

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 and the relevant discussions connected with them illustrate the practice of the Security Council and the types of action it took when considering the questions in which a number of members of the Security Council either called for action by the Council under Article 39, or were of the opinion that actions previously taken by the Council had a bearing on the provisions of Article 39.

2. In the General Survey reference is made to a decision by the Council taken explicitly under Article 39 and to a decision of the Council recalling a previous decision containing an explicit reference to that Article. The General Survey lists also several letters submitting certain questions for the consideration of the Council in which Article 39 was explicitly invoked as a basis of the submission.

3. The General Survey briefly reviews statements of the Secretary-General made during the consideration by the Security Council of the situation in the Republic of the Congo in which he referred to Article 39 as a possible implicit basis of the resolutions of the Council on that item, and the proceedings on the India-Pakistan question, when, following an intervention by the Secretary-General in which he cited Article 39, further references to that Article were made in the subsequent discussion. Also listed are some explicit references made to Article 39 during the consideration of various items by the Security Council.

4. In connexion with the situation in Southern Rhodesia the proceedings and the constitutional discussion related to Security Council resolution 232 (1966) of 16 December 1966 are dealt with in this study. This resolution contains an explicit determination under Article 39 as the last of a series of resolutions, also treated in this study, of which the first two, although finding the situation as threatening international peace and security, avoided any such determination.

5. In the General Survey there is also a relevant excerpt from an advisory opinion of the International Court of Justice in which Article 39 was explicitly referred to.

6. The Analytical Summary of Practice deals with the following questions treated in the previous volumes of the *Repertory*: "A. The question whether

decisions amounted to action under Article 39 in the absence of explicit invocation of the Article" which arose in connexion with the situation in Southern Rhodesia; "B. The question of action under Article 39 in matters in which the competence of the Security Council to intervene was questioned on the grounds that they came within the domestic jurisdiction of States". This question arose in connexion with the consideration by the Council of the situation in Southern Rhodesia; "C. The question of the circumstances in which Article 39 is applicable", under which two new subheadings were added: "3. The question of determination under Article 39 in matters in which it was contended that a situation was 'disturbing' rather than 'threatening' international peace and security" which arose in connexion with the consideration by the Security Council of the question of race conflict in South Africa, and "4. The question whether an existing situation constitutes a threat to the peace, breach of the peace or act of aggression" a question discussed by the Security Council in connexion with the situation in Angola, with the situation in Territories in Africa under Portuguese administration, with the question of race conflict in South Africa and with the situation in Southern Rhodesia; and "D. The question of designating in advance certain circumstances as coming within the purview of Article 39", which arose in connexion with the situation in Southern Rhodesia.

7. No material was found for treatment under the following headings included in the previous volumes of the *Repertory* and its *Supplements Nos. 1 and 2*: "The question whether a determination within the meaning of Article 39 is a pre-condition of invoking the procedure under General Assembly resolution 377 A (V)" and "The question whether without a determination under Article 39 and a decision in accordance with Article 42, a United Nations force may be established and employed by the Security Council".

8. While Article 39 authorizes the Security Council to determine the the existence of any threat to the peace, breach of the peace, or act of aggression and to make recommendations or decide what measures should be taken in accordance with Articles 41 and 42 of the Charter, to maintain or restore international peace and security, the General Assembly took a number of decisions to which, in the

related proceedings, objections were raised on the ground that they fell within the scope of Article 39 and that, for this reason, they went beyond the competence of the General Assembly and were made in violation of Article 39.¹ The following General Assembly resolutions may be referred to as examples of such decisions: "Question of South Africa": resolutions 1568 (XV) of 18 December 1960, 1702 (XVI) of 19 December 1961, 1805 (XVII) of 14 December 1962, 1899 (XVIII) of 13 November 1963, 1979 (XVIII) of 17 December 1963 and 2074 (XX) of 17 December 1965;² "Question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa": resolutions 1598 (XV) of 13 April 1961 and 1663 (XVI) of 28 November 1961; "The policies of *apartheid* of the Government of the Republic of South Africa": resolutions 1761 (XVII) of 6 November 1962, 1881 (XVIII) of 11 October 1963, 1978 (XVIII) of 16 December 1963 and 2054 (XX) of 15 December 1965;³ "The situation in Angola":

¹ For statements to the effect that the Security Council is exclusively competent to decide on the application of sanctions under Articles 41 and 42, see this *Supplement*, under Article 41, paras. 9, 28 and 31.

² For statements to the effect that only the Security Council is competent to determine that a situation constituted a threat to the peace, a breach of the peace or an act of aggression, see in connexion with these resolutions: G A (XV), 4th Com., 1110th mtg.: United States, para. 31; 1115th mtg.: India, para. 31; 1116th mtg.: Colombia, para. 17; United States, para. 9; G A (XVI), 4th Com., 1242nd mtg.: United States, para. 44; 1244th mtg.: Bolivia, para. 57; G A (XVII), 4th Com., 1386th mtg.: Japan, para. 47; G A (XVIII), 4th Com., 1465th mtg.: Uruguay, para. 55; 1471st mtg.: Denmark, para. 31; United States, para. 20; 1473rd mtg.: Australia, para. 44; Chile, para. 16; Japan, para. 74; New Zealand, para. 10; Sweden, para. 40; United Kingdom, para. 69; Venezuela, para. 78; G A (XX), 4th Com. 1582nd mtg.: Denmark, para. 42; Norway, para. 43; Sweden, para. 25; United Kingdom, para. 53; United States, para. 40.

