then to decide on whatever measures it considered appropriate. To refrain from specifically determining the existence of a threat to the peace and merely to decide what measures should be taken would be comparable to rendering a judgement which stated the penalty and not the crime.

At the 1333rd meeting on 12 December 1966, the representative of the United States contended that the question might be raised whether the situation in Southern Rhodesia constituted a threat to the peace, which was the condition under which sanctions could be imposed under Chapter VII of the Charter. The answer laid in the fact that there were unique elements in that situation. The Council had already found particularly in resolution 217 (1965) that the continuance in time of such a situation was likely to lead to a threat to the peace. The situation was not only continuing but it was obviously growing more acute. The Council had before it an effort by a small minority to suppress the political rights of a majority and to extend into a Non-Self-Governing Territory practices of racial discrimination. The sovereign authority of the Territory came to the United Nations and requested it to take measures which would permit the restoration of the full rights of the people of Southern Rhodesia under the United Nations Charter. This was not a static but a deteriorating situation in which the danger to the peace was obviously growing and to which the Council must properly address itself.

The representative of Japan observed that it was the primary obligation of the Council, under Article 39, to determine "the existence of a threat to the peace, breach of the peace, or act of aggression", and then to decide on whatever measures were appropriate. Since the United Kingdom draft resolution invoked Article 25²² of the Charter, the Security Council should define in explicit terms that its action was taken under Chapter VII in order to ensure the effective implementation of the resolution.

At the 1335th meeting on 13 December 1966, the representative of Uganda introduced²³ amendments,²⁴ sub-

²⁰ 1331st meeting, para. 25.

²¹ S/7621.

²² See in this *Supplement*, chapter VIII, p. 117.

²³ 1335th meeting, para. 3.

²⁴ S/7630, *OR*, 21st yr., *Suppl. for Oct.-Dec. 1966*, pp. 178, 179.

mitted jointly with Mali and Nigeria, to the United Kingdom draft resolution. In amendment No. 2, it was proposed to insert before the operative paragraph of the draft resolution two operative paragraphs, of which the first new paragraph read:

"1. *Determines* that the continuance of the illegal racist régime in Southern Rhodesia constitutes a threat to international peace and security;"

At the same meeting, the representative of Pakistan expressed the view that since the situation in Southern Rhodesia after the adoption of the Council's resolution 217 (1965) continued for a much longer time than originally anticipated, it was beyond dispute that the Council regarded it as a threat to international peace and security. The other fact was that resolution 221 (1966) of 9 April 1966 had authorized the use of force which, however limited, could not be applied except in exercise of the powers conferred upon the Security Council by Chapter VII of the Charter. It was thus established that the legal prerequisites of action under Chapter VII had already been fulfilled. However, a fresh declaration to this effect as proposed in the three-Power amendment would be both necessary and appropriate.

At the 1337th meeting on 14 December 1966, the representative of the Netherlands stated that the United Kingdom characterized the action of the régime in Southern Rhodesia as a rebellion and therefore a domestic matter of the United Kingdom; at the same time, however, it had brought the subject before the Council under Chapter VII. These two aspects were not incompatible, but it was necessary to realize what the basis was of the competence of the Council to deal with the matter. Clear warning that a decision under Chapter VII could be contemplated was given in operative paragraph 1 of Security Council resolution 217 (1965). It was clear from this resolution that it was not Southern Rhodesia which was threatening international peace and security because if the Council had taken that view, it would have implied recognition of that Non-Self-Governing Territory as a subject of international law. When the resolution spoke of a threat to the peace, it referred to the situation in Southern Rhodesia. This idea had also been at the basis of resolution 221 (1966) of 9 April 1966. In the United Kingdom draft resolution, however, the fact that the situation in Southern Rhodesia threatened international peace and security was not clearly spelled out. Despite this, the Government of the Netherlands was prepared to support that draft resolution, taking into consideration that the United Kingdom as the country responsible for the Territory had requested selective mandatory sanctions under Chapter VII.

At the 1338th meeting on 15 December 1966, the representative of Uganda introduced²⁵ a revised text²⁶ of the amendments submitted by Mali, Nigeria and Uganda, according to which before operative paragraph 1 of the

²⁵ 1338th meeting, para. 149.

²⁶ S/7630/Rev.1, *OR*, 21st yr., *Suppl. for Oct.-Dec. 1966*, pp. 180, 181.

United Kingdom draft resolution would be inserted two new operative paragraphs, the first of which read:

"*Determines* that the present situation in Southern Rhodesia constitutes a threat to international peace and security;"

At the 1339th meeting on 16 December 1966 the representative of the United Kingdom submitted²⁷ a revised text of his draft resolution.²⁸

At the 1340th meeting on the same day, the representative of Jordan stated that in any resolution to be adopted by the Security Council, it should be determined that a situation existed which threatened peace within the meaning of Article 39. The United Kingdom draft resolution omitted the specific mention of this question of fact, and it was not enough to bring out this point by implication, that is, by mere reference to resolution 217 (1965) and Article 39. Determination that the situation threatened international peace and security should precede the adoption of any suitable measure under Chapter VII. The Council must, as a first step, declare unequivocally that there was a situation in fact posing a threat to international peace and security and that situation existed. The formula presented in the three-Power draft amendment would remedy the situation.

The representative of Uruguay agreed with the representative of Argentina that the mere reference to Article 39 in the United Kingdom draft resolution was not sufficient. When it was intended to take action under Chapter VII, the provisions of Article 39, which sanctioned intervention by international bodies and justified whatever measures they might adopt, must be explicitly defined. Consequently, the relevant paragraph of that draft resolution should explicitly use the words "the existence of any threat to the peace, breach of the peace or act of aggression". The nature of these events had removed the situation in Rhodesia from the United Kingdom domestic jurisdiction and had made it a matter of international concern.

At the same meeting, the representative of the United Kingdom accepted²⁹ that part of the amendment submitted by Mali, Nigeria and Uganda, to insert in his revised draft resolution a new operative paragraph 1, by which the Council would determine that "the present situation in Southern Rhodesia constituted a threat to international peace and security".

At the same meeting, this amendment was adopted³⁰ by 14 votes in favour, none against, with one abstention. The revised United Kingdom draft resolution, as amended, was adopted³¹ by 11 votes in favour, none against, with 4 abstentions.

²⁷ 1339th meeting, para. 2.

²⁸ S/7621/Rev.1, *OR*, 21st yr., *Suppl. for Oct.-Dec. 1966*, pp. 169, 170.

²⁹ 1340th meeting, para. 59.

³⁰ *Ibid.*, para. 85.

³¹ *Ibid.*, para. 110.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER

NOTE

During the period under review the Security Council, acting explicitly under Chapter VII, adopted two draft resolutions³² providing for the application of economic sanctions under Article 41. A draft resolution³³ in which Article 41 was explicitly invoked, was not adopted. A draft resolution³⁴ which has a bearing on Article 41 was adopted by the Security Council, without, however, any constitutional discussion relating to the provisions of the Article. The constitutional issues which arose in connexion with the resolutions dealt with below were concerned with the question of the type, scope and modalities of the economic sanctions to be applied by the Security Council under Article 41.

CASE 4.³⁵ SITUATION IN SOUTHERN RHODESIA: In connexion with the draft resolution submitted by Mali, Nigeria and Uganda: voted upon and not adopted on 23 May 1966.

[*Note:* In connexion with the above three-Power draft resolution, it was maintained, on the one hand, that the Security Council should adopt mandatory sanctions under Article 41. It was contended, on the other hand, that the Security Council should for the time being take no action so as not to endanger the informal talks being held in London. It was further maintained it was for the members of the Security Council to enter into consultations to arrive at an agreed formula due to the importance of the matter.]

At the 1278th meeting on 17 May 1966, the representative of Pakistan stated that it was a matter of regret that decisive enforcement measures had not been taken by the Security Council and instead, a decision had been made to impose permissive sanctions on the rebel minority régime. The obligation of Member States to comply with the decisions of the Council, even when they were not adopted under Chapter VII, however could not be denied. The expectation of the administering Power had not been fulfilled, permissive sanctions had failed, and it was necessary for the Council to adopt mandatory sanctions provided for under Chapter VII in Articles 41 and 42.

At the 1279th meeting on 17 May 1966, the representative of Nigeria introduced³⁶ a draft resolution³⁷

³² Cases 5, 6.

³³ Case 4.

³⁴ Resolution 221 (1966) of 9 April 1966; for the text, see in chapter VIII, p. 114. For the consideration in connexion with this resolution of the provisions of Article 39 and Article 42, see in this chapter, Cases 1 and 7.

³⁵ For texts of relevant statements, see:

1278th meeting: Pakistan, paras. 81, 89, 91;

1279th meeting: Nigeria, paras. 52, 53; Sierra Leone, para. 90;

1280th meeting: USSR, para. 105; United Kingdom, paras. 43-46, 61;

1281st meeting: Uruguay, paras. 31-33;

1285th meeting: Uruguay, paras. 27, 28.

³⁶ 1279th meeting, para. 42.

³⁷ S/7285/Add.1, *OR*, 21st yr., *Suppl. for April-June 1966*, pp. 82, 83.

sponsored jointly with Mali and Uganda, in which it was provided:

"The Security Council,

"Recalling its resolution 216 (1965) and 217 (1965) of 12 and 20 November 1965, respectively, and 221 (1966) of 9 April 1966, and in particular its call to all States to do their utmost to break off all economic relations with Southern Rhodesia, including an embargo on oil and petroleum products,

"Noting with concern that this call has not been heeded by all States and that economic measures have failed to bring down the racist régime of Salisbury,

"...

"Gravely concerned by the reports that substantial supplies of oil are reaching Southern Rhodesia and that arrangements are being made to devise a permanent system of oil supply to that territory, [preamble, para. 3]

"Noting with regret that the administering Power has made no effort to open negotiations with the leaders of African political parties with a view to establishing in Southern Rhodesia a Government consistent with the aspirations of the people of Zimbabwe, [preamble, para. 4]

"Disturbed at the grave consequences which negotiations between the United Kingdom of Great Britain and Northern Ireland and the racist régime of Salisbury, without the participation of the genuine representatives of the people of Zimbabwe, might entail for the rights of that people to freedom and independence, [preamble, para. 5]

"1. Determines that the situation in Southern Rhodesia continues to constitute a threat to international peace and security;

"2. Calls upon all States to apply measures with a view to the complete severance of economic relations and communications with Southern Rhodesia in accordance with Article 41 of the United Nations Charter;

"3. Invites the Portuguese and South African Governments, in particular, to take forthwith the necessary measures under Article 41 of the Charter to sever economic relations and communications with Southern Rhodesia;

"4. Calls upon all States, and particularly the Portuguese and South African Governments, to take all necessary measures to prevent the supply of oil and petroleum products to Southern Rhodesia;

"..."

In introducing the three-Power draft resolution, the representative of Nigeria said that its sponsors called upon all States to apply measures with a view to the complete severance of economic relations with Southern Rhodesia in accordance with Article 41. This Article had been intended to be applied in certain circumstances. The situation in Southern Rhodesia provided a set of

circumstances for which the application of Article 41 was suitable.

In the course of the discussion at the same meeting, the representative of Sierra Leone observed that the Southern Rhodesian problem had reached the stage where the only course of action open to the Security Council was a resort to such actions as might be necessary under Articles 41 and 42 of Chapter VII.

At the 1280th meeting on 18 May 1966, the representative of the United Kingdom referring to the informal talks in London, the purpose of which was to find out whether it was possible to arrive at a basis for negotiations with Salisbury, stated that if it was not possible to achieve a just settlement that would protect the rights of all the people of Rhodesia, then a new situation would arise and it would be necessary to consider the problem again. Further action at this time by the United Nations, however, would only be likely to prejudice the achievement of such a settlement.

The representative of the USSR stated that the Security Council should adopt the most effective measures against the racist régime in Southern Rhodesia up to the application of sanctions under Chapter VII in complete accordance with the principles and provisions of the Charter.

At the 1281st meeting on 18 May 1966, the representative of Uruguay contended that the time had come for the Security Council to consider the adoption of certain mandatory measures of a general nature under Chapter VII. Among them, the Security Council should consider the following: first, to call on all States not to recognize the illegal régime in Southern Rhodesia or to maintain relations, diplomatic or otherwise, with it; secondly, to urge all States to take appropriate action to prevent the supply of oil and petroleum products to Southern Rhodesia; and, thirdly, to call upon all States to take the necessary steps for the severance of economic relations with Southern Rhodesia excepting, for humanitarian reasons, the supply of food-stuffs, clothing, and medicine. These measures were mandatory and, under Article 25, all States Members of the United Nations must put them into effect. Failure to do so would lead the Security Council to consider in the future what action should be taken.

At the 1285th meeting on 23 May 1966, the representative of Uruguay stated that the adoption of the three-Power draft resolution, which contemplated preemptory measures, would be tantamount to an international agreement imposing obligations not only on the States members of the Security Council but also on all Members of the United Nations by virtue of the commitment they had assumed on signing the Charter. As with any international agreement containing specific and detailed obligations, this would require careful consideration and adjustment. There would thus be a need for consultations among the members of the Council so as to find a formula it could approve. However, so far the Council had been unable to make use of such a procedure to the extent necessary.

At the same meeting, the three-Power draft resolution was not adopted,³⁹ the result of the vote being 6 in favour, 1 against and 8 abstentions.

³⁹ 1285th meeting, para. 33.

CASE 5.³⁹ SITUATION IN SOUTHERN RHODESIA: In connexion with the draft resolution submitted by the United Kingdom and amendments thereto submitted jointly by Mali, Nigeria and Uganda, voted upon and adopted, as amended, on 16 December 1966.

[*Note:* During the discussion, it was maintained that since the Security Council had determined that the situation in Southern Rhodesia constituted a threat to international peace and security within the meaning of Article 39, it had to apply under Article 41 comprehensive rather than selective sanctions against it, mandatory for all Member States according to Article 25 of the Charter and for all non-member States on the basis of Article 2(6).]

At the 1331st meeting on 8 December 1966, the representative of the United Kingdom stated that the aim of his Government was to bring the rebellion by the illegal régime in Rhodesia to an end, which objective was to be achieved by peaceful means. The United Kingdom Government would ask the Security Council to impose on all States to carry out, with the same intensity, the measures it had itself taken since the illegal declaration of independence on 11 November 1965, which affected not only the stability and progress of its immediate neighbours but also the maintenance of international peace and security. The situation thus created was such that the Council should decide upon certain measures under Articles 39 and 41 of the Charter. The United Kingdom draft resolution provided for selective mandatory sanctions pursuant to those Articles on the export of those commodities which were of critical importance to Rhodesia's foreign trade or the import of arms and military supplies. The decisions of the Council would become binding upon Member States by virtue of Article 25. If any State were to decide that it would not conform with the Council's decision, that would create a new situation which would no doubt be raised in due course. However, selective sanctions were proposed against Rhodesia only. The Security Council must proceed step by step in dealing with this situation which must not be allowed to develop into an economic or military confrontation that would have incalculable consequences for the whole of central and southern Africa, going far beyond the issues raised by the Rhodesian problem. The representative pointed out further that as to the question of how commodities for sanctions should be selected, the following criteria should apply: they should be those export commodities against which sanctions could be most effectively applied by the Member States and the sanctions proposed should be those which would cause the greatest economic damage to the illegal régime. With a view to the strong measure of support for the inclusion of oil in the mandatory sanctions, if an amendment in this sense were to be made in acceptable terms, the United Kingdom would not oppose it, on the basis of understanding of the importance of not allowing sanctions to escalate into economic confrontation with third States.

³⁹ For texts of relevant statements, see:

1331st meeting: United Kingdom, paras. 5, 22-27, 31-33, 38;
1332nd meeting: Argentina, paras. 57, 59;
1333rd meeting: Japan, paras. 44, 47, 49; Senegal, para. 38;
United States, paras. 12, 13, 25;
1335th meeting: Uganda, para. 17; Pakistan, para. 87;
1336th meeting: India, paras. 10, 16;
1337th meeting: Netherlands, para. 84;
1340th meeting: Jordan, para. 10; Uruguay, paras. 34, 38.

At the same meeting, the representative of the United Kingdom introduced ⁴⁰ a draft resolution ⁴¹ in which it was provided:

"The Security Council,

"Reaffirming its resolutions numbers 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965, and 221 (1966) of 9 April 1966, and in particular its appeal to all States to do their utmost in order to break off economic relations with Southern Rhodesia,

"Deeply concerned that this call has not brought the rebellion in Southern Rhodesia to an end,

"Reaffirming that to the extent not superseded in this resolution, the measures provided for in resolution 217 (1965) of 20 November 1965, as well as those initiated by Member States in implementation of that resolution, shall continue in effect,

"Acting in accordance with Articles 39 and 41 of the United Nations Charter,

"1. Decides that all States Members of the United Nations shall prevent:

"(a) The import into their territories of asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products and hides, skins and leather originating in Southern Rhodesia and exported therefrom after the date of this resolution;

"(b) Any activities by their nationals or in their territories which promote or are calculated to promote the export of these commodities from Southern Rhodesia and any dealings by their nationals or in their territories in any of these commodities originating in Southern Rhodesia and exported therefrom after the date of this resolution, including in particular any transfer of funds to Southern Rhodesia for the purposes of such activities or dealings;

"(c) Shipment in vessels or aircraft of their registration of any of these commodities originating in Southern Rhodesia and exported therefrom after the date of this resolution;

"(d) Any activities by their nationals or in their territories which promote or are calculated to promote the sale or shipment to Southern Rhodesia of arms, ammunition of all types, military aircraft, military vehicles, and equipment and materials for the manufacture and maintenance of arms and ammunition in Southern Rhodesia,

notwithstanding any contracts entered into or licenses granted before the date of this resolution;

"...".

At the 1332nd meeting on 9 December 1966, the representative of Argentina stated that his Government was, for the time being, in favour of those measures which were listed in Article 41, and did not include the use of force. Before resorting to this final step, the Security Council should try such measures as might achieve the purpose of maintaining international peace and security, avoiding armed confrontations the consequences of which would be quite unpredictable. Adoption of the measures

under Article 41 would be a sufficient remedy for the situation. However, the Government of Argentina would not concur in the approval of measures which had no chance of success. Its desire was, to use the wording of Article 1 (1) of the Charter, that these collective measures should be "effective". If, however, they were to be effective, they must be implemented by all States, whatever their economic interests or geographic position. The proposed measures were obligatory for all Member States under Article 25 and they were also binding on non-member States under Article 2(6). If they would be adopted, nobody could avoid implementing them.

At the 1333rd meeting on 12 December 1966, the representative of the United States noted that the Security Council was asked to impose, under Chapter VII of the Charter, mandatory sanctions against the Rhodesian régime. The sanctions, in the view of the United States Government, had one purpose only: to bring about a peaceful settlement of the Rhodesian problem. They were necessary in order to persuade the illegal régime that the international community would not tolerate the existence of a discriminatory system based on minority rule in defiance of the United Nations and its principles.

The representative of Japan observed that Security Council resolution 217 (1965) had determined that the continuance in time of the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia had constituted a threat to international peace and security. That situation continued for more than a year and it was such that the Council should call for binding measures under Article 41 of the Charter.

At the 1335th meeting on 13 December 1966, the representative of Uganda introduced ⁴² amendments ⁴³ to the United Kingdom draft resolution submitted jointly with Mali and Nigeria. In the amendments, it was proposed to insert two new operative paragraphs and to renumber former operative paragraph 1 as operative paragraph 3. In addition, the following amendments were proposed:

"3. Amend sub-paragraph (a) of former operative paragraph 1 as follows:

In the third line, insert between 'leather' and 'originating' the following: ', coal and all manufactured goods'.

"4. After sub-paragraph (d) of former operative paragraph 1, insert the following sub-paragraph:

'(e) participating in their territories or territories under their administration or in land or air transport facilities or by their nationals or vessels of their registration in the supply of oil or oil products to Southern Rhodesia.'

"5. After former operative paragraph 1 (now operative paragraph 3), insert the following five operative paragraphs:

"...".

"8. Calls upon all States not to render financial or other economic aid to the illegal racist régime in Southern Rhodesia.'

"...".

⁴⁰ 1331st meeting, para. 25.

⁴¹ S/7621.

⁴² 1335th meeting, para. 3.

⁴³ S/7630, OR, 21st yr., Suppl. for Oct.-Dec. 1966, pp. 178-179.

At the 1336th meeting on 13 December 1966, the representative of India stated that mandatory sanctions of a general and comprehensive character should be applied under Chapter VII of the Charter and should cover both exports and imports, including the export of petroleum and petroleum products to Rhodesia under Article 41.

At the 1338th meeting on 15 December 1966, the representative of Uganda introduced ⁴⁴ a revised text ⁴⁵ of the amendments submitted by Mali, Nigeria and Uganda, in which the text of the amendments listed in the preceding paragraph remained unchanged.

At the 1339th meeting on 16 December 1966, the representative of the United Kingdom submitted ⁴⁶ a revised text of the United Kingdom draft resolution ⁴⁷ which incorporated a new operative sub-paragraph 1(e), which read:

"(e) any activities by their nationals or in their territories which promote or are calculated to promote the supply to Southern Rhodesia of all other aircraft and motor vehicles and of equipment and materials for the manufacture, assembly or maintenance of aircraft and motor vehicles in Southern Rhodesia; the shipment in vessels and aircraft of their registration of any such goods destined for Southern Rhodesia; and any activities by their nationals or in their territories which promote or are calculated to promote the manufacture or assembly of aircraft or motor vehicles in Southern Rhodesia;"

At the 1340th meeting on 16 December 1966, the representative of Uruguay maintained that the United Nations was competent to apply economic, financial and other sanctions against Southern Rhodesia. It must be borne in mind, however, that the sanctions provided for under Article 41 were not only binding upon all Member States as stated in Article 25 but were also obligatory for non-member States in accordance with Article 2(6) of the Charter.

At the same meeting, the third of the joint amendments submitted by Mali, Nigeria and Uganda, was not adopted,⁴⁸ the result of the vote being 8 votes in favour, none against, with 7 abstentions; the fourth amendment was adopted ⁴⁹ by 14 votes in favour, none against, with 1 abstention; paragraph 8 in the fifth amendment was adopted ⁵⁰ by 14 votes in favour, none against, with 1 abstention. The revised draft resolution submitted by the United Kingdom, as amended, was adopted ⁵¹ by 11 votes in favour, none against, with 4 abstentions, as resolution 232 (1966).

CASE 6.⁵² SITUATION IN SOUTHERN RHODESIA: In connexion with the letter of submission dated 12 March 1968; with the draft resolution jointly submitted by

⁴⁴ 1338th meeting, para. 146.

⁴⁵ S/7630/Rev.1, *OR*, 21st yr., *Suppl. for Oct.-Dec. 1966*, pp. 180-181.

⁴⁶ 1339th meeting, para. 2.

⁴⁷ S/7621/Rev.1, *OR*, 21st yr., *Suppl. for Oct.-Dec. 1966*, pp. 169-170.

⁴⁸ 1340th meeting, para. 88.

⁴⁹ *Ibid.*, para. 89.

⁵⁰ *Ibid.*, para. 94.

⁵¹ *Ibid.*, para. 110.

⁵² For texts of relevant statements, see:

1399th meeting (PV): Algeria, pp. 16, 18-20; Ethiopia, pp. 41,

Algeria, Ethiopia, India, Pakistan, and Senegal; with the draft resolution submitted by the United Kingdom; and with the draft resolution submitted by the members of the Security Council: the latter voted upon and adopted on 29 May 1968; the two other draft resolutions not pressed to a vote.

[*Note:* In the course of the discussion, the question of the scope and the modalities of the application of economic sanctions under Article 41 arose. It was maintained that the selective sanctions against Southern Rhodesia previously adopted by the Security Council must extend to total and comprehensive sanctions resulting in Southern Rhodesia's complete economic isolation.]

