

Chapter XI

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER

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INTRODUCTORY NOTE

Chapter VI does not constitute a review of the
cross references are given to Chapter VIII to facilitate
the consultation of the material in conjunction with

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

Article 39

"The Security Council shall determine the existence of any threat to the peace, breach of the
or restore international peace and security."

Article 40

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
claims or position of the parties concerned. The

Article 41

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
and security. Such action may include demonstra-

Article 43

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

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

to contribute to the maintenance of international
and facilities, including
maintaining international peace and security.

"2. Such agreement or agreements shall govern

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

Article 44

"When the Security Council has decided to use
imminent 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."

urgent military measures, Members shall hold immediately available national air force contingents for

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."

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

Article 47

Committee to advise and assist the Security Council on all questions relating to the Security Council's

national peace and security, the employment and command of forces placed at its disposal, the remuneration of the members of the Committee, and the

"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

THE MEMBERS OF THE UNITED NATIONS SHALL JOIN

Article 50

"3. The Military Staff Committee shall be responsible under the Security Council for the strategic

command of such forces shall be worked out subsequently.

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

"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 the Security Council, 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."

tions 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

inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international

immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

Part I

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

NOTE

During the period under review, the Council has taken no decisions explicitly under Article 39 of the Charter.

both of these letters and draft resolutions have since

consideration by the Council were of the nature envisaged in Article 39. In several instances when this Article has been invoked, the Council has confined itself to expressing its grave concern over the prevailing situation, to urging the avoidance of activities

encouraging the contending parties to settle their dis-

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

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

³ For discussions concerning allegations of aggression, see Complaint by Malaysia (1144th meeting, para. 62); Complaint

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

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

In two⁵ of the four cases presented below the

involvement in determining the Council's role.

in the three instances while there was general agree-

actual threat to international peace existed within the meaning of Article 39 of the Charter; the resolution adopted by the Council determined that the "continuance" of the situation "would" constitute a threat to international peace and security.

The employment of provisional measures under Article 40 of the Charter was recommended in one

requesting both parties to desist from further hostile military action and to issue cease-fire orders to the military forces under their command as a first step toward a peaceful settlement of outstanding differences between the two countries was adopted by the Council.

During consideration of the complaint by Panama

⁵ Cases 1 and 2.

⁶ Case 3.

⁷ Case 4.

Article 40 of the Charter, suggested that the Council adopt certain measures of an "emergency character" which

to distinguish the threat to the peace they admitted was inherent in the situation in South Africa from a

CASE 1. THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA

on 18 June 1964

[Note: During the discussion, the question was raised as to whether the situation in South Africa could

within the meaning of Article 39 of the Charter. On

it could still not be said with any certainty that the situation caused thereby constituted a threat to the peace. On the other hand, it was contended that any objective analysis of the situation would reveal that there was a threat to international peace and security. The Council adopted a draft resolution expressing its conviction that the situation was "continuing seriously to disturb international peace and security".⁸

At the 1129th meeting on 10 June 1964, the representative of Indonesia* noted that in the matter of the employment of economic sanctions against South Africa, only the Security Council had the power to

then only if it had first determined the existence of a "threat to the peace", a "breach of the peace", or an "act of aggression" according to the language of Article 39 of the Charter. However, as yet the situation in South Africa had not caused an actual breach of the peace nor had any act of aggression been considered

the permanent members refused to concede that the situation in South Africa represented a threat to the

was seriously disturbing international peace and secu

had worsened since the December resolution, he wondered how far it should be allowed to deteriorate

within the meaning of Article 39 to warrant Council action. The representative recalled that in previous debates¹⁰ certain members of the Council had sought

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

⁹ For texts of relevant statements, see: 1129th meeting: Indonesia*, para. 10-26; 1131st meeting: United Kingdom,

paras. 3-4; 1133rd meeting: Norway, para. 3; 1135th meeting: Ivory Coast (President), paras. 3-5, 8.

