

# ARTICLE 39

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## TEXT OF ARTICLE 39

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

## INTRODUCTORY NOTE

1. The decisions treated in this study have been selected for the purpose of illustrating the manner of decision by the Security Council and the types of action it took when considering questions in which a number of members of the Council either called for action under Article 39, or held the view that action previously taken was within the scope and meaning of that Article.
2. In the General Survey an indication is given of the questions in connexion with which Article 39 was invoked either in their submission or in the consideration of draft proposals and decisions concerning them. The Council has taken very few affirmative decisions explicitly invoking Article 39. Such decisions were taken in the case of the Palestine question at a stage when the Council felt that its earlier decisions had failed of their purpose. Decisions in the language of the provisions of Article 39, which, however, did not explicitly name the Article, are included, with an indication of the questions involved that led to such a practice. Also included are decisions in connexion with matters concerning which it was contended that Article 39 did not apply because the circumstances under consideration did not correspond to those envisaged in the Article.
3. The general problem concerning the question of under what precise Charter provisions or authority the Council took many of the decisions treated in this study is dealt with in the Analytical Summary of Practice. That general question has been treated in the present study for the sake of convenience; such treatment is not to be regarded as implying that the decisions dealt with hereunder have a constitutional bearing related exclusively to the application and interpretation of Article 39. The fact that considerable discussion took place in the Council on whether or not many of the decisions here treated represented action under Article 39, in the light of the contention that a determination under Article 39 carried with it implications of the possibility of a varied range of action under Chapter VII, would seem to warrant treatment of the question in this study.
4. The question of action under Article 39 in the general context of the challenge to the competence of the Council to intervene in matters which were contended to fall entirely within the domestic jurisdiction of States arose in connexion with the consideration of certain draft proposals and decisions. While a more comprehensive examination of the questions involved is included in the study dealing with Article 2 (7), material pertaining to the restricted question of action under Article 39 in the circumstances above-mentioned is also included in the present study.
5. While, under the Charter, "The Security Council shall determine the existence of a threat to the peace, breach of the peace, or act of aggression and shall make recommendations, etc.", another organ of the United Nations, the General Assembly, has,

on certain occasions, taken decisions in the proceedings related to which contentions were advanced that they fell within the purview of Article 39, that the General Assembly did not, therefore, possess the competence to take such decisions, and that such action amounted to a violation of Article 39. The following resolutions may be mentioned as examples of such decisions: 39 (I) of 12 December 1946 -- "Relations of Members of the United Nations with Spain"; 193 (III) of 27 November 1948 -- "Threats to the political independence and territorial integrity of Greece"; 377 A (V) of 3 November 1950 -- "Uniting for peace"; and 498 (V) of 1 February 1951 -- "Intervention of the Central People's Government of the People's Republic of China in Korea". <sup>1/</sup> For an examination of the questions raised by the practice of the General Assembly cited in this paragraph, attention is drawn to the study on Article 11.

## I. GENERAL SURVEY

6. The questions in connexion with which the provisions of Article 39 were invoked explicitly or otherwise, either in their submission or in the proposals and decisions concerning them, were: (a) the Spanish question; (b) the Greek frontier incidents question; (c) the Indonesian question (II) submitted to the Security Council by Australia and India in July 1947; (d) the Palestine question; (e) identic notifications dated 29 September 1948 from the Governments of the French Republic, the United States of America and the United Kingdom (the Berlin question); (f) Complaint of aggression upon the Republic of Korea; and (g) the Guatemalan question.

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<sup>1/</sup> In the proceedings related to some of the resolutions mentioned above, the question of the Charter authority under which the General Assembly acted in adopting them arose as well as the question of its competence to act in a field of activity which was contended to be germane to that covered by Article 39. While a number of representatives maintained that the General Assembly had the competence to act as it did under one or the other of the Charter Articles which confer "Functions and Powers" on it, none of them claimed that the General Assembly, under whatever circumstances, had the competence to act under Article 39, with all the consequences implicit in such action, or that its action represented application of the provisions of Article 39. As already mentioned, a number of representatives claimed, on the other hand, that the General Assembly, in adopting the resolutions mentioned above, had trespassed into a field in which it had no competence and that it had thereby violated the provisions of Article 39.

7. In the cases of the Indonesian question (II), 2/ the Palestine question, 3/

2/ S C, 2nd yr., Suppl. No. 16, S/449.

3/ By letter (S C, 2nd yr., Suppl. No. 20, p. 172, S/614) dated 2 December 1947, the Secretary-General transmitted to the President of the Security Council the text of General Assembly resolution 181 (II) of 29 November 1947 concerning the "future government of Palestine" and invited the attention of the Council particularly to paragraphs (a), (b) and (c) of the operative part of the resolution, which requested that:

"(a) The Security Council take the necessary measures as provided for in the plan Plan of partition with Economic Union for its implementation;

"(b) The Security Council consider, if circumstances during the transitional period require such consideration, whether the situation in Palestine constitutes a threat to the peace. If it decides that such a threat exists, and in order to maintain international peace and security, the Security Council should supplement the authorization of the General Assembly by taking measures, under Articles 39 and 41 of the Charter, to empower the United Nations Commission, as provided in this resolution, to exercise in Palestine the functions which are assigned to it by this resolution;

"(c) The Security Council determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution."

At its 222nd meeting on 9 December 1947, the Council included the Secretary-General's letter in its agenda. After some discussion on whether the Council should "take note of" the communication or "accept" it, the Council agreed to the following formulation stated by the President: "The Security Council received the letter from the Secretary-General enclosing the resolution of the General Assembly concerning Palestine, and, being seized of the question, decided to postpone discussion."

At the 255th meeting on 25 February 1948, the representative of the United States submitted a draft resolution (S C, 3rd yr., Nos. 16-35, 255th mtg., p. 294, S/685) which would resolve "To accept, subject to the authority of the Security Council under the Charter, the requests addressed by the General Assembly to it the Council in paragraphs (a), (b) and (c) of section A of the General Assembly resolution of 29 November 1947." At the 260th meeting on 2 March, he explained (S C, 3rd yr., Nos. 16-35, 260th mtg., pp. 399-401) that the draft resolution implied "the limitation that armed force cannot be used for implementation of the plan, because the Charter limits the use of United Nations force expressly to threats to and breach of the peace and aggression affecting international peace". Measures of implementation would, therefore, be peaceful measures. Under the draft resolution, the Council would be required to consider, in pursuance of the request contained in paragraph (b) of the General Assembly resolution, whether the situation in Palestine constituted a threat to the peace; and, if it so found, the Council might empower the United Nations Palestine Commission to assist the Council in maintaining peace, and might take steps under Articles 40 to 42 of the Charter. With regard to the request contained in paragraph (a) of the General Assembly resolution, the understanding would be that the Council might "regard attempts to alter by force the settlement envisaged by this resolution as constituting such a threat"; but this attitude must follow from the "Council's own process of determination" and not solely at the request of the General Assembly. At the 258th meeting on 27 February, the representative of Belgium submitted an amendment (S C, 3rd yr., Suppl. for Jan., Feb. and March, pp. 30 and 31, S/688) to the United States draft resolution, the effect of which would be to delete from the United States draft resolution the provision for the acceptance of the requests of the General Assembly. At the 263rd meeting on 5 March, the amendment submitted by Belgium and the above provision in the United States draft resolution were both rejected (S C, 3rd yr., Nos. 36-51, 263rd mtg., pp. 38-40).

Identical notifications dated 29 September 1948 4/ and the Guatemalan question, 5/ the provisions of Article 39 were cited explicitly or otherwise when the attention of the Security Council was initially drawn to those questions. In the cases of the Spanish question 6/ and the Greek frontier incidents question, 7/ while the submissions were made on the basis of Articles 34 and 35, action under Article 39 was proposed in the course of their consideration. In the case of the complaint of aggression upon the Republic of Korea, the item was brought before the Security Council on the basis of a report 8/ submitted by a member that North Korean forces had invaded the territory of the Republic of Korea as well as on the basis of a report 9/ from the United Nations Commission on Korea drawing attention to a situation which was "assuming (the) character of full-scale war and may endanger the maintenance of international peace and security". In certain other questions, 10/ charges of aggression were made in their submission, but action under Article 39 was neither proposed nor taken.