By letter ⁵³ dated 12 March 1968 addressed to the President of the Security Council, the representatives of Algeria, Botswana, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Kenya, Lesotho, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta and Zambia stated that selective mandatory sanctions adopted by the Security Council in its resolution 232 (1966) of 16 December 1966, had failed. It was incumbent upon the Council to examine the continuing grave situation in Southern Rhodesia (Zimbabwe) which still constituted a threat to international peace and security and to envisage the necessary measures and action under Chapter VII of the Charter with a view to enabling the people of Southern Rhodesia (Zimbabwe) to exercise their right to self-determination in accordance with General Assembly resolution 1514 (XV).

At the 1399th meeting on 19 March 1968, the representative of Algeria contended that it became necessary to reconsider the problem of sanctions as provided for in resolution 232 (1966). If economic sanctions were to be completely effective, it was necessary that the frontiers of Southern Rhodesia be completely sealed henceforth. Also South Africa and Portugal must be compelled to comply with the implementation of sanctions to be adopted. The sanctions must be total: all Members of the United Nations and its specialized agencies must break off all consular relations and not recognize in any way any travel documents issued by the Salisbury authorities; the same States must be asked to implement all the measures provided for in Article 41, including the interruption of rail, sea, air, postal, telegraphic, radio and other means of communications, including also information media such as the press, films and television programmes.

The representative of the United Kingdom stated that the Security Council had a duty to explore and to examine every effective and practicable method to supplement and sustain the measures already taken.

The representative of Ethiopia observed that the Security Council should address itself to an evaluation of the effects of the selective mandatory sanctions decided

42, 48; United Kingdom, p. 32; 1400th meeting (PV): Canada, p. 17; India, pp. 12-13; Jamaica, p. 26; USSR, p. 52;

1408th meeting (PV): Brazil, pp. 33-35; China, p. 43; Pakistan, pp. 38-40; Senegal (President), p. 51;

1428th meeting (PV): USSR, pp. 18-20.

⁵³ S/8454, *OR*, 23rd yr., *Suppl. for Jan.-March 1968*, pp. 258-259.

upon in its resolution of 16 December 1966 and, in the light of such an evaluation, to examining new and additional measures sufficiently adequate to remove the threat to international peace and security resulting from the situation in Southern Rhodesia. However, no sanctions, even if they were comprehensive, could be effective unless they were to include the Portuguese Territories and South Africa as well. Furthermore, sanctions without some means of following up their implementation could have no effect. Therefore the Council must decide on specific and appropriate measures which could enable it to follow up the implementation of its decisions.

At the 1400th meeting on 20 March 1968, the representative of India observed that the Security Council should impose comprehensive mandatory economic sanctions and should issue a warning that all Member States of the United Nations would be bound to comply with the sanctions imposed in terms of their obligations under Article 25 of the Charter.

The representative of Canada expressed the view that the Security Council must try harder to make the mandatory economic sanctions work. This was a matter involving the isolation of the Rhodesian régime. Particular attention should be given to the possibility of broadening the mandatory economic sanctions to a comprehensive and complete embargo on trade against Rhodesia.

The representative of Jamaica pointed out that an extension of the mandatory economic sanctions by the Security Council or an attempt to tighten the existing sanctions could founder on the policies of the Governments of Portugal and South Africa. If sanctions were to be effective, some action had to be taken concerning the policies of those two Governments.

At the 1408th meeting on 26 March 1968, the representative of Brazil stated that the Security Council should tighten the economic pressure on Southern Rhodesia. This could be done through a broadening of the trade embargo. In applying selective sanctions to Rhodesia, the Council had not even partially utilized the entire range of economic measures which it could take under the Charter; furthermore, economic sanctions were only one of the many kinds of sanctions, short of the use of force, available to the Council under Article 41.

The representative of Pakistan contended that the Security Council, acting under Chapter VII of the Charter, must decide upon comprehensive mandatory sanctions. Furthermore, it should also establish a procedure to close loop-holes and to ensure strict implementation of the resolution under its own continuing direction and control, in addition to the Secretary-General's administrative supervision of the implementation of the resolution.

The representative of China observed that there could be no effective economic sanctions without the co-operation of all Member States since unless they were prepared to fulfil their obligations under the Charter, the sanctions would not be effective. The representative agreed with the suggestion that sanctions authorized by the Council should be broadened into a total embargo against Rhodesia. However, such comprehensive mandatory economic sanctions would require full co-operation of all Member States.

The President, speaking as the representative of Senegal, stated that the Security Council was duty bound to

decide upon total and binding economic sanctions against Southern Rhodesia, taking the precaution of deciding upon effective measures of implementation and avoiding any commercial infiltration through South Africa and Mozambique.

At the 1413th meeting on 18 April 1968, the representative of Ethiopia introduced⁵⁴ a draft resolution⁵⁵ submitted jointly by Algeria, Ethiopia, India, Pakistan and Senegal, in which it was, *inter alia*, provided:

"The Security Council,

"...

"Acting under Chapter VII of the Charter of the United Nations, [preamble, para. 11]

"...

"2. Calls upon all States to sever immediately all economic and other relations with the illegal racist minority régime in Southern Rhodesia;

"..."

At the 1415th meeting on 23 April 1968, the representative of the United Kingdom submitted⁵⁶ a draft resolution⁵⁷ whereby:

"The Security Council,

"...

"Acting in accordance with Articles 39 and 41 of the United Nations Charter, [preamble, para. 6]

"1. Decides that States Members of the United Nations shall prevent:

"(a) The import into their territories of all commodities and products originating in Southern Rhodesia and exported therefrom after the date of this resolution (whether or not the commodities or products are for consumption or processing in their territories, whether or not they are imported in bond and whether or not any special legal status with respect to the import of goods is enjoyed by the port or other place where they are imported or stored);

"(b) Any activities by their nationals or in their territories which promote or are calculated to promote the export of any commodities or products from Southern Rhodesia; and any dealings by their nationals or in their territories in any commodities or products originating in Southern Rhodesia and exported therefrom after the date of this resolution, including in particular any transfer of funds to Southern Rhodesia for the purposes of such activities or dealings;

"(c) The shipment in vessels or aircraft of their registration or under charter to their nationals or the carriage (whether or not in bond) by land transport facilities across their territories of any commodities or products originating in Southern Rhodesia and exported therefrom after the date of this resolution;

"(d) The sale or supply by their nationals or from their territories of any commodities or products (whether or not originating in their territories

⁵⁴ 1413th meeting (PV), p. 11.

⁵⁵ S/8545, *OR*, 23rd yr., *Suppl. for April-June 1968*, pp. 120, 121.

⁵⁶ 1415th meeting (PV), p. 6.

⁵⁷ S/8554, *OR*, 23rd yr., *Suppl. for April-June 1968*, pp. 133-136.

but not including medical supplies, educational equipment, documents, books, periodicals, newspapers, cinematograph films containing only news or other informative or educational matter, television films containing only such matter, other material for cinematograph, television or radio purposes containing only such matter or, in special humanitarian circumstances, food-stuffs) to any person or body in Southern Rhodesia or to any other person or body for the purposes of any business carried on in or operated from Southern Rhodesia; and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply;

“(e) The shipment in vessels or aircraft of their registration or under charter to their nationals or the carriage (whether or not in bond) by land transport facilities across their territories of any such commodities or products which are consigned to any person or body in Southern Rhodesia or to any other person or body for the purposes of any business carried on in or operated from Southern Rhodesia;

“2. *Decides* that States Members of the United Nations shall not make available to the illegal régime in Southern Rhodesia or to any commercial, industrial or public utility undertaking in Southern Rhodesia any funds for investment or any other financial or economic resources and shall prevent their nationals and any persons within their territories from making available to the régime or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Southern Rhodesia except payments exclusively for pensions or other humanitarian, educational or information purposes;

“3. *Decides* that States Members of the United Nations shall:

“(a) Prevent the entry into their territories, save on exceptional humanitarian grounds, of any person travelling on a Southern Rhodesian passport, regardless of its date of issue, or on a purported passport issued by or on behalf of the illegal régime in Southern Rhodesia;

“(b) Take all possible measures to prevent the entry into their territories of persons whom they have reason to believe to be ordinarily resident in Southern Rhodesia and whom they have reason to believe to have furthered or encouraged or to be likely to further or encourage the unlawful actions of the illegal régime in Southern Rhodesia or any activities which are calculated to

evade any measures decided upon in this resolution or in resolution 232 (1966) of 16 December 1966;

“4. *Decides* that States Members of the United Nations shall prevent airline companies constituted in their territories and aircraft of their registration or under charter to their nationals from operating to or from Southern Rhodesia and from linking up with any airline company constituted or aircraft registered in Southern Rhodesia;

“5. *Calls upon* States Members of the United Nations to take all practicable measures to discourage their nationals from emigrating to Southern Rhodesia;

“6. *Decides* that all States Members of the United Nations shall give effect to the decisions set out in operative paragraphs 1, 2, 3, 4 and 5 of this resolution notwithstanding any contract entered into or licence granted before the date of this resolution save that landlocked States of southern Africa shall be obliged to carry out those decisions only in so far as their position permits;

“...”

At the 1428th meeting on 29 May 1968, the President (United States) said⁵⁸ that a new draft resolution⁵⁹ which had been arrived at in extensive consultations, had been submitted and circulated.

The representative of the USSR observed that compared with the resolution of 16 December 1966, the economic sanctions and other boycott measures were broadened. However, even those measures were still not sufficiently comprehensive. The draft resolution furthermore did not provide for complete cessation of relations of all kinds with Southern Rhodesia at the State level and did not require the breaking off of postal, telegraphic, telephonic and other communications; its provision concerning the banning of immigration to Southern Rhodesia was not clearly formulated; and the draft resolution also provided for a number of unjustifiable exceptions in the matter of breaking off trade relations with that country.

At the same meeting, the President stated that the sponsors of draft resolutions S/8545 and S/8554 did not intend to press for a vote on their draft resolutions.⁶⁰

The draft resolution S/8601 was adopted⁶¹ unanimously.

⁵⁸ 1428th meeting (PV), p. 6.

⁵⁹ S/8601, same text as resolution 253 (1968); for the text of its relevant provisions in connexion with the consideration of Article 41 (eleventh preambular paragraph and operative paragraphs 2-10), see in chapter VIII, pp. 123, 124.

⁶⁰ 1428th meeting (PV), pp. 23-25.

⁶¹ *Ibid.*, p. 27.

Part III

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

NOTE

Three resolutions of the Security Council adopted during the period under review contained provisions concerning the use of force by an administering Power

of a Non-Self-Governing Territory; in one instance,⁶² in specific circumstances when the situation resulting from them constituted, according to the determination of

⁶² See Case 7.

the Council, a threat to the peace, and in two instances,⁶³ in connexion with the situation in that Territory which itself, according to the Council's determination, constituted a threat to international peace and security. In another instance,⁶⁴ a draft resolution calling upon the administering Power to use force under Chapter VII, in that Territory, was not adopted.

The principal issue dealt with in the course of the consideration of the draft resolutions before the Security Council centred on the constitutionality of the use of force under Article 42. Specifically, the questions of the scope of force to be used, the responsibility for its use and the circumstances in which the Security Council could call for its use were dealt with. During the discussions, references were made also to special agreements concerning the availability to the Security Council of armed forces, as provided for in Article 43.

No questions arose in the Security Council in connexion with the interpretation and application of Articles 44-47 of the Charter.

CASE 7.⁶⁵ SITUATION IN SOUTHERN RHODESIA: In connexion with the draft resolution submitted by the United Kingdom and with the amendments thereto, submitted by Mali, Nigeria and Uganda; the amendments not adopted on 9 April 1966; the United Kingdom draft resolution adopted on the same day.

[*Note:* It was maintained, on the one hand, that the adoption of a resolution authorizing the use of force by the United Kingdom against an oil tanker arriving at Beira would enable it to intervene in the Southern Rhodesian situation without the fear of illegality and that the draft resolution was acceptable because the authorization to use force was limited. It was contended, on the other hand, that since the scope of the draft resolution was limited, the use of force should be provided in accordance with Articles 41 and 42 in order to remove the illegal régime in Southern Rhodesia.]