³ For texts of statements similar to those in the preceding footnote in connexion with these resolutions, see G A (XV), Spec. Pol. Com., 241st mtg.: India, para. 18; 242nd mtg.: United Kingdom, para. 14; G A (XVI), Spec. Pol. Com.,

resolution 1742 (XVI) of 30 January 1962;⁴ "Territories under Portuguese administration": resolutions 1807 (XVII) of 14 December 1962 and 1913 (XVIII) of 3 December 1963; "Question of Territories under Portuguese administration": resolution 2107 (XX) of 21 December 1965;⁵ "Question of Southern Rhodesia": resolution 2022 (XX) of 5 November 1965;⁶ "Question of Aden": resolution 2023 (XX),⁷ of 5 November 1965. Concerning these decisions and the questions raised by the practice of the General Assembly referred to in this paragraph attention is drawn to the study in this *Supplement* of Article 11.⁸

274th mtg.: United Kingdom, para. 5; 276th mtg.: Sweden, para. 3; 277th mtg.: France, para. 10; 282nd mtg.: Turkey, para. 12; G A (XVII), Spec. Pol. Com., 336th mtg.: Sweden, para. 48; 341st mtg.: Colombia, para. 24; G A (XVIII), 386th mtg.: United Kingdom, para. 9; 390th mtg.: Japan, paras. 36 and 37; 392nd mtg.: United States, para. 10; G A (XX), Spec. Pol. Com., 472nd mtg.: Japan, para. 4; United Kingdom, para. 17; 480th mtg.: Netherlands, para. 19; 481st mtg.: Italy, para. 22; G A (XX), Plen., 1385th mtg.: Italy, para. 180; Netherlands, para. 194; Norway, paras. 141 and 142; Sweden, paras. 160 and 163; Thailand, para. 189.

⁴ For a statement similar to those referred to in footnote 1 above, see G A (XVI), Plen., 1102nd mtg.: France, para. 52.

⁵ For statements such as those referred to in footnote 1 above in connexion with these resolutions, see G A (XVIII), 4th Com., 1493rd mtg.: Bulgaria, para. 119; 1494th mtg.: United Kingdom, para. 9; United States, para. 13; G A (XX), 4th Com., 1590th mtg.: Portugal, para. 23; 1591st mtg.: Canada, para. 1; 1592nd mtg.: Brazil, para. 63; Denmark, para. 30; Italy, para. 33; Norway, para. 36; Sweden, para. 20.

⁶ For statements such as those referred to in footnote 1 above, in connexion with this resolution, see G A (XX), Plen., 1367th mtg.: Costa Rica, para. 72; 4th Com., 1541st mtg.: Netherlands, para. 51; Sweden, para. 30; Venezuela, para. 67 and 68; 1544th mtg.: Iraq, paras. 60–63; Ireland, para. 42; Italy, para. 34; Norway, para. 47; South Africa, para. 36.

⁷ For a statement similar to those referred to in footnote 1 above, see G A (XX), 4th Com., 1546th mtg.: United States, para. 20.

⁸ See therein paras. 7, 21, 29, 30, 36, 40, 45, 46 and 52. See also this *Supplement* under Article 2 (4), para. 19, with respect to General Assembly resolutions 1817 (XVII) and 1954 (XVIII) on the question of Basutoland, Bechuanaland and Swaziland.

I. GENERAL SURVEY

9. During the period under review the Security Council, in one of its resolutions,⁹ invoked Article 39 explicitly and made a determination that the situation in Southern Rhodesia constituted a threat to international peace and security.

10. During the same period in S C resolution 171 (1962) of 9 April 1962 on the Palestine question, the Security Council (1) recalled its resolution 54 (1948) of 15 July 1948 in which the Security Council had determined that the situation in Palestine constituted a threat to the peace within the meaning of Article 39; (2) ordered the Governments and authorities concerned, pursuant to Article 40, to desist from further military action and to that end to issue cease-fire orders to their military and paramilitary forces, to take effect at a time to be determined by the Me-

diator, but in any event not later than three days from the date of the adoption of the resolution; and (3) declared that failure by any of the Governments or authorities concerned to comply with the preceding paragraph of the resolution would demonstrate the existence of a breach of the peace within the meaning of Article 39 requiring the immediate consideration by the Security Council with a view to such further action under Chapter VII of the Charter as might be decided upon by the Council.¹⁰

11. Article 39 was explicitly referred to in letters submitting requests for the consideration by the Security Council on the following occasions (a) in

⁹ SC resolution 232 (1966). See also paras. 113–117 below.

¹⁰ See *Repertory*, vol. II, under Article 39, paras. 9 and 44–46; *Repertory Supplement No. 1*, vol. I, under Article 39, para. 6; and S C resolutions 54 (1948), 101 (1953), 106 (1955) and 171 (1962).

a letter dated 22 October 1962¹¹ from the representative of Cuba concerning the complaint by Cuba; (b) in letters dated 26 December 1963,¹² 13 March 1964,¹³ 8 August 1964¹⁴ and 31 July 1965¹⁵ from the representative of Cyprus concerning the complaint by the Government of Cyprus; and (c) in a letter dated 3 September 1964 from the representative of Malaysia concerning the complaint by Malaysia.¹⁶ In the first two instances Article 39 was cited together with other Articles of the Charter.

12. During the consideration of the situation in the Republic of the Congo in connexion with the discussion of the mandate of the United Nations Force in the Congo the Secretary-General pointed out¹⁷ that it was repeated in the Security Council that actions of the United Nations Command and of the Secretary-General were not in conformity with the mandate. Thus the mandate was given an interpretation not warranted by the history of the case and stated that it was even doubtful if the Council ever had acted under Chapter VII. The very most that could be said was that the actions of the Council might have been under Article 40 of the Charter. One representative expressed¹⁸ the view that it would stretch legal ingenuity to regard Article 39 of the Charter as applicable to the case which was a power conflict, a struggle for political leadership, a dispute over the legