

Chapter XI

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER

CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE.....	419
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLES 39-42 OF THE CHARTER	
Note.....	420
PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLES 43-47 OF THE CHARTER	
Note.....	425
PART III. CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER	
Note.....	425
PART IV. CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER IN GENERAL	
Note.....	433

INTRODUCTORY NOTE

The present chapter presents the decisions of the Security Council that either constitute explicit applications or might be considered as implicit applications of the provisions of Chapter VII of the Charter.¹

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 fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

"Article 45

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

"Article 46

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

"Article 47

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

"2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

¹Up to *Supplement 1964-1965*, chapter XI dealt with instances in which proposals placed before the Council evoked discussions regarding the application of Chapter VII of the Charter. The change was introduced in *Supplement 1966-1968*.

"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 sub-committees.

"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 39-42 OF THE CHARTER

NOTE

Owing to the frequently interconnected nature of the proceedings of the Council involving, especially, Articles 39 and 41, Articles 39 to 42 are again considered together, rather than separately.

During the period under review, the Council took one decision in which Article 39 was explicitly invoked together with Article 40:

Resolution 598 (1987) of 20 July 1987, ninth and tenth preambular paragraph:²

Determining that there exists a breach of the peace as regards the conflict between Iran and Iraq,

Acting under Articles 39 and 40 of the Charter,

The Council took a number of decisions which contained provisions that might be considered to be similar to the language of Article 39. These are briefly listed as follows:

Resolution 581 (1986) of 13 February 1986, third preambular paragraph:³

Gravely concerned at the tension and instability created by the hostile policies and aggression of the apartheid regime throughout southern Africa and the mounting threat they pose to the security of the region and its wider implications for international peace and security,

At the 2690th meeting, on 13 June 1986, the President of the Security Council made a statement on behalf of the Council, the first paragraph of which read as follows:

The members of the Security Council, on the occasion of the observance of the tenth anniversary of the wanton killings perpetrated by the apartheid regime in South Africa against the African people in

Soweto, wish to recall Council resolution 392 (1976) which strongly condemned the South African Government for its resort to massive violence against and killings of the African people including school-children and students and others opposing racial discrimination. They are convinced that a repetition of such tragic events would aggravate the already serious threat that the situation in South Africa poses to the security of the region and could have wider implications for international peace and security.

Resolution 602 (1987) of 25 November 1987, seventh preambular paragraph:⁴

Gravely concerned also that the pursuance of these acts of aggression against Angola constitutes a serious threat to international peace and security.

The Council considered a number of draft resolutions containing implicit references to Article 39, which, however, either were not voted upon or failed of adoption. The drafts read as follows:

S/17633, tenth preambular paragraph and paragraph 1 (2629th mtg., 15 November 1985):⁵

Gravely concerned at the further aggravation of the already tense situation and instability created by the repeated and systematic acts of aggression and occupation perpetrated by the apartheid regime over a period of several years throughout southern Africa, which constitutes a serious threat to the peace of the region as well as to international peace and security,

⁴In connection with the complaint by Angola against South Africa.

⁵S/17633, OR, 40th yr., Suppl. for Oct.-Dec. 1985: draft resolution submitted by Burkina Faso, Egypt, India, Madagascar, Peru and Trinidad and Tobago in connection with the situation in Namibia failed to be adopted owing to the negative votes of two permanent members.

²In connection with the situation between Iran and Iraq.

³In connection with the situation in southern Africa.

1. *Determines* (a) that the persistent refusal of South Africa to comply with Security Council and General Assembly resolutions on Namibia constitutes a serious threat to international peace and security;

S/17769/Rev.1, paragraph 2 (2650th mtg., 30 January 1986).⁶

Affirms that such acts constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East, the failure of which could also endanger international peace and security;

S/17984, second preambular paragraph (2673rd mtg., 14 April 1986).⁷

Considering that the use of force constitutes a threat to international peace and security,

S/18087/Rev. 1, paragraph 6 (a) (2686th mtg., 23 May 1986).⁸

Acting in accordance with the provisions of the Charter of the United Nations:

(a) *Determines* that the policies and acts of the racist regime of South Africa constitute a threat to international peace and security;

S/18785, paragraph 7 (a) and (b) (2747th mtg., 9 April 1987).⁹

Determines that:

(a) South Africa's continued illegal occupation of Namibia constitutes a breach of international peace and security in violation of the Charter of the United Nations;

(b) The persistent refusal by racist South Africa to comply with Security Council and General Assembly resolutions and decisions on Namibia, and its violation thereof, constitutes a serious threat to international peace and security;

During the period under review, Article 39 was explicitly invoked four times in communications received by the United Nations,¹⁰ and in numerous cases communications received by the United Nations employed language similar to that of Article 39.¹¹

⁶S/17769/Rev.1, *OR*, 41st yr., *Suppl. for Jan.-March 1986*: draft resolution submitted by the Congo, Ghana, Madagascar, Trinidad and Tobago and the United Arab Emirates in connection with the situation in the occupied Arab territories failed to be adopted owing to the negative vote of a permanent member.

⁷S/17984, *OR*, 41st yr., *Suppl. for April-June 1986*, draft resolution submitted by Malta in connection with the letter dated 12 April 1986 from the Chargé d'affaires a.i. of the permanent Mission of Malta to the United Nations.

⁸S/18087/Rev.1, *OR*, 41st yr., *Suppl. for April-June 1986*, revised draft resolution submitted by the Congo, Ghana, Madagascar, Trinidad and Tobago and the United Arab Emirates in connection with the situation in southern Africa failed of adoption owing to the negative votes of two permanent members.

⁹S/18785, *OR*, 42nd yr., *Suppl. for April-June 1987*, pp.6-7: draft resolution submitted by Argentina, the Congo, Ghana, the United Arab Emirates and Zambia in connection with the situation in Namibia failed to be adopted owing to the negative votes of two permanent members.

¹⁰S/17849, *OR*, 41st yr., *Suppl. for Jan.-March 1986*, regarding the situation between Iran and Iraq; S/19031, *OR*, 42nd yr., *Suppl. for July-Sept. 1987*, regarding the situation between Iran and Iraq, S/19083 and Add. 1, *ibid.*, regarding the situation between Iran and Iraq; and S/19167, *ibid.*, regarding the situation between Iran and Iraq.

¹¹In connection with the question of South Africa, the letter dated 17 June 1985 from the representative of Botswana, the situation in the Middle East, the situation in the occupied Arab territories, the complaint by Angola against South Africa, the letters dated 10 February 1988 from the observer of the Republic of Korea and from the representative of Japan, and the situation relating to Afghanistan.

There were a number of explicit references to Article 39 during the consideration of several agenda items in the Council.¹² Furthermore, many statements contained what might be interpreted as implicit references to the Article, usually in the form of an appeal to the Council to recognize a particular situation as a threat to international peace and security and to weigh the adoption of appropriate measures under the Charter.¹³

During the period under consideration, the Council took one decision in which Article 40 was explicitly invoked together with Article 39:

Resolution 598 (1987) of 20 July 1987, ninth and tenth preambular paragraphs and paragraph 1:

Determining that there exists a breach of the peace as regards the conflict between Iran and Iraq,

Acting under Articles 39 and 40 of the Charter,

1. *Demands* that, as a first step towards a negotiated settlement, the Islamic Republic of Iran and Iraq observe an immediate ceasefire, discontinue all military actions on land, at sea and in the air, and withdraw all forces to the internationally recognized boundaries without delay;

The question whether there were any resolutions or other decisions containing implicit references to Article 40 cannot be answered in the affirmative because the action taken by the Council and the accompanying proceedings did not make clear whether the Council was actually considering basing its decision on the provisions of that Article. Moreover, there was no constitutional discussion regarding the Article, but merely occasional references to it or an invocation of its language in order to support a specific demand relating to the question under consideration.

Those decisions and statements that might be interpreted as implicit references to Article 40 are briefly summarized below. Special attention is given to those decisions that might be considered to be of the nature of provisional measures to prevent the aggravation of the situation. Such provisional measures included: (a) demands that the independence, sovereignty and territorial integrity of countries must be respected;¹⁴ (b) calls for all concerned parties to respect the rights of civilians and to refrain from acts of violence against them and to take measures to alleviate their suffering;¹⁵ (c) demands for the strict observance of the Geneva Protocol of 1925, according to which the use

¹²In connection with the complaint by Angola against South Africa, S/PV.2612: Nigeria, pp. 18-19; S/PV.2616: United Arab Emirates, p. 47; in connection with the situation in Namibia, S/PV.2629: Trinidad and Tobago, p. 17; S/PV.2746: Uganda, p. 61; in connection with the situation in southern Africa, S/PV.2686: Madagascar, p. 12; in connection with the situation between Iran and Iraq, S/PV.2750: United Kingdom, p. 16.

¹³Such statements occurred especially in connection with questions involving the occupied Arab territories and the situation in the Middle East, but also in discussions involving developments in southern Africa, the situation between Iran and Iraq, the letter dated 6 May 1985 from the representative of Nicaragua and the letter dated 27 June 1986 from the representative of Nicaragua.

¹⁴Statement of the President (S/17215) of 24 May 1985, para. 3, and resolution 564 (1985), para. 2, in connection with the situation in the Middle East; statement of the President (S/17932) of 21 March 1986, para. 5, statement of the President (S/18538) of 22 December 1986, para. 2, statement of the President (S/18863) of 14 May 1987, para. 6, in connection with the situation between Iran and Iraq.

¹⁵Resolution 564 (1985), paras. 1 and 3, in connection with the situation in the Middle East.

in war of chemical weapons is prohibited;¹⁶ (d) calls on all States to implement fully the arms embargo imposed against South Africa in resolution 418 (1977);¹⁷ (e) calls for payment of full and adequate compensation for the effects of acts of aggression;¹⁸ (f) calls for parties to normalize their relations and to employ established channels of communication in matters of mutual concern;¹⁹ (g) calls for an end to military presences not accepted by the proper authorities;²⁰ (h) calls for relevant parties to exercise restraint, to avoid violent acts and to contribute towards the establishment of peace;²¹ (i) calls to all States to exert pressure on South Africa to desist from perpetrating acts of aggression against neighbouring States;²² (j) calls on parties to submit conflicts to mediation or other means of settlement of disputes;²³ (k) calls for the respect for the right of free navigation and commerce;²⁴ (l) calls for the immediate lifting of states of emergency;²⁵ (m) calls for a ceasefire;²⁶ (n) calls upon Member States to cooperate with the Security Council, the Secretary-General or the United Nations;²⁷ (o) calls to States to continue to apply or to establish strict control of the export of chemical products used in the production of chemical weapons to the parties to the Iran-Iraq conflict.²⁸