At the 1276th meeting on 9 April 1966, the representative of the United Kingdom introduced⁶⁶ a draft resolution in which, in its revised form,⁶⁷ it was provided:

"*The Security Council,*

"*Recalling its resolutions 216 (1965) of 12 November 1965 and 217 (1965) of 20 November 1965 and in particular its call to all States to do their utmost to break off economic relations with Southern Rhodesia, including an embargo on oil and petroleum products,*

"*Gravely concerned at reports that substantial supplies of oil may reach Southern Rhodesia as the result of an oil tanker having arrived at Beira and the approach of a further tanker which may lead to the resumption of pumping through the Companhia do Pipeline Moçambique Rhodésias pipeline with the acquiescence of the Portuguese authorities,*

"...

"1. *Determines* that the resulting situation constitutes a threat to the peace;

"...

"5. *Calls upon* the Government of the United Kingdom of Great Britain and Northern Ireland to prevent, by the use of force if necessary, the arrival at Beira of vessels reasonably believed to be carrying oil destined for Southern Rhodesia, and empowers the United Kingdom to arrest and detain the tanker known as the *Joanna V* upon her departure from Beira in the event her oil cargo is discharged there."

In introducing the draft resolution, the representative of the United Kingdom stated that in the matter before the Council, the United Kingdom Government had been anxious that at all times, its actions should be lawful actions and that it should not risk acting in breach of the law of nations. One of the purposes of the action it was taking against the illegal régime in Southern Rhodesia was to assert the rule of law and principles of the Charter. By adopting the draft resolution, the Security Council would enable the United Kingdom to carry out without fear of illegality the responsibilities which in the Rhodesian situation belonged to it. Therefore the representative asked the Council to enable the United Kingdom Government to take within the law all steps, including the use of force as the situation might demand, to stop the arrival at Beira of ships taking oil to the rebel régime. This purpose was in accordance with the aims expressed in the Security Council resolution 217 (1965).

At the same meeting, the representative of Uganda introduced⁶⁸ amendments⁶⁹ submitted jointly with Mali and Nigeria, to the United Kingdom revised draft resolution which read:

"1. After the first preambular paragraph of the resolution submitted by the United Kingdom of Great Britain and Northern Ireland (S/7236/Rev.1) insert the following paragraphs:

'*Noting* that economic measures have failed to produce desired political results,

'*Deeply concerned* at the reports that oil has been reaching Rhodesia'.

"2. In operative paragraph 1 replace the words 'the resulting situation' by the words 'the situation prevailing in Southern Rhodesia' and after the word 'peace' add the words 'and security'.

"3. After paragraph 3 insert the following new paragraph:

'4. *Calls upon* the Government of South Africa to take all measures necessary to prevent the supply of oil to Southern Rhodesia'.

"4. Renumber the present paragraph 4 as paragraph 5.

"5. Replace the present paragraph 5 by the following text:

'6. *Calls upon* the Government of the United Kingdom to prevent by all means including the use of force, the transportation into Southern Rhodesia of oil or other merchandise and empowers the United Kingdom to take measures necessary for the immediate implementation of this provision'.

⁶³ See Cases 9 and 10.

⁶⁴ See Case 8.

⁶⁵ For texts of relevant statements, see:

1276th meeting: Uganda, paras. 46, 56; USSR, para. 127; United Kingdom, paras. 21, 26; 1277th meeting: Argentina, para. 46; Mali, para. 171; Nigeria, paras. 25, 33; Sierra Leone, para. 64; Uruguay, para. 120.

⁶⁶ 1276th meeting; para. 12.

⁶⁷ S/7236/Rev.1; same text as resolution 221 (1966).

⁶⁸ 1276th meeting, paras. 44, 49-56.

⁶⁹ S/7243, O.R., 21st yr., Suppl. for April-June 1966, pp. 32-33.

"6. Add the following two paragraphs at the end of the draft resolution:

'7. *Calls upon* all States to apply measures for the complete interruption of economic relations and of communications with the settler minority régime and any other means in conformity with Articles 41 and 42 of the United Nations Charter,

'8. *Calls upon* the Government of the United Kingdom to employ all measures including the use of armed force to bring down the settler minority régime in Rhodesia and to implement forthwith resolution 1514 (XV) of the General Assembly'."

The representative of Uganda, introducing the three-Power amendments to the United Kingdom draft resolution, said that since the United Kingdom had moved from the application of Chapter VI of the Charter to the application of Chapter VII, it should agree to the use of force to topple the minority régime in Southern Rhodesia. The proposed two new operative paragraphs to be added to the draft resolution were in complete conformity with Articles 41 and 42 of the Charter. Since the United Kingdom had agreed to invoke Chapter VII, it should not complain if what should be contained in the draft resolution was spelled into greater clarity.

At the 1277th meeting on 9 April 1966, the representative of Nigeria contended that it was clear from the three-Power amendments that their sponsors considered the scope of the United Kingdom draft resolution to be too limited and restricted and could not meet the dangerous situation in Southern Rhodesia. The United Kingdom was asking the Council to approve the use of force on the high seas. The sponsors of the amendments were asking the Council to extend this use of force to Rhodesia and to other fields so that the way might be cleared for the removal of the illegal government in Rhodesia.

The representative of Argentina declared that paragraph 5 of the United Kingdom draft resolution could be accepted solely because it defined and limited the authorization of the use of force. However, in principle, any resolution under the terms of Chapter VII and particularly of Article 42 should be approved only in extreme cases. Such provisions should be restrictive and applicable only to well defined and limited cases. Paragraph 6 proposed in the amendments would be acceptable if the reference to Article 42 were deleted.

The representative of Sierra Leone maintained that the draft resolution before the Security Council was inadequate and wondered what would be the value of isolating the incident of an oil tanker arriving at Beira, from the general context of the larger argument whether, at that stage, the Council should be called upon to impose mandatory sanctions under Articles 41 and 42. By coming to the Council, the United Kingdom Government should admit the validity of the contention that the problem of Rhodesia would never be solved without the use of force.

The President, speaking as the representative of Mali, observed that his Government would have preferred if the United Kingdom would have recourse to the use of force in order to ensure respect for the frontiers of Southern Rhodesia and for their closing with South Africa and Mozambique.

At the 1277th meeting on 9 April 1966, the three-Power amendments were not adopted,⁷⁰ having failed to obtain the affirmative votes of 9 members. The United Kingdom draft resolution was adopted⁷¹ by 10 votes in favour, none against, with 5 abstentions as resolution 221 (1966).

CASE 8.⁷² SITUATION IN SOUTHERN RHODESIA: In connexion with the draft resolution submitted by Mali, Nigeria and Uganda: voted upon and not adopted on 23 May 1966.

[*Note:* In the course of the discussion, it was contended, on the one hand, that since the economic sanctions against the illegal régime in Southern Rhodesia had failed, the Security Council must decide upon the use of force under Article 42 against it. It was maintained, on the other hand, that the use of force was the responsibility of the United Kingdom; that no State could be compelled to use force against its will and that agreements according to Article 43 of the Charter were not concluded; moreover, measures provided for in Article 42 could be applied by the Council only when the measures listed in Article 41 had proved to be inadequate.]

At the 1278th meeting on 17 May 1966, the representative of India observed that the United Kingdom should declare that the use of force to end the illegal minority régime in Southern Rhodesia was not ruled out and it should be made clear that further continuation of the rebellion would make the use of force imperative.

The representative of Pakistan said that the Security Council should decide to take appropriate measures, including the use of force, if necessary, as provided for under Articles 41 and 42, since permissive sanctions have failed. The Security Council had to follow its decision to authorize the United Kingdom Government to use force, if necessary, in the limited and specific case of the arrival of the vessels at Beira, and to decide upon the application of sanctions in order to quell the racist régime in Southern Rhodesia.

At the 1279th meeting on 17 May 1966, the representative of Nigeria introduced⁷³ a draft resolution⁷⁴ sponsored jointly with Mali and Uganda in which it was provided:

"The Security Council,

"Recalling its resolution[s] 216 (1965) and 217 (1965) of 12 and 20 November 1965, respectively, and 221 (1966), of 9 April 1966, and in particular its call to all States to do their utmost to break off all economic relations with Southern Rhodesia, including an embargo on oil and petroleum products,

⁷⁰ 1277th meeting, paras. 172-178.

⁷¹ *Ibid.*, para. 179.

⁷² For texts of relevant statements, see:

1278th meeting: India, para. 64; Pakistan, paras. 81, 91; Zambia, paras. 21, 23;

1279th meeting: Nigeria, paras. 51, 58, 64, 65; Sierra Leone, paras. 85-90;

1281st meeting: Uruguay, paras. 34-36;

1283rd meeting: Argentina, para. 18;

1284th meeting: Bulgaria, para. 26; Netherlands, paras. 70-73;

1285th meeting: Argentina, paras. 16, 17; Uruguay, paras. 23, 27, 28.

⁷³ 1279th meeting, para. 42.

⁷⁴ S/7285/Add.1, *OR*, 21st yr., *Suppl. for April-June 1966*, pp. 82-83.

"Noting with concern that this call has not been heeded by all States and that economic measures have failed to bring down the racist régime of Salisbury,

"Pointing out that the grave threat to international peace and security inherent in the situation in Southern Rhodesia has already induced it to authorize the use of force, by its resolution 221 (1966) of 9 April 1966, in exercise of the powers which Chapter VII of the United Nations Charter alone confers upon it,

"Gravely concerned by the reports that substantial supplies of oil are reaching Southern Rhodesia and that arrangements are being made to devise a permanent system of oil supply to that territory,

"...

"1. *Determines* that the situation in Southern Rhodesia continues to constitute a threat to international peace and security;

"...

"4. *Calls upon* all States, and particularly the Portuguese and South African Governments, to take all necessary measures to prevent the supply of oil and petroleum products to Southern Rhodesia;

"5. *Calls upon* the United Kingdom to take the measures provided for in Chapter VII of the Charter, in order, by the use of air, sea or land forces, to prevent any supplies, including oil and petroleum products, from reaching Southern Rhodesia;

"...

"9. *Calls upon* the United Kingdom Government to take all necessary measures, including the use of force, to abolish the racist minority régime in Southern Rhodesia and to ensure the immediate application of General Assembly resolution 1514 (XV)."

In introducing the three-Power draft resolution, the representative of Nigeria pointed out that in operative paragraph 9 the three-Power draft resolution would call upon the Government of the United Kingdom to take all the necessary measures, including the use of force, to abolish the racist minority régime in Southern Rhodesia. However, in that paragraph, the amount of force to be applied was not dictated to the United Kingdom. It would suffice for the purpose of the draft resolution if it applied no more force than was necessary to remove that régime.

In the course of the discussion, at the same meeting, the representative of Sierra Leone, referring to resolution 221 (1966) of 9 April 1966, stated that the Security Council had passed this resolution after rejecting amendments which sought to extend the use of force under Articles 41 and 42 of the Charter. On that occasion, the Council had decided to use force, however limited, in support of mandatory sanctions under Chapter VII of the Charter. As if to reassure the doubters on that point, the resolution referred to the resulting situation as constituting a "threat to the peace", using the language of Article 39 of the Charter.

At the 1281st meeting on 18 May 1966, the representative of Uruguay, contended that in addition to the economic sanctions under Article 41, the Security Council could consider taking other mandatory measures including the use of armed force. In this context, it was necessary to differentiate between two situations which were juridically non-comparable. The first concerned the use of force in

Southern Rhodesia by the United Kingdom which would be incumbent upon it as an administering Power. In the second, a request might be addressed to a specific State, in this case the United Kingdom, to use its armed forces for purposes not directly connected with its status as an administering Power. However, such a course would allow a given State considerable latitude in the application of coercive measures; furthermore, any such request addressed by the Security Council to one or several States would not be binding on those States, since the agreements provided for in Article 43 and the following Articles of the Charter regarding the establishment of the United Nations forces were not signed and the United Nations did not automatically have at its disposal the armed units which would have been available under those agreements. Since all peaceful methods must be exhausted for a solution to international conflicts, the representative was opposed to the request to the United Kingdom for the use of force.