8. The decision of the Council to include on its agenda questions in connexion with whose submission Article 39 or any of its provisions were cited did not at that stage amount to a determination by the Council that the provisions of Article 39 applied. The question as to whether or not a situation came within the purview of Article 39 was a matter for the Council to decide subsequent to the inclusion of the relevant item on the agenda.

9. Affirmative determinations citing Article 39 have been exceptional. In the Palestine question, at the 333rd meeting of the Council, the Mediator for Palestine made a statement to the effect that he had exhausted all the powers at his disposal, and that it was up to the Council to adopt measures to put an end to the renewal of hostilities in Palestine. At its 338th meeting on 15 July 1948, the Council adopted a resolution 11/ which determined that the situation in Palestine constituted a threat to the peace within the meaning of Article 39 and ordered the Governments and authorities concerned, pursuant to Article 40, to desist from further military action and to issue cease-fire orders to their forces. The Council in the course of its further consideration of the Palestine question adopted a number of resolutions 12/ which either reaffirmed or recalled or directed the attention of the Governments and authorities concerned to its resolution of 15 July 1948. These decisions were taken in circumstances in which the Council decided that hostilities had broken out or were imminent.

4/ S C, 3rd yr., Suppl. for Oct., pp. 9-45, S/1020 and S/1020/Add.1.

5/ S C, 9th yr., Suppl. for April, May and June, pp. 11-13, S/3232; see also in this Repertory under Articles 40 and 52.

6/ S C, 1st yr., 1st Series, Suppl. No. 2, p. 55, S/34.

7/ S C, 1st yr., 2nd Series, Suppl. No. 10, pp. 169-190, S/203 and S/203/Add.1.

8/ S C, 5th yr., No. 15, 473rd mtg., S/1495, in footnote to p. 1.

9/ S C, 5th yr., No. 15, 473rd mtg., S/1496, in footnote to p. 2.

10/ The India-Pakistan question, S C, 3rd yr., Suppl. for Nov., pp. 139-144, S/628; Complaint of armed invasion of Taiwan (Formosa), S C, 490th mtg., pp. 9 and 10, S/1715.

11/ S C, 3rd yr., Suppl. for July, pp. 76 and 77, S/902.

12/ Resolutions of: 19 August 1948, S C, 3rd yr., No. 107, 354th mtg., pp. 50 and 51, S/983; 19 October 1948, S C, 3rd yr., Suppl. for Oct., pp. 67 and 68, S/1045; 16 November 1948, S C, 3rd yr., Suppl. for Nov., pp. 13 and 14, S/1080; 11 August 1949, S/1376, II; 8 May 1951, S C, 6th yr., 545th mtg., p. 4, S/2130; 18 May 1951, S/2157; 24 November 1953, S C, 8th yr., Suppl. for Oct., Nov. and Dec., pp. 57 and 58, S/3139/Rev.2.

10. In the case of some decisions, the Council made a determination in the language of Article 39, without, however, naming the Article. By its resolution 13/ of 25 June 1950 concerning the complaint of aggression upon the Republic of Korea, the Council, "noting with great concern the armed attack on the Republic of Korea by forces from North Korea", determined "that this action constitutes a breach of the peace". By its resolution 14/ of 27 June 1950 in connexion with the same question, the Council, "having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace", recommended "that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area". The Council's resolution 15/ of 7 July 1950 on the same question again repeated in its preamble the language of Article 39.

11. Decisions of the Council which made use of the language of Article 39 without, however, explicitly invoking the Article, often led to a question of interpretation as to whether, in the absence of such an explicit invocation, the decisions represented action under the Article. Some of the main arguments related to this question, together with examples of such decisions, are set forth in the Analytical Summary of Practice.

12. In a number of decisions which the Council took outlining certain measures which it called upon the parties to implement in connexion with the Indonesian question (II) to meet situations in which it (a) noted "with concern the hostilities in progress between the armed forces of the Netherlands and the Republic of Indonesia", 16/ or (b) took into consideration that "military operations are being continued on the territory of the Indonesian Republic", 17/ or (c) noted "with concern the resumption of hostilities in Indonesia", 18/ the Council did not specify the Charter provisions under which it took the decisions. Indeed, in no affirmative decision the Council took in the case of the Indonesian question did it refer explicitly to the provisions of Article 39.

13. Throughout its consideration of the Indonesian question (II), the Council was confronted by a challenge to its competence to intervene and to act under Chapter VII, on, among other grounds, the ground that the question fell within the domestic jurisdiction of one of the parties, a State Member of the United Nations. The challenge, however, was not formally decided by the Council; the manner in which it resolved the issue is set forth in II.B, below.

14. In a number of instances, the Council rejected a determination explicitly under Article 39. Draft resolutions proposing such a determination were submitted in connexion with (a) the Greek frontier incidents question, 19/ and (b) the Palestine

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13/ S/1501, same text as S/1499, see S C, 5th yr., No. 15, 473rd mtg., pp. 13 and 14.

14/ S/1511, same text as S/1508/Rev.1, see S C, 5th yr., No. 16, 474th mtg., p. 4.

15/ S/1588.

16/ S C, 2nd yr., No. 72, 178th mtg., S/459, in footnote to p. 1839.

17/ S/525.

18/ S C, 3rd yr., No. 134, 392nd mtg., pp. 37 and 38, S/1150.

19/ Draft resolution submitted by Australia, S C, 2nd yr., No. 79, 188th mtg., pp. 2093 and 2094, S/471/Add.1; United States draft resolution, S C, 2nd yr., No. 79, 188th mtg., p. 2098, S/486; and decisions of 19 August 1947, S C, 2nd yr., No. 79, 188th mtg., pp. 2094 and 2098.

question. 20/ In connexion with the Spanish question and the Indonesian question (II), draft resolutions containing references to Article 39 were submitted, but the references were deleted before the draft resolutions were voted upon. 21/ In the Palestine question, as has already been mentioned, the Council made such a determination invoking Article 39 by its decision of 15 July 1948 at its 338th meeting. That decision, however, was taken after the Council had twice rejected proposals, submitted in the course of earlier proceedings, to determine that the situation came within the scope of Article 39, and after a warning had been addressed to the parties that "the situation in Palestine will be reconsidered with a view to action under Chapter VII of the Charter" if they rejected the terms of its resolution 22/ of 29 May 1948.

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. The question whether decisions amounted to action under Article 39 in the absence of explicit invocation of the Article

15. In the Indonesian question (II) and the question of the complaint of aggression upon the Republic of Korea, the Security Council adopted certain resolutions without explicitly citing Article 39. In the proceedings connected with both items, the question as to whether those resolutions represented action under Article 39 was discussed. The question as such, however, was neither put to the Council directly nor did the Council itself decide on it, though a number of members stated what, in their view, were the provisions under the authority of which the resolutions were adopted. Some of the main contentions of members in regard to this question are set out below.

#### 1. *Decision of 1 August 1947 in connexion with the Indonesian question (II)*

16. At its 173rd meeting on 1 August 1947, the Security Council adopted a resolution, 23/ which, after "Noting with concern the hostilities in progress between the armed forces of the Netherlands and of the Republic of Indonesia", called upon the parties "(a) To cease hostilities forthwith, and (b) To settle their disputes by arbitration or by other peaceful means and keep the Security Council informed about the progress of the settlement".

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- 20/ (a) United States draft resolution, S C, 3rd yr., No. 67, 293rd mtg., p. 2, S/749; and decision of 22 May 1948, S C, 3rd yr., No. 72, 302nd mtg., p. 540.
- (b) USSR draft resolution, S C, 3rd yr., Suppl. for May, pp. 101 and 102, S/794/Rev.2; and resolution of 29 May 1948, S C, 3rd yr., No. 77, 310th mtg., pp. 36 and 37.
- 21/ Draft resolution submitted by Poland, S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167; and decision of 24 June 1946, S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 388.
- Draft resolution submitted by Australia, S C, 2nd yr., No. 67, 171st mtg., p. 1626, S/454; and decision of 1 August 1947, S C, 2nd yr., No. 68, 173rd mtg., p. 1702.
- 22/ S C, 3rd yr., Suppl. for May, pp. 103 and 104, S/801.
- 23/ S C, 2nd yr., No. 72, 178th mtg., S/459, in footnote to p. 1839.