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

under Articles 41 and 42. Thus according to one party referred to the underlying elements of a serious situation that, if continued, would be likely to endanger international peace and security. However, such a condition was quite different from "a fully matured threat

to try to prevent broached virtually the next day or even the next hour". Disputing that contention, he pointed out that the language of Article 39 clearly indicated that the terms of the Charter envisaged the definite time lag between a "threat" and a "breach" or else both words would not have been included. That being so, his delegation interpreted Article 39 as indicating that "the first duty of the Council is to safeguard the peace, to prevent the occurrence of an actual breach, rather than to restore the peace after a breach has taken place".

At the 1131st meeting on 15 June 1964, the repre-

representative of Indonesia among others had recognized that "a pre-condition of the decision under Article 41 is the decision under Article 39 that there exists a threat to the peace, a breach of the peace or an act of aggression" maintained that in the prevailing situation in South Africa there was no question

made. To make such a determination, it was necessary to look at the situation within South Africa itself, and

ered the maintenance of international peace and secu

resolutions of 7 August 1963 (S/5386), 4 December 1963 (S/5471) and 9 June 1964 (S/5761) and on

Africa is continuing seriously to disturb international peace and security".

At the 1135th meeting on 18 June 1964, the President, speaking as the representative of the Ivory Coast, observed that while the principles and intentions of the draft resolution were praiseworthy, they

were to be expressed and put in practice. In any event

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

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

At the 1135th meeting on 18 June 1964, the draft resolution was adopted by 8 votes in favour, none

At the 1267th meeting on 22 November 1965, the representative of Uruguay, commenting on operative paragraph 1 of the draft resolution, observed that if the paragraph implied the application of Chapter VII of the Charter, his delegation was not ready to support it, since he did not believe that the non-permanent

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

or the application of Chapter VII of the Charter". Moreover, as he understood it, the three sponsors of the draft resolution that are members of the Security Council did not interpret operative paragraph 1 as implying the application of Chapter VII of the Charter.

States to be a threat to international peace and security... implied the application of Chapter VII of the Charter, and because it was felt that non-permanent

The amendment was adopted by a vote of 10 in favour, 7 in favour, none against and 4 abstentions.¹⁴

security.]

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

resolution: not put to the vote, and with the Bolivian and Uruguayan draft resolution voted upon and adopted on 20 November 1965

[Note: The contention that the unilateral declaration of independence of Southern Rhodesia had created a threat to international peace and security within the meaning of Article 39 of the Charter was disputed

population of its colonies and the neighbouring States endangers international peace and security".

... [that "the situation was extremely grave and

Government in the territories under its administration was not directed against any outsider. Consequently, "if outsiders choose not to like our internal policy, and are seeking to force a change, it does not follow that it is Portugal that endangers international peace and security". On the contrary, the responsibility must be laid at the door of the outsiders. Moreover, when it

At the 1257th meeting on 12 November 1965, the representative of Ghana * observed that the unilateral

precipitated a serious crisis which posed a threat of immense proportions to the peace and security of the African continent and in fact of the world. Recalling that at a recent African summit conference a resolution was adopted calling upon the United Nations to regard the unilateral declaration of independence as constituting a threat to international peace, he explained that in pursuance of that resolution the Afri

and encouraging violence against it, he wondered whether it could be said that it was Portugal which endangered international peace and security.

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

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

¹⁵ 1268th meeting, para. 15.
¹⁶ 1268th meeting, para. 30; S/RES/218 (1965), O.R., 20th yr., Resolutions and Decisions of the Security Council, 1965, pp. 18-19.

¹³ For texts of relevant statements, see: 1255th meeting: United Republic of Tanzania, para. 83.

¹⁷ For texts of relevant statements, see: 1257th meeting: Ghana * paras 40-61.

1266th meeting: Portugal, * paras. 21-35; Tunisia, * paras. 4-19.

1259th meeting: Ivory Coast, paras. 49-50, 71; Pakistan, * paras. 9, 12; United Kingdom, para. 31.

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

1263rd meeting: United Kingdom, para. 8.

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

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

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

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

constitute a threat to international peace and security" 18

resolutions submitted by the United Kingdom and Ivory Coast respectively contained both formal and substantial differences which certain members of the

lution 2022 (XX) of 5 November 1965 the General Assembly had characterized the situation in Southern Rhodesia as one which "threatens international peace and security" stated that in the view of his delegation the situation in that territory constituted one of the eventualities for which Chapter VII of the Charter

a draft resolution jointly sponsored by Bolivia and Uruguay, under which the Security Council would express its deep concern about the situation in Southern Rhodesia and would determine that

"the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia constitutes a threat to international peace and security."

world community to put an end to this situation which is a threat to international peace and security as recognized by the General Assembly in its resolution 2022 (XX)".

thern Ireland should put an end to it, and that its continuance in time would constitute a threat to international peace and security."

In explaining the objectives of this draft resolution,

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

or VII of the Charter was brought to bear on the situation nor did it seek to define the criteria that might imply the use of armed forces in the prevailing circumstances. In effect the draft resolution sought to generalize the measures adopted by the Government of the United Kingdom and imposed upon other Members of the Organization the need for co-operation in order to ensure the effectiveness of those measures.

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

At the same meeting the representative of Jordan stated that in order to invoke Chapter VII of the Charter, the Council first had to determine under Article 39 whether or not there was a breach of the peace within the meaning of the Charter. "This is a question of fact, it is not a question of law. The determination of the situation as one falling within the meaning of Article 39 is not a question of legal interpretation, it is a question of evidence, a question of proof, a question of fact." The facts related to the matter, however, were uncontroversial in that an attempt was

"The Security Council,

"...

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

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

the finding that the situation constituted a threat to the peace. After referring to other developments as evidence of a rapidly deteriorating situation, he maintained that unless effective measures were taken, the African States might find themselves compelled to intervene. All those developments, therefore, fully justified the finding that a threat to the peace existed and

"It has not yet developed to a point where there is an actual breach of international peace—that is to say, where there is fighting between nations—and

measures to check that explosive situation. Furthermore, the Council was expected "to determine that a breach of the peace does exist within the meaning of

representative of Uruguay, noting that the two draft

President (Bolivia), before proceeding to the vote explained that the sponsors of the joint Bolivia-Uruguay

1260th meeting: Ethiopia, paras. 2-3; Malawi, paras. 20

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

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

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

18 S/6928, 1259th meeting, para. 31.

20 S/6929, 1259th meeting, para. 70.

the United Kingdom Government should put an end

threat to international peace and security.

The resolution as modified was adopted by 10 votes

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

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

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

[Notes. Report A: Article 40 was suggested by the

for a cease-fire, noted that he had not succeeded in obtaining compliance. The representatives of India and Pakistan held differing views as to the relevance and applicability of that article under prevailing circumstances. However, it was felt that the Council should on the basis of this provision demand an immediate

At the 1220th meeting on 17 September 1965, the

effect to the resolutions calling for the cessation of hostilities, noted that he had so far not succeeded in

he offered certain of his "own views" about the role

tion. He suggested that the Council "might now do what it has done once before and

it could order the two Governments concerned, pursuant to Article 40 of the Charter of the United Nations, to desist from further hostile military action and to this end, to issue cease-fire orders to their

failure by the Governments concerned to comply with this order would demonstrate the existence of

39 of the Charter."

With regard to the adoption of provisional measures under Article 40 the representative of India * felt that

instead he suggested that the Council call upon Pakistan to desist from carrying out hostilities and to determine under Article 39 of the Charter the existence of

yr., Resolutions and Decisions of the Security Council, 1965, pp. 8-9.

* 1265th meeting: United Kingdom para 63

paras. 103-107.

1249th meeting: Pakistan * para 65

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

At the 1241st meeting on 19 September 1965, the representative of the Netherlands asserted that the

the Charter, decide on a specific moment "in the nearest future" at which hostilities should cease, and at the same time offer its assistance for assuring the

lose sight of its long range objectives which were the

conflict, it could set in motion the process to that end.

application of Articles 39 and 40 may turn out to be

to uphold the authority of the Council and more

as to endanger world peace".

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

Having considered the reports of the Secretary-General on his consultations with the Governments

"...
"Convinced that an early cessation of hostilities is essential as a first step towards a peaceful settlement

on Kashmir and other related matters,

"1. Demands that a cease-fire should take effect on Wednesday, 22 September 1965 at 0700 hours GMT and call upon both Governments to issue

subsequent withdrawal of all armed personnel back to positions held by them before 5 August 1965."

* 1265th meeting: United Kingdom para 63

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

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER

the applicability of enforcement measures within the meaning of Chapter VII of the Charter were raised in two instances. In the first instance²⁸ discussion was

²⁸ Case 5.

Article 41 of the Charter in the absence of a specific determination by the Council that the situation in a Member State threatened international peace and security within the meaning of Article 39. The discussion

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

AFRICA: In connexion with the Bolivian and Norwegian joint draft resolution voted upon and adopted

[Note: The view that whether, as a result of developments in South Africa, the Council could apply economic sanctions under Article 41 of the Charter was

disturbing the peace" and therefore the Council could act under the aforementioned Article. The draft resolution adopted by the Council, which viewed the situation in South Africa as continuing seriously to disturb international peace and security, established an expert committee to undertake a technical and practical study of the feasibility of imposing such sanctions.

the Charter and reaffirmed its call upon all States to

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

The representative of Sierra Leone* recalling that in a resolution of 7 August 1963 the Council determined

measures in accordance with Articles 41 and 42 of the Charter. He stated that the Council had the power under Article 41 of the Charter, to demand that the Government of South Africa release these national leaders sentenced to death and

30 For text of relevant statements, see: 1127th meeting: Liberia,* paras. 7, 71; Sierra Leone,* paras. 103-104. 1129th meeting: Indonesia,* paras. 12-22; Tunisia,* paras. 106-115.

against the Republic of South Africa since a breach of international peace and security.

At the 1129th meeting on 10 June 1964, the representative of Indonesia* expressed the view that the Council should consider the question of South Africa's racial policies under Chapter VII of the Charter, and supported application of the Charter by the United Nations to apply "coercive measures provided under Articles 41 and 42" of that Chapter. He noted that the coercive measures envisaged were primarily economic sanctions listed under Article 41, backed if necessary, by a blockade which was a measure falling under Article 42. Thus he saw those sanctions as a method of compelling the South African Government

it has first declared the situation a 'threat to the peace', a 'breach of the peace' or an 'act of aggression' could the Security Council consider measures under Chapter VII. Because, however, the situation in South Africa had not caused an "actual breach of the peace" nor was there as yet an act of aggression, to be

inducing the Government of South Africa to abandon its apartheid policy, inseparably linked, upon the

to the peace". But in August and December 1963 when such a determination had been sought of the Council, three permanent members refused to concede that the situation in South Africa represented a threat to the peace within the meaning of Article 39 of the Charter. As a result, because Chapter VII did not speak in terms of "disturbances" of the peace, the resolutions of 7 August and 4 December 1963 declaring the situation as seriously disturbing international peace and security, were "unpleasant to read, the Council's anxiety for the Charter."³¹

The representative of Tunisia* noting that the Charter embodied various measures and provisions to deal with a situation which was a threat to international peace and security, asserted that "under Chapter VII

At the 1131st meeting on 15 June 1964, the representative of the United Kingdom* noting that the Council "set in hand an urgent examination of the logistics of sanctions" contended that it was not for that group to recommend to the Council "so serious a step as the application of economic sanctions" since "a step with Article 41 of Chapter VII of the Charter" and

31 For discussion of this issue, see part I, Case 1. 32 Under the Security Council resolution S/5471 (4 December 1963), the Secretary-General was authorized to appoint a group of experts to examine "methods of resolving the present situation in South Africa through full, peaceful and

debate, a pre-condition of the decision under Article 41 is a determination under Article 39 that there existed a threat to peace, a breach of the peace or an act of aggression. In the case under consideration, however, there was no breach of the peace or act of aggression and in the view of his delegation "no such threat to the peace exists at the present time". Essentially, the problem before the Council involved the failure of the Government of South Africa to comply with certain

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

CASE 6.³⁵ SITUATION IN SOUTHERN RHODESIA: In connexion with the Jordanian draft resolution, voted

United Kingdom draft resolution, not put to the vote; with the Ivory Coast draft resolution not put to the vote; and with the Bolivian and Uruguayan draft

not in itself create a situation where determination under Article 39 could be made. Noting that the imposition of sanctions would be an experiment of "a most grave and dangerous nature", he wondered whether in the case of its failure the Council would be prepared to take action under Article 42 and attempt

[Note: During the discussions it was contended that the measures proposed by the Administering Authority, essentially of an economic and financial nature, were inadequate to deal with the situation created by the unilateral declaration of independence in Southern Rhodesia. It was further contended that the Council

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

range of measures under Articles 41 and 42. On the other hand, doubts were expressed as to whether the nature of the situation warranted the adoption of measures under Chapter VII, particularly the use of force.]

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

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

"Convinced that the situation in South Africa is

crisis which poses a threat of invasion upon the Government to use every means at its disposal to restore law and order in Southern Rhodesia, including the use of armed force". At the same time he called upon the Council "to order full sanctions against the Ian Smith régime in accordance with Chapter VII of the Charter".

conclusions of the Group of Experts,

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

"8. Decides to establish an expert committee

submitted by the representative of Jordan, under which

measures which could, as appropriate, be taken by the Security Council under the United Nations Charter;

Rhodesia and called upon all States not to recognize

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

³⁵ For texts of relevant statements, see:

1257th meeting: United Kingdom, paras. 10, 11, 16; Jordan, paras. 109, 148-149; United Kingdom, paras. 10-36.

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

1260th meeting: Ethiopia,* paras. 4, 19, 21; Guinea,* paras. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

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

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

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

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

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

South Africa was charged with dangerous implications, his Government did not believe that the then prevailing situation provided a basis under the Charter for the application by the Security Council of coercive measures.

At the 1135th meeting on 18 June 1964 the draft

³³ S/5769 same text as S/5773 O.R. 19th yr. Suppl. for

serious threat to international peace and security, and that effective measures to deal with it should be taken

At the same meeting, the representative of Ivory Coast, noting that the United Kingdom had asked the

of the sanctions advocated by the representative of the situation, he urged that the first step should be to take action first by inviting the United Kingdom to take steps to restore normal conditions in Southern Rhodesia, and in

problem "under the only Chapter of the Charter, Chapter VII. Consequently, deliberations should be conducted under the terms of Articles 20-51 of the Charter, and that the question fell within that Chapter. Article 2

At the same meeting, noting that the situation created by the unilateral declaration of independence posed a serious danger to international peace, the representative of India expressed the hope that the measures proposed by the United Kingdom "will be he felt that the seriousness of the situation demanded "sterner measures", and was thus of the view that political, economic and even military measures should

Great Britain must be invited to take more effective measures "which would not exclude the use of force and which would bring the rebellion to an end in the shortest possible time". Moreover, the Security Council should not limit itself to merely taking note of the support the measures already proposed by that Government and add certain other measures thereto under Chapter VII of the Charter. Nor should it hesitate "to

The representative of the USSR, referring to the

decisions of the Security Council and which therefore will be binding on all Member States" To this end

"The Security Council

representative of the United Kingdom, in the direction of passing of a resolution was the first step in the direction of achieving a solution of the situation, the Council should simultaneously start considering concrete steps to be implemented within a specific period of time. His delegation was of the view that the Council

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

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

"The Security Council,

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

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

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

"If States to recognize such a unilateral declaration of independence as having any legal validity;

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

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

The representatives of Ethiopia, * Guinea, * Mauritania, * Gambia, * Zambia, * Jamaica, * Sierra Leone, * Sudan, * Somalia and Ghana stated at the 1259th to 1264th meetings that the situation in Southern Rhodesia was a threat to international peace and security and that economic measures against Southern Rhodesia would not be effective. Only force or a combination of force and economic sanctions would produce immediate and favourable results. As proposed by the United Kingdom, the economic measures

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

At the 1261st meeting on 15 November 1965, the representative of Uruguay observed that whereas his delegation understood that in the present situation Chapter VII of the Charter should be applied, it was not ready to support a draft resolution imposing the

they felt it was incumbent on the Security Council to

the Security Council. The use of force called for the

maintained that by ruling out the use of force and advocating economic and financial sanctions which were inadequate, the United Kingdom Government had failed to respond to the gravity of the situation. The Council should therefore invoke the provisions of Chapter VII of the Charter and, in particular, bring

unanimity did not exist would have weakened the provoked its meetings.