At the 1283rd meeting on 19 May 1966, the representative of Argentina declared that he could not support the reference to the use of force. While there were means of reaching a peaceful solution and of recommending measures which had not presupposed the use of force it would be premature to take that ultimate step. The representative, referring to his statement made at the 1277th meeting of the Council, reiterated that any resolution under Chapter VII and especially Article 42 must be adopted only in very extreme cases. He added that the use of force pursuant to the Charter was based upon the principle of the prior consent of the State or States using such force. The Security Council could not compel any State to use its armed forces if it did not wish to do so. Furthermore, the United Kingdom needed neither the authorization nor the endorsement of the Security Council to quell the Smith régime. It was the United Kingdom's problem, its dilemma and its chief responsibility.

At the 1284th meeting on 20 May 1966, the representative of Bulgaria said that an effective and immediate action was called for if the problem of Southern Rhodesia, which threatened peace and security in Africa and could have serious repercussions throughout the world, was to be solved. This meant that the necessary steps including the use of force must be taken to eliminate the racist régime there.

The representative of the Netherlands maintained that it was the Security Council's primary duty not to decide in favour of the use of armed force as long as there was a possibility that the problem could be solved by the application of economic measures or by peaceful negotiations. However, the United Kingdom was still the legal authority in Rhodesia and was therefore responsible for it. Thus, the decision when and to what extent force should be used must be made in the first place by the Government of the United Kingdom. Furthermore, the use of force as provided for in the draft resolution found insufficient basis in the Charter: Article 41 provided for enforcement measures not involving the use of armed force, while Article 42 provided for military action. Article 42 left no doubt that military force might be applied only in the event that the Council considered "that measures provided for in Article 41 would be inadequate or have proved to be inadequate". Operative paragraphs 5 and 9 of the draft resolution would consti-

tute an application of military force under Article 42, though there was no declaration in the draft resolution that the economic measures provided for in Article 41 "would be inadequate or have proved to be inadequate". Moreover it was right that there was no such provision in the draft resolution, for there was no sufficient factual basis for such a conclusion at this time. Therefore, the fundamental condition for the application of Article 42 was not fulfilled. It was not possible at one and the same time to call for economic measures in accordance with Article 41, as was done in operative paragraphs 2, 3 and 4 of the draft resolution, and to call for the use of force under Article 42, as was done in other paragraphs of the draft resolution.

At the 1285th meeting on 23 May 1966, the representative of Argentina expressed the view that with regard to the use of force by the United Kingdom, to which the draft resolution referred, no State could be compelled to use force, in accordance with Chapter VII, without its own consent, unless the agreements provided for in Article 43 had been signed.

The representative of Uruguay observed that the Security Council should find a formula which would allow it to take a further step towards the solution of this problem, a step of deciding upon obligatory sanctions which would not imply the use of force.

At the same meeting, the draft resolution submitted by Mali, Nigeria and Uganda was not adopted,⁷⁶ having failed to obtain the affirmative votes of nine members, the result of the vote being 6 in favour, 1 against, with 8 abstentions.

CASE 9.⁷⁶ SITUATION IN SOUTHERN RHODESIA: In connexion with the draft resolution submitted by the United Kingdom and the amendments thereto submitted jointly by Nigeria, Mali and Uganda, adopted, as amended, on 16 December 1966.

[*Note:* In the course of the discussion, it was maintained, on the one side, that since the Security Council had already determined that the situation in Southern Rhodesia constituted a threat to international peace and security, it should, in view of the current circumstances, apply sanctions under Article 42 against the illegal régime there. On the other side, it was contended that the Security Council could decide upon the use of force only with the consent of the State concerned or if that State had concluded a special agreement with the United Nations according to Article 43. In the present case, however, the decision whether to use force against the Southern Rhodesian régime was a matter within the competence of the administering Power.]

At the 1331st meeting on 8 December 1966, the representative of the United Kingdom introduced⁷⁷ a draft resolution.⁷⁸

At the 1332nd meeting on 9 December 1966, the representative of Argentina maintained that in view of cir-

cumstances and since the situation fell into the category of a threat to the peace, the adoption of effective collective measures was justified. Among such measures provided for in the Charter, preference was to be given for the time being to those provided for in Article 41, which did not involve the use of armed force. Before resorting to this final step, it would be well to try such measures as might achieve the same purpose of maintaining international peace and security, avoiding armed confrontations, the consequences of which would be quite unpredictable at this time. Measures provided for in Article 42 should be applied only in very extreme cases. Further, the use of force under the Charter was based exclusively upon the consent of States. The Security Council could not constrain any country to use its armed forces against its will, unless it had indicated its consent by means of the agreements referred to in Article 43. On the other hand, while no one could constrain the United Kingdom to use force, the United Kingdom did not need the authorization of the Council to use force against the illegal régime in Southern Rhodesia, since the problem was confined to its own Territory.

At the 1333rd meeting on 12 December 1966, the representative of Senegal observed that if the Security Council were to consider the draft resolution submitted by the United Kingdom, the economic sanctions should be comprehensive applying to all commodities, including petroleum products. The Security Council should also decide from the outset that all States would be compelled to implement the resolution, if necessary, by force.

At the 1335th meeting on 13 December 1966, the representative of Uganda introduced⁷⁹ amendments,⁸⁰ jointly submitted with Mali and Nigeria, to the United Kingdom draft resolution. It was proposed to amend the draft resolution as follows:

"1. Replace the second preambular paragraph with the following paragraph:

'*Noting with deep regret that the administering Power has failed to take effective measures to bring down the illegal racist minority régime in Southern Rhodesia.*'

"2. Before operative paragraph 1, insert the following two operative paragraphs and renumber operative paragraph 1 as operative paragraph 3:

'1. . . .

'2. *Deplores*

'(a) the refusal of the United Kingdom to use every means including force to bring about the immediate downfall of the Ian Smith régime in Southern Rhodesia;'

". . .

"5. After former operative paragraph 1 (now operative paragraph 3), insert the following five operative paragraphs:

". . .

'5. *Invites* the Government of the United Kingdom to prevent by all means the transport to Southern Rhodesia of oil or oil products;'

". . .".

⁷⁶ 1285th meeting, para. 33.

⁷⁷ For texts of relevant statements, see:

1332nd meeting: Argentina, paras. 56, 57;

1333rd meeting: Senegal, para. 38;

1335th meeting: Mali, para. 67; Pakistan, paras. 81, 82, 90-92;

1336th meeting: India, para. 10;

1337th meeting: Netherlands, para. 89;

1339th meeting: China, paras. 38, 41.

⁷⁷ 1331st meeting, para. 25.

⁷⁸ S/7621, for its provisions see chapter VIII, p. 117.

⁷⁹ 1335th meeting, para. 3.

⁸⁰ S/7630, *OR*, 21st yr., *Suppl. for Oct.-Dec. 1966*, pp. 178, 179.

At the same meeting, the representative of Pakistan stated that it was a misconception of Article 42 that its application was based on a condition that economic measures should have proved to be inadequate if force was to be employed. There was no warrant in the Charter for such an assumption. The words "would be inadequate or have proved to be inadequate" in Article 42 could only mean that the proof of the inadequacy of economic measures was not a condition precedent to the taking of such action by air, sea or land forces as might be necessary to restore international peace and security. Thus there was no basis for the argument that action under Chapter VII meant either economic measures or military operations. To contend that the Charter precluded a combination of the two was incorrect. It could not be denied that, in certain situations, economic measures would not be effective unless they were reinforced by a police action. If the African members of the United Nations came to the firm conclusion that there was no alternative to the use of force to reinforce sanctions against Southern Rhodesia, as provided for in Article 42, the Security Council should not indicate in any manner that this point of view had been disregarded. No one relished the prospect of the use of force; but were there not greater dangers attendant on inadequate action taken under Chapter VII of the Charter?

At the 1336th meeting on 13 December 1966, the representative of India expressed the view that mandatory sanctions of a general and comprehensive character should be applied under Articles 41 and 42 of Chapter VII.

At the 1337th meeting on 14 December 1966, the representative of the Netherlands noted that in connexion with the question of the use of force in Southern Rhodesia, the United Kingdom, as the country bearing responsibility for Southern Rhodesia, was entitled to apply force and was also entitled to the ultimate judgement of whether and when that should be done. The United Nations in itself could not oblige the United Kingdom to use force there; neither was the United Kingdom in need of an authorization from the United Nations to do so if it wished.

At the 1338th meeting on 15 December 1966, the representative of Uganda introduced⁸¹ a revised text of the three-Power amendments⁸² which read:

"1. Replace the second preambular paragraph with the following paragraph:

'Deeply concerned that the Council's efforts so far and the measures taken by the administering Power have failed to bring the rebellion in Southern Rhodesia to an end,'

"..."

Amendments 2 and 5 remained unchanged.

At the 1339th meeting on 16 December 1966, the representative of the United Kingdom submitted⁸³ a revised text of the United Kingdom draft resolution.⁸⁴

At the same meeting, the representative of China pointed out that the Security Council, in resolution 217

(1965) of 22 November 1965, had determined that the "continuance in time" of the situation resulting from the unilateral declaration of independence by the illegal authorities in Southern Rhodesia had constituted "a threat to international peace and security". Since that situation had continued for over a year, the delegations of the African States urged that the Security Council should authorize the use of enforcement action provided for in Article 42. However, the Security Council could not impose the use of force on any State against its will if that State had not expressed its consent in accordance with the provisions of Article 43 of the Charter. And the Council should not, in the present circumstances, make such a specific recommendation to the constitutional authority. The use of force, if it was necessary, must be left to the discretion of the administering Power.

At the 1340th meeting on 16 December 1966, the first three-Power amendment was adopted⁸⁵ by 14 votes to none, with 1 abstention; paragraph 2 (a) in the second amendment was not adopted,⁸⁶ the result of the vote being 7 votes in favour, none against, with 8 abstentions; new operative paragraph 5 in the fifth amendment was not adopted,⁸⁷ the result of the vote being 7 votes in favour, none against with 8 abstentions.

At the same meeting, the revised draft resolution submitted by the United Kingdom, as amended, was adopted⁸⁸ by 11 votes to none, with 4 abstentions, as resolution 232 (1966).

CASE 10.⁸⁹ SITUATION IN SOUTHERN RHODESIA: In connexion with the letter of submission dated 12 March 1968; and with the draft resolution jointly submitted by Algeria, Ethiopia, India and Pakistan: not pressed to a vote on 29 May 1968.

[Note: It was maintained that the primary responsibility for the situation in Southern Rhodesia rested with the administering Power, which had to apply force, if necessary, in order to end the illegal minority régime in its colony. It was contended, on the other side, that the application of comprehensive and peremptory economic sanctions must precede a decision on the use of force against that régime. Moreover, the use of force was dependent upon the consent of the State which would be responsible for its use.]

By letter⁹⁰ dated 12 March 1968 addressed to the President of the Security Council, the representatives of Algeria, Botswana, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Kenya, Lesotho, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta and Zambia stated that

⁸⁵ 1340th meeting, para. 84.

⁸⁶ *Ibid.*, para. 86.

⁸⁷ *Ibid.*, para. 91.

⁸⁸ *Ibid.*, para. 110.

⁸⁹ For texts of relevant statements see:

1400th meeting (PV): Canada, pp. 16-17; India, p. 12; Jamaica, pp. 26-28;

1408th meeting (PV): China, pp. 42-43; Pakistan, pp. 38-40; Zambia, pp. 23-25, 27, 31;

1428th meeting (PV): USSR, p. 16.

⁹⁰ S/8454, OR, 23rd yr., Suppl. for Jan.-March 1968, pp. 258-259.

⁸¹ 1338th meeting, para. 149.

⁸² S/7630/Rev.1, OR, 21st yr., Suppl. for Oct.-Dec. 1966, pp. 180, 181.

⁸³ 1339th meeting, para. 2.