17. The Indonesian question (II) had been brought 24/ before the Council under Article 39 as a breach of the peace, and a draft resolution 25/ had been submitted determining a breach of the peace under the Article and calling for compliance with certain specified provisional measures under Article 40. Following a proposal to delete the references to specific Articles of the Charter on the ground that their explicit invocation raised complex and serious legal questions, the draft resolution was amended with the agreement of the sponsor and was adopted on 1 August 1947. Discussion arose subsequently regarding the relation of the resolution to the Charter and views were expressed on whether or not the particular resolution and certain others had been adopted under Articles 39 and 40.

18. Those who were of the view that the resolution amounted to action under Articles 39 and 40 maintained that there had been a breach of international peace, that what was happening was an armed conflict between two States, that as all possibilities of finding a solution by negotiation and mediation had been exhausted, the case had been brought to the attention of the Council under Article 39, and that the Council, by admitting the case under Article 39, had accepted the situation as a breach of international peace. Although the resolution of 1 August 1947 did not expressly mention Article 39, it was clear that only under that Article could the Council deal with the case and take the measures it did. These representatives stated that the provisional measures contained in the resolution were taken under Article 40.

19. Those who held a contrary view denied that the Charter was applicable, much less Chapter VII, inasmuch as international peace or security was not endangered, and there had been no breach of the peace in the sense of the Charter. A determination about the existence of a threat to the peace, a breach of the peace or act of aggression in accordance with the actual terms of Article 39 would first have to be made before the Council could proceed to take provisional measures under Article 40, and such a determination had not been made. It was contended that the Security Council could not possibly be bound by the interpretation of individual members regarding the relation of decisions to any particular Charter provisions. Such an interpretation must be

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24/ Letter dated 30 July 1947 from the representative of Australia, S C, 2nd yr., Suppl. No. 16, S/449.

25/ Draft resolution submitted by Australia, S C, 2nd yr., No. 67, 171st mtg., p. 1626.

considered as the opinion of individual members of the Council and only the Council acting as a body could specify under what authority a decision was taken. 26/

*2. Decisions of 25 and 27 June 1950 in connexion with the complaint of aggression upon the Republic of Korea*

20. At its 473rd meeting on 25 June 1950, the Security Council adopted, by 9 votes, with 1 abstention, a permanent member being absent, a resolution, 27/ which read:

"The Security Council,

".....

"Noting with grave concern the armed attack on the Republic of Korea by forces from North Korea,

"Determines that this action constitutes a breach of the peace,".

21. At its 474th meeting on 27 June 1950, the Security Council adopted, by 7 votes to 1, with 2 members of the Council not voting and a permanent member being absent, a resolution 28/ which read:

26/ For texts of relevant statements, see:

S C, 2nd yr., No. 67, 171st mtg.: Australia, pp. 1622-27; China, p. 1633; India, p. 1620; Netherlands, p. 1645.

S C, 2nd yr., No. 68, 172nd mtg.: Belgium, pp. 1653 and 1654; USSR, pp. 1659-65; United Kingdom, pp. 1655 and 1656; United States, pp. 1657-59.

S C, 2nd yr., No. 68, 173rd mtg.: Australia, p. 1708; Brazil, pp. 1682 and 1683; France, pp. 1676-78; India, pp. 1683 and 1684; USSR, pp. 1689-92; United Kingdom, pp. 1674 and 1675.

S C, 2nd yr., No. 76, 184th mtg.: Colombia, p. 1988.

S C, 2nd yr., No. 77, 185th mtg.: Poland, p. 2015.

S C, 2nd yr., No. 82, 192nd mtg.: Netherlands, p. 2144.

S C, 2nd yr., No. 82, 193rd mtg.: United States, pp. 2175 and 2176.

S C, 2nd yr., No. 84, 195th mtg.: Australia, pp. 2215-17.

S C, 2nd yr., No. 95, 209th mtg.: Poland, p. 2222; United States, p. 2526.

S C, 2nd yr., No. 96, 210th mtg.: Australia, p. 2553.

S C, 2nd yr., No. 101, 215th mtg.: Australia, p. 2667.

S C, 3rd yr., No. 132, 288th mtg.: Netherlands, pp. 2-31.

S C, 3rd yr., No. 133, 390th mtg.: Australia, pp. 5-14; China, pp. 1-5.

S C, 4th yr., No. 2, 398th mtg.: Belgium, p. 11; United States, p. 3.

27/ S/1501, same text as S/1499, see S C, 5th yr., No. 15, 473rd mtg., pp. 13 and 14.

28/ S/1511, same text as S/1508/Rev.1, see S C, 5th yr., No. 16, 474th mtg., p. 4.

At the 475th meeting on 30 June 1950, the representative of Egypt, who had not participated in the voting, stated that had he received instructions in time, he would have abstained. The President, speaking as the representative of India, who also had not participated in the voting, informed the Council that his Government had accepted the resolution. By cablegram (S C, 5th yr., Suppl. for June, July and August, pp. 29 and 30, S/1517) dated 29 June 1950, the USSR, the Council member that had been absent, stated that the resolution of 27 June had no legal force since it had been passed in the absence of two permanent members, the USSR and China, the latter having not been duly represented.

"The Security Council,

"Having determined that the attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

".....

"Recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."

22. In the resolution mentioned above, the Security Council did not explicitly invoke Article 39, though it used the language of the Article. In proceedings subsequent to their adoption, a number of members expressed the view that the resolutions of 25 and 27 June 1950 represented action under Chapter VII of the Charter, and in particular under Article 39, which enabled the Council to recommend measures which should be taken to restore international peace and security. One member stated, however, that on 25 June 1950, when the Council discussed the Korean conflict, it took no decision as to what Article of the Charter should be applied and on what legal basis action should be taken. 29/

**B. The question of action under Article 39 in matters in which  
the competence of the Security Council to intervene  
was questioned on the ground that they came within  
the domestic jurisdiction of States**

23. In the case of the Indonesian question (II) in which the competence of the Council to intervene was challenged on the ground that the question came within the domestic jurisdiction of one of the parties, the Council proceeded to take action on the substance of the question without deciding explicitly the issue of its competence. 30/ The question arose whether, in the circumstances of a challenge to the Council's competence, which was left unresolved, the Council could take action within the scope of Article 39 and Chapter VII of the Charter, as also the further question whether, in such circumstances, it would deem it advisable to invoke explicitly Articles 39 and 40. Consequently, when the Council had before it a proposal 31/ under Articles 39 and 40, discussion arose as to whether the proposed action was not excepted by the proviso

29/ For texts of relevant statements, see S C, 5th yr., Nos. 18, 30 and 36:  
476th mtg.: United Kingdom, pp. 3 and 4.  
488th mtg.: Norway, pp. 15 and 16.  
494th mtg.: India, pp. 15 and 16; USSR, pp. 17 and 18.

30/ During its consideration of the Indonesian question (II), the Council acted on two occasions with regard to the question of its competence:  
(a) At its 173rd meeting on 1 August 1947, the Council rejected an amendment to the draft resolution submitted by Australia reading: "and without in any way deciding the juridical question concerning the competence of the Security Council in this regard".  
(b) At its 195th meeting on 26 August 1947, the Council rejected a draft resolution submitted by Belgium (S C, 2nd yr., No. 83, 194th mtg., S/517, in footnote to p. 2193) which would request the International Court of Justice for an advisory opinion concerning the competence of the Council to intervene in the matter of the Indonesian question (II).

31/ Draft resolution submitted by Australia, S C, 2nd yr., No. 67, 171st mtg., p. 1626, S/454; and decision of 1 August 1947, S C, 2nd yr., No. 68, pp. 1700-1703.

of Article 2 (7) relating to the principle of non-intervention in matters of domestic jurisdiction. Similar discussion also took place in connexion with certain other proposals leading to decisions 32/ which subsequently were contended to represent action under Articles 39 and 40. In the proceedings connected with the draft resolution submitted by Australia at the 171st meeting of the Council, it was suggested that the references to Articles 39 and 40 contained in it be omitted on the ground that such omission would obviate the question of the competence of the Council to intervene in the matter of the Indonesian question (II). None of the resolutions adopted by the Council on the Indonesian question contained references to the Charter provisions under the authority of which they were taken. On one occasion, when a draft resolution invoking Article 40 and containing a reference to other possible enforcement action under Chapter VII was pressed to a vote, the Council rejected the draft resolution. 33/

24. The practice of the Council in meeting the question outlined in the preceding paragraph, as illustrated by its resolutions of 1 August 1947 and 24 December 1948 and the proceedings related to them, are set out below.

*1. Decision of 1 August 1947 in connexion with the Indonesian question (II)*

25. At its 171st meeting on 31 July 1947, the Security Council had before it the following draft resolution: 34/

"The Security Council,

"Noting with concern the hostilities in progress between the armed forces of the Netherlands and of the Republic of Indonesia, and

"Having determined that such hostilities constitute a breach of the peace under Article 39 of the Charter of the United Nations,

"Calls upon the Governments of the Netherlands and of the Republic of Indonesia, under Article 40 of the Charter of the United Nations, to comply with the following measures, such measures to be without prejudice to the rights, claims, or position of either party:

"(a) To cease hostilities forthwith, and

"(b) To settle their disputes by arbitration in accordance with article XVII of the Linggadjati Agreement, signed at Batavia on 25 March 1947."

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- 32/ (a) Draft resolution submitted by Poland, S C, 2nd yr., No. 84, 195th mtg., S/521, in footnote to p. 2224; and decision of 26 August 1947, *ibid*, p. 2232.  
 (b) United States draft resolution as amended by a Sub-Committee of the Council, S C, 2nd yr., No. 103, 218th mtg., pp. 2723 and 2724, S/594; and decision of 1 November 1947, *ibid*, 219th mtg., pp. 2749 and 2750.  
 (c) Joint draft resolution submitted by Colombia, Syria and the United States, S C, 3rd yr., Suppl. for Dec., pp. 294 and 295, S/1142; and decision of 24 December 1948, S C, 3rd yr., No. 134, 392nd mtg., pp. 30-38.
- 33/ Draft resolution submitted by Poland, S C, 2nd yr., No. 101, 215th mtg., pp. 2661 and 2662, S/589; and decision of 1 November 1947, S C, 2nd yr., No. 103, 219th mtg., p. 2751.
- 34/ Draft resolution submitted by Australia, S C, 2nd yr., No. 67, 171st mtg., p. 1626, S/454.

26. The sponsor of the draft resolution above stated that, only after all attempts to bring the parties together had failed and after strenuous attempts had been made to bring about a solution by negotiation and mediation, had the attention of the Council been drawn to the matter under Article 39. In the view of his Government, <sup>35/</sup> the hostilities in Indonesia constituted a breach of the peace under Article 39. What was happening amounted to armed conflict between two States. No allegation was, however, being made that one party was the aggressor. Furthermore, since it was well established that hostilities were in progress, there was no occasion for the Council to undertake an investigation of the facts under Article 34.

27. The representative of the Netherlands, one of the parties directly concerned, denied that the provisions of Chapter VII were applicable to the situation. He contended that the situation in Indonesia was one with which the Council had no concern on the grounds that the Charter was designed to operate between sovereign States, that it was not applicable to the situation in Indonesia inasmuch as the latter was not a sovereign State, and that the question came essentially within the domestic jurisdiction of the Netherlands. Even if it were assumed, for the sake of argument, that the Charter was applicable, he stated that Chapter VII did not definitely apply because there was, in the sense of the Charter, no danger to international peace or security, let alone breaches of the peace or acts of aggression. There were no signs of danger to peace in countries outside the Netherlands' territory.

28. Among other members who entertained doubts about the applicability of Chapter VII to the situation, one or more stated that (a) the Council would have to determine first of all that, in accordance with the actual terms of Article 39, there had come into existence a threat to the peace, a breach of the peace or an act of aggression; (b) it was not Article 39 but rather Articles 34 and 35 which would be applicable to the case "not as a dispute between the Netherlands and the Indonesian Republic, but because the fighting in progress may well create a situation leading to international friction"; and (c) there might be less objection to the Council calling for a cessation of hostilities on humanitarian grounds, in which case the references to the Charter provisions would have to be deleted and a reservation regarding the Council's competence in the question included in the text of the decision.

29. At the 172nd meeting on 1 August 1947, the representative of the United States submitted an amendment deleting the reference to the provisions of the Charter contained in the draft resolution. He stated that in this way there would be no commitment regarding the sovereignty of the Netherlands over the region concerned. That question was left open and without prejudice to any determination which the Council might reach later. The invocation of Articles 39 and 40, he said, raised complex and serious questions of law. The question of sovereignty and the question of the competence of the Council to deal with the case were important questions and merited consideration. Equally important was the fact that shooting was taking place and men were being killed; that was a legitimate concern of the Council, no matter what concept of sovereignty was involved or what might ultimately be decided to be the fact.

30. A number of other representatives held the view that what was happening in Indonesia amounted to war on such a scale that it had international repercussions, that the Council was obliged by the Charter to intervene to maintain international peace and

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<sup>35/</sup> Letter dated 30 July 1947 from the representative of Australia, S C, 2nd yr., Suppl. No. 16, S/449.

security and therefore the question came within its jurisdiction, and that in the light of the prevailing circumstances, it was justified in taking action under Article 39. 36/

### Decision

At the 173rd meeting of the Security Council on 1 August 1947, the draft resolution, with the references to the Charter provisions deleted, was adopted. 37/ The amendment reading "and without in any way deciding the juridical question concerning the competence of the Security Council in this regard" was rejected. 38/

The resolution 39/ adopted read as follows:

"The Security Council,

"Noting with concern the hostilities in progress between the armed forces of the Netherlands and the Republic of Indonesia,

"Calls upon the parties:

"(a) To cease hostilities forthwith, and

"(b) To settle their disputes by arbitration or by other peaceful means and keep the Security Council informed about the progress of the settlement."

### *2. Decision of 24 December 1948 in connexion with the Indonesian question*

31. Following the second outbreak of hostilities in Indonesia, the Council had before it on 22 and 23 December 1948 a draft resolution, 40/ and amendments, 41/ certain provisions of which were rejected and others adopted in the decision of 24 December 1948. Observations were made on whether the situation in Indonesia corresponded to the circumstances provided for in Article 39 of the Charter. While some representatives contended that a breach of the peace had occurred warranting Council intervention, the representative of the Netherlands argued that the matter came within the domestic jurisdiction of his Government. The decision taken on 24 December 1948 contained no indication of any Charter provision. Among the parts of the joint draft resolution and the amendment rejected were those which provided that the Security Council:

36/ For texts of relevant statements, see S C, 2nd yr. Nos. 67 and 68:

171st mtg.: Australia, pp. 1622-1627; Netherlands, pp. 1639-1648.

172nd mtg.: Belgium, pp. 1653 and 1654; USSR, pp. 1659-1665; United Kingdom, pp. 1655 and 1656; United States, pp. 1657-1659.

173rd mtg.: Australia, p. 1703; Brazil, pp. 1682 and 1683; France, pp. 1676-1678; India, pp. 1683 and 1684; USSR, pp. 1689-1692; United Kingdom, pp. 1674 and 1675.

37/ S C, 2nd yr., No. 68, 173rd mtg., pp. 1700-1703.

38/ Ibid., p. 1702.

39/ S C, 2nd yr., No. 72, 173th mtg., S/459, in footnote to p. 1839.

40/ Joint draft resolution submitted by Colombia, Syria and the United States, S C, 3rd yr., Suppl. for Dec., pp. 294 and 295, S/1142.

41/ Amendments submitted by Australia, S C, 3rd yr., No. 133, 390th mtg., pp. 15 and 16, S/1145.

