

Chapter XI

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER

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INTRODUCTORY NOTE

number in brackets in parentheses in the

before the Council have evoked discussion regarding the application of Chapter VII. Appropriate cross references are given to chapter VIII to facilitate the

has been included in the present Supplement.

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 recommend the measures to be taken 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 Members 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 obligations of the Members concerned. The Security Council shall keep under review the situation created by such provisional measures."

Article 41

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 all other measures which are not incompatible with the Charter of the United Nations."

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

operations by air, sea, or land forces of members of the United Nations."

Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, and other facilities, as may be necessary to maintain international peace and security."

numbers and types of forces, their disposition, readiness and general location, and the nature of the facilities and assistance to be provided.

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

Article 44

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

Article 45

"In order to enable the United Nations to take urgent action, Members shall make available to the Security Council, on its call, such national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their employment shall be decided by the Security Council in accordance with Article 43."

agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee."

Article 46

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 operations. The Committee shall be composed of representatives of the permanent members of the Security Council, and shall be authorized to study and report to the Security Council on the military requirements for the maintenance of international peace and security, the regulation of armaments, and possible disarmament."

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 shall be represented with it when the efficient discharge of the Committee's responsibilities requires the

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."

"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

"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

tion of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees."

Article 51

"Nothing in the present Charter shall impair the in-

Members of the United Nations or by some of them, as the Security Council may determine.

cise of this right of self-defense shall be immediately

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

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

Part I

NOTE

As the previous volumes of the *Repertoire* indicate, decisions explicitly under Article 39 of the Charter have been exceptional. On one occasion,^{1/} during the period under review two draft resolutions were submitted which recalled previous resolutions containing direct or indirect references to Article 39. One of the draft resolutions was adopted. However, the invocation of this Article in letters of submission and the employment of language derived from it both in these letters^{2/} and in draft resolutions have given rise to discussions^{3/} whether the situations under consideration by the Council corresponded to circumstances en-

During the discussion of the question of race conflict in South Africa, certain members of the Council made a distinction between a situation considered to be "seriously endangering international peace and security" and "actual threats to the peace, breaches of the peace or acts of aggression", within the meaning of Chapter VII of the Charter and the kind of action which the latter would necessitate under that Chapter.^{4/}

Reference to Article 40 of the Charter has been made in the course of discussion on proposals to adopt provisional measures. On one occasion,^{5/} an

tensions. Consequently, in connexion with certain questions before it, the Council found it necessary to address itself to the problem of cessation of activities that might aggravate an existing situation and to encourage contending parties to settle their disputes by peaceful means. As a guide to the decisions of the Council in this regard, reference should be made to the Analytical Table of Measures adopted by the Security Council in chapter VIII and to chapter X of the present volume.

^{1/} Case 3.

^{2/} The *Table of Contents* in part IV of chapter X lists instances of such references.

pp. 253, 255.

^{3/} See Cases 1, 2. See also chapter VIII, pp. 157-159.

regional organization be suspended pending an advisory opinion from the International Court of Justice on the legality of these decisions. On another occasion,^{6/} a permanent member proposed that certain interim measures within the meaning of Article 40 be adopted pending certain other actions by the Council. Neither of these proposals was put to the vote. In a third instance, Article 40 was invoked by the President in a statement made after a motion for the adjournment of the meeting was adopted, interpreting the consensus of the Council by reiterating an appeal that no action should be taken in the Republic of the Congo

^{5/} Chapter VIII, p. 201.

^{6/} Chapter VIII, pp. 167-168.

that would aggravate the situation until the resumption of the debate on the item.