⁸⁴ S/7621/Rev.1, OR, 21st yr., Suppl. for Oct.-Dec. 1966, pp. 169, 170. See in chapter VIII, p. 119.

selective mandatory sanctions adopted by the Security Council in its resolution 232 (1966) of 16 December 1966, had failed. It was incumbent upon the Council to examine the continuing grave situation in Southern Rhodesia (Zimbabwe) which still constituted a threat to international peace and security and to envisage the necessary measures and action under Chapter VII of the Charter with a view to enabling the people of Southern Rhodesia (Zimbabwe) to exercise their right to self-determination in accordance with General Assembly resolution 1514 (XV).

At the 1400th meeting on 20 March 1968, the representative of India noted that the Security Council should call upon the Government of the United Kingdom to adopt effective measures, not excluding the use of force, to fulfil its responsibilities.

The representative of Canada stated that it was one thing to advocate the use of force; it was another to determine effective means for applying it. A decision to use force must include a decision as to who would be charged with its employment. There seemed to be two possibilities: either the use of force by the United Nations in accordance with the Charter in exercise of the collective responsibility to remove threats to the peace or to deal with breaches of the peace or acts of aggression, or alternatively, the exercise of this responsibility by the United Kingdom alone taking action against a colony in rebellion. If the Security Council was to decide on the use of force by the United Nations in the exercise of its collective responsibilities, there must be an agreement among those members of the Council which would have to carry the main burden of implementing the decision that economic measures were inadequate and that the use of force was necessary. However, whatever views might be held on the use of force in the current situation, no basis for such an agreement existed. As for the use of force by the sovereign Power concerned, it was quite clear that the United Kingdom was not prepared to embark on this approach at this time; it had taken the firm position that it was not prepared to use force, except as a last resort for restoration of law and order.

The representative of Jamaica maintained that the Security Council could not continue to rule out the possibility and the likelihood of the use of force. The United Nations would most likely call upon a Government to employ military force only following consultations with that Government and having considered the implications of the application of force. However, since the sanctions so far imposed on Southern Rhodesia had failed, the only effective means of returning Rhodesia to the rule of law was by force.

At the 1408th meeting on 26 March 1968, the representative of Zambia expressed the view that the United Kingdom Government, which was the legal administering Power in Southern Rhodesia, was capable of settling the situation there if it were to use force. It was difficult to understand the logic that further economic sanctions could become effective unless they were backed by the use of force.

The representative of Pakistan maintained that the United Kingdom, as the administering Power, should no longer rule out resolute measures including, if necessary, the use of force in Southern Rhodesia.

The representative of China contended that since the unilateral declaration of independence of the Southern

Rhodesian régime was an act of rebellion against the constitutional authority, the Government of the United Kingdom had the legitimate right to suppress it with all the means at its disposal, including military action. That Government had not hesitated in April 1966 to ask for authorization to use force to prevent the shipment of oil to Southern Rhodesia via Beira. The legitimate use of force in the prevailing circumstances should not be precluded as a last resort when all possibilities of a peaceful settlement were exhausted. In the last analysis, the main burden of any enforcement action must necessarily fall on the Government of the United Kingdom, which must decide whether force could be effectively used.

At the 1413th meeting on 18 April 1968, the representative of Ethiopia introduced⁹¹ a draft resolution⁹² submitted jointly with Algeria, India, Pakistan, and Senegal, in which it was, *inter alia*, provided:

"The Security Council,

"*Recalling and reaffirming* its resolutions 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965, 221 (1966) of 9 April 1966, and 232 (1966) of 16 December 1966,

"*Reaffirming in particular* its resolution 232 (1966) in which it determined that the situation in Southern Rhodesia constitutes a threat to international peace and security,

"...

"*Gravely concerned* that the measures so far taken have failed to resolve the situation in Southern Rhodesia [preamble, para. 4]

"...

"*Emphasizing* the responsibility of the Government of the United Kingdom for the situation that prevails in Southern Rhodesia and the consequences that have flowed therefrom, [preamble, para. 8]

"...

"*Acting* under Chapter VII of the Charter of the United Nations, [preamble, para. 11]

"...

"7. *Urges* the United Kingdom as the administering Power to take urgently all necessary measures including the use of force to bring an end to the rebellion in Southern Rhodesia and enable the people to exercise their right to self-determination and independence in accordance with General Assembly resolution 1514 (XV);

"...".

The representative of the USSR stated that the Government of the United Kingdom, as the administering Power, had been and remained obligated to take all necessary measures, including the use of force, to eliminate the illegal racist régime in Southern Rhodesia. The draft resolution before the Council confirmed the primary responsibility of the Government of the United Kingdom for the settlement of the situation in Southern Rhodesia.

At the same meeting, the President stated that the sponsors of the draft resolution S/8545 did not intend to press for a vote on it.⁹³

⁹¹ 1413th meeting (PV), p. 11.

⁹² S/8545, *OR*, 23rd yr., *Suppl. for April-June 1968*, pp. 120, 121.

⁹³ 1428th meeting (PV), pp. 23-25.

Part IV

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

NOTE

Provisions of the following resolution adopted by the Security Council during the period under review might be considered as containing an implied reference to Article 49. In its resolution 246 (1968)⁹⁴ of 14 March 1968 adopted in connexion with the question of South West Africa, the Security Council called upon Members of the United Nations to co-operate with the Security Council, in pursuance of their obligations under the Charter, in order to obtain compliance by the Government of South Africa with the provisions of this resolution; and urged those Member States who were in a position to contribute to the implementation of this resolution to assist the Security Council in order to obtain compliance by that Government with the provisions of this resolution (operative paragraphs 3 and 4).

A draft resolution and an amendment submitted thereto contained a provision which might be deemed relevant to Article 50. In a draft resolution⁹⁵ submitted by the President (United Kingdom) at the 1428th meeting on 29 May 1968, in connexion with the situation in Southern Rhodesia, it was provided that the Security Council requested Member States of the United Nations, the United Nations, the specialized agencies and other international organizations in the United Nations system to extend assistance to Zambia as a matter of priority with a view to helping it to solve such special economic problems as it might be confronted with, arising from the carrying out of the decisions of the Security Council (operative paragraph 15). According to an amendment⁹⁶ submitted by the representative of the USSR to that operative paragraph, the Security Council would decide that the material losses that might be inflicted on Zambia in connexion with the implementation of this decision of the Security Council should be compensated by those States which, having failed to take the necessary measures to put an end to the illegal racist régime in Southern Rhodesia, and, in particular, the measures provided for in resolutions of the Security Council 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965, 221 (1966) of 9 April 1966 and 232 (1966) of 16 December 1966, and resolution of the General Assembly 2262 (XXII) of 3 November 1967, bore political responsibility for the continued existence of that régime in South Africa. At the 1428th meeting of the Security Council on 29 May 1968, the USSR amendment was rejected; operative paragraph 15 of the draft resolution, on a separate vote, was adopted.⁹⁷

In a draft resolution submitted in connexion with the question of the safeguards to non-nuclear-weapon States parties to the Non-Proliferation Treaty, the question of the scope of an explicit reference to Article 51 arose.⁹⁸

⁹⁴ See in chapter VIII, pp. 167, 168.

⁹⁵ See in chapter VIII, pp. 122-124.

⁹⁶ *Ibid.*, p. 122.

⁹⁷ *Ibid.*

⁹⁸ Case 11 below.

Explicit references to Article 51 were made in connexion with the situation in the Middle East (I);⁹⁹ the situation in the Middle East (II);¹⁰⁰ and the situation in Czechoslovakia.¹⁰¹

CASE 11.¹⁰² QUESTION OF SAFEGUARDS TO NON-NUCLEAR-WEAPON STATES PARTIES TO THE NON-PROLIFERATION TREATY: In connexion with the draft resolution submitted jointly by the USSR, the United Kingdom and the United States: voted upon and adopted on 19 June 1968.¹⁰³

[*Note:* In the course of the discussion, it was maintained, on the one hand, that the reaffirmation of Article 51 in the draft resolution and in the declarations of the three Governments was vital for the non-nuclear-weapon signatories of the Non-Proliferation Treaty, since it constituted a basis for their assumption that they could expect assistance from one or more of the three Governments until the Security Council decided upon measures for the maintenance of international peace and security. It was contended, on the other hand, that the right of individual or collective self-defence existed independently of the Charter and could not limit a State's option in order to obtain assistance to prevent or deter a nuclear attack. The qualitatively new situation which would be created by nuclear aggression or by its threat against a non-nuclear-weapon State, as envisaged in the declarations of the three Governments, had not been anticipated when the Charter had been drafted. Therefore Article 51 was inadequate to meet the perils of the nuclear age.]

In a letter¹⁰⁴ dated 12 June 1968, the representatives of the USSR, the United Kingdom and the United States requested the President of the Security Council to convene an early meeting of the Council to consider an attached draft resolution on measures to safeguard non-nuclear-weapon States parties to the Treaty on the Non-Proliferation of Nuclear Weapons. In the draft resolution,¹⁰⁵ it was provided that the Security Council, *inter alia*, reaffirmed in particular the inherent right, recognized under Article 51 of the Charter, of individual and collective self-defence if an armed attack occurred against a

⁹⁹ 1342nd meeting (PV): Israel, pp. 43-45;

1344th meeting (PV): Lebanon, p. 17;

1347th meeting (PV): Israel, pp. 17-21; United Arab Republic, pp. 26-30;

1348th meeting (PV): Israel, pp. 73-75, 76;

1349th meeting (PV): Israel, p. 76;

1350th meeting (PV): Bulgaria, p. 26;

1352nd meeting (PV): India, pp. 49-50;

1353rd meeting (PV): Syria, pp. 58-61;

1358th meeting (PV): Israel, p. 103.

¹⁰⁰ 1411th meeting (PV): United Arab Republic, p. 46.

¹⁰¹ 1441st meeting (PV): USSR, p. 41.

¹⁰² For texts of relevant statements, see:

1431st meeting (PV): Canada, p. 7; Paraguay, p. 12;

1433rd meeting (PV): China, p. 28; Pakistan, pp. 31, 32.

¹⁰³ For the consideration of Chapter VII of the Charter in general in connexion with this item, see below, Case 12.

¹⁰⁴ S/8630, *O.R.*, 23rd yr., *Suppl. for April-June 1968*, pp. 216-218. See below pp. 218, 219.

¹⁰⁵ *Ibid.*, S/8631.

Member of the United Nations, until the Security Council had taken measures necessary to maintain international peace and security.

At the 1430th meeting on 17 June 1968, the representatives of the USSR, the United Kingdom and the United States read, in the course of their statements, identical declarations of their Governments, in which it was said that these Governments reaffirmed the inherent right recognized under Article 51 of self-defence if an armed attack, including a nuclear attack, occurred against a Member State until the Council had taken measures necessary to maintain international peace and security.

At the 1431st meeting on 18 June 1968, the representative of Canada observed that the provision of the draft resolution reaffirming Article 51, taken in relation to its preceding provisions, represented an important assertion that a non-nuclear-weapon State, party to the Non-Proliferation Treaty, which was an object of nuclear threat or nuclear attack, might reasonably expect assistance from one or more of the nuclear-weapon States which had made declarations in support of the draft resolution, until such time as the Security Council had taken measures necessary to maintain international peace and security.

The representative of Pakistan stated that operative paragraph 3 of the draft resolution and the declarations of the three nuclear Powers reaffirmed the inherent right under Article 51 to individual and collective self-defence. This right, which was recognized by the Charter, existed independently of it and did not and could not limit a State's option in the matter of obtaining assistance to prevent or counter a nuclear attack. Operative paragraph 3 opened the possibility of the three nuclear Powers acting severally to deter or suppress a nuclear attack before the Security Council could act or when it was unable to act. At the same time, few of the non-nuclear-weapon States which were primarily affected and which were other than

those which were members of the North Atlantic Treaty Organization or Warsaw Pacts or even those States which were beneficiaries of firm unilateral guarantees outside the framework of the United Nations could entertain realistic expectations that the possibility would become an actuality. The element of deterrence to a would-be aggressor and the assurance of protection to its victim would both have been strengthened if it had been made clear in the declarations of the three nuclear Powers that they would respond to the request of any non-nuclear-weapon State so threatened, with effective assistance, regardless of whether that State had been aligned in a military alliance or non-aligned. Already certain States had received such guarantees. The unilateral nature of the guarantee did not detract from its credibility, in view of the present state of international relations. Furthermore, the provisions of Article 51 were no longer adequate to the requirements of the right of self-defence in an age of nuclear weapons. Such a right could hardly be restricted to the actual occurrence of a nuclear armed attack. There were very few non-nuclear-weapon States that would be able to survive a nuclear strike to exercise the right of self-defence. The three nuclear Powers in their declarations have stated that aggression with nuclear weapons or the threat of such aggression against a non-nuclear-weapon State "would create a qualitatively new situation". Such a situation was not anticipated when the Charter had been drafted. Therefore Article 51 was inadequate to meet the perils of the age of nuclear weapons.