"Considers such resumption of hostilities to be in conflict with the resolution adopted by the Security Council at its 171st meeting of 1 August 1947,"

"Calls upon the parties immediately to withdraw their armed forces to their respective sides of the demilitarized zones established under the truce agreement of 17 January 1948," and

"Instructs the Committee of Good Offices to report on assessing the responsibility for the outbreak of hostilities."

32. In the discussion preceding the adoption of the resolution of 24 December 1948, the representative of the Netherlands, questioning the competence of the Council to intervene, stated that, under the Charter, the Council could intervene only when international peace and security were endangered. The events in Indonesia did not constitute a danger to the maintenance of international peace and security in the sense of Articles 33 and 34, let alone a threat to the peace, or breach of the peace, or act of aggression in the sense of the Charter. The events in Indonesia represented a breach of internal peace and the situation fell within the exclusive responsibility of the Netherlands. Since the conditions for the application of Chapter VII did not exist, the provisions of Article 2 (7) applied to the situation in full force without the limitation contained in its final clause.

33. The representative of the Republic of Indonesia maintained, on the other hand, that what was happening in Indonesia amounted to a war and that there was no longer merely a threat to the peace, but that a breach of the peace had occurred.

34. Members who favoured Council action stated: (a) that the cease-fire resolution of 1 August 1947 continued to be binding on both parties and that it had been violated by the armed action taken by the Netherlands authorities; (b) that in a situation in which there was no uncertainty that hostilities had indeed broken out, the Council was obliged to order cessation of hostilities; and (c) that the events in Indonesia constituted a breach of international peace and security. One representative stated that the Indonesian situation seemed to be showing signs of leading to international friction, and by supporting the joint draft resolution his Government did not commit itself to any view of the legal questions which had been argued on both sides as regards the Council's competence or the particular provisions of the Charter which authorized any particular Council action. He believed that if the Council adopted the draft resolution, it would avoid the reproach of washing its hands of a situation which cried out for remedy, or of exceeding its powers in matters which were solemnly protected by the domestic jurisdiction clause of the Charter. 42/

#### Decision

At the 392nd meeting on 24 December 1948, the Security Council adopted 43/ by 7 votes to none, with 4 abstentions, the joint draft resolution and the amendment thereto, after they had been voted upon in parts and amended. The text of the resolution 44/ adopted follows:

42/ For texts of relevant statements see S C, 3rd yr., Nos. 132-134:

388th mtg.: Netherlands, pp. 2-31.

389th mtg.: Indonesia, pp. 31-42; United States, pp. 42-49.

390th mtg.: Australia, pp. 5-14; China, pp. 1-5.

391st mtg.: India, p. 29; Syria, pp. 18-24; USSR, pp. 29-41.

392nd mtg.: Belgium, pp. 24-27; Canada, p. 12; China, p. 28; France, pp. 7-12; Netherlands, pp. 20-22; United Kingdom, pp. 3-7.

43/ S C, 3rd yr., No. 134, 392nd mtg., p. 38.

44/ Ibid., pp. 37 and 38.

"The Security Council,

"Noting with concern the resumption of hostilities in Indonesia, and

"Having taken note of the reports of the Committee of Good Offices,

"Calls upon the parties:

(a) To cease hostilities forthwith, and

(b) Immediately to release the President and other political prisoners arrested since 18 December;

"Instructs the Committee of Good Offices to report to the Security Council fully and urgently by telegraph on the events which have transpired in Indonesia since 12 December 1948, and to observe and report to the Security Council on compliance with sub-paragraphs (a) and (b) above."

35. On the question whether the decisions treated above amounted to action under Article 39 in the absence of explicit invocation of the Article, see II.A, above.

### C. The question of the circumstances in which Article 39 is applicable

36. Proposals for action under Article 39 have given rise to discussion whether the circumstances under consideration by the Council corresponded to those envisaged in that Article. While discussion has mainly consisted of the appraisal, in the terms of Article 39, of the actual situation before the Council, observations have on occasion been made on the meaning to be attached to the provisions of Article 39. Throughout the consideration of the Indonesian question (II), and especially in the discussion related to the decisions of 1 August 1947 and 24 December 1948, the main question was whether the Council was precluded from action under Chapter VII and Article 39 when its competence was disputed on the ground that the matter fell within the domestic jurisdiction of one of the parties, namely, the Netherlands. Observations were also made on whether the situation corresponded to the circumstances envisaged in Article 39, in particular whether a threat to or a breach of "internal" peace, as distinct from a threat to or a breach of "international" peace, came within the scope of Article 39. This particular question, as exemplified by the Council's action in the Indonesian question, is dealt with in II.B above. In certain other cases, however, while the major question was not one of competence to intervene in matters claimed to be within the domestic jurisdiction of States, the question arose whether the Council could reach a determination under Article 39 in matters in which it was contended that "international" peace was not threatened or breached. In the Palestine question, there was discussion regarding the significance of the qualifying word "any" as well as the significance of the omission of the qualifying word "international" in the description of the kind of peace, any threat to, or breach of which would become a matter for the Council to take action on under Article 39. Also, in the case of the complaint of aggression upon the Republic of Korea, there was discussion on whether the Council could properly take action in a conflict that was claimed to have the characteristics of a civil war, and which, therefore, did not present a threat to peace outside the borders of the State in which it was being waged. Secondly, the question whether a potential threat to the peace came within the scope of Article 39 and the question of the applicability of that Article to such a situation were raised in connexion with the Spanish question.

37. The practice of the Security Council with regard to the two subsidiary issues outlined in the preceding paragraph is illustrated below.

**1. The question of determination under Article 39 in matters in which it was contended that "international" peace was not threatened or breached**

**a. DECISION OF 22 MAY 1948 IN CONNEXION WITH THE PALESTINE QUESTION**

38. At the 292nd and 293rd meetings on 15 and 17 May 1948, the Security Council had before it communications regarding developments in Palestine subsequent to the expiration of the British Mandate. The communication 45/ from the Jewish Agency for Palestine charged Transjordan with acts of aggression; Egypt had sent a cablegram 46/ stating that its armed forces had begun to enter Palestine to establish security and order there. A cablegram 47/ from the League of Arab States declared that the Arab States were compelled to intervene in Palestine for the sole purpose of restoring peace and security and establishing law and order. A cablegram 48/ from the Provisional Government of Israel transmitted the proclamation establishing the independent State of Israel.

39. At the 292nd meeting, the representative of the Jewish Agency for Palestine urged the Council to determine the existence in Palestine of a threat to international peace, a breach of the peace, and acts of aggression, and to call upon Arab States to desist from aggression on penalty of action under Chapter VII of the Charter. The representative of the Arab Higher Committee questioned the right of the Jewish Agency to term as aggression the entry of Arab forces which had been invited by the Arab Higher Committee to assist the latter in maintaining law and order. With the termination of the Mandate, he stated, Palestine had become an independent nation and the Jews constituted a rebellious minority.

40. At the 293rd meeting, the Council had before it a United States draft resolution 49/ which would determine "that the situation in Palestine constitutes a threat to the peace and a breach of the peace within the meaning of Article 39 of the Charter", and order the cessation of military action. Discussion ensued on whether the determination required by Article 39 related to international peace rather than to

45/ S C, 3rd yr., No. 66, 292nd mtg., p. 2, S/744.

46/ Ibid., p. 3, S/743.

47/ S C, 3rd yr., Suppl. for May, pp. 83-88, S/745.

48/ Ibid., pp. 88 and 89, S/747.

49/ S C, 3rd yr., No. 67, 293rd mtg., p. 2, S/749. The text was as follows:

"The Security Council,

"Taking into consideration that previous resolutions of the Security Council in respect to Palestine have not been complied with and that military operations are taking place in Palestine,

"Determines that the situation in Palestine constitutes a threat to the peace and a breach of the peace within the meaning of Article 39 of the Charter;

"Orders all Governments and authorities to cease and desist from any hostile military action and to that end to issue a cease-fire and stand-fast order to their military and para-military forces to become effective within thirty-six hours after the adoption of this resolution;

"Directs the Truce Commission established by the Security Council by its resolution of 23 April 1948 [document S/721] to report to the Security Council on the compliance with these orders."

peace not so qualified; and on whether the situation in Palestine could rightly be determined as a threat to international peace.

41. One representative argued that since the juridical status of Palestine, after the termination of the Mandate, was uncertain, his Government had doubts whether there was a threat to, or breach of, international peace. Secondly, invocation of Article 39 would raise the question of whether there had been an act of aggression, involving the search for a definition of the aggressor which would lead to interminable wrangles. Thirdly, it would launch the Council on Chapter VII, under which it might have to take action with forces it did not yet possess. Accordingly, he suggested an amendment to eliminate the reference to Article 39 and to substitute the phrase "calls upon" for the word "orders". The amendment and the reasons therefor were supported by a number of other representatives.

42. Another representative, who took a similar position, expressed the view that the word "any" in Article 39 was an adjective qualifying the threat or breach, but not the peace itself. "Any" threat to peace or "any" breach of peace did not mean threat to or breach of "any" peace. Although the word "international" was omitted in the first part of Article 39, it was international peace that was clearly meant. Consequently, Article 39 could not be applied inasmuch as the international status of Palestine had yet to be determined following the termination of the Mandate. Furthermore, the Arab States had entered Palestine at the invitation of the majority of the people of Palestine, so that the act of entry could not be considered an act of aggression or a threat to the peace.

43. The main arguments of those who held the view that Article 39 was applicable to the situation and should be applied were: (a) that the word "any" in the Article included "international" as well as other kinds of threats to the peace, breaches of the peace or acts of aggression, and thus the Council, once it had found "any threat to the peace", could proceed to the inquiry with respect to the application of remedial measures, or take steps to prevent an extension of the conflagration into a breach of international peace; (b) that the application of Article 39 did not necessarily involve search for the aggressor, but that it was incumbent on the Council, as the guardian of the peace of the world, to find out, under Article 39, whether there existed any threat to the peace; (c) that the Council had repeatedly tried to act under Chapter VI alone and had failed to obtain the necessary results and that, therefore, it was obliged by Chapter VII to cope with an international situation calling for action to prevent a conflagration; (d) that the regular armed forces of several States had crossed their frontiers and entered a territory which, whatever its status, was not their own; and (e) that a finding under Article 39 would not be inconsistent with further efforts of negotiation and mediation. 50/

50/ For texts of relevant statements, see S C, 3rd yr.:

No. 66, 292nd mtg.: Arab Higher Committee, pp. 7-9; Jewish Agency for Palestine, pp. 4-7.

No. 67, 293rd mtg.: Colombia, p. 9; USSR, p. 8; United States, p. 2.

No. 68, 294th mtg.: Syria, p. 9; Ukrainian SSR, pp. 2 and 3, 13 and 14.

No. 68, 295th mtg.: Colombia, pp. 24-26; USSR, pp. 39-41.

No. 69, 296th mtg.: Belgium, pp. 11 and 12; China, p. 22; United Kingdom, pp. 2-5; United States, pp. 7 and 9.

No. 70, 297th mtg.: Syria, pp. 8 and 9; Ukrainian SSR, pp. 5 and 8.

No. 70, 298th mtg.: Argentina, pp. 31 and 32; Canada, pp. 14 and 15; Colombia, p. 30; France, pp. 17-19; Syria, pp. 20-22.

No. 71, 299th mtg.: USSR, p. 7.

No. 72, 302nd mtg.: Syria, p. 48; United States, pp. 43 and 44.

No. 75, 306th mtg.: United States, pp. 14 and 15.

Decision

At the 302nd meeting on 22 May 1948, the Security Council rejected the determination under Article 39, and adopted 51/ the draft resolution in an amended form by 8 votes to none, with 3 abstentions, the text 52/ reading as follows:

"The Security Council,

"Taking into consideration that previous resolutions of the Security Council in respect to Palestine have not been complied with and that military operations are taking place in Palestine;

"Calls upon all Governments and authorities, without prejudice to the rights, claims or position of the parties concerned, to abstain from any hostile military action in Palestine and to that end to issue a cease-fire order to their military and para-military forces to become effective within thirty-six hours after midnight New York Standard Time, 22 May 1948,

"Calls upon the Truce Commission and upon all parties concerned to give the highest priority to the negotiation and maintenance of a truce in the City of Jerusalem;

"Directs the Truce Commission established by the Security Council by its resolution of 23 April 1948 to report to the Security Council on the compliance with the two preceding paragraphs of this resolution;

"Calls upon all parties concerned to facilitate by all means in their power the task of the United Nations Mediator appointed in execution of the resolution of the General Assembly of 14 May 1948."

b. DECISIONS OF 15 JULY AND 27 JULY 1948, IN CONNEXION  
WITH THE PALESTINE QUESTION

44. Following the adoption by the Council of a resolution 53/ on 7 July 1948 containing an urgent appeal to the interested parties in the Palestine question to accept a prolongation of the truce for such a period as might be decided upon in consultation with the Mediator, efforts were made by the Mediator to extend the truce for thirty days and to secure an unconditional cease-fire for ten days. At the 333rd meeting of the Council on 13 July 1948, by which time hostilities had been resumed in Palestine, the Mediator reported 54/ on the failure of his efforts and concluded by stating that, for the time being, he had exhausted all the powers at his disposal, and that it was up to the Security Council to adopt measures to put an end to the renewal of hostilities in Palestine. It was his view that the Security Council might consider an immediate cease-fire in Palestine and the demilitarization of Jerusalem and should make clear its determination to apply enforcement measures in case of non-compliance.

45. At the 334th meeting on 13 July 1948, a draft resolution 55/ was submitted which would determine that the situation in Palestine constituted a threat to the peace

51/ S C, 3rd yr., No. 72, 302nd mtg., pp. 40, 54, 59, 61, 64 and 66.

52/ S C, 3rd yr., Suppl. for May, p. 97, S/773.

53/ S/875, same text as S/867, see S C, 3rd yr., No. 93, 331st mtg., p. 35.

54/ S C, 3rd yr., No. 95, 333rd mtg., pp. 7 and 8.

55/ United States draft resolution, S C, 3rd yr., No. 95, 334th mtg., pp. 40 and 41, S/890.

within the meaning of Article 39, and would order the Governments and authorities concerned, pursuant to Article 40, to desist from further military action and to issue cease-fire orders to their forces to that effect.

46. One representative opposed the above draft resolution on the ground that Article 39 applied to a threat to international peace and not to a civil war, as was the case in Palestine, and submitted a draft resolution 56/ to request the International Court of Justice, pursuant to Article 96 of the Charter, "to give an advisory legal opinion as to the international status of Palestine after the termination of the Mandate". He explained that such an opinion might enable the Security Council to determine whether the Arab action in Palestine should be considered an aggression to be dealt with under Chapter VII of the Charter. 57/

#### Decision

The draft resolution invoking Articles 39 and 40 was voted upon first and adopted 58/ with amendments at the 338th meeting of the Council on 15 July 1948, the vote on the amended draft resolution as a whole being 7 to 1, with 3 abstentions. The relevant portions of the resolution 59/ follow:

"The Security Council,

"Taking into consideration that the Provisional Government of Israel has indicated its acceptance in principle of a prolongation of the truce in Palestine; that the States members of the Arab League have rejected successive appeals of the United Nations Mediator, and of the Security Council in its resolution of 7 July 1948, for the prolongation of the truce in Palestine; and that there has consequently developed a renewal of hostilities in Palestine;

"Determines that the situation in Palestine constitutes a threat to the peace within the meaning of Article 39 of the Charter;

"Orders the Governments and authorities concerned, pursuant to Article 40 of the Charter of the United Nations, to desist from further military action and to this end to issue cease-fire orders to their military and para-military forces, to take effect at a time to be determined by the Mediator, but in any event not later than three days from the date of the adoption of this resolution;

"Declares that failure by any of the Governments or authorities concerned to comply with the preceding paragraph of this resolution would demonstrate the existence of a breach of the peace within the meaning of Article 39 of the Charter requiring immediate consideration by the Security Council with a view to such further action under Chapter VII of the Charter as may be decided upon by the Council;".

56/ Draft resolution submitted by Syria, S C, 3rd yr., No. 95, 334th mtg., pp. 52 and 53, S/894.

57/ For texts of relevant statements, see S C, 3rd yr.:  
 No. 95, 334th mtg.: Syria, pp. 43 and 44, 46, 52 and 53; United Kingdom, pp. 54 and 55; United States, pp. 39-41.  
 No. 96, 335th mtg.: Belgium, p. 4; Canada, p. 5; China, pp. 6 and 7.  
 No. 96, 336th mtg.: China, pp. 34 and 35; Colombia, p. 26; France, pp. 22-25; USSR, pp. 30 and 33.  
 No. 97, 337th mtg.: Argentina, p. 9; Syria, pp. 11 and 12.  
 No. 97, 338th mtg.: Ukrainian SSR, p. 30.

58/ S C, 3rd yr., No. 97, 338th mtg., p. 66.

59/ S C, 3rd yr., Suppl. for July, pp. 76 and 77, S/902.

47. At the 339th meeting on 27 July 1948, the sponsor of the draft resolution 60/ which would request an advisory opinion from the International Court of Justice stated that the legality of the Council's decision of 15 July 1948 was doubtful since the Arab States were defending the lawful inhabitants of Palestine and could not, therefore, be considered aggressors. He urged that the International Court of Justice should clarify the international status of Palestine before the Security Council proceeded with any other measures.

48. One representative who opposed the draft resolution stated that recourse to the International Court would inevitably hinder and postpone the negotiations for a peaceful settlement in Palestine.

49. The representative of Israel held that the juridical status of Palestine had no relevance to any determination of a threat to the peace, or an act of aggression within the meaning of Chapters VI and VII, since the word "State" did not occur in either of those chapters in connexion with the definition of threats to the peace and acts of aggression. 61/

#### Decision

At the 340th meeting of the Security Council on 27 July 1948, the draft resolution 62/ requesting the International Court of Justice to give an advisory legal opinion as to the international status of Palestine after the termination of the Mandate was rejected 63/ by 6 votes to 1, with 4 abstentions.

#### C. DECISION OF 6 SEPTEMBER 1950 IN CONNEXION WITH THE COMPLAINT OF AGGRESSION UPON THE REPUBLIC OF KOREA

50. During the consideration of a draft resolution 64/ submitted by the United States at the 479th meeting of the Council on 31 July 1950 condemning the North Korean authorities for the continued defiance of the United Nations and calling upon all States to take certain measures to prevent the spread of the Korean conflict, there was -- in connexion with the question of inviting representatives of both North Korea and South Korea to the Council table -- incidental discussion on the competence of the Council to intervene in a situation which was alleged to have the characteristics of a civil war. The validity of earlier resolutions of 25 and 27 June 1950, 65/ in the first of which the Council reached an affirmative determination that a breach of the peace had occurred and in the second made certain recommendations to restore international peace and security in the area, was also questioned on, among other grounds, the ground that the Council was not authorized to intervene in a civil war situation.

60/ See para. 46 above.

61/ For texts of relevant statements, see S C, 3rd yr., No. 98: 339th mtg.: Argentina, pp. 12 and 13; Canada, p. 12; China, pp. 13 and 14; Syria, pp. 2-9; USSR, pp. 16 and 17; United Kingdom, p. 13; United States, pp. 14 and 15.

340th mtg.: Egypt, pp. 19 and 27; Israel, pp. 29 and 32.

62/ See para. 46 above.

63/ S C, 3rd yr., No. 98, 340th mtg., p. 34.

64/ S C, 5th yr., No. 21, 479th mtg., pp. 7 and 8, S/1653.

65/ The decision of 25 June 1950 was reached by the Council at its 473rd meeting by 9 votes, with 1 abstention and 1 permanent member of the Council being absent. The decision of 27 June 1950 was reached by the Council at its 474th meeting by 7 votes to 1, with 2 members not voting and 1 permanent member being absent.

51. One representative stated that what was taking place in Korea was a civil war between the North and South Koreans. It was an internal conflict and the military operations in progress in that country could not be regarded as aggression. The Charter prohibited intervention by the United Nations in the domestic affairs of any State when the conflict was an internal one between two groups within a single State and a single nation. The Charter provided for intervention by the Security Council only in events of an international rather than of an internal nature.

52. Another representative, who held a different view, stated that a civil war in certain circumstances might constitute a "threat to the peace", or even a "breach of the peace" under Article 39 and that if the Security Council so decided, there would be nothing whatever to prevent its taking any action it desired in order to put an end to the incident, even if it should involve two or more portions of the same international entity. Article 2 (7) made it quite clear that the United Nations had full authority to intervene actively in the internal affairs of any country if that was necessary for the purpose of enforcing its decisions with regard to the maintenance of international peace and security. In his view, the Council had acted under Article 39 in the decisions it took on 25 and 27 June 1950. 66/

### Decision

At the 496th meeting of the Security Council on 6 September 1950, the draft resolution was put to the vote and was not adopted. 67/ There were 9 votes in favour, 1 against and 1 abstention, the vote against being that of a permanent member.

### *2. The question of determination under Article 39 in matters in which it was contended that the threat to the peace was "potential" rather than "actual"*

#### Report dated 1 June 1946 of the Sub-Committee on the Spanish question and decision of 24 June 1946 in connexion with the Spanish question

53. The situation arising from the existence and activities of the Franco régime was drawn 68/ to the attention of the Security Council initially under Articles 34 and 35. At its 34th meeting on 17 April 1946, the Council had before it a draft resolution 69/ submitted by Poland, providing (a) that the Council declare that the existence and activities of the Franco régime in Spain had led to international friction and endangered international peace and security, and (b) that the Council call upon all Members of the United Nations to sever diplomatic relations with the Franco Government "in accordance with the authority vested in it under Articles 39 and 41 of the Charter".

54. At its 39th meeting on 29 April 1946, the Council adopted a draft resolution 70/ setting up a Sub-Committee of five of its members to make further studies in order to determine whether the situation in Spain had led to international friction and endangered international peace and security, and if it so found, then to determine what practical measures the United Nations might take.

66/ For texts of relevant statements, see S C, 5th yr., Nos. 24 and 28:  
482nd mtg.: USSR, pp. 6-10.

486th mtg.: United Kingdom, pp. 4-6.

67/ S C, 5th yr., No. 38, 496th mtg., pp. 18 and 19.

68/ Letter dated 9 April 1946 from the representative of Poland to the Secretary-General, S C, 1st yr., 1st Series, Suppl. No. 2, p. 55, S/34.

69/ S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167.

70/ S C, 1st yr., 1st Series, No. 2, 39th mtg., p. 244.

55. The report 71/ of the Sub-Committee, dated 1 June 1946, included conclusions and recommendations as well as reservations by two of its members. In part IV of its report entitled "Jurisdiction of the Security Council and its power to take action under Chapter VII of the Charter", the Sub-Committee stated that the juridical meaning of Article 39 was that the Council had to measure the situation as at the moment of the proposed action on its part, it being the clear intention of the Charter that the Council should only call for direct enforcement measures, provided it was affirmatively satisfied that a threat to the peace, or a breach of the peace, or an act of aggression had actually come into existence. The Sub-Committee further stated that, in its opinion, the Council could not, on the present evidence, make the determination required by Article 39. No breach of peace had yet occurred, and no act of aggression had been proved. No threat to the peace had been established. In part VI of its report entitled "Conclusions and recommendations addressed to the Security Council", the Sub-Committee stated that although the activities of the Franco régime did not at present constitute a threat to the peace within the meaning of Article 39 and, therefore, the Council had no jurisdiction to direct or to authorize enforcement measures under Article 40 or 42, nevertheless such activities did constitute a situation which was a potential menace to international peace and security and which, therefore, was a situation "likely to endanger the maintenance of international peace and security" within the meaning of Article 34.