Article 40 was further referred to by the Secretary-General in his statement and communications^{8/} de-

"1. Condemns the incursions by United States aircraft into the territory of other States and regards them as aggressive acts;

"2. Requests the Government of the United States

such actions and to prevent their recurrence,

For the statements bearing upon Article 40 in connexion with the question of the Charter authority concerning the United Nations action in the Republic of the Congo see in this Chapter part V, Consideration of the provisions of Chapter VII of the Charter in general.

the United States had committed any aggressive acts against the Soviet Union or any other country and asserted that the activities protested by the Government of the USSR had no aggressive intent but were

the "free world" against surprise attack by a Power United States and other countries by missiles equipped with atomic warheads.

CASE 1, ^{9/} COMPLAINT BY THE USSR (U-2 INCIDENT): In connexion with the USSR draft resolution.

At the 859th meeting on 24 May 1960, the USSR representative or 16 May seemed to have been made on the basis of the provisions of Chapter VII of the Charter, and in particular of Article 39. His delegation, however,

[Note: The letter of submission referred to the question of "aggressive acts by the Air Force of the United States of America against the Soviet Union,

regard them "as aggressive acts". Another permanent

rules of international law concerning the gathering of

At the 857th meeting on 23 May 1960, the repre-

occurred.

aspects of the invasion of the airspace of a sovereign

they constituted aggression and should be condemned

unprecedented destructive power, there was the added danger that if a United States aircraft invaded Soviet territory, the Soviet Union would have every reason to view it as an act of aggression and to deal the aggressor a retaliatory blow.

pointed out that the United States overflights did not come within any of the cases of aggression envisaged in the draft. Furthermore, if the Soviet Union had thought that the flights constituted a threat to the peace for other reasons than because it was an act of aggression, then it should have submitted its complaint

"The Security Council,

was not a judicial tribunal but a high executive body of a political character, charged with the maintenance of international peace and security; the representative of Argentina further asserted that its first duty "... is to ensure that its acts, instead of making the situation worse, will serve to improve it by creating, as far as possible, an atmosphere of relaxation and harmony".

^{8/} 887th meeting; para. 31; S/4475, O.R., 15th year, Suppl. for July-Sept. 1960, pp. 126-127, paras. 3, 4; S/4599, document II, O.R., 15th year, Suppl. for Oct.-Dec. 1960, pp. 102-103; S/4651, O.R., 16th year,

The representative of Poland stated that the Soviet complaint of aggressive acts by the United

^{9/} For texts of relevant statements see:

^{10/} This draft agreement on the definition of aggression was sub-

^{11/} S/4521, 857th meeting; para. 99.

States Air Force against the Soviet Union which were a threat to the peace of the world. The real danger lay not only in the threat of military incidents, but mainly in the undermining of the rules of international law and the breach of the principle of sovereignty of all States, as well as in the violation of treaties and obligations. The consequences of such a state of affairs were distrust, international tension and a threat to peace. The task of the Council, therefore, was to reinstate the rule of law and respect for obligations and proper conduct in international relations.

resolution was rejected by 2 votes in favour and 7 against, with 2 abstentions.^{13/}

8 MARCH 1962 FROM THE REPRESENTATIVE OF CUBA CONCERNING THE PUNTA DEL ESTE DECISIONS): In connexion with a request of Cuba for the adoption of certain provisional measures; the Council adjourned without taking any action on the request

[Note: During the consideration of the question, it was suggested that the proposal concerning the adoption of provisional measures under Article 40 not only conformed to the spirit and letter of the Charter, but also was the only one possible in the circumstances. On the other hand, it was argued that the Council had previously considered that aspect of the Cuban complaint and found it to be unjustified. If the Council were then to accede to the Cuban request it would be going back on its own decision when there were no new factors to justify fresh consideration.]

At the 892nd meeting on 14 March 1962, the Council considered the letter of 8 March 1962 from the representative of Cuba (S/5086). The letter^{15/} requested the Council

"under the terms of Article 40 of the Charter of the United Nations ... to inform the Council of the Organization of American States and the other organs of the Inter American system that, as a provisional measure, it is calling for the suspension of the agreements adopted at the Eighth Meeting of Consultation of the Ministers of Foreign Affairs of the American States, held at Punta del Este, Uruguay, and of such measures as may have been ordered in pursuance of those agreements, because the adoption and execution of those agreements constitute illegal acts and because they involve a threat to international peace and security."

At the same meeting, the representative of Cuba

^{13/} 860th meeting: para. 87. (In a telegram (S/4384) dated 13 July 1960, the USSR again requested an urgent meeting of the Council to examine the question of "new aggressive acts by the Air Force of the United States of America against the Soviet Union, creating a threat to universal peace". A USSR draft resolution (S/4406) submitted at the 860th meeting on 23 July 1960, proposed that the Council should meet on an urgent basis to consider the question.)

at the 883rd meeting on 26 July 1960. For the developments concerning this question, see chapter VIII, pp. 185-186, and chapter X, Case 3.)

^{14/} For texts of relevant statements, see:

995th meeting: China, para. 27; France, paras. 55-57.

^{15/} S/5086, O.R., 17th year, Suppl. for Jan.-March 1962, pp. 88-90.

refer certain questions to the International Court of Justice for an advisory opinion,^{16/} urged that, pending the opinion of the Court, the Council decide to suspend the "illegal agreements" of Punta del Este together with any measures that might have been taken under those agreements, and that the regional organization should be notified of that decision.

At the 993rd meeting on 15 March 1962, the representative of the USSR, speaking in support of the Cuban proposal "that the Council should undertake a number of supplementary actions and measures on

suggested that such a proposal deserved the most serious attention and ought to be approved by the Council. He recalled that Article 40 envisaged such provisional measures as might be taken by the Security Council to prevent the aggravation of the situation.

"Applying this to what we are now discussing, namely to the request to the International Court of Justice for an advisory opinion on the important questions of international law formulated in the letter from the representative of Cuba, we believe that the Security Council has a right and a duty to

the Punta del Este meeting and of any decisions developing or supplementing them which may be taken until such time as the Security Council has received and considered the advisory opinion of the Court."

He was of the opinion that a provisional measure of the kind proposed not only conformed to the spirit and letter of Article 40 of the Charter, but also was "the

was no unanimity among the members of the Security Council about the nature of the final decision on the legal and political problems which the Security Council could take in connexion with the question raised by the Cuban Government. Moreover, a provisional measure of the sort proposed, and as envisaged in Article 40 of the Charter, would be without prejudice to "the rights, claims, or position of the parties concerned", because it would not prejudice the nature of the Security Council's final consideration on the question submitted by Cuba, but would prevent actions which could be irrevocable at a time when their legality was questioned by many Members of the United Nations, including members of the Council."

The representative of the United States observed that, viewed in the context of the resolutions adopted at Punta del Este and the precedent of the Dominican case, the question raised in the letter from the representative of Cuba should be dismissed for lack of substantiality; "moreover, the insubstantiality of the questions demonstrates that there is even less reason for the Council to consider the Cuban demand that provisional measures be adopted, under Article 40, to suspend the implementation of the resolutions of Punta del Este."

At the 995th meeting on 20 March 1962, the representative of China expressed the view that the charge

^{16/} See chapter VIII, p. 200, and chapter XII, Case 25.

action which Cuba was requesting the Council to take on those resolutions was unwarranted and undesirable.

The representative of France, after recalling Cuba's request for a ceasefire, noted that the representative of Cuba was

justice, noted that the representative of Cuba was

of American States and the organs of the Inter-American system provisionally to suspend those decisions and any measures which might have been ordered

measures adopted were illegal and threatened international peace and security. Then, calling attention to the fact that during the previous month both the General Assembly and the Security Council had considered that aspect of the Cuban complaint and that neither of them had found the charges justified, he

request it would be going back on its own decision

consideration of the matter

adjourned without taking any action on the Cuban re-

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nexion with the decision of 9 April 1962 determining that the Israel attack of 16-17 March 1962 constituted a violation of the Council resolution of 19 January

[Note: During the discussion a draft resolution was submitted under which Israel would be warned that sanctions would be invoked against it in the event of further aggression. It was not voted upon. A second draft resolution calling upon both parties to abide by the cease-fire arrangements was adopted by the

Council decision of 15 July 1948, which determined the situation in Palestine to be a threat to the peace within the meaning of Article 39 of the Charter.]