The Council also called upon certain Member States to take a number of specific measures. Thus, South Africa was called upon to release all political prisoners and detainees, including Nelson Mandela and other black leaders, and to withdraw the charges of "high treason" instituted against United Democratic Front officials;²⁹ to lift the state of emergency in the thirty-six districts in which it had been

imposed;³⁰ to rescind the actions taken in Namibia, the government of which the Council declared null and void, and to cooperate in and facilitate the implementation of the relevant resolutions;³¹ to unconditionally withdraw all its occupation forces from the territory of Angola, cease all acts of aggression against that State and scrupulously respect the sovereignty and territorial integrity of the People's Republic of Angola,³² and to pay full compensation to the People's Republic of Angola for damages resulting from acts of aggression.³³ The Council also demanded the unconditional cessation of all acts of aggression by South Africa against Botswana,³⁴ and also demanded that South Africa pay full compensation to Botswana for the loss of life and damage to property resulting from its acts of aggression.³⁵ Similarly, South Africa was called upon to pay full and adequate compensation to the Kingdom of Lesotho for the damage and loss of life resulting from acts of aggression, as well as to resort to peaceful means in resolving international problems in accordance with the Charter, to live up to its commitment not to destabilize neighbouring countries nor to allow its territory to be used as a springboard for attacks against neighbouring countries and to take meaningful steps towards the dismantling of apartheid.³⁶

The Council demanded that Israel refrain from threatening or perpetrating acts of aggression such as the air raid on Tunis of 1 October 1985.³⁷

In 1986, the Council demanded that South Africa immediately eradicate apartheid as the necessary step towards the establishment of a non-racial democratic society; to that end the Council further demanded: (a) the dismantling of the bantustan structures as well as the cessation of uprooting, relocation and denationalization of the indigenous African people; (b) the abrogation of the bans and restrictions on political organizations, parties, individuals and news media opposed to apartheid; (c) the unimpeded return of all the exiles. The resolution furthermore demanded that the racist regime of South Africa put an end to the violence against and repression of the black people and other opponents of apartheid, unconditionally release all persons imprisoned, detained or restricted for their opposition to apartheid and lift the state of emergency.³⁸

In 1986 and 1987, both the Islamic Republic of Iran and Iraq were called upon to observe an immediate ceasefire and cessation of hostilities on land, at sea and in the air and to withdraw their forces to the internationally recognized boundaries without delay while submitting all

¹⁶Statement of the President (S/17130) of 25 April 1985, statement of the President (S/17932) of 21 March 1986, statement of the President (S/18863) of 14 May 1987, para. 3; resolution 612 (1988), para. 3, in connection with the situation between Iran and Iraq, resolution 612 (1988), para. 4, and resolution 620 (1988), para. 3, called upon States to establish or continue strict control of the export to the parties to the conflict of chemical products used in the manufacture of chemical weapons.

¹⁷Resolution 571 (1985), para. 4, and resolution 574 (1985), para. 5, in connection with the complaint by Angola against South Africa; resolution 591 (1986), paras. 2, 3, 7, 8 and 9, in connection with the question of South Africa.

¹⁸Resolution 571 (1985), para. 6, and resolution 577 (1985), para. 7, in connection with the complaint by Angola against South Africa.

¹⁹Resolution 580 (1985), para. 3, in connection with the complaint by Lesotho against South Africa.

²⁰Resolution 587 (1986), para. 7, statement of the President (S/18439) of 31 October 1986, para. 7, in connection with the situation in the Middle East.

²¹Resolution 582 (1986), para. 7, in connection with the situation between Iran and Iraq; resolution 592 (1986), para. 5, resolution 605 (1987), para. 4, in connection with the situation in the occupied Arab territories.

²²Resolution 581 (1986), para. 5, in connection with the situation in southern Africa.

²³Resolution 582 (1986), para. 5, in connection with the situation between Iran and Iraq.

²⁴Statement of the President (S/18538) of 22 December 1986, para. 2, in connection with the situation between Iran and Iraq.

²⁵Statement of the President (S/18157) of 13 June 1986, para. 2, in connection with the question of South Africa.

²⁶Statement of the President (S/18691) of 13 February 1987, para. 2, in connection with the situation in the Middle East.

²⁷Statement of the President (S/18863) of 14 May 1987, para. 7, in connection with the situation between Iran and Iraq; resolution 602 (1987), para. 6, in connection with the complaint by Angola against South Africa.

²⁸Resolution 612 (1988), para. 4, resolution 620 (1988), para. 3, in connection with the situation between Iran and Iraq.

²⁹Resolution 560 (1985), paras. 3 and 4, and resolution 569 (1985), para. 4, in connection with the question of South Africa.

³⁰Resolution 569 (1985), para. 3, in connection with the question of South Africa.

³¹Resolution 566 (1985), paras. 3, 4, 5 and 12, in connection with the situation in Namibia.

³²Resolution 567 (1985), para. 3, resolution 571 (1985), para. 3, resolution 574 (1985), para. 3, and resolution 577 (1985), para. 4, in connection with the complaint by Angola against South Africa.

³³Resolution 571 (1985), para. 6, resolution 577 (1985), para. 7, in connection with the complaint by Angola against South Africa.

³⁴Resolution 568 (1985), para. 3, in connection with the letter dated 17 June 1985 from the representative of Botswana.

³⁵Resolution 568 (1985), para. 5, in connection with the letter dated 17 June 1985 from the representative of Botswana.

³⁶Resolution 580 (1985), paras. 2, 6, 7 and 8, in connection with the complaint by Lesotho against South Africa.

³⁷Resolution 573 (1985), para. 2, in connection with the letter dated 1 October 1985 from the representative of Tunisia.

³⁸Resolution 581 (1986), paras. 7 and 8, in connection with the situation in Southern Africa.

aspects of the conflict to mediation or to any other means of peaceful settlement of disputes.³⁹

In 1987, the Council again called upon South Africa to end apartheid and to free all political prisoners and detainees; the South African authorities were also called upon to revoke the decree of 10 April 1987, which prohibited nearly all forms of protest against detention without trial, and which the Council considered as being contrary to fundamental human rights as envisaged in the Charter as well as being based on the state of emergency imposed in June 1986, the lifting of which had already been called for by the members of the Council,⁴⁰ to put an immediate end to the repression of the Namibian people and to all illegal acts against neighbouring States, as well as to comply fully with resolutions 385 (1976) and 435 (1978) and to put an end to its illegal occupation and administration of Namibia;⁴¹ again to cease immediately its acts of aggression against Angola and unconditionally withdraw all its forces from Angolan territory as well as respect the sovereignty and territorial integrity of Angola.⁴² The Council called upon Israel to respect the rights of civilians in the occupied territory by scrupulously abiding by the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War.⁴³

In 1988, the Council repeatedly called upon South Africa to stay the execution and commute the death sentences imposed on the Sharpeville Six.⁴⁴

A number of Council resolutions contained warnings that, in the event of failure to comply with the terms of those resolutions, the Council would meet again and consider further steps. Those warnings, which might be considered as falling under the last provision of Article 40, were expressed in various ways. Frequently, the Council warned that it would consider taking adequate and effective measures if its calls were not heeded.⁴⁵

During the period under review, the Council did not adopt any resolutions containing explicit references to Article 41. Nor did any constitutional discussions develop regarding the application of these provisions.

During the period under review, the Council adopted three resolutions that contained implicit references to Article 41, concerning related developments in South Africa. Resolutions 57 I (1985) and 574 (1985) were adopted in connection with complaints by Angola about persistent South African attacks and continued military occupation of parts of Angola; the resolutions called upon all States to fully implement the arms embargo imposed against

South Africa in resolution 418 (1977).⁴⁶ Similarly, the Council adopted resolution 591 (1986), which addressed the problem of implementing the mandatory arms embargo enacted against South Africa in resolution 418 (1977) and reaffirmed that resolution. Resolution 591 (1986) further requested all States to refrain from importing arms, ammunition of all types and military vehicles produced in South Africa and requested all States, including States not Members of the United Nations, to act strictly in accordance with its provisions.⁴⁷

During the period under review, the Council considered several draft resolutions that contained explicit invocations of Article 41. All of these draft resolutions were either not voted on or failed of adoption.

When the Council resumed consideration of the situation in Namibia, at its 2624th to 2626th, 2628th and 2629th meetings, from 13 to 15 November 1985, two draft resolutions⁴⁸ were submitted calling for the Council to act under both Chapter VII and, specifically, Article 41 of the Charter, and to impose on South Africa mandatory selective sanctions. The first draft resolution (S/1763 I) was not put to a vote, while the second (S/17633) was voted upon at the 2629th meeting and failed of adoption owing to the negative vote of two permanent members of the Council.⁴⁹ The Council further considered the situation in Namibia at its 2740th to 2747th meetings, from 6 to 9 April 1987, where a draft resolution⁵⁰ was submitted calling for the Council to act under both Chapter VII and Article 41 of the Charter in order to impose comprehensive mandatory sanctions on South Africa. The draft resolution was put to a vote at the 2747th meeting and failed of adoption owing to the negative vote of two permanent members of the Council.⁵¹

When the Council was convened in February 1987 to consider the question of South Africa, a draft resolution⁵² was submitted calling for the Council to act under Chapter VII and Article 41 of the Charter and to impose selective mandatory sanctions against South Africa. Following extensive debate on the issue at the 2732nd to 2737th meetings,

³⁹Resolution 582 (1986), paras. 3 and 5, resolution 598 (1987), paras. 1 and 4, in connection with the situation between Iran and Iraq.

⁴⁰Statement of the President (S/18808) of 16 April 1987, in connection with the question of South Africa.

⁴¹Statement of the President (S/19068) of 21 August 1987, in connection with the situation in Namibia.

⁴²Resolution 602 (1987), para. 4, in connection with the complaint by Angola against South Africa.

⁴³Resolution 605 (1987), para. 3, in connection with the situation in the occupied Arab territories.

⁴⁴Resolution 610 (1988), para. 1, and resolution 615 (1988), para. 1, in connection with the question of South Africa.

⁴⁵Resolution 566 (1985), para. 13, in connection with the situation in Namibia; resolution 574 (1985), para. 8, in connection with the complaint by Angola against South Africa; resolution 598 (1987), para. 10, and resolution 620 (1988), para. 4, in connection with the situation between Iran and Iraq.

⁴⁶Resolution 571 (1985) of 20 September 1985, adopted unanimously at the 2607th meeting, following a separate vote on operative paragraph 5, in connection with the complaint by Angola against South Africa: the eighth preambular paragraph and paragraph 4 focused on the sanctions against South Africa; resolution 574 (1985) of 7 October 1985, adopted unanimously at the 2617th meeting, following a separate vote on paragraph 6, in connection with the complaint by Angola against South Africa: the sixth preambular paragraph and paragraph 5 focused on the sanctions against South Africa.

⁴⁷Resolution 591 (1986) of 28 November 1986, adopted by consensus at the 2723rd meeting, in connection with the question of South Africa.

⁴⁸S/17631, S/17633, OR, 40th yr., Suppl. for Oct.-Dec. 1985.

Both draft resolutions were sponsored by Burkina Faso, Egypt, India, Madagascar, Peru and Trinidad and Tobago and both called for, *inter alia*, mandatory sanctions, including: (a) economic sanctions; (b) an oil embargo; and (c) an arms embargo.

⁴⁹Draft resolution S/1763 I was not put to a vote. Draft resolution S/17633 received 12 votes in favour, 2 against and 1 abstention.

⁵⁰Draft resolution S/18785, OR, 42nd yr., Suppl. for April-June 1987, was sponsored by Argentina, the Congo, Ghana, the United Arab Emirates and Zambia, and called, *inter alia*, for comprehensive and mandatory sanctions.

⁵¹Draft resolution S/18785 received 9 votes in favour, 3 against and 3 abstentions.

⁵²S/18705, OR, 42nd yr., Suppl. for Jan.-March 1987. The draft was sponsored by Argentina, the Congo, Ghana, the United Arab Emirates and Zambia.

the proposal was voted upon at the 2738th meeting and failed of adoption owing to the negative vote of two permanent members of the Council.⁵³

During the subsequent examination of the question of South Africa, at its 2793rd to 2797th meetings from 3 to 8 March 1988, the Council was faced with another draft resolution⁵⁴ which explicitly mentioned both Chapter VII and Article 41 and called for the imposition of mandatory sanctions against South Africa. This proposal was voted upon at the 2797th meeting and failed to be adopted owing to the negative votes of two permanent members of the Council?

During the period under review, Article 41 was explicitly referred to in the Council in connection with the complaint by Angola against South Africa,⁵⁶ the situation in Namibia,⁵⁷ the situation in southern Africa⁵⁸ and the question of South Africa.⁵⁹ In some instances, Article 41 was mentioned in tandem with Chapter VII of the Charter, where it is included. On many occasions, however, Council members explicitly invoked only Chapter VII of the Charter when they specifically referred to the application of sanctions. Although in these cases Article 41 was not explicitly mentioned, it was nevertheless the centrally relevant article from the explicitly mentioned Chapter VII, and, in most cases, took the same form as those statements which invoked Article 41 explicitly. Chapter VII, in its specific provisions regarding the imposition of sanctions, was explicitly referred to in connection with the situation in Namibia,⁶⁰ the question of South Africa,⁶¹ the situation in the occupied Arab territories⁶² and the complaint by Angola against South Africa.⁶³ In connection with these and other issues, representatives made frequent implicit references to Article 41 suggesting economic sanctions and other mandatory measures.

Article 42 was not invoked in any decision of the Council, nor was there any constitutional discussion regarding the Article. But on several occasions Article 42 was invoked explicitly in Council discussions, usually with suggestions for the use of force by the Organization?

⁵³The draft resolution received 10 votes to 3, with 2 abstentions.

⁵⁴S/19585, OR, 43rd yr., Suppl. for Jan.-March 1988. The draft resolution was sponsored by Algeria, Argentina, Nepal, Senegal, Yugoslavia and Zambia and called for, *inter alia*, the imposition of selected mandatory sanctions against South Africa the effectiveness of which were to be reviewed by the Council after a 12-month period.

⁵⁵The draft resolution received 10 votes in favour, 2 against and 3 abstentions.

⁵⁶S/PV.2617: Ghana, p. 27.

⁵⁷S/PV.2629: Trinidad and Tobago, p. 17.

⁵⁸S/PV.2686: Madagascar, p. 12.

⁵⁹S/PV.2737: Kenya, p. 4; and S/PV.2738: Venezuela, p. 42.

⁶⁰S/PV.2583: India, p. 16; South West Africa People's Organization (SWAPO), pp. 77-78; S/PV.2588: USSR, p. 31; Syrian Arab Republic, pp. 51 and 54; S/PV.2589: Kenya, p. 52; and S/PV.2740: SWAPO, p. 42.

⁶¹S/PV.2602: German Democratic Republic, p. 28; S/PV.2734: Morocco, pp. 46-47; S/PV.2735: Ukrainian SSR, pp. 7-9; S/PV.2793: African National Congress (ANC), p. 21; S/PV.2794: Bulgaria, pp. 44-46; S/PV.2795: India, p. 27; and S/PV.2796: Zimbabwe, p. 28.

⁶²S/PV.2644: Syrian Arab Republic, p. 37; S/PV.2724: Zimbabwe, p. 12; and S/PV.2775: Viet Nam, p. 27.

⁶³S/PV.2765: Argentina, p. 23.

⁶⁴In connection with the complaint by Angola against South Africa, S/PV.2612: Nigeria, p. 22; and S/PV.2617: Ghana, p. 27; in connection with the situation in Namibia, S/PV.2629: Trinidad and Tobago, p. 17; and in connection with the question of South Africa, S/PV.2737: Kenya, p. 4.

CASE I

The question of South Africa

(In connection with a draft resolution (S/17354/Rev.1) sponsored by Denmark and France, voted upon and adopted as resolution 569 (1985); and the proposed amendment (S/17363) to the above-mentioned draft resolution, sponsored by Burkina Faso, Egypt, India, Madagascar, Peru and Trinidad and Tobago, voted upon and not adopted owing to the negative vote of two permanent members of the Council)

Following the imposition of a state of emergency in 36 districts of South Africa on 22 July 1985 and in view of the increased suffering endured by the people of South Africa as a result of the system of apartheid, the representatives of Denmark and France urged States Members of the Organization to take certain measures against the Republic of South Africa as specified in draft resolution S/17354.⁶⁵ While saying that the international community expected a reaction from the Council that was both firm and realistic, the representative of France also pointed out that the text of the draft resolution under consideration (S/17354) might not meet every Council member's own concerns. The representative of France went on to say that his delegation was seeking a unanimous stand on the part of the international community regarding a tragic situation. Many of those who had participated in the Council's debate supported the draft resolution as far as it went but felt that, in search of a consensus, it was not severe enough to produce the desired effect.⁶⁶ Several participants in the debate called for the adoption of mandatory sanctions against South Africa under Chapter VII.⁶⁷

Several other delegations were of the view that sanctions would not promote the end of apartheid and appealed for continued negotiations in lieu of measures they considered would have a damaging effect on the population of South Africa without achieving the desired end.⁶⁸

At the 2600th meeting, on 25 July 1985, the representative of Denmark said that his country strongly believed that the situation in South Africa constituted a serious threat to international peace and security and that the Government of South Africa was guilty of breaching the peace in violation of the provisions of the Charter. Pending mandatory sanctions under Chapter VII, it was important that the Council cooperate quickly and, in a spirit of compromise, reach agreement on measures against South Africa which would increase international pressure in an effective way.⁶⁹ At the same meeting, the representative of the United States, in addition to voicing his Government's opinion that the total political and economic isolation of

⁶⁵S/PV.2600: France, pp. 8-10.

⁶⁶For relevant statements, see S/PV.2600: Australia, pp. 24-25; China, p. 28; Egypt, p. 63; Burkina Faso, pp. 76-77; S/PV.2601: Madagascar, pp. 12-13; S/PV.2602: Zaire, pp. 13-15.

⁶⁷For relevant statements see S/PV.2600: USSR, p. 32; Mali (speaking on behalf of the Group of African States), p. 57; India (speaking on behalf of the Movement of Non-Aligned Countries) (not Chapter VII explicit), p. 67; Burkina Faso, p. 73; Cuba, p. 81; Kenya, p. 87 (not Chapter VII explicit); S/PV.2601: Trinidad and Tobago, pp. 8-10; S/PV.2602: Syrian Arab Republic, pp. 17 and 21 (not Chapter VII explicit); Ethiopia, p. 32; Yugoslavia, p. 38; Ukrainian SSR, p. 41.

⁶⁸For relevant statements see S/PV.2600: United Kingdom, p. 13; United States, pp. 17-20.

⁶⁹*Ibid.*, Denmark, p. 16.

South Africa would not produce the desired result, further stated that his delegation was not convinced that certain elements of the draft resolution under consideration were suitable means of discouraging apartheid. He singled out the draft resolution's call for suspension of new investments, stating that it would only disrupt the functioning of an economy that had become increasingly open to blacks, giving them growing power to eliminate apartheid.⁷⁰ At the same meeting, the Chairman of the Special Committee against Apartheid pointed out that apartheid was not merely an issue of equal employment opportunities offered by companies supported by the labours of blacks whose working and living conditions demeaned the value and meaning of human dignity.⁷¹

At the 2602nd meeting, on 26 July 1985, the French delegation submitted a revised draft resolution (S/17354/Rev.1) which broadly took into account suggestions made by other participants in the debate. Before the revised draft resolution (S/17354/Rev.1) was voted upon, the President drew attention to an amendment (S/17363) to the draft resolution submitted by Burkina Faso, Egypt, India, Madagascar, Peru and Trinidad and Tobago. The proposed amendment, to be inserted after operative paragraph 5 of the revised draft resolution, warned South Africa that failure to eliminate apartheid would compel the Council to meet at a later date in order to consider other measures under the Charter, including Chapter VII, that would bring additional pressure to ensure South Africa's compliance. At the same meeting the amendment was put to the vote and failed of adoption owing to the negative vote of two permanent members of the Council.⁷² After the vote on the amendment and before the vote on draft resolution

S/17354/Rev.1, the representative of the United Kingdom stated that most of the draft resolution before the Council was generally in accord with the policy of his Government; however, his delegation could not endorse operative paragraph 6 in particular, because it felt that the sale of South African krugerrands was not a major issue. The representative of the United Kingdom went on to say that his delegation could not vote for the proposed draft resolution and would vote against the amendment which the Council had just voted upon because it did not believe that measures under Chapter VII would prove an effective way of achieving internal change in South Africa.

At the 2602nd meeting, on 26 July 1985, the Council voted on the revised draft resolution (S/17354/Rev.1), which received 13 votes in favour, none against and 2 abstentions, and was thus adopted as resolution 569 (1985). After the vote, the representative of France expressed his country's pleasure at the adoption of the draft resolution which it had submitted with the co-sponsorship of Denmark after taking into account in great measure the comments made by the non-aligned members of the Council. He went on to state, however, that his country believed that the provisions of Chapter VII of the Charter did not apply to the question which the Council had before it; hence his delegation had abstained in the vote on draft amendment S/17363.

The representative of Burkina Faso expressed, on the one hand, his appreciation of the efforts of the sponsors of the draft resolution to take account of certain concerns of the States members of the Movement of Non-Aligned Countries. On the other hand, however, he expressed his regret that the resolution just adopted suffered from a fundamental omission in that it contained no reference to measures under Chapter VII of the Charter, which his delegation felt the Council should impose against South Africa. The representative of Burkina Faso further stated that the omission could have been overcome through the inclusion of amendment S/17363, which was identical to the text of Security Council resolution 566 (1985), adopted only weeks before.

⁷⁰Ibid., United States, pp. 19-20.

⁷¹Ibid., Chairman of the Special Committee on Apartheid, p. 53.

⁷²The amendment (S/17363) received 12 votes in favour and 2 against, with 1 abstention.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLES 43-47 OF THE CHARTER

NOTE

During the period under review, the Council did not adopt any resolutions referring to Articles 43-47 of the Charter. Nor was there any constitutional discussion about these articles.

Part III

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

NOTE

During the period under review, the Council adopted three resolutions which contained implicit references to Articles 49 and 50. These resolutions involved the question of assistance to Botswana⁷³ and Lesotho,⁷⁴ Member States that had suffered losses and damage as a result of their humanitarian support of South African refugees as well as

their adherence to a Council resolution against South Africa.

⁷³See resolution 568 (1985) of 21 June 1985, adopted unanimously at the 2599th meeting, especially paragraphs 5, 6 and 8; and resolution 572 (1985) of 30 September 1985, adopted unanimously at the 2609th meeting, especially paragraph 5.

⁷⁴See resolution 580 (1985) of 30 December 1985, adopted unanimously at the 2639th meeting, especially paragraphs 4 and 5.

In the course of deliberations in the Council, various issues occasioned pertinent arguments relating to the interpretation of the principle embodied in Article 50.