56. The meaning of the phrase "threat to the peace" was debated both in the Sub-Committee and in the Council.

57. One member of the Sub-Committee stated that, although he accepted the analysis of facts and the recommendations of the Sub-Committee, he had made a reservation on the ground that its report conveyed the view that a potential threat to the peace would not fall within the scope of Article 39. Stating that the functions of the Security Council were preventive as well as repressive, he maintained that the Charter did not demand that a situation, in order to be recognized as a threat to the peace under Article 39, be an immediate danger resulting in a breach of the peace or act of aggression within the next few days, weeks or even months. Potential dangers could be construed as a threat to the peace in the sense of Article 39 inasmuch as, unless such threats to the peace were dealt with by the Council at an early stage while they were still potential and easy to remove, the United Nations might find itself confronted with a situation beyond its power to control. Furthermore, the enumerations in Article 41 of steps such as interruption of postal, telegraphic and radio communications and the severance of diplomatic relations indicated that potential threats to the peace were also covered by Article 39. If only imminent threats to the peace were envisaged in Article 39, measures short of economic and military sanctions would be meaningless. He could not, therefore, agree with the statement that the activities of the Franco régime did not represent a threat to the peace within the meaning of Article 39.

58. In the discussion of the Sub-Committee's report in the Security Council, one representative expressed the view that in a situation where there was a threat to the peace, either Article 39 or Article 34 could apply. Which one of the Articles would apply would depend on the Council's estimate of the facts and on its assessment of the more or less imminent nature of the threat. It did not, however, mean that Article 39 was not applicable except when a threat was already on the point of being transformed into action. The Sub-Committee's report, in his view, merely meant that, according to whether the threat was more or less serious, the Council might rely either on Article 39 or on Article 34, and, after judging the facts, the Sub-Committee had elected

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71/ S C, 1st yr., 1st Series, Special Suppl., pp. 1-12, 8/75.

to recommend reliance on Article 34. Another representative who took a similar position on very similar grounds stated that in the case under examination the Sub-Committee, after assessing the evidence submitted to it, had found that the situation did not come within the meaning of Article 39 and that there was no existing threat to the peace. The determination of a situation as one falling within the meaning of Article 39 was not a question of legal interpretation; it was a question of evidence and proof of facts.

59. Those representatives on the Council who argued that the situation under consideration did come within the scope of Article 39, stated that the Sub-Committee had restrictively interpreted the meaning of that Article. To introduce the idea of a "potential" threat to the peace, to make a distinction between a "potential" and an "actual" threat to the peace, and then to interpret Article 39 to mean that the term "threat to the peace" used there referred only to an "actual" threat and not to a "potential" threat, would serve to diminish the significance of the Article and introduce a false distinction. The consequence of such an interpretation would be to render the Security Council ineffective as an organ charged with the maintenance of peace. 72/

#### Decision

At the 48th meeting of the Security Council on 24 June 1946, the draft resolution submitted at the 34th meeting was resubmitted with the reference to Articles 39 and 41 of the Charter deleted. At the same meeting, the revised draft resolution 73/ was rejected. There were 4 votes in favour and 7 against.

#### **D. The question of designating in advance certain circumstances as coming within the purview of Article 39**

60. The question whether certain circumstances in advance of their actual materialization could be designated by the Council as coming within the scope of Article 39 was discussed in connexion with a draft resolution relating to the Greek frontier incidents question. Some incidental discussion of the issue took place also in connexion with a draft resolution submitted at the 255th meeting of the Council on the Palestine question. 74/ An analysis of the proceedings connected with the draft resolution on the Greek frontier incidents question submitted at the 147th meeting and the amendments to it is set forth below.

#### Decision of 29 July 1947 in connexion with the Greek frontier incidents question

61. At the 147th meeting on 27 June 1947, the Security Council had before it a draft resolution 75/ providing for the establishment of a commission of investigation and

72/ For texts of relevant statements, see S C, 1st yr., 1st Series, No. 2:

35th mtg.: United Kingdom, pp. 184 and 185.

44th mtg.: Australia, p. 314; France, p. 322; Poland, p. 323.

45th mtg.: USSR, pp. 336 and 337.

46th mtg.: France, p. 359; Mexico, p. 363.

47th mtg.: Australia, pp. 375 and 376; Poland, pp. 370 and 371.

73/ S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 388.

74/ In this connexion see also the penultimate paragraph of the resolution of 29 May 1948 on the Palestine question referred to in paragraph 14 above.

75/ United States draft resolution, S C, 2nd yr., No. 51, 147th mtg., pp. 1124-1126, 8/391.

good offices in pursuance of the majority recommendations of the Commission of Investigation concerning Greek frontier incidents. At the 162nd meeting on 22 July 1947, the following amendment 76/ to the draft resolution was submitted:

"In view of the gravity of the present situation, if in the future one of the four States concerned is found to be supporting armed bands formed on its territory which cross into the territory of one of the other States, or if such State is found to be refusing, in spite of the demands of that other State, to take necessary measures on its own territory to deprive such bands of any aid or protection, that shall be considered by the Security Council as a threat to the peace within the meaning of the Charter of the United Nations."

62. In connexion with the above amendment, discussion arose on the question whether the Security Council could designate in advance certain types of action as a threat to the peace.

63. Those who objected to the amendment as worded stated the following as the grounds for their objection: (a) that the amendment in effect amounted to a definition of the concept of "threat to the peace"; (b) that the United Nations Conference on International Organization held at San Francisco deliberately decided not to accept any definition of a "threat to the peace" which would bind the Security Council in the future, because it was thought unwise to bind the Council by general definitions which might be applicable in one place but entirely out of place in another; (c) that the Council could not describe an act that had not yet occurred as a breach of the peace, nor was it authorized to do so by the Charter; and (d) that the Council by approving the amendment, the text of which corresponded to that of a recommendation properly made by the Commission of Investigation concerning Greek frontier incidents, would be committing itself in advance and prejudging the decision it would have to take if those events actually did occur.

64. Representatives who were of the view that the amendment was in order stated that it amounted only to a declaration and a warning, and that, at that stage, it had no "operative or executory" power. Before the situation became an admitted threat to the peace, the Council would have to find that the facts described in the amendment did exist, and thereafter would have to reach a determination. They maintained that the Council, by virtue of its responsibility to maintain peace in every part of the world, would be within its rights to issue such a warning.

65. At the 164th meeting on 23 July 1947, the following text 77/ was submitted to replace the amendment and was accepted by the sponsors of the draft resolution and the original amendment:

"Giving support to armed bands formed on any one of the four States concerned and crossing into the territory of another State, or refusal by any one of the four Governments in spite of the demands of the State concerned to take the necessary measures to deprive such bands of any aid or protection, shall be avoided by the Governments of Albania, Bulgaria, Greece and Yugoslavia, as a threat to the peace within the meaning of the Charter of the United Nations."

66. The sponsor of the revised amendment stated that, as worded, it did not bind the Council in any way in the future, but was merely an expression of the Council's point of view at that time. Before any action or further action could be contemplated by the

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76/ United Kingdom amendment, S C, 2nd yr., Suppl. No. 15, p. 145, S/429.

77/ Amendment submitted by Australia, S C, 2nd yr., No. 62, 164th mtg., p. 1469.

Security Council under Chapter VII of the Charter, it would have to make a definitive finding that a threat to the peace had resulted from any one of the acts mentioned on the basis of its own examination of any report submitted to it by the proposed Commission. 78/

Decision

At the 170th meeting on 29 July 1947, the revised amendment 79/ was adopted 80/ by 9 votes to 1, with 1 abstention. At the same meeting, the amended draft resolution was not adopted. 81/ There were 9 votes in favour and 2 against, 1 vote against being that of a permanent member.

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- 78/ For texts of relevant statements, see S C, 2nd yr.:  
No. 51, 147th mtg.: United States, pp. 1123 and 1124.  
No. 58, 158th mtg.: Colombia, pp. 1322 and 1323.  
No. 59, 159th mtg.: Poland, p. 1353.  
No. 59, 160th mtg.: USSR, pp. 1377 and 1378.  
No. 60, 161st mtg.: Bulgaria, pp. 1396 and 1397.  
No. 62, 164th mtg.: Australia, pp. 1469 and 1470; Bulgaria, p. 1461; China, pp. 1464 and 1465; Colombia, p. 1467; France, pp. 1454-56; Poland, p. 1466; USSR, p. 1457; United States, p. 1458.
- 79/ See para. 65 above.
- 80/ S C, 2nd yr., No. 66, 170th mtg., p. 1604.
- 81/ Ibid., p. 1612.