At the 1000th meeting on 3 April 1962, the representative of Syria submitted a draft resolution^{19/} in

and 19 January 1956, concerning the Golan Heights and

the Golan Heights, calling upon Israel to take effective

^{17/} 998th meeting: para. 158. The draft resolution requesting an advisory opinion from the International Court of Justice was rejected by 2 votes in favour to 7 against, with 1 abstention; Ghana did not participate in the voting.

^{999th} meeting: Israel*, para. 84; Syria*, paras. 24, 37, 49, 52-55; USSR, paras. 143, 150-153; United States, paras. 100, 101;

^{1000th} meeting: Israel, para. 90; Syria, paras. 56, 58;

^{1002nd} meeting: France, para. 14;

^{1003rd} meeting: Syria, para. 10; United Kingdom, para. 20;

^{1004th} meeting: Venezuela, para. 14;

^{1005th} meeting: Ghana, paras. 10-15; USSR, paras. 55, 57, 62; United States, paras. 26-27, 29-30, 35-36;

^{1006th} meeting: USSR, paras. 93, 95; United Arab Republic, para. 78; United Kingdom, para. 82.

^{19/} S/5110 and Corr.1. The text of this draft resolution, following its

measures to prevent the recurrence of such military actions, the resolution would condemn

Israel for the violation of the

1948, or the terms of the General Armistice Agree-

ments under the Charter of the United Nations.

Further, it would "again" warn Israel "of the Security Council's resolve to call for appropriate sanctions against Israel, should it repeat any breach of the

At the 1005th meeting on 6 April 1962, the Council also had before it a joint draft resolution^{20/} submitted by the United Kingdom and the United States, which, after deploring the hostile exchanges between the Syrian Arab Republic and Israel, would reaffirm the

condemned Israeli military action in breach of the

taken by way of retaliation, and would determine that

a flagrant violation of that resolution, and call upon

At the same meeting, the representative of Ghana speaking on the incidents of 16-17 March, stated:

"it was a deliberately planned military operation. . . It is not the first incident of this kind and, besides

vious similar occasions that military action in breach of the Israel-Syrian General Armistice Agreement is not permissible, whether or not undertaken by way of retaliation."

He urged Israel to have fuller respect for, and to place greater reliance on the United Nations machinery

area than on the use of force.

The representative of the USSR, commenting on the Syrian draft resolution, observed:

"... I fail to understand why certain delegations...

this extremely modest draft resolution, which is

sents a minimum programme of what the

He pointed out further that the draft resolution did not even call for the immediate application of sanctions, although there would be every ground for such a

ought to examine and investigate.

He went on to say that not only were certain provisions of the draft resolution submitted by the United Kingdom and the United States in absolute contradiction with the factual side of the question, but also an attempt was made to place the victim of aggression and the aggressor on an equal footing.

^{20/} S/5110 and Corr.1. The text of this draft resolution, following its

At the 1006th meeting on 9 April 1962, the representative of the USSR, further commenting on the draft resolution submitted by the United Kingdom and the United States, stated:

will serve as a serious warning and as an intimation that the Security Council as a whole, performing its functions under the Charter of the United Nations,

from acts of aggression and should strictly observe its principles. He stated that the Security

Israel of the Armistice Agreement and will take action if such violations are committed.

hereafter Israel should be guilty of violations of the

Armistice Agreement or should commit other aggressive acts, the Security Council will, in this threat to international peace and security resulting from the incessant aggressive actions of Israel in the Middle

Charter."