In an annex to a letter sent by the representative of South Africa to the Secretary-General, the South African Minister of Foreign Affairs warned the Secretary-General that Security Council resolution 569 (1985), which called, *inter alia*, for voluntary economic sanctions against South Africa, was dangerous and irresponsible since it could have damaging effects on the economies of South Africa's neighbouring States. If sanctions such as the suspension of new investment were imposed, South Africa would be unable to give loans and financial aid to neighbouring States. Sanctions would also jeopardize the employment opportunities for many expatriate workers who sent remittances to neighbouring States.⁷⁵

The argument that economic sanctions should not be imposed against South Africa because they would hurt black South Africans and other front-line States more than they would harm Pretoria was voiced occasionally in the course of the Council's debates concerning the various agenda items relating to southern Africa.⁷⁶ This argument was often countered by statements emphasizing that the black populations and their authentic leaders in the region had themselves called for the imposition of sanctions and were ready to submit to the sacrifices which their imposition would entail.

During the consideration of the situation in Namibia, the representative of Zambia observed that the front-line States were not "starry-eyed" concerning the impact of economic sanctions against South Africa. The front-line States had thoroughly examined the indirect impact those measures would have on their own economies and welfare. Despite the economic repercussions against the front-line States, the leaders of those States were fully aware of their international responsibility and had called strongly for comprehensive mandatory economic sanctions against South Africa.⁷⁷ At the 2741st meeting, on 6 April 1987, the representative of Venezuela observed that general binding sanctions against South Africa had been demanded by the victims of apartheid and by the front-line States. His country wished to ask the Council once again whether the time had not come, within the context of Article 50 of the Charter and as an exercise in preventive diplomacy, to hear the views of the countries of the subregion on the adverse effects that a policy of sanctions against South Africa might have on their respective economies.⁷⁸

In connection with the situation in southern Africa, the representative of Nicaragua stated that the argument used for not imposing sanctions on South Africa, namely, that the people would be hurt the most, was a clumsy manoeuvre and an excuse to continue support for the Pretoria regime. He questioned how much the South African and Namibian peoples had actually benefited from economic opportunities provided by the racist minority.⁷⁹ At the 2686th meeting, on 23 May 1986, the representative of Zimbabwe observed that South Africa had been systematically implementing its own policy of political and eco-

conomic sanctions against its neighbours in a regular and remorseless fashion.⁸⁰ Evidence of Pretoria's policy of sanctions against its neighbours could be found in a paper by a South African foreign policy consultant entitled "Some strategic implications of regional economic relationships for South Africa". Some of the techniques contained in the paper which he associated with South Africa's policy of sanctions against its neighbours included: its use of its railways and harbours to squeeze, pressure or strangle any of its land-locked neighbours by imposing surcharges or announcing restrictions on the amount of goods to be exported through South Africa; limiting or banning the importation of labour from its neighbours; and curbing or regulating the amount of such goods as petroleum which might pass to neighbouring States. Since South Africa was already using the weapon of sanctions against the front-line States, he could not understand why some Western countries attempted to argue that sanctions against South Africa: (a) were morally wrong, (b) would hurt the wrong people, (c) would not be effective and (d) would hurt neighbouring States. The representative of Zimbabwe emphasized that the people of South Africa and the front-line States were already being hurt and that they knew, furthermore, that sanctions were effective as evidenced by the results of the sanctions employed by the South African Government.⁸¹

In connection with the question of South Africa, the representative of Zimbabwe, responding to a statement made earlier in the debate by the representative of South Africa, called the question of the suffering in neighbouring States, if sanctions were to be imposed, a "non-starter", since those countries had already made it clear that they did not want anyone to use their vulnerability as an excuse not to impose sanctions. He observed that those countries were already suffering and it would make their suffering tolerable if they knew there was "light at the end of the tunnel". The people of his own country, Zimbabwe, had endured United Nations comprehensive mandatory sanctions for nearly 15 years and he assured the Council that the black Zimbabweans had accepted the deprivations of sanctions as a small price to pay in order to achieve their liberation.⁸² At the 2737th meeting, on 20 February 1987, the representative of the USSR stated that in the governmental circles of various Western countries "much play" had been made of the question of the possible negative consequences of mandatory sanctions for the populations of South Africa and neighbouring African States. This had led to a situation that could only be described as "paradoxical". African countries had demanded the introduction of sanctions and yet they were being told: "We are against sanctions because we are concerned about you?"

In the course of the debate in the Council, the arguments contending that sanctions would inflict grave economic

⁷⁵S/17426, OR, 40th yr., Suppl. for July-Sept. 1985.

⁷⁶For relevant statements, see S/PV.2737: Federal Republic of Germany, p. 20; S/PV.2797: United States, pp. 18-19, both in connection with the question of South Africa.

⁷⁷S/PV.2624: Zambia, p. 61.

⁷⁸S/PV.2741: Venezuela, pp. 28-30.

⁷⁹S/PV.2656: Nicaragua, pp. 44-45.

⁸⁰See also S/PV.2652, pp. 29-30, where the representative of Zambia remarked: "The fact is that South Africa itself has imposed some form of sanctions against its economically weak neighbours;" and, in connection with the question of South Africa, see also S/PV.2733: Nicaragua, p. 18; and WV.27381 Uganda, p. 18.

⁸¹S/PV.2686: Zimbabwe, pp. 91-95; for further relevant statements in connection with the situation in southern Africa, see S/PV.2652: Zambia, p. 28; and S/PV.2684: Zambia, pp. 18-20.

⁸²S/PV.2734: Zimbabwe, p. 26.

⁸³S/PV.2737: USSR, pp. 37-38. For further relevant statements, see S/PV.2738: Uganda, pp. 17-18; Guyana, p. 28; Togo, p. 37; and Ghana, p. 58.

damage on the **front-line** States as well as on black South Africans were frequently countered through statements recommending an augmentation in economic aid to those areas in order to reduce their dependence on South Africa.

During the Council's consideration of the question of South Africa, the representative of Yugoslavia argued that theories deeming sanctions ineffective and counter-productive were unacceptable. In the interest of human rights, justice and lasting peace, even the neighbouring countries had advocated sanctions although they would be hurt by them. The Movement of Non-Aligned Countries had initiated a number of concrete actions to strengthen its expressions of solidarity with and support for the peoples of southern Africa. Those actions included working to bring about the imposition of sanctions against South Africa, on the one hand, and mobilizing to render assistance to the front-line States, on the other, thereby reducing their dependence on South Africa. To that end, the Action for Resisting Invasion, Colonialism and Apartheid (AFRICA) fund had been established at the Summit Conference of Non-Aligned Countries in Harare. Furthermore, at a high-level meeting in New Delhi, the members of the committee of the Fund had appealed to the entire international community to contribute to the Fund and assist the **front-line** States and the liberation movements of the peoples of South Africa and **Namibia**.⁸⁴

At the same meeting, the representative of Nicaragua stated that the international community needed to urgently expand its bilateral economic cooperation with the **front-line** States as well as with the Southern African Development Coordination Conference (SADCC). He further stressed that the international community should, at the same time, lend its full support to the Solidarity Fund for Southern Africa, established by the Movement of Non-Aligned Countries, as a concrete step in the struggle against **apartheid**.⁸⁵

At the 2738th meeting, on 20 February 1987, the representative of Venezuela stated that the argument that imposing sanctions would primarily affect the non-white population of South Africa and neighbouring countries had undoubtedly been the most controversial point raised in the debate. Statements made by authorized representatives of the majority in South Africa and neighbouring countries made it clear that they were "perfectly well aware" of the risk that sanctions against South Africa posed for them and they were nevertheless ready to pay the price. He drew attention to the provision of Article 50 of the Charter of the United Nations and read the Article aloud. He remarked that, in the light of Article 50, it appeared best to embark upon a consideration of the necessary measures to limit, as far as possible, the ill-effects that those sanctions might have on the victims of oppression and on the victims of the continued aggression of the South African Government.⁸⁶

During the period under review, one **resolution**⁸⁷ adopted by the Council contained an explicit reference to Article

5 1. The Council also adopted several **resolutions**⁸⁸ which, although making no explicit mention of Article 5 1, nevertheless requested Member States to extend all necessary assistance to the People's Republic of Angola in order to strengthen its defence capabilities in the face of South Africa's escalating acts of aggression and the occupation of parts of **Angolan** territory by South African military forces.

In the course of deliberations in the Council, various issues occasioned pertinent arguments relating to the interpretation of the principle of self-defence.

During the consideration of the situation in the Middle East, Israel claimed that its duty to protect the lives and security of its citizens, coupled with the inability of the Government of Lebanon to prevent the use of its territory for attacks against Israel, had led to Israeli retaliatory attacks against concentrations of PLO terrorists in Lebanon in the exercise of the inherent right of self-defence. Israel further claimed that continued terrorist activity had hindered a permanent Israeli withdrawal from **Lebanon**.⁸⁹ Other representatives challenged Israel's argument of self-defence, denying that so-called pre-emptive actions could be justified by any interpretation of Article 5 1.⁹⁰ Israel countered by stating that the draft resolution then before the Council (S/1 7000), were it to be adopted, would not stop Israel from defending its men, women and children against attack.⁹¹ Many representatives argued that what Israel deemed terrorist attacks against withdrawing Israeli forces were instead themselves acts of self-defence which were an inevitable result of the Israeli invasion and occupation of Lebanon and were therefore justified under Article 5 1 of the **Charter**.⁹²

In connection with the question of South Africa, the Chairman of the Special Committee against Apartheid stated that the people of South Africa had no choice but to intensify their armed resistance in view of the Pretoria regime's mounting reign of terror. The Special Committee wished to reaffirm that the South African people and their liberation movements had the right to utilize all the means at their disposal, including armed struggle, necessary for the dismantling of **apartheid**.⁹³

⁸⁸Resolution 571 (1985), para. 5, adopted unanimously at the 2607th meeting following a separate vote on operative paragraph 5, and resolution 577 (1985), paragraph 6, adopted unanimously at the 2631st meeting following a separate vote on operative paragraph 6.

⁸⁹S/PV.2568: Israel, p. 36; SAW.25731 Israel, pp. 54-56; S/PV.2708: Israel, p. 8; and S/PV.2832: Israel, pp. 18-20.

⁹⁰S/PV.2570: Yugoslavia, p. 21; S/PV.2572: Mr. Maksoud, Permanent Observer of the League of Arab States, pp. 27-30; Madagascar, p. 67; S/PV.2573: Indonesia, pp. 8-9; Syrian Arab Republic, pp. 71-72. See also the letter dated 3 May 1988 from the representative of Lebanon to the Secretary-General, which categorically rejected Israel's argument for the invasion of Lebanon in the name of self-defence and recalled that it was the same argument Israel used in 1978 and 1982 (S/1 9860, OR, 43rd yr., *Suppl. for April-June I 1988*).

⁹¹S/PV.2573: Israel, p. 58.

⁹²See S/PV.2568: Qatar, p. 21; Israel, p. 33; S/PV.2570: USSR, p. 32; Islamic Republic of Iran, p. 62; S/PV.2572: Mr. Maksoud, Permanent Observer of the League of Arab States, pp. 21-22; United Arab Emirates, p. 82; Mr. Terzi, PLO, p. 102, who claims right of self-defence has also been legitimized by the General Assembly; and S/PV.2573: Indonesia, p. 8; Syrian Arab Republic, p. 62.