At the 1433rd meeting on 19 June 1966, the three Power draft resolution was adopted¹⁰⁸ by ten votes in favour, none against, with 5 abstentions as resolution 255 (1968).

¹⁰⁸ 1433rd meeting (PV), p. 46. For the text of the resolution, see in chapter VIII, p. 171.

Part V

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII IN GENERAL

NOTE

In connexion with the consideration of the question of safeguards to non-nuclear-weapon States parties to the Non-Proliferation Treaty, the issue arose whether a draft resolution submitted by three permanent members of the Security Council which are nuclear-weapon States, constituted or not a modification of the collective security system established under the provisions of the Charter. Since the relevant statements made in the course of the consideration of this issue referred explicitly or implicitly to the powers of the Security Council as defined in Chapter VII of the Charter, the case history is included in part V of this chapter of the *Repertoire*.

Explicit references to Chapter VII of the Charter were made in connexion with the consideration of the following items¹⁰⁷ by the Security Council: the Palestine question;¹⁰⁸ the situation in the Middle East (I);¹⁰⁹ the situation in the

¹⁰⁷ With the exception of the items dealt with in this chapter of the *Repertoire*.

¹⁰⁸ 1323rd meeting: Jordan, para. 27;
1324th meeting: Jordan, paras. 16, 18-20; Uruguay, paras. 41, 61;

1328th meeting: Jordan, paras. 43-45.

¹⁰⁹ 1345th meeting (PV): Iraq, p. 11; Jordan, pp. 27, 36;

1352nd meeting (PV): Israel, p. 72:75;

1366th meeting (PV): USSR, p. 17.

Middle East (II),¹¹⁰ and the question of South West Africa.¹¹¹

CASE 12.¹¹² QUESTION OF SAFEGUARDS TO NON-NUCLEAR-WEAPON STATES PARTIES TO THE NON-PROLIFERATION TREATY: In connexion with the draft resolution submitted jointly by the USSR, the United Kingdom and the United States: voted upon and adopted on 19 June 1968.

[*Note:* The discussion centred on the question whether the adoption of the draft resolution would or would not constitute a revision of the Charter. It was maintained, on the one hand, that the draft resolution did not amend the Articles of Chapter VII of the Charter nor any other Articles. It provided for the application of the Charter to the realm of nuclear weapons, creating a reasonable basis for an intervention by the Security Council in case of aggression or a threat of it by a nuclear-weapon State against a non-nuclear-weapon State, party to the Treaty on the Non-Proliferation of Nuclear Weapons in the framework of the Security Council. It was contended, on the other hand, that a new security machinery to be established by the adoption of the draft resolution implied an indirect revision of the Charter. The draft resolution requested the Security Council to endorse a security machinery of a discriminatory nature, since the benefit of protection against attack or threat by nuclear weapons would be limited to signatories of the Treaty on the Non-Proliferation of Nuclear Weapons only.]

In a letter¹¹³ dated 12 June 1968, the representatives of the USSR, the United Kingdom and the United States informed the President of the Security Council that on the same day, the General Assembly had adopted resolution 2373 (XXII), in which it commended the Treaty on the Non-Proliferation of Nuclear-Weapons. They referred to the statements in the course of the debate during the resumed twenty-second session of the General Assembly to the effect that it was the intention of their Governments to sponsor a resolution in the Security

Council in response to the desire of many Members that appropriate measures be taken to safeguard their security in conjunction with their adherence to the Treaty on the Non-Proliferation of Nuclear Weapons. Accordingly, they requested an early meeting of the Council to consider the attached draft resolution.¹¹⁴

At the 1430th meeting on 17 June 1968, the representatives of the USSR, the United Kingdom and the United States read, in the course of their statements, identical declarations of their Governments, the relevant parts of which were as follows: the three Governments noted the concern of certain of the signatories of the Non-Proliferation Treaty that appropriate measures should be undertaken to safeguard their security. Bearing these considerations in mind, the three Governments declared that aggression with nuclear weapons or its threat against a non-nuclear weapon State would create a qualitatively new situation in which the nuclear-weapon States, permanent members of the Security Council, would have to act immediately through the Council to take measures to counter such aggression or to remove its threat in accordance with the Charter which called for taking "... effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace". Therefore, any State which had committed aggression with nuclear weapons or threatened it must be advised that its action would be countered by measures provided for in the Charter to suppress aggression or remove its threat. The three Governments affirmed their intention to seek immediately the Council's action to provide assistance, in accordance with the Charter, to any non-nuclear-weapon State party to the Treaty, which was a victim of an act of aggression or an object of its threat in which nuclear weapons were used. The votes of the three Governments on the draft resolution before the Security Council and their respective statements were based upon the fact that the draft resolution was supported by other permanent members of the Council which were nuclear-weapon States and were proposing to sign the Non-Proliferation Treaty and that they had made similar statements as to the way in which they intended to act in accordance with the Charter.

The representative of the USSR stated that its declaration would come into force at the same time as the Security Council resolution concerning security assurances to the non-nuclear countries entered into force.

At the same meeting, the representative of France said that it was not the intention of the French delegation that its abstention from voting in the Security Council should constitute an obstacle to the adoption of a draft resolution which in no way changed the provisions of Chapter VII of the Charter, as was clear from the contents of the draft, from the declared intentions of its sponsors and from the fact that there was no recourse to the procedure laid down in Article 108 for any amendment of the Charter. He observed further that the nations of the world would not receive the security guarantee which they were entitled to claim until the nuclear Powers agreed to take the path of nuclear disarmament and until they had achieved it.

¹¹⁰ 1373rd meeting (PV): Nigeria, pp. 81-82;
1401st meeting (PV): Jordan, pp. 13-16;
1402nd meeting (PV): Iraq, p. 47; USSR, pp. 33-35;
1403rd meeting (PV): United Arab Republic, p. 13;
1404th meeting (PV): Jordan, pp. 6, 13-15; Syria, p. 26;
1407th meeting (PV): Jordan, pp. 71, 77, 78; USSR, pp. 13-15;
1409th meeting (PV): Jordan, pp. 12-17;
1411th meeting (PV): United Arab Republic, p. 51;
1417th meeting (PV): Jordan, p. 92;
1418th meeting (PV): Jordan, p. 22;
1434th meeting (PV): Jordan, pp. 23-25;
1437th meeting (PV): Jordan, pp. 38-40;
1439th meeting (PV): Ethiopia, p. 7;
1440th meeting (PV): Jordan, p. 56;
1456th meeting (PV): United Arab Republic, p. 12;
1457th meeting (PV): Hungary, p. 27;
1460th meeting (PV): Algeria, p. 56; Hungary, p. 51; Lebanon, p. 11; USSR, p. 41;
1462nd meeting (PV): Algeria, p. 37; Hungary, p. 18; Lebanon, p. 81; USSR, p. 31.

¹¹¹ 1391st meeting (PV): Pakistan, p. 21; Senegal, p. 27;
1392nd meeting (PV): Algeria, p. 37; India, p. 16;
1395th meeting (PV): Pakistan, pp. 13-15, 18-20.

¹¹² For texts of relevant statements, see:
1430th meeting (PV): France, p. 31; USSR, pp. 6-15; United Kingdom, pp. 16-20; United States (President), pp. 20-25;
1431st meeting (PV): Canada, pp. 6-7; Denmark, pp. 8-11, 13; Hungary, pp. 19-21; Senegal, p. 23;
1433rd meeting (PV): Algeria, pp. 3-10; Brazil, pp. 13-16; China, pp. 26-28; Ethiopia, pp. 18-23; India, pp. 41-43; Pakistan, pp. 31-36.

¹¹³ S/8630, *O.R.*, 23rd yr., *Suppl. for April-June 1968*, pp. 216-218.

¹¹⁴ Same text as resolution 255 (1968) of 19 June 1968; see in this *Supplement*, chapter VIII, p. 171.

At the 1431st meeting on 18 June 1968, the representative of Canada stated that while the draft resolution with the accompanying declarations made in the Council could not and did not alter the provisions of the Charter, they constituted unequivocal evidence of a common intent by the three major nuclear powers to act in common in the event of nuclear aggression or the threat thereof with a view to restoring peace.

The representative of Denmark saw the agreement between the three nuclear-power States as a token that they considered it in their vital and proper interest that no non-nuclear-weapon State would be subject to nuclear aggression or its threat. For this reason, that agreement must be considered as a reasonable basis committing the parties, a basis upon which the Security Council, should the occasion arise, might intervene.

The representative of Paraguay maintained that it was its legitimate right as a non-nuclear State to claim from the nuclear States special guarantees if a non-nuclear State were to be attacked or threatened with nuclear weapons. The nuclear States had offered such assurance in their declarations; and the Government of Paraguay considered that it was in its interest to accept them. It also considered that the adequate framework in which to set forth those assurances was the United Nations and, within the United Nations, the Security Council.

The representative of Hungary contended that the provisions of the draft resolution constituted an important step in applying the Charter to the realm of nuclear weapons that could not have been foreseen at the time of the drafting of the Charter. By adopting the draft resolution, the Security Council would contribute to the meaningful implementation of Charter provisions to maintain international peace and security. The draft resolution put a potential nuclear aggressor in a position where he must be advised that his action would be resisted effectively and immediately. Contemporary international law provided that international security emanated from the United Nations through the Security Council in the spirit and letter of the Charter. The resolution of the General Assembly on the Non-Proliferation Treaty and the resolution of the Security Council on security assurances constituted one entity. The identical declarations of three nuclear Powers set up a bridge between the Treaty and the resolution of the Security Council and thus provided for the widest possible adherence to the Treaty and led to strengthening of the collective security system under the Charter.

The representative of Senegal stated that his Government took note of the declaration of the three nuclear Powers sponsoring the draft resolution and understood that they would act immediately and in concert in the event of nuclear aggression or its threat to put an end by appropriate means to such an aggression or threat of aggression. The draft resolution and the declaration supporting it constituted together, in the view of the Government of Senegal, one entity, formally guaranteeing the protection of non-nuclear States by the nuclear-weapon States sponsoring the draft resolution.