The representative of the United Arab Republic stated that if his request for a separate vote on certain para-

Kingdom and the United States were accepted, he

tion. Following the refusal by the Representative of the United Kingdom to accede to this request, the joint

1006th meeting: para. 100.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER

NOTE

During the period under review, references to Articles 41 and 42 were made in connexion with three questions before the Council when the issue as to whether certain decisions of a regional agency constituted or did not constitute an "enforcement action", within the meaning of Article 53, was considered. References to their relationship to the concept of "enforcement action" in Article 53. The three case histories dealing with the matter are included in chapter XII, part IV, of the

Part III

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

NOTE

During the consideration by the Council of the mandate of the United Nations Force in the Congo, it was maintained that the Security Council had made no explicit or implicit findings under Articles 41 and 42 for the adoption of enforcement measures to be carried out by the United Nations Force in the Congo.

As indicated in the note to part II of this chapter, references to Article 42 were made on three occasions which are included in chapter XII, part IV, of this volume.

Part IV

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

NOTE

During the period under review Article 49 was invoked, together with Article 25, in a draft resolution submitted and adopted in connexion with the situation in the Republic of the Congo. In the course of the discussion, the peremptory character of both Articles was emphasized, and no specific constitutional references were made to Article 49. For this reason the case is included in chapter XII, part IV: Consideration of the provisions of Article 25 of the Charter. For the same reason there are to be found in chapter VII, part II:

Secretary-General in his statement before the Council and in his communications.

References to Article 51 of the Charter were made during consideration by the Council of the RB-47 incident, and the complaint by Cuba concerning decisions by the Organization of American States made at Punta del Este, Uruguay. These references are treated in chapter VII, parts II and III, respectively.

Part V

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

NOTE

In none of its five resolutions^{22/} adopted in connexion with the consideration of the situation in the Republic of the Congo, did the Security Council indicate which Article or Articles of the Charter constituted the Charter authority on which the Council based its decisions. Neither the original resolution authorizing the Secretary-General to take the necessary steps to provide the Government of the Congo with military assistance, nor the subsequent resolutions by which the Council decided upon further measures to be undertaken by the Secretary-General or by the United

Nations Force contain an explicit or implicit reference to any Article of the Charter which would make possible a conclusive judgement as to whether the Council, in exercising its primary responsibility for the maintenance of international peace and security, had adopted its decisions under the Articles of Chapter VI or especially under Chapter VII of the Charter.^{23/}

Also, the constitutional discussions which preceded the particular decisions shed no light on the intentions of the Council with regard to the Charter provisions on which it was basing its actions.

The Council took into account limitations imposed by the Charter on its powers especially in connexion

^{22/} Resolution S/4387 adopted on 14 July 1960 (873rd meeting); resolution S/4405 adopted on 22 July 1960 (879th meeting); resolution S/4426 adopted on 9 August 1960 (886th meeting); resolution S/4741

References made to Articles 25 and 49 with regard to the obligations of Member States to accept and carry out the decisions of the Council and to afford mutual assistance in carrying out measures decided upon by the Council (oper. para. 5). This resolution was reaffirmed by resolution S/4741 adopted on 21 February 1961 (part A, oper. para. 5). In the same resolution, an implied reference was made to Article 49 (part B, oper. para. 3). In resolution S/5002 adopted on 24 November 1961 the four previous resolutions were recalled (preamble, para. 1).

with its decisions relating to the mandate of the United Nations Force in the following two instances: in connexion with the question of the limitations of the powers of the Force with regard to the principle of non-intervention in domestic matters^{24/} and with the question of the use of force by the Force.^{25/}

This issue was dealt with, in relation to the above-mentioned two questions, in several interventions by the Secretary-General who, while drawing attention to the fact that he was expressing his own views which had not been endorsed by the Security Council

stressed the negative aspect of the matter by referring to those Articles of the Charter on which the action of the Council could not, in his opinion, have been deemed to be based.

However, deliberations in the Council on these two and other pertinent questions are not conducive to ascertaining which of the Articles of the Charter had constituted or could have constituted the basis for the Council's decisions.