⁹³S/PV.2732: Mr. Garba, Chairman, Special Committee against Apartheid, p. 14. For similar arguments which also implicitly refer to Article 5 1, see the following statements: S/PV.2602: Syrian Arab Republic, p. 16; S/PV.2732: Egypt, pp. 6-7; S/PV.2735: Ukrainian SSR, p. 6; S/PV.2736: Mr. Makhanda, representative of the Pan Africanist Congress of Azania (PAC), p. 53.

⁸⁴S/PV.2733: Yugoslavia, pp. 11-12.

⁸⁵*Ibid.*: Nicaragua, p. 19.

⁸⁶S/PV.2738: Venezuela, pp. 42-43. For further relevant statements, see S/PV.2734: India, p. 5; WV.2736 France, pp. 6-7; S/PV.2738: Uganda, p. 18; Guyana, p. 28; Togo, p. 36; WV.2796 Somalia, pp. 13-15.

⁸⁷Resolution 574 (1985), para. 4, adopted unanimously at the 2617th meeting after a separate vote on operative paragraph 6, in connection with the complaint by Angola against South Africa.

During the Council's consideration of the situation in Namibia, the representative of South Africa argued that it was an established principle of international law that a State might not permit or encourage on its territory activities for the purpose of carrying out acts of violence on the territory of another State. It was equally well established that a State had a right to take appropriate steps to protect its own security and territorial integrity against such acts. These principles explained why South Africa had repeatedly urged the Angolan Government not to permit such activities in its territory and why South Africa had no alternative but to take such action as it considered appropriate for the protection of its people from such acts of violence.⁹⁴ The representative of Cuba argued, on the other hand, that his country's presence in Angola was not connected with Namibia. Cuban combatants went to Angola, at the request of the Angolan Government and people, to fight "against the racist army and other acts of aggression aimed at smothering the newborn People's Republic of Angola."⁹⁵ The representative of Angola emphasized that the Council, by its resolution 539 (1983), had rejected all South African attempts to link the independence of Namibia with extraneous matters such as the withdrawal of Cuban forces from Angola, whose presence was fully in keeping with Article 51 of the Charter.⁹⁶ Several other speakers, explicitly invoking Article 51, reiterated the argument that the presence of Cuban troops in Angola fell within the competence of Angola and should not be linked with the implementation of resolution 435 (1978).⁹⁷ The representative of Malaysia noted that, on the one hand, members of the United Nations reserved the inherent right of self-defence and, on the other, that Namibia's struggle for independence and self-determination was recognized as legitimate by the United Nations. Therefore, SWAPO should not be denied the right "to conduct its struggle by all means possible" until the Council demonstrated the will and means to carry out the plan for peaceful settlement embodied in resolution 435 (1978).⁹⁸

In connection with the situation in Cyprus,⁹⁹ Mr. Koray, representative of the Turkish Cypriots, stated that Turkish forces were stationed within the territory of the Turkish Republic of Northern Cyprus in accordance with Turkey's commitment to the security and well-being of the Turkish Cypriot people, who faced increasingly hostile Greek and Greek Cypriot forces who were constantly expanding their offensive capability. This position was reiterated by the representative of Turkey, who wished to clarify his position on the Turkish presence in Northern Cyprus by stating that the Turkish forces sent to Cyprus in 1974 to prevent Greece's annexation of Cyprus by force had remained there, in part, to safeguard the security of the Turkish Cypriots until a negotiated solution was achieved. The representative of Cyprus, on the other hand, rejected the argu-

ment that his country could not build up its defences against the clear and present dangers which emanated from continuing Turkish aggression. The right to self-defence and the protection of the sovereignty, independence and territorial integrity of a country was in accordance with the provisions of the Charter of the United Nations and the general principles of international law.

During the Council's consideration of the complaint by Angola against South Africa, several delegations reminded Council members that resolution 546 (1984) had already affirmed Angola's right to take all measures necessary to defend its sovereignty and territorial integrity under the Charter; other representatives remarked that that right should be reaffirmed.¹⁰⁰

The representative of South Africa argued that the Angolan Government was providing facilities for thousands of ANC terrorists on its territory as well as actively arming them and preparing them for the perpetration of acts of terrorism against South Africans. It was an established principle that a State might not permit activities on its territory for the purpose of carrying out acts of violence on the territory of another State, and therefore South Africa would take whatever action was necessary and appropriate to defend itself.¹⁰¹

Several representatives contested this argument, noting that such a justification, based on the theory of so-called preventive action, was unacceptable in the framework of international law. The representative of Madagascar observed that, because of its vagueness and subjective nature, the theory of preventive action would permit any State to consider as dangerous to its security any action taken by its victim, even if that action were in keeping with internationally accepted norms. This was the antithesis of the right of self-defence as recognized by Article 51 of the Charter.¹⁰² That opinion was reiterated by the Chairman of the Special Committee against Apartheid when he commented upon the South African regime's use of the concepts of "hot pursuit" and pre-emptive action to justify what he called "its latest act of aggression". He said that the right of self-defence was governed by Article 51 of the Charter, which could in no way be invoked by South Africa since there had been no threat to South African territory. South Africa had, on the contrary, repeatedly been the source of aggression and destabilization against its neighbours and therefore the question of self-defence or hot pursuit could not arise in the case then being considered. Furthermore, the South African presence in Angola had been declared illegal, had been repeatedly condemned by the Security Council and was an infringement of international law.¹⁰³

The representative of the United Arab Emirates claimed that international law and jurisprudence provided that two fundamental conditions must be met in exercising the right of self-defence: (a) urgent need, and (b) the proportionality of force used in response to the danger posed. Those con-

⁹⁴S/PV.2583: South Africa, pp. 101-102.

⁹⁵S/PV.2584: Cuba, p. 21.

⁹⁶S/PV.2586: Angola, p. 42.

⁹⁷S/PV.2625: Cuba, p. 43; S/PV.2626: USSR, p. 31; S/PV.2741: Angola, pp. 59-61; S/PV.2742: Mozambique, p. 46; S/PV.2757: Mozambique, p. 72.

⁹⁸S/PV.2588: Malaysia, pp. 18-20.

⁹⁹For references to Article 51, see S/PV.2749: Mr. Koray (Turkish Cypriots), p. 33; Turkey, pp. 46-47; Cyprus, pp. 53-55; S/PV.2771: Cyprus, p. 26; Turkey, pp. 54-55; S/PV.2816: Mr. Koray, p. 27; and Turkey, pp. 44-45.

¹⁰⁰For references to Article 51, see S/PV.2596: India, p. 21; and S/PV.2597: Sao Tome and Principe, pp. 29-30; S/PV.2616: Trinidad and Tobago, p. 22; Madagascar, p. 26.

¹⁰¹S/PV.2597: South Africa, pp. 25-26.

¹⁰²S/PV.2606: Madagascar, p. 31.

¹⁰³*Ibid.*, Mr. Garba, Chairman, Special Committee against Apartheid, pp. 58-59.

ditions were not present in the case of the acts of aggression perpetrated by South Africa against "small, peace-loving" Angola, which posed no danger whatsoever to a strong State which possessed military arsenals as large as South Africa's. The right of self-defence could not be invoked to justify an act of aggression which fell under article 3 of the Definition of Aggression as contained in the annex to General Assembly resolution 3314 (XXIX) of 14 December 1974.¹⁰⁴

The representative of Angola emphasized that, in light of the situation then prevailing, his country might be left with no option except recourse to Article 51 of the Charter, which included the right to seek broader assistance in the face of South Africa's persistent aggression.¹⁰⁵ This position was supported in a number of statements by other representatives.¹⁰⁶ Several other representatives, however, did not interpret the Council's calls to provide Angola with assistance in strengthening its defence capacity in the face of South African aggression as an endorsement for the intervention of foreign combat troops.¹⁰⁷

During the Council's consideration of the letter dated 1 October 1985 from the representative of Tunisia, the representative of the PLO questioned the validity of Israel's claim that its raid on Tunisian territory was an act of self-defence in response to Palestinian terrorist attacks against Israel which had emanated from Tunisia. He suggested that Israel's occupation of Arab and Palestinian territories, and the concomitant deprivation of the residents' basic rights under the Charter of the United Nations, were themselves acts of State terrorism which legitimized Palestinian resistance as a means of self-defence.¹⁰⁸

At the same meeting, the representative of Kuwait pointed out that Israel's justification of its action in the name of self-defence made no reference to the aggression against Tunisia's sovereignty.¹⁰⁹

The representative of Israel responded to the assertion that his country's raid was an unprovoked attack on a country not at war with Israel by saying that every State had the responsibility to prevent armed attacks from occurring on its territory. Israel could never accept the notion that the bases and headquarters of "terrorist killers" should enjoy immunity anywhere, and at all times. Sovereignty could not be separated from its responsibilities, the chief of which was preventing a sovereign territory from being used as a launching ground for acts of aggression against another country. When a country abdicated that fundamental responsibility, either deliberately or through neglect, it risked taking upon itself the consequences of such a dereliction of duty. The representative explicitly argued that "the interest of a State in exercising protection over its nationals may take precedence over territorial sovereignty". Article 51 of the Charter said this quite clearly, and he em-

phasized his point by quoting the following part of that Charter Article: "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."¹¹⁰

The representative of Tunisia challenged the interpretation of Article 51 provided by the representative of Israel by claiming it was wrong to attach to an Article of the Charter a meaning diametrically opposed to that which it undoubtedly had. As a point of fact, Article 51 gave a Member of the United Nations the inherent right of self-defence in the precise case where an "armed attack" had transpired against it. He disputed the assertion that Tunisia had conducted an armed attack against Israel and cited the balance of power currently existing in the region as evidence of the unlikelihood of such a scenario. On the contrary, the only armed attack that had occurred was the one officially claimed by the Israeli Government. Tunisia had no other means of retaliation against that armed attack except for those provided in the Charter within the framework of the right of self-defence.¹¹¹

The representative of Madagascar charged that over the years Israel had, in the name of self-defence, constantly resorted to "occupation, oppression, repression, threats, pre-emptive attacks and reprisals". Israel's concept of self-defence was very far from the one established in international law. His delegation found it difficult to find any sufficient justification for Israel's armed aggression, and further claimed that it was a "specious argument" to assert that Tunisia, because it harboured PLO headquarters, bore responsibility for all hostile acts against Israel even if they were carried out by individuals and responsibility for them was not claimed by the PLO.¹¹² Several other speakers also contested Israel's argument for the right to strike in pre-emptive self-defence regardless of the question of sovereignty.¹¹³ The representative of the United States, however, stated that his country recognized and strongly supported the principle that a State subjected to continuing terrorist attacks might respond with the appropriate use of force to defend itself against further attacks. This was an aspect of the inherent right of self-defence recognized in the Charter of the United Nations and it was the collective responsibility of each State to ensure that terrorism received no sanctuary and that those who practiced it had no immunity from the responses which their actions warranted.¹¹⁴

After the Council had adopted resolution 573 (1985) by a vote of 14 in favour to none against, with 1 abstention, the Foreign Minister of Tunisia stated that the Council's decision had given his country hope that the principles of law and justice would triumph over the illegitimate and unwarranted use of force; in bringing the matter under consideration to the Council's attention, Tunisia believed that it had fully exercised its right to self-defence against an aggressor that had violated its sovereignty and territorial integrity.¹¹⁵

¹⁰⁴S/PV.2616: United Arab Emirates, pp. 46-47.