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

was such a dangerous threat to international peace and security that the provision of Article 41 could not

"Noting that the United Kingdom Government has taken certain measures against the situation in

dance with Article 41 were being asked to effect immediately "a complete interruption of economic relations of rail, sea, air, postal and other means of communication", these would still not be enough

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

"5. Further calls upon the United Kingdom Government to take all other appropriate measures

the Council should on the basis of the evidence before it, declare that the measures proposed by the British

thority of the usurpers and in bringing the minority régime in Southern Rhodesia to an immediate end;

Southern Rhodesia. Therefore, a clear case has

the Council was entitled to consider the taking of such

ken down, to take immediate measures in order to allow the people of Southern Rhodesia to determine

to restore international peace and security, he suggested that "such action" may include demonstrations, blockade and other operation by air, sea or land force of the Members of the United Nations.

General Assembly resolution 1514 (XV);

"8. Calls upon all States to refrain from any action which would assist and encourage the illegal régime and in particular to desist from providing

measures of a non-military character, provided they were effectively applied, would force "the Smith ré-

to do their utmost in order to break all economic relations with Southern Rhodesia including an em-

not on those issues on which there was difference of opinion, but on those measures on which there was

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

the draft resolution submitted by the United Kingdom.

The representative of Malaysia suggested that it would have been helpful if the United Kingdom had

" ...

desia. "This is the relevant information which we need information vital to the Security Council so that

deem it necessary to take. After explaining the objectives of the draft resolu-

Charter, whether the measures provided for in Article 41 can be adequate". He maintained that "sanctions

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

Chapters VI or VII of the Charter, or attempt to use force under the prevailing circumstances. What it means is that the Council should ensure the support of the Security Council and other Members of the Organization for the effective implementation of the

At the same meeting, the representative of the Ivory Coast stated that in view of the Council's decision, he would not press for a vote on his draft resolution.⁴¹ However, if the situation in Southern Rhodesia were to change, and if the Council were to resume discussion on it in order to consider what measures it might take to end the rebellion, the Council

draft resolution was adopted by 10 votes in favour, none against with 1 abstention.⁴⁰

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

representative of the United Kingdom likewise did not press for a vote on his draft resolution.⁴²

⁴¹ 1265th meeting, para. 38.

⁴² 1265th meeting, para. 63.

Part III

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

NOTE

It will be noted that in the previous section Articles 41 and 42 have been treated jointly. This was due to the fact that both in the consideration of the question of race conflict in South Africa and the situation in Southern Rhodesia invocation of Article 42 had been made in connexion with the application of Article 41. Those members favouring the employment of enforcement measures contended that the limited economic sanctions advocated by some were unlikely to be effective, and consequently, it was incumbent on the Council to invoke the full range of sanctions, including if necessary, the use of force to insure their successful implementation. The principal issue in this regard, therefore, centred not so much on the constitutionality of the use of force provided in Article 42 of the Charter, but on its efficacy in dealing with the urgent situations under consideration, as well as its implications and consequences for the Organization.

developed in separate case histories, as no constitutional discussion was involved.

Part IV

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

NOTE

instances in which action by a Member State claimed to have been taken in self-defence gave rise to dis-

and the rights and obligations of Members under that Article. In two instances⁴³ the discussion centred on the distinction between the right of self-defence as defined in Article 51 of the Charter and "the right of retaliation" referred to by certain representatives. In another instance⁴⁴ it was maintained that the Council should pronounce itself on whether the resort to military action by a Member State termed by it to be "an emergency defence measure" could be considered as

meaning of Article 51.

CASE 7.⁴⁵ COMPLAINT BY YEMEN: In connexion with the joint draft resolution submitted by Ivory Coast

1964

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

⁴³ For the text of relevant statements see: 1106th meeting: Iraq,* paras. 64-69; UAR,* para. 111; USSR, paras. 79-80; United Kingdom, paras. 34, 38, 51, 54. 1107th meeting: Iraq,* paras. 13-18, 20, 21, 41. 1108th meeting: Ivory Coast, paras. 50-54; Morocco, paras.

Syria,* paras. 75, 79; United Kingdom, paras. 25-31.