At the 1433rd meeting on 19 June 1968, the representative of Algeria stated that to the extent that the co-sponsors had wanted the backing of the United Nations, it would have been desirable for them to refer to the relevant provisions of the Charter and not only to recall certain parts of them. The draft resolution and the three-

Power declaration requested the United Nations to endorse a new machinery of a discriminatory nature. While the text of the draft resolution provided for possible sanctions of a universal nature, the benefit of the nuclear protection was reserved only for the signatories of the Non-Proliferation Treaty. By the draft resolution, the United Nations was going to endorse the Treaty the nature of which was not in accordance with its principles, thereby assuming the responsibility of creating machinery that occasioned serious concern. This machinery consisted first of all in the fact that the draft resolution gave the Treaty the stature of a collective security covenant the signatories of which could only benefit from the security guarantees. It was unprecedented for the Security Council to act as guarantor for any covenant. Furthermore, responsibility for the safeguarding and maintenance of peace within the framework of the United Nations rested on the agreement of the permanent members. However, this machinery would henceforth require only the agreement of three of those members, thus calling into question a balance which had been worked out with difficulty at the time of the establishment of the Security Council. There could only be one of two choices. Either the sponsors of the draft resolution would in the case of a dispute be able to obtain the support of the other two permanent members, or if that proved to be impossible to achieve, the resolution would be tantamount to withdrawing from the Security Council its prerogatives in respect of the maintenance and safeguarding of nuclear peace. The adoption of such a machinery under the draft resolution in the last analysis implied an indirect revision of the Charter. If, on the other hand, it was assumed that all nuclear Powers were not those which under the Charter and in their capacity as permanent members had assumed special responsibility with regard to the maintenance of peace, then it would be necessary to proceed to amend the Charter. Either the United Nations would have to envisage two categories of peace maintenance or it would have to amend Article 23. Furthermore, the discriminatory nature of the draft resolution resulted from the fact that it established two categories of States, namely, the signatories that would benefit from apparent nuclear protection, and others who apparently were open to virtually authorized aggression. It seemed also that those States which would be in a position to engage in nuclear aggression, by virtue of the text of the draft resolution, would be exonerated from any possible punishment. More specifically it seemed that the draft resolution as a whole evaded the only question which specifically arose in the current situation: what use did the nuclear Powers intend to make of their arsenals of atomic weapons? China had proclaimed that it would not be the first to use nuclear weapons; the USSR was in favour of prohibition of those weapons; and France did not envisage their offensive use. From this flowed the following alternatives: either those assurances were superfluous, since the two nuclear Powers which were not parties to the Non-Proliferation Treaty had taken the just outlined positions or they were inadequate because the two other Powers apparently were not ready to enter into commitments similar to those assured by the three permanent members of the Council.

The representative of Brazil pointed out that the matter before the Security Council was related to the system of collective security established in the Charter which set up a universal security machinery which included,

without any exception, all Member States. However, the guarantees referred to in the three-Power draft resolution, unilaterally offered by only three of the five existing nuclear Powers, would be applied only to those Member States which became parties to the Non-Proliferation Treaty. Moreover, while the Charter established juridical obligations, the draft resolution and the unilateral declaration of the three great Powers were but statements of intention. The draft resolution therefore fell short of assuring the guarantees against all kinds of aggression contemplated in the Charter. It apparently referred to a new system of guarantees which had not been formulated in accordance with the same principles and criteria applied to the system of guarantees of the Charter. The delegation of Brazil had previously expressed its conviction that the draft non-proliferation treaty did not conform to the relevant principles of General Assembly resolution 2028 (XX)¹¹⁵ and, more specifically, it had failed to establish an acceptable balance of obligations and responsibilities between nuclear and non-nuclear States, including the question of security guarantees to be given to the latter. The system currently proposed also failed to meet this objective.

The representative of Ethiopia maintained that the problem of security guarantees seemed to have encouraged the assumption that the Non-Proliferation Treaty would somehow establish new obligations and rights for Member States of the United Nations outside of the Charter. However, that was not the case: there was no question of establishment of a competing collective security system on the sole behalf of those States accepting the Non-Proliferation Treaty. Under the Charter, all Member States had accepted an obligation to help the victim of aggression in accordance with the determination and the decisions of the Security Council. Moreover, under the Charter, all the permanent members of the Council assumed a decisive vote in the Council's primary responsibility for the maintenance of international peace and security. As a confirmation of this responsibility, the Charter not only granted those Powers the status of permanent membership but also gave them the right and privilege whereby no decision by the Council would be taken without their concurrence. Thus at the time when the Charter had been drafted, it had already contained a mutual balance of rights and obligations as between the permanent members of the Security Council, on the one hand, and the other Member States on the other. The addition of atomic weapons to the war arsenals of States could not have changed, and could not change, this mutual balance of rights and obligations within the framework of the collective security system established by the Charter. The fact that aggression was committed by means of atomic weapons and that the use of atomic weapons against another State was threatened could not change the character of the obligations Member States of the United Nations had assumed under the Charter. All the permanent members of the Security Council, like all other Member States, were under the Charter obligation to come to the assistance of a victim of aggression. The representative pointed out further that neither in the declarations of the sponsors of the draft resolution nor in the draft resolution itself, was there any mention of General Assembly resolution 2153 (XXI), which called

upon all nuclear-weapon Powers "to refrain from the use, or the threat of use, of nuclear weapons against States which might conclude" non-proliferation treaties. That was an unjustified omission. Further it was also to be noted that operative paragraph 2 of the draft resolution only welcomed the expression of the "intention . . . by certain States that they will provide . . . assistance, in accordance with the Charter". It seemed that the use of the word "intention" in this context was somewhat ambiguous. However, with or without this resolution, the permanent members, like all other Member States of the United Nations, had by signing the Charter entered into the legally binding obligation to come to the assistance of a victim of aggression, in accordance with a decision of the Security Council. This was the clear position of the Charter.

The representative of China contended that it would seem that neither the draft resolution nor the declarations added anything new to what had already been provided for in the Charter, Article 1 of which called for " . . . effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression. . .". However, aggression was aggression, no matter what weapons were used. Even if in the present context, the Security Council was dealing with a specific type of aggression, aggression accompanied by the use of nuclear weapons, which as stated by the sponsors of the draft resolution in their declarations, would "create a qualitatively new situation". Yet the procedure of dealing with such a situation was no different from that already provided for in the Charter. From this point of view, it might have been doubted whether the draft resolution was necessary. The criterion of any system of security assurances must be the degree of its effectiveness and credibility. In the present world, it was not always easy to foresee the circumstances in which aggression with nuclear weapons would occur or the forms such aggression might take. The difficulty was compounded by the virtual impossibility of arriving at a consensus on what constitutes aggression, nuclear or otherwise. However, no system of security guarantees could be absolute. The system of security guarantees embodied in the draft resolution was no exception. If it fell short of perfection, at least it afforded the non-nuclear-weapon States more protection than they would otherwise have.

The representative of Pakistan maintained that the security assurances of the three nuclear Powers to the non-nuclear-weapon States related to aggression accompanied by the use of nuclear weapons or a threat of aggression in which nuclear weapons were used against a non-nuclear-weapon State party to the Non-Proliferation Treaty. It had been pointed out during the debate in the First Committee of the General Assembly that the draft resolution would have been a better instrument if instead of speaking of "aggression", which had so far neither been defined nor in practice determined, it had related itself to the use or threat of use of nuclear weapons. As the protection was offered essentially within the framework of the Charter, the possibility of the Security Council's being rendered unable by the use of the veto to take the necessary action made the protection uncertain. Operative paragraph 2 of the three-Power draft resolution made it clear that the identical declarations of the three nuclear Powers were only statements of intention. In the debate in the First Committee, several non-nuclear-

¹¹⁵ Resolution is entitled "Non-proliferation of nuclear weapons".

weapon States had expressed their dissatisfaction over that fact and had called for a binding treaty guarantee to provide immediate assistance to any non-nuclear party that was a victim of nuclear attack or of a nuclear threat. Furthermore, it seemed only just and equitable that, if non-nuclear-weapon States would forswear the acquisition and production of nuclear weapons for their own defence, the nuclear Powers should in return renounce the use of such weapons against those States. Paragraph 1 of the draft resolution recognized that protection was available under the Charter to a non-nuclear-weapon State against nuclear aggression or its threat. A State's adherence to the non-proliferation treaty was not made a condition. However, in paragraph 2 of the draft resolution, the Council was required to welcome the intention expressed by certain States that they would provide or support immediate assistance in accordance with the Charter to any non-nuclear-weapon State party to the Treaty on the Non-Proliferation of Nuclear Weapons that was a victim of an act or an object of a threat of aggression in which nuclear weapons were used. Read together, the two paragraphs gave rise to a certain ambiguity. As the draft resolution was formulated, only a few States could derive from it real assurance of security against the use or threat of use of nuclear weapons, apart from the non-nuclear-weapon States that were members of the NATO or Warsaw Pacts or those protected by the unilateral guarantees outside the framework of the United Nations. As formulated in the draft resolution, it was questionable whether the security assurances in the context of the current realities of international life and the policies of the nuclear Powers were likely to be universal in their practical operation, either as regards the source of the threat or as regards the victim. There was a wide diversity of security interests in the world and security assurances must not be limited as regards time. If on this account, the formula for security must be cast in general terms, there was no reason why it could not be indicated that the protection offered was universal, without preference or exclusion. Therefore it seemed that what the formula in the joint draft resolution on security assurances offered to non-nuclear-weapon States was not all that could now be devised to deter the use or threat of use of nuclear weapons.

The representative of India said that so long as nuclear weapons continued to remain in the armouries of a few States, they had a definite obligation to assure the non-nuclear-weapon States that their security would not be endangered by the use or threat of use of such weapons, and also that such weapons would not be used as an instrument of pressure, intimidation or blackmail. It was in this context that the question of security assurances must be considered. Any steps that might be taken by the nuclear-weapon States in concert with non-nuclear-weapon States to increase the effectiveness of the role of the United Nations for the purpose of providing security must be welcomed. The obligations imposed by the Charter on Member States, and more particularly on the permanent members of the Security Council, to ensure peace in the world, made it necessary for them to discharge their responsibilities in strict conformity with the Charter. However, the assurance of security to non-nuclear-weapon States was an obligation on the nuclear-weapon States, and not something which they could or should offer in return for the signature by non-nuclear-weapon States of the Non-Proliferation Treaty. The

basis for any action by the Security Council for the maintenance of international peace and security was the Charter. Any linking of security assurances to the signature of the Non-Proliferation Treaty would be contrary to its provisions, because the Charter did not discriminate between those who might adhere to a particular treaty and those who might not do so. Referring to Article 24 of the Charter, the representative pointed out that, according to it, in discharging its duties, the Council would act in accordance with the Purposes and Principles of the United Nations. One of the cardinal principles was that of sovereign equality, of the equality of rights and benefits under the Charter for all Members of the United Nations. The second, and equally important, principle was that all Members shall fulfil in good faith the obligations assumed by them in accordance with the Charter. It would thus be clear that, while the permanent members of the Security Council had a special obligation and responsibility for the maintenance of international peace and security, they were precluded from adopting a discriminatory approach in situations involving the security of States, including that arising from the threat or the use of nuclear weapons against non-nuclear-weapon States. However, such a discriminatory approach was adopted in the three-Power draft resolution, particularly in preambular paragraph 2 and operative paragraph 2 thereof. The Security Council was being asked to take into consideration the concern of only certain of those States which had expressed a desire to subscribe to the Non-Proliferation Treaty. This concept was contrary to the Purposes and Principles of the Charter. When the Security Council was called upon to make a determination in accordance with Article 39 of the Charter, it did not first enquire as to whether a certain State had subscribed to a particular treaty or not. Its findings, recommendations and decisions were to be guided solely by the objective of maintaining or restoring international peace and security. The Charter provided clearly that the assistance of the Security Council should be available in equal measure to all States. Some nuclear-weapon States that were also permanent members of the Security Council intended, however, to provide or support immediate assistance by way of collective self-defence only to those non-nuclear-weapon States which were parties to a particular treaty. In their declarations, the three nuclear-weapon Powers themselves recalled the provision of the Charter which called for effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace. However, it was the responsibility of the nuclear-weapon States members of the Security Council to go to the assistance of any non-nuclear-weapon State that was threatened with or was the victim of nuclear attack, and not merely to those that might be signatories of the Non-Proliferation Treaty. This was their special responsibility by reason of their possessing nuclear weapons as well as of their being permanent members of the Security Council. It would be inappropriate, therefore, for the Security Council to welcome the partial assurances mentioned in operative paragraph 2. It was in the interest of the international community that non-nuclear-weapon States were encouraged to remain in that category. This could be done only by ensuring the security of all non-nuclear-weapon States in conformity with the Charter, regardless of whether or not they signed the Non-Proliferation Treaty.

It was therefore clear that the draft resolution contained in document S/8631 did not fully accord with the basic principles which should govern the problem of the security of non-nuclear-weapon States.

At the 1433rd meeting on 19 June 1966, the three-

Power draft resolution was adopted¹¹⁶ by 10 votes in favour, none against with 5 abstentions, as resolution 255 (1968).

¹¹⁶ 1433rd meeting (PV), p. 46. For the text of the resolution see in chapter VIII, p. 171.