¹⁰⁵S/PV.2606: Angola, pp. 14-15; S/PV.2612: Angola, p. 6.

¹⁰⁶S/PV.2596: United Republic of Tanzania, pp. 29-30; S/PV.2597: Trinidad and Tobago, p. 68; S/PV.2693: Ghana, p. 29; S/PV.2765: Bulgaria, p. 26.

¹⁰⁷For relevant statements, see S/PV.2617: United Kingdom, p. 52; S/PV.2631: United States, p. 34; S/PV.2693: United States of America, p. 53.

¹⁰⁸S/PV.2610: Mr. Kaddoumi, PLO, p. 36.

¹⁰⁹Ibid.: Kuwait, p. 16.

¹¹⁰S/PV.2611: Israel, pp. 23-26.

¹¹¹S/PV.2615: Tunisia, p. 82.

¹¹²S/PV.2613: Madagascar, pp. 8-11.

¹¹³For relevant statements, see S/PV.2615: Bangladesh, pp. 53-56; Mr. Maksud, Permanent Observer of the League of Arab States, pp. 102-103.

¹¹⁴S/PV.2615: United States, p. 112.

¹¹⁵S/PV.2615: Tunisia, p. 113.

In connection with the letter dated 4 February 1986 from the representative of the Syrian Arab Republic, the Syrian representative stated that the interception and forced landing of a civilian Libyan aircraft by two Israeli fighter planes in international airspace was an act of air piracy which threatened international peace and security. He called upon the Council to prevent a repetition of such an action and added that, on previous occasions, the Council had unanimously adopted resolutions condemning acts of air piracy. Resolution 337 (1973) was cited as an example.¹¹⁶

The representative of Israel claimed that his country had reason to believe that the aeroplane that had been intercepted was carrying terrorists on board who had been at a meeting in Tripoli where clear declarations had been made about continuing terrorist attacks against Israel. According to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex):

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts. . . .

The representative questioned whether the members of the Council expected Israel "to sit idly by" and "wait to absorb the attack" while knowing both that a terrorist conference was occurring and that Israel had suffered recent terrorist attacks. It made no difference whether Israel was right or, as in the present case, not right in assuming there were terrorists on board the Libyan aeroplane because other speakers considered it wrong to have any interception of civil aviation under any circumstances. Israel found such limitations of international law, and such inhibiting of the "essential concept of self-defence", never to be applicable in practice and especially out of date given the nature of current terrorist practices. The representative of Israel noted that classic international law allowed a country to stop ships in international waters if pirates were believed to be harboured on board. He read the following relevant passage from Bowett:

It is clear, as the case of the *Marianna Flora* shows, that the right may be exercised against acts of piratical aggression if the circumstances are such as to reasonably warrant the apprehension of real danger by the State. The fact that the ship subsequently proves innocent of piratical character would seem to be irrelevant if the initial suspicion is well founded.¹¹⁷

With regard to the absolute limits on self-defence, the representative of Israel asserted that a nation attacked by terrorists was permitted to use force to prevent or pre-empt future attacks; it was unrealistic to argue that international law prohibited capturing terrorists in international waters or international airspace. He concluded by stating his belief that even those who did not fully accept the fundamental concept of self-defence as it needed to be construed in the age of terrorism would be prepared to accept that the sanctity of human lives preceded the sanctity of airspace.¹¹⁸

The representative of the Syrian Arab Republic, exercising his right of reply, contended that Israel had a record of

waging war under what it called the theory of self-defence. Israel had no right to tell the Council when it was acting in self-defence and when it was not; Israel could not survive, occupy, expand and annex Jerusalem and the Golan Heights other than by justifying its deeds under the pretext of self-defence. The representative of Israel was attempting to pass a new international law based on suspicion and probability. He emphasized that every Arab in the world was determined to liberate the occupied Arab territories; hence, according to the Israeli interpretation of international law, every Arab was a terrorist. Therefore by invoking the theory described earlier in the meeting by the Israeli representative, Israel had assumed the right to stop any Arab and make itself into the guardian and interceptor of Arab aircraft because it suspected every Arab of being a freedom fighter or terrorist. The Syrian representative further asserted that Israel could not be both judge and a party to the conflict in defiance of the will of the Security Council.¹¹⁹

At the 2653rd meeting, on 5 February 1986, the representative of Israel further explained his position by arguing that international terrorism, including attacks on civil aviation, represented the emergence of a new kind of war that could not have been foreseen in the period 1945-1965. International law nevertheless provided a stipulation able to counteract this type of war, which could be found in the "paramountcy" or "predominance" of self-defence. In detailing further aspects of what he described as a new type of war, the representative of Israel claimed that a Government could use its own embassies "as a machine-gun post to massacre passers-by" and then proceed to claim diplomatic immunity, or would use its territory for terrorist training camps which launched attacks against various countries and then claim the immunity of sovereignty over those camps. He described this "new phenomena" as consisting of: (a) the emergence of terrorist States giving the terrorist groups they sponsored support and shelter, and (b) the fact that those States hid behind their construction and interpretation of various immunities given under entirely different circumstances and for entirely different operations. States which fell into those categories forfeited their diplomatic immunity and were also subject to a response.¹²⁰

A number of other speakers disputed Israel's interpretation of international law vis-à-vis self-defence, claiming that it set a dangerous precedent in which any Government in the world could intercept flights conveying those it considered its antagonists.¹²¹ The representative of the United States, while noting his opposition to Israel's action against the Libyan aircraft, nevertheless found the draft resolution then before the Council (S/17796/Rev.1) unacceptable because it failed to sufficiently address the issue of terrorism. The United States opposed the interception of civil aircraft as a general principle and his country was prepared to vote for a draft resolution that expressed that basic principle. However, exceptional circumstances might arise which could justify an interception of civilian aircraft and the United States strongly supported the principle that a State

¹¹⁶S/PV.2651: Syrian Arab Republic, pp. 8-11.

¹¹⁷See D. W. Bowett, *The Law of the Sea* (New York, Oceana Publications, 1967).

¹¹⁸S/PV.2651: Israel, pp. 16-20.

¹¹⁹Ibid., Syrian Arab Republic, pp. 26-31.

¹²⁰S/PV.2653: Israel, pp. 31-33.

¹²¹For relevant statements, see S/PV.2655: United Arab Emirates, pp. 11-12; Ghana, pp. 26-27; Algeria, pp. 34-35; Bulgaria, p. 37; Iraq, pp. 56-57; and Congo, p. 82.

whose territory or citizens were subjected to continuing terrorist attacks might respond with appropriate use of force to defend itself against future attacks. The United States representative concluded by saying that any State taking such action was obliged to meet a high burden of proof by demonstrating that the decision was justified on the basis of the strongest and clearest evidence that terrorists were aboard, adding that he deplored the action taken by Israel because it had failed to demonstrate that its action met the rigorous and necessary standard.¹²²

During the Council's consideration of the situation in southern Africa, the representative of South Africa stated that the actions taken by his Government against what he termed "ANC bases" in Zimbabwe, Botswana and Zambia were necessary for the defence and security of the South African people and for the elimination of terrorist elements who were intent on sowing death and destruction in his country and the entire region.¹²³ Many speakers disputed South Africa's claim to the right of self-defence under the circumstances, by questioning the potential threat posed to South Africa by the sites targeted¹²⁴ and by regarding South Africa's attempts to cite Article 51 as justification for armed attacks across international boundaries as specious arguments which constituted attempts to revise the Charter outside the framework of the United Nations.¹²⁵

In connection with the letter dated 15 April 1986 from Chargé d'affaires a.i. of the Libyan Arab Jamahiriya, the representative of the United States declared that on 14 April 1986 his country had exercised its inherent right of self-defence, recognized in Article 51 of the Charter, when United States military forces had "executed a series of carefully planned air strikes against terrorist-related targets in Libya". The United States had acted in self-defence only after other protracted efforts to deter the Libyan Arab Jamahiriya from ongoing attacks against the United States in violation of the Charter had failed. Citing "direct, precise and irrefutable evidence" which demonstrated Libyan responsibility for a bombing in West Berlin on 5 April 1986 and alluding to "clear evidence" that the Libyan Arab Jamahiriya was planning multiple attacks in the future, the United States was compelled to exercise its right of self-defence.¹²⁶

Other representatives were also of the opinion that, in consideration of conclusive evidence of Libyan involvement in recent terrorist acts and of their planning for further such acts, the military action of 14 April 1986 was justified under the inherent right of self-defence as reaffirmed in Article 51 of the Charter.¹²⁷

The representative of the Libyan Arab Jamahiriya questioned the legitimacy of some members' position regarding both the invocation of Article 51 in general and the necessary compliance with the stipulation in that Article which called upon members to immediately report to the Council

all measures taken in exercise of the right of self-defence.¹²⁸

The representative of Algeria was of the view that Article 51 set exact limits on the exceptions to the prohibition of the use of force effected by the exercise of the legitimate right of self-defence. Article 51 could not be invoked in the absence of an act of aggression, and the Libyan Arab Jamahiriya had committed no such act in the case under consideration. The representative of Algeria was also of the opinion that Article 51 of the Charter provided for the suspension of the right of self-defence in a particular situation if and while the Security Council was seized of that same situation. He therefore reasoned, in the light of this interpretation of Article 51 and considering one of the parties involved was a permanent member of the Council, that the United States had a duty to do nothing that could have hindered the efforts of the Council while it was still considering the situation in the central Mediterranean.¹²⁹

The representative of Qatar concurred with Algeria in viewing Article 51 as an exception to the general rule against the threat or use of force set forth in Article 2, paragraph 4. As an exception, he contended, the inherent right of self-defence should be interpreted narrowly rather than broadly in order to prevent violations of the general rule in the name of the legitimate recourse to the right of self-defence. For the use of force in self-defence to be legitimate under Article 51, it must be preceded by an armed attack against the State attempting to justify its use of force on the basis of that Article. He quoted a passage from a work by an American jurist to reinforce his position that there was no attack in the sense intended by Article 51 unless "military forces cross an international boundary in visible, massive and sustained form."¹³⁰ The representative of Qatar went on to describe a second condition which he considered necessary in order for the right to use force in the name of self-defence under Article 51 to be legitimate, namely, that the acts of self-defence must take place directly following armed aggression and before the cessation of military operations by the forces of the aggressor State. The right of self-defence had been recognized in order to rebuff aggression and to prevent the aggressor from carrying out its objectives; therefore if such aggression ceased there would no longer be a pretext for using force on the grounds of self-defence. The use of force in the name of self-defence after the initial aggression had ceased amounted to mere retaliation designed to teach the aggressor a lesson or geared towards other purposes irrelevant to self-defence in its strict legal sense. He disputed the United States' position that the military engagement that had transpired on 15 April 1986 was a pre-emptive action carried out in self-defence in order to prevent the occurrence of further incidents. The concept of "pre-emptive self-defence" did not exist in international law, since armed aggression had to precede acts of self-defence. In reinforcing his argument, he cited the testimony of the representative of the United Kingdom, who had categorically rejected pre-emptive self-defence when speaking on behalf of the European Economic Community (EEC) during the thirty-sixth

¹²²S/PV.2655: United States, pp. 112-113.