1109th meeting: Czechoslovakia, paras. 22-25; Morocco,

1111th meeting: China, para. 12.

⁴⁴ Case 9.

past by the Council. A draft resolution condemning by the United Kingdom against Yemen was a retaliation

against the Federation of South Arabia. The United Kingdom Government had seen no alternative but to make a defensive response to the Yemeni attacks in order to preserve the territorial integrity of the Federation of South Arabia for whose defence it was responsible.

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

The representative of the United Arab Republic *

not merely a counter-attack, locally ordered and approved, but a retaliation which had been refuted in the past by the Council, including the United Kingdom.

At the 1107th meeting on 3 April 1964, the representative of Iraq * noted that the Council was called upon to decide whether an attack of the kind complained of involving the violation of the air space of a

tion of facilities inside its frontiers was permissible under the Charter. The British Government had tried to justify its attack by contending that it was an act of self-defence. But, under the Charter, measures of self-defence were permitted "when and if an armed attack occurs against a Member of the United Nations". It was thus clear that Article 51 of the Charter envisaged an emergency situation where interim mea-

ture of armed attack with which Article 51 of the

a premeditated act of retaliation planned well in advance and sanctioned at the highest levels of the British Government. Even if alleged incursions by Yemeni aircraft and helicopters into the territory of the Federation were admitted, a proper defensive measure

the aircraft and helicopters or even shoot at them if they had indeed violated the air space of the Federation. . . . Instead a whole day passed and then eight aircraft were sent from Aden to demolish the police

Council could do no less than to "condemn" the reta-

At the 1108th meeting on 6 April 1964 the repre-

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

At the 1109th meeting on 7 April 1964, the representative of the United Kingdom declared that the action against Yemen "was not a retaliation or a reprisal. On the contrary, the action was taken in response to an urgent request from ministers of the Federation to protect the interests and integrity of their country. It was a measure of defence". He went on to explain that in existing law there was a clear distinction between the two forms of self-help. One, which was of a retributive or punitive nature, was

to expressly contemplated or authorized by the Charter was self-defence against armed attack. The term "counter-attack" previously used by his delegation might have led to some misunderstanding and might have implied action of the nature of reprisals only. However, the use of force to repel or prevent an attack "that is, legitimate action of a defensive

counter-attack. The territory of the Federation had been subjected to a series of acts of aggression over a considerable period of time and against which its people had asked to be defended. In that connexion the destruction of the fort at Harib "with the minimum use of force, was therefore a defensive measure proportionate and confined to the necessities of the case", and lacked the essential element of vengeance or retri-

purpose been as warning on future attacks.

the obligations of Member States under the Charter, since it was completely disproportionate to the immediate cause which, according to the United Kingdom "was the flying of a helicopter and a few days before

The representative of Syria * after citing the provisions of Article 51, maintained that self-defence could not be exercised unless an armed attack occurred

Kingdom forces. . . was justified, such proof is not juridically or legally admissible by reason of the very

of Article 51 of the Charter—because the so-called Federation is not a Member of the United Nations"

against attack, that someone must be a Member of the

that these actions went beyond the requirements of

The representative of Morocco maintained that self-

viously condemned by the Council.]

legitimately create "a right of belligerence which the

Hanoi" of the grave consequences that would result

craft and helicopter, the only immediate defence should have been directed against those craft. However, what was attacked by the United States was a ship which had nothing to do with the alleged raids. The scope of the action against Harib had exceeded

viet-nameese navy. In response, certain aerial strikes had been carried out against North Viet-Nameese torpedo boats and their supply facilities. He emphasized however, that "this action was limited in scale... its targets being the weapons and facilities" against which

self-defence was within the provisions of the Charter

Yemen territory on 28 March 1964 (S/5635),

take action directed to prevent the recurrence of attacks on its ships. "Preventive action in accordance with that aim is an essential right which is embraced