The case history presented below relates to the proceedings in the Council in which, within the framework of a discussion of the provisions of two draft resolutions submitted, the question of the Charter authority underlying the Council's decisions was dealt with in constitutional terms.

of the Charter, the case history is included in part V of this chapter under the heading: Consideration of the Provisions of Chapter VII in General.

^{24/} See chapter V, Cases 2 (i-ii).

^{25/} See chapter V, Cases 2 (iii-vii).

CASE 4.^{26/} SITUATION IN THE REPUBLIC OF THE CONGO: In connexion with the draft resolution

Assuming, however, that their interpretation of the mandate was correct, the Secretary-General asked:

14 December 1960; and with the joint draft resolution

General on the Force: the means—I mean now the legal

thereto: the amendments voted upon and rejected on 14 December 1960, the joint draft resolution

mandate which you believe has been given to the Force? And if so, let me ask this last question: could the Council have given such means to the Force,

[Note: In connexion with the consideration of the above-mentioned draft resolutions and amendments, statements were made relating to the question as to whether the resolutions of the Security Council on the situation in the Congo were or were not adopted under

it is even doubtful if the Council ever has acted under Chapter VII. The very most that can be said is that the Council's actions may have been under Article 40 of the Charter"^{30/}

of the lawful Government of the Republic of the Congo,

could be said to have been the only means available to

and upon the Command of the United Nations Force to disarm "the terrorist bands of Mobutu" was rejected; a joint draft resolution requesting the Secretary-General to continue his efforts to assist the Republic of the Congo in the restoration of law and order and in adopting measures tending to safeguard civil and human rights was not adopted, while amendments thereto, corresponding to the provisions of the first draft resolution, were rejected.]

the limits within which its action must be confined.

"It would stretch legal ingenuity to regard Article 39 of the Charter as applicable to the case before us, which is a power conflict, a struggle for political leadership, a dispute over the legitimacy of governments, in short, a problem of an internal

and independent sovereign State, this is unquestionably a matter within its domestic jurisdiction, which is safeguarded by Article 2 (7) of the Charter."

At the 914th meeting on 8 December 1960 the President, speaking as the representative of the USSR, introduced a draft resolution.^{27/}

At the 917th meeting on 10 December 1960 the representative of Ceylon stated that the United Nations Force had applied the mandate in too restricted a manner in a fast-changing situation which, in order to justify the presence of the United Nations Force in the Congo, required a completely new approach. If the Secretary-General's interpretation that "the Security Council resolutions gave him a certain

At the same meeting, the representative of Argentina introduced a draft resolution^{28/} submitted jointly with Italy, the United Kingdom and the United States.

At the 915th meeting on 9 December 1960 the

tion or constitutional rule^{29/} had been the subject of

did not envisage the involvement in matters of internal

lengthy debates in the Council and some representatives were giving to the mandate an interpretation which was not warranted by the history of the case.

1960, it was the duty of the Council to give a new mandate to the Secretary-General, for the utilization

^{26/} For texts of relevant statements, see:

^{30/} On two other occasions, the Secretary-General made statements, as follows:

At the 884th meeting on 8 August 1960, the Secretary-General pointed out that the Charter stated in several Articles the obligations of Member

^{27/} See 1960, *Annex to the Report of the Secretary-General*, paras. 133-134.

^{28/} See 1960, *Annex to the Report of the Secretary-General*, paras. 135-136, 1960, pp. 82-83, and footnote 11. For the summary of its provisions, see chapter VIII, p. 171.

^{29/} At the 913th meeting on 7 December 1960 the Secretary-General recalled that at the initial stage there had been no United Nations contact with the constitutional or political institutions of the Congo and, referring to demands made after the adoption of the first two

saving the Congo to one of peace or war—and not only in the Congo (884th meeting: paras. 21-26).

At the 887th meeting on 21 August 1960, the Secretary-General stated that the Council could not be deemed

"to have instructed the Secretary-General, without stating so explicitly, to act beyond the scope of his own request on contrary to the specific limitation regarding non-intervention in internal conflicts. . . . More-

expressed the view that the Council had to stand by the mandate as laid

General to intervene with armed troops in an internal conflict when

in the Congo (913th meeting: paras. 26-27, 60).

para. 44).

of the forces in the Congo, to carry out the purpose for which they were sent".

There were no grounds for any fears that the Council, by giving a wider mandate, would be acting against the Charter, since in this case the Head of a State had requested the United Nations to render certain assistance of a specified kind.

"Article 39 of the Charter is clear as regards the duties of the Security Council whenever there exists a threat to peace or a breach of the peace,

situation likely to cause a breach of international peace and security. The United Nations is today in the Congo, in all its aspects, because it was invited by the legitimate and unquestioned Government, so that our action can in no way be regarded as an intervention in matters essentially within the domestic jurisdiction of the Republic of the Congo."^{31/}

At the same meeting, the Secretary-General, referring to the statement of the representative of

might be considered "as the background for action taken, although that is not quite clear legally". It had also been hinted that the Council might be entitled to act, as indicated by the representative of Ceylon, on the basis of the fact that the United Nations assistance

which the action was based.^{32/}

Secretary-General stated:

"In interventions in the course of the debate in the Council, I have pointed out that the Council has

the basis of which it took action in the Congo. In particular, it is significant that the Council did not invoke Articles 41 and 42 of Chapter VII, which provide for enforcement measures and which would override the domestic jurisdiction limitation of Article 2 (7). I mention this as one of the reasons

at least that the Security Council had clearly taken enforcement measures under Articles 41 and 42."

The Secretary-General then quoted from his statement at the 887th meeting the following:

"... in the light of the domestic jurisdiction limitation of the Charter, it must be assumed that

^{31/} The representative of Ceylon suggested that the United Nations Houses of Parliament; should use every persuasive measure to promote

^{31/} Congo (I) (1960) meeting, para. 107, 109, 110.

^{32/} See the statement of the Secretary-General, para. 15.

the Council would not authorize the Secretary-General to intervene with armed troops in an internal conflict, when the Council had not specifically adopted enforcement measures under Articles 41 and 42 of Chapter VII'."

and stated:

"Members may remember that no one in the Council raised any question about this statement.

"It is true that, in its resolution of 9 August 1960, the Council expressed its concern for the States concerned by the Council's action, but this does not mean that the Council intended to take such measures.

"My own view, which I have expressed to the Council, is that the resolutions may be considered as implicitly taken under Article 40 and, in that sense, as based on an implicit finding under Article 39. But what I should like to emphasize is that neither the Council nor the Assembly has ever endorsed this interpretation, much less authorized endorsement in a resolution, what is even more certain is that the Council in no way directed that we go beyond the legal basis of Article 40 and into the coercive action covered by Articles 41 and 42. Certainly the Organization, as represented by the Security Council and the General Assembly, must take carefully into account the limits on its authority

The representative of Ceylon pointed out that

General and stated that they would have vested the Security Council's decision with a great cogency and force, but it had been unnecessary for the Security Council to have done so. The Council had not done so because the strength and the authority of a resolution by the General Assembly for the Congo had been sufficient to make the action taken by the United Nations to send its forces into the Congo, take action which should go beyond the part which

At the same meeting, the President, speaking as the representative of the USSR, submitted amendments^{33/} to the four-Power draft resolution.

At the same meeting on 13/14 December 1960, the USSR amendments to the four-Power draft resolution were rejected;^{34/} the four-Power draft resolution of the Council of 14 December 1960, paragraph 1, which was rejected.^{35/}

^{33/} S/4578, 920th meeting, para. 53. For the summary of the provisions of the amendments, see S/4578, 920th meeting, para. 54.

^{35/} 920th meeting, para. 156.