¹²³S/PV.2684: South Africa, pp. 27-28.

¹²⁴For relevant statement, see S/PV.2686: Zimbabwe, p. 86.

¹²⁵For relevant statements, see S/PV.2686: Madagascar, p. 11; USSR, pp. 26-27; Islamic Republic of Iran, p. 71; United Arab Emirates, p. 81; Trinidad and Tobago, pp. 101-102; and Libyan Arab Jamahiriya, pp. 116-117.

¹²⁶S/PV.2674: United States, pp. 13-17.

¹²⁷For relevant statements, see S/PV.2679: United Kingdom, p. 27; S/PV.2683: United States, p. 44.

¹²⁸S/PV.2674: Libyan Arab Jamahiriya, pp. 8-10.

¹²⁹S/PV.2676: Algeria, pp. 4-5.

¹³⁰Richard A. Falk, comp., *Crimes of War* (New York, Random House, 1971), p. 195.

session of the General Assembly.¹³¹ The representative of Qatar asserted that the "true meaning" of self-defence had been defined over 140 years ago by the then Secretary of State of the United States, Mr. Daniel Webster. He quoted Webster's definition as follows:

A necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment for deliberation

and then questioned whether or not that definition was applicable to the United States' military operations against the Libyan Arab Jamahiriya of 15 April 1986. Experts in international law had recognized that combating terrorist acts never justified the use of force in violation of Article 2, paragraph 4, of the Charter and did not fall under the provisions of Article 51. He referred to several studies published in a journal of international law to reinforce his position.¹³²

Several other delegations were also of the opinion that the military engagement under consideration did not meet the conditions necessary to justify it on the grounds of self-defence under Article 51 of the Charter.¹³³

One speaker observed that, since coming into effect, the Charter had not yet been interpreted as permitting pre-emptive attack or reprisal as a valid substitute for its multilateral procedure, and that in this sense the Charter could be said to circumscribe traditional norms of international law for obvious, though perhaps overly optimistic, reasons.¹³⁴

In connection with three separate but integrally related agenda items, the letters dated 27 June, 22 July and 17 October 1986 from the representative of Nicaragua, some speakers claimed that several countries neighbouring Nicaragua had requested assistance as a result of Nicaraguan aggression and the threat posed by Nicaraguan armed forces. They contended that the United States had responded to that call.¹³⁵ Other speakers contested the legality of the argument made for the right to "collective self-defence" as it had been employed in justifying United States acts of aggression against Nicaragua. In support of that position, many references were made to the decision of the International Court of Justice of 27 June 1986 (S/18221).¹³⁶

¹³¹A/36/PV.53, p. 33.

¹³²S/PV.2677: Qatar, pp. 4-8.

¹³³For relevant statements, see S/PV.2677: Madagascar, p. 12, Viet Nam, p. 36; S/PV.2678: Afghanistan, p. 6, Czechoslovakia, p. 13, Islamic Republic of Iran, p. 21, Sudan, pp. 28-31; S/PV.2679: Bangladesh, p. 12; S/PV.2680: Congo, p. 27, Ghana, p. 32, Nicaragua, p. 48; S/PV.2682: Uganda, p. 16,

¹³⁴S/PV.2682: Thailand, p. 41.

¹³⁵For relevant statements, see S/PV.2694: United States, p. 28 in connection with the letter dated 27 June 1986 from the representative of Nicaragua; S/PV.2700: El Salvador, p. 27, in connection with letter dated 22 July 1986 from the representative of Nicaragua.

¹³⁶For relevant statements, see S/PV.2694: Nicaragua, pp. 13-15; S/PV.2695: German Democratic Republic, p. 5, Viet Nam, p. 8, USSR, p. 13; S/PV.2696: Nicaragua, p. 71; S/PV.2697: Madagascar, p. 21, Congo, p. 32; S/PV.2698: Libyan Arab Jamahiriya, pp. 19-21 in connection with the letter dated 27 June 1986 from the representative of Nicaragua; S/PV.2700: Nicaragua, pp. 8-10; S/PV.2701: Czechoslovakia, p. 31, Syrian Arab Republic, p. 36; S/PV.2703: Libyan Arab Jamahiriya, p. 13, in connection with the letter dated 22 July 1986 from the representative of Nicaragua; S/PV.2715: Nicaragua, p. 6, S/PV.2718: Syrian Arab Republic, p. 26, in connection with the letter dated 17 October 1986 from the representative of Nicaragua.

During the Council's consideration of the letter dated 5 July 1988 from the representative of the Islamic Republic of Iran, it was emphasized that, according to Article 51 of the Charter, acts of self-defence could be initiated only in response to prior armed attack and that pre-emptive measures before the occurrence of such an armed attack could not be justified as acts of self-defence.¹³⁷ One speaker contended that the Security Council had an obligation to reject the self-defence arguments put forth by some representatives in the case then being considered not only out of respect for Article 51 of the Charter but also because they set a dangerous precedent which could endanger the freedom of civil aviation by allowing others to use the same justification in similar incidents.¹³⁸ Another speaker reiterated that the *USS Vincennes* had legitimately acted in self-defence when, in the course of responding to the distress call of a neutral vessel which was under attack, the *Vincennes* itself had come under attack. Only after it had issued seven warnings, all unanswered, did the *Vincennes* shoot down an Iranian aircraft which approached it while it was engaged in active battle.¹³⁹

Explicit references to article 51 occurred during other proceedings without giving rise to further discussions.¹⁴⁰

Article 51 was also invoked in communications in connection with the situation between Iran and Iraq;¹⁴¹ the

¹³⁷For relevant statements, see S/PV.2818: Islamic Republic of Iran, pp. 36-40; S/PV.2819: USSR, p. 18.

¹³⁸S/PV.2818: Islamic Republic of Iran, p. 37.

¹³⁹S/PV.2818: United States, p. 56.

¹⁴⁰See S/PV.2605: Syrian Arab Republic, pp. 103-105, in connection with the situation in the Arab occupied territories; S/PV.2684: United States, p. 49, in connection with the situation in southern Africa; S/PV.2668: United States, pp. 21-22; S/PV.2669: United Kingdom, p. 36; S/PV.2671: Democratic Yemen, p. 7, in connection with the letters dated 25 March 1986 from the representatives of Malta and the USSR and the letter dated 26 March 1986 from the representative of Iraq; S/PV.2673: United States, pp. 13-15, in connection with the letter dated 12 April 1986 from the Chargé d'affaires a.i. of Malta; S/PV.2721: Chad, p. 3, Zaire, pp. 17-18, France, p. 22 and United States, pp. 24-25, in connection with the letter dated 13 November 1986 from the representative of Chad; S/PV.2800: United Kingdom, p. 16, in connection with the letter dated 11 March 1988 from the representative of Argentina; S/PV.2802: Honduras, p. 18 in connection with the letter dated 17 March 1988 from the representative of Nicaragua.

¹⁴¹Letters from Iraq included those dated 20 July 1985 (S/17450, *OR*, 40th yr., *Suppl. for July-Sept. 1985*), 13 January 1987 (S/18591, *ibid.*, *Suppl. for Jan.-March 1985*), 10 August 1987 (S/19027, *OR*, 42nd yr., *Suppl. for July-Sept. 1987*), 16 March 1988 (S/19631, *OR*, 43rd yr., *Suppl. for Jan.-March 1988*), 28 March 1988 (S/19695, *ibid.*). Letters from Iran included those dated 19 February 1986 (S/17849, *OR*, 41st yr., *Suppl. for Jan.-March 1986*), 9 January 1987 (S/18573, *OR*, 42nd yr., *Suppl. for Jan.-March 1987*), 14 January 1987 (S/18601, *ibid.*), 29 February 1988 (S/19548, *OR*, 43rd yr., *Suppl. for Jan.-March 1988*), 26 August 1988 (S/20157, *OR*, 43rd yr., *Suppl. for July-Sept. 1988*). Article 51 was explicitly invoked four times in communications from the United States to the President of the Security Council and from the Islamic Republic of Iran to the Secretary-General: Letter dated 22 September 1987 from the representative of the United States of America to the President of the Security Council (S/19149, *OR*, 42nd yr., *Suppl. for July-Sept. 1987*); letter dated 29 September 1987 from the representative of the Islamic Republic of Iran to the Secretary-General (S/19167, *ibid.*); letter dated 9 October 1987 from the representative of the United States of America to the President of the Security Council (S/19194, *OR*, 42nd yr., *Suppl. for Oct.-Dec. 1987*); letter dated 20 October 1987 from the Minister for Foreign Affairs of the Islamic Republic of Iran to the Secretary-General (S/19224, *ibid.*).

situation in Namibia;¹⁴² the complaint by Angola against South Africa;¹⁴³ the letter dated 6 December 1985 from Nicaragua;¹⁴⁴ the situation in the occupied Arab territories;¹⁴⁵ the situation in southern Africa;¹⁴⁶ the letters dated 25 March 1996 from the representatives of Malta and the USSR and the letter dated 26 March 1996 from the representative of Iraq;¹⁴⁷ the letter dated 12 April 1986 from the

Chargé d'affaires a.i. of Malta;¹⁴⁸ the letters dated 15 April 1986 from the Chargé d'affaires a.i. of the Libyan Arab Jamahiriya, Burkina Faso, the Syrian Arab Republic and the representative of Oman;¹⁴⁹ the letter dated 13 November 1986 from the representative of Chad;¹⁵⁰ the letter dated 9 December 1986 from the representative of Nicaragua;¹⁵¹ and the letter dated 5 July 1988 from the representative of the Islamic Republic of Iran.¹⁵²

¹⁴²Letter dated 18 March 1986 from the representative of Angola to the Secretary-General (S/17931, OR, 41st yr., Suppl. for Jan.-March 1986).

¹⁴³Letter dated 18 March 1986 from the representative of Angola to the Secretary-General (S/17931, OR, 41st yr., Suppl. for Jan.-March 1986); letter dated 18 November 1987 from the President of Angola to the Secretary-General (S/19283, OR, 42nd yr., Suppl. for Oct.-Dec. 1987).

¹⁴⁴Letter dated 17 January 1986 from the representative of Nicaragua to the Secretary-General (S/17746, OR, 41st yr., Suppl. for Jan.-March 1986).

¹⁴⁵Letter dated 9 September 1985 from the representative of Israel to the Secretary-General (S/17448, OR, 40th yr., Suppl. for July-Sept. 1985).

¹⁴⁶Letter dated 18 March 1986 from the representative of Angola to the Secretary-General (S/17931, OR, 41st yr., Suppl. for Jan.-March 1986).

¹⁴⁷Letter dated 25 March 1996 from the representative of the United States to the President of the Security Council (S/17938, OR, 41st yr., Suppl. for Jan.-March 1986).

¹⁴⁸Letters from the representative of the Libyan Arab Jamahiriya to the Secretary-General included those dated 12 April 1986 (S/17983, OR, 41st yr., Suppl. for April-June 1986) and 14 April 1986 (S/17986, *ibid.*).

¹⁴⁹Letter dated 14 April 1986 from the representative of the United States to the President of the Security Council (S/17990, OR, 41st yr., Suppl. for April-June 1986); letter dated 16 April 1986 from the representative of Italy to the President of the Security Council (S/18007, *ibid.*).