"1. Condemns reprisals as incompatible with the

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

seemed to be fully consistent with Article 51 of the Charter, and, as the United States representative had emphasized, its action "was a limited response tailored to the circumstances". It was the right of every nation whose ships were subjected to acts of aggression on the high seas to take immediate measures that were in accordance with the right of self-defence. It was also right that the United States representative should have reported to the Council the measures which his Government had felt compelled to take in exercise of

representative of China noted that paragraph 1 of the draft resolution "condemns reprisals" without having defined the term. He was therefore assuming that as used in the paragraph, the term "reprisals" denoted a response involving the use of force, since there are different types of reprisals, some of which might take the form of political and economic pressures which

of the Charter. Moreover, the Council's condemnation of reprisals in general should not be interpreted to mean that the Council overlooked or condoned acts of international delinquency that were calculated to provoke reprisals. At the same meeting the draft resolution was adopted by 9 votes to none, with 2 abstentions.⁴⁷

had an obligation to uphold the right of self-defence recognized in Article 51 of the Charter.

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

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

the definition of self-defence in that Article. According to the United States version of the incident, the alleged Viet-Nameese attack was immediately followed by an equally alleged act of self-defence, thereby repelling the initial attack. There was, therefore, even in the United States version "no place for any further United States military action in terms of self-defence, and consequently, the attack by the United States against the territory of the Democratic Republic of Viet-Nam could not be most, it could be qualified as an act of reprisal, and the Security Council, by its resolution of 9 April 1964⁴⁹ condemned all reprisals as incompatible with the principles of the United Nations".

⁴⁷ S/5647, same text as S/5650, O.R., 19th yr., Suppl. for April-June 1964, p. 9.

⁴⁸ 1111th meeting, paragraph 24, S/RES/188 (1964), O.R., 19th yr., Resolutions and Decisions of the Security Council, 1964, pp. 9-10. For discussion concerning prevalence of Charter obligations over provisions of protective treaties, see chapter

The representative of the United States replying to

1111st meeting, Czechoslovakia, paras. 27-32; USSR, paras. 81-84; United States, paras. 49, 52.

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

limited to the provocation and directed only against a deliberate assault against the armed forces of the United States.

The difference between the right of self-defence and the "right of retaliation" and stated that "the recognition of the right of self-defence in Article 51 of the

minated in the bombing of the territory of the Democratic Republic of Viet-Nam could not have been done in self-defence or covered by that concept.

called after consultation with the members of the Council.⁵⁰

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

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

representative of Israel explained that the action by his Government against Syria had been taken as a last

pose of the air strike was to suppress gun positions which were operating in the vicinity of the Israeli population and territory. His Government accepted full responsibility "for this defensive measure." It had

charge of its obligation to defend the State against attack.

At the 1164th meeting on 27 November 1964, the representative of Syria* disputing Israel's assertion that the action against Syria was "an emergency defence measure" or a "measure taken in the last

sive and that "terms such as 'exploratory self-defence', 'preventive self-defence,' . . . have already found their

⁵⁰ 1141st meeting, p. 28.

⁵¹ Ibid.

most into the highest possible degree with regard to and self-preservation remained the sole prerogative of States, the decisions to resort to them and the way that decision was applied should be open to investigation and adjudication and that was what the Council was being requested to undertake. He was thus of the view that the idea of emergency defence measure

best an abuse of right".

At the 1169th meeting on 8 December 1964, the representative of Morocco introduced a draft resolution

of its aggression on 13 November 1964 against the Syrian Arab Republic, used its air force to bomb peaceful villages and defensive positions in Syrian territory, and the violation of the Syrian air space on 13 and 14 November 1964,

"1. Condemns the air action undertaken by the armed forces of Israel against the territory of the Syrian Arab Republic on 13 November as constituting a violation of the cease-fire provisions of the

as being both incompatible with the obligations binding upon the parties under the terms of the Charter of the United Nations;

"2. Expresses the most severe condemnation with regard to this action, which is of such a nature

draft resolution was voted upon and rejected by 3 votes in favour, none against with 8 abstentions.⁵³

At the same meeting, the United States introduced

rity Council,

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

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

At the 1182nd meeting on 21 December 1964 after certain amendments to the draft resolution were

negative votes being that of a permanent member of the Council.⁵⁵

⁵³ CS/6113, O.R. 19th Sess., Suppl. for Oct.-Dec. 1964, p. 10.

⁵⁵ Ibid., p. 10.

Part V

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