¹⁵⁰Letter dated 14 January 1987 from the representative of Chad to the President of the Security Council (S/18603, OR, 42nd yr., Suppl. for Jan.-March 1987).

¹⁵¹Letters from the representative of Honduras included those dated 15 December 1986 (S/18524, OR, 41st yr., Suppl. for Oct.-Dec. 1986) and 16 December 1986 (S/18526, *ibid.*).

¹⁵²Letter dated 6 July 1988 from the representative of the United States to the President of the Security Council (S/19989, OR, 43rd yr., Suppl. for July-Sept. 1988).

Part IV

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

NOTE

During the period under review, the Council adopted one resolution which made explicit reference to Chapter VII. In connection with the situation in Namibia, Chapter VII was explicitly invoked in resolution 566 (1985) of 19 June 1985 in which the Council, *inter alia*, warned South Africa that its failure to implement the resolution would compel the Council to meet again and adopt appropriate measures under the Charter, including Chapter VII, to ensure South Africa's compliance.¹⁵³

At the 2597th meeting, on 20 June 1985, the Council unanimously adopted resolution 567 (1985), in which it condemned South Africa for its aggression against Angola in the province of Cabinda and the threat such aggression posed to international peace and security. The third preambular paragraph and paragraphs 1 and 3 read as follows:

The Security Council,

...

Gravely concerned at the renewed escalation of unprovoked and persistent acts of aggression committed by the racist regime of South Africa in violation of the sovereignty, airspace and territorial integrity of Angola, as evidenced by the recent military attack in the province of Cabinda,

1. *Strongly condemns* South Africa for its recent act of aggression against the territory of Angola in the Province of Cabinda as well as for its renewed intensified, premeditated and unprovoked acts of aggression, which constitute a flagrant violation of the sovereignty and territorial integrity of that country and seriously endanger international peace and security;

¹⁵³See resolution 566 (1985), para. 13.

3. *Demands* that South Africa should unconditionally withdraw forthwith all its occupation forces from the territory of Angola, cease all acts of aggression against that State and scrupulously respect the sovereignty and territorial integrity of the People's Republic of Angola;

After the vote, the representative of the United Kingdom pointed out that his delegation had voted for the draft resolution because it considered that the Council should express strong condemnation of South Africa's illegal and totally unjustifiable act of force in Cabinda. However, although his delegation had voted for it, it did not endorse every formulation in the draft resolution. His delegation considered that neither the third preambular paragraph nor paragraphs 1 and 3 fell under the provisions of Chapter VII of the Charter or constituted a finding or decision which had specific consequences under the Charter.¹⁵⁴

During the period under review, the Council considered several draft resolutions containing explicit references to Chapter VII, which, however, failed to be adopted. Such draft resolutions were submitted in connection with the situation in Namibia.¹⁵⁵ Neither of the drafts gave rise to a

¹⁵⁴For relevant statements, see S/PV.2597: United Kingdom, p.72; United States, pp. 74-75.

¹⁵⁵S/17633, preambular paras. 8, 13 and para. 7, OR, 40th yr., Suppl. for Oct.-Dec. 1985. The draft resolution had been submitted by Burkina Faso, Egypt, India, Madagascar, Peru and Trinidad and Tobago and failed to be adopted owing to the negative votes of two permanent members. S/18785, para. 8, OR, 42nd yr., Suppl. for April-June 1987. The draft resolution had been submitted by Argentina, the Congo, Ghana, the United Arab Emirates and Zambia and failed to be adopted owing to the negative votes of two permanent members.

constitutional discussion, but they were frequently accompanied by invocations of Chapter VII or by statements employing the language of that Chapter. In connection with the complaint by Angola against South Africa (draft resolution S/18163), which failed of adoption at the 2693rd meeting on 18 June 1986, called for certain selective, mandatory economic sanctions under the rubric of "relevant provisions of the Charter" rather than under an explicit invocation of Chapter VII. As such, the failed draft resolution may be considered to represent an implicit reference to Chapter VII in general, since its primary objective was the implementation of sanctions against South Africa.

On a number of occasions, Chapter VII was explicitly invoked in communications circulated as Security Council documents in connection with the following agenda items: the situation in the Middle East;¹⁵⁶ the situation between Iran and Iraq;¹⁵⁷ the question of South Africa;¹⁵⁸ the situation in Namibia;¹⁵⁹ the complaint by Angola against South Africa;¹⁶⁰ the letter dated 17 June 1985 from the Representative of Botswana;¹⁶¹ the letter dated 1 October 1985 from the representative of Tunisia;¹⁶² and the situation in the occupied Arab territories?

Throughout the period under review, there were many explicit references to Chapter VII in the proceedings of the

Council in connection with the following issues: the situation in the Middle East; the situation between Iran and Iraq; the question of South Africa; the situation in Namibia; letter dated 6 May 1985 from the representative of Nicaragua; complaint by Angola against South Africa; letter dated 17 June 1985 from the representative of Botswana; United Nations for a better world and the responsibility of the Security Council in maintaining international peace and security; letter dated 1 October 1985 from the representative of Tunisia; letter dated 6 December 1985 from the *Chargé d'affaires* of the Permanent Mission of Nicaragua; complaint by Lesotho against South Africa; the situation in the occupied Arab territories; the situation in Southern Africa; letter dated 27 June 1986 from the representative of Nicaragua; and letter dated 19 April 1988 from the representative of Tunisia.

¹⁵⁶Note *verbale* dated 10 December 1986 from the mission of Zimbabwe to the Secretary-General on behalf of the Movement of Non-Aligned Countries (S/18569, *OR*, 42nd yr., *Suppl. for Jan.-March 1987*) (with regard to the imposition of sanctions against Israel).

¹⁵⁷Letter dated 3 July 1985 from the representative of the Islamic Republic of Iran to the Secretary-General (S/17322, *OR*, 40th yr., *Suppl. for July-Sept.* 1985) (with regard to the possible recourse to measures under Chapter VII as a result of alleged arms sales by South Africa to Iraq in violation of Council resolution 566 (1985)). Letters from the representative of Iraq to the Secretary-General included those dated 14 August 1987 (S/19045, *OR*, 42nd yr., *Suppl. for July-Sept.* 1987) (with regard to the implementation of Council resolution 598 (1987)), 17 August 1987 (S/19049, *ibid.*), 29 August 1987 (S/19083, *ibid.*) (both regarding the alleged rejection of resolution 598 (1987) by the Islamic Republic of Iran).

¹⁵⁸Note *verbale* dated 7 February 1985 from the Permanent Mission of the Ukrainian SSR addressed to the Secretary-General (S/16950, *OR*, 40th yr., *Suppl. for Jan.-March 1985*); note *verbale* dated 13 February 1985 from the Permanent Mission of the USSR addressed to the Secretary-General (S/16957, *OR*, 40th yr., *Suppl. for Jan.-March 1985*); notes *verbales* dated 14 and 26 February 1985 from the Permanent Mission of the Byelorussian SSR addressed to the Secretary-General (S/16966 and S/16986, *OR*, 40th yr., *Suppl. for Jan.-March 1985*); letters from the representative of India to the Secretary-General on behalf of the Movement of Non-Aligned Countries included those dated 6 March 1985 (S/17009, *OR*, 40th yr., *Suppl. for Jan.-March 1985*), 27 July 1985 (S/17367, *OR*, 40th yr., *Suppl. for July-Sept.* 1985) and 22 May 1986 (S/18089, *OR*, 41st yr., *Suppl. for April-June 1986*); note *verbale* dated 13 March 1985 from the representative of Mongolia addressed to the Secretary-General (S/17048, *OR*, 40th yr., *Suppl. for Jan.-March 1985*); note *verbale* dated 2 April 1985 from the representative of the German Democratic Republic addressed to the Secretary-General (S/17076, *OR*, 40th yr., *Suppl. for April-June 1985*); and letter dated 29 July 1985, from the representative of Burkina Faso, conveying an annex from the President of ANC addressed to the President of the Security Council (S/17374, *OR*, 40th yr., *Suppl. for July-Sept.* 1985) (regarding the call for the imposition of sanctions under Chapter VII against South Africa). See also note by the President of the Security Council dated 16 June 1986 (S/18160, *OR*, 41st yr., *Suppl. for April-June 1986*) (with regard to the Council's adoption of resolution 418 (1977) under Chapter VII of the Charter).

¹⁵⁹Letter dated 19 April 1985 from the representative of India, on behalf of the Movement of Non-Aligned Countries, addressed

to the President of the Security Council (S/17114, *OR*, 40th yr., *Suppl. for April-June 1985*); letter dated 30 April 1985 from the representative of the USSR addressed to the Secretary-General (S/17141, *OR*, 40th yr., *Suppl. for April-June 1985*); letter dated 10 June 1985 from the representative of Mongolia addressed to the Secretary-General (S/17253, *OR*, 40th yr., *Suppl. for April-June 1985*); note *verbale* from the Permanent Mission of the USSR addressed to the Secretary-General (S/17410, *OR*, 40th yr., *Suppl. for July-Sept.* 1985); letter dated 13 August 1986 from the Chairman of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples addressed to the President of the Security Council, transmitting the text of a decision on the question of Namibia adopted by the Special Committee (S/18272; for the text of the decision see A/31/23, *Official Records of the General Assembly, 41st Session, Suppl. No. 23*, chap. VIII, para. 13); letter dated 5 June 1987 from the President of the United Nations Council for Namibia addressed to the Secretary-General, transmitting the text of an appeal issued by the Council (S/18900); letter dated 5 June 1987 from the President of the United Nations Council for Namibia addressed to the Secretary-General transmitting the text of the Luanda Declaration and Programme of Action, adopted by the Council at its 492nd meeting on 22 May 1987 (S/18901); letter dated 13 August 1987 from the Chairman of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples addressed to the President of the Security Council transmitting the text of a consensus on the question of Namibia (S/19052; for the text of the consensus, see A/AC.109/926); letter dated 9 August 1988 from the Chairman of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples addressed to the President of the Security Council, transmitting the text of a consensus on the question of Namibia (S/20110); letter dated 6 October 1988 from the representative of Zimbabwe addressed to the Secretary-General on behalf of the Movement of Non-Aligned Countries (S/20227, *OR*, 43rd yr., *Suppl. for Oct.-Dec. 1988*).

¹⁶⁰Letter dated 1 October 1985 from the representative of India, on behalf of the Movement of Non-Aligned Countries, addressed to the Secretary-General (S/17518, *OR*, 40th yr., *Suppl. for Oct.-Dec. 1985*); letter dated 12 June 1986 from the representative of Ghana addressed to the President of the Security Council (S/18152, *OR*, 41st yr., *Suppl. for April-June 1986*).

¹⁶¹Letter dated 20 June 1985 from the representative of Liberia transmitting, in an annex, the text of a letter of the same date from the President of ANC addressed to the President of the Security Council (S/17290, *OR*, 40th yr., *Suppl. for April-June 1985*).

¹⁶²Letter dated 1 October 1985 from the representative of India, on behalf of the Movement of Non-Aligned Countries, addressed to the Secretary-General (S/17518, *OR*, 40th yr., *Suppl. for Oct.-Dec. 1985*).

¹⁶³Letter from the representative of Kuwait addressed to the Secretary-General, transmitting a communiqué adopted by members of the Organization of the Islamic Conference (S/19439, *OR*, 43rd yr., *Suppl. for Jan.-March 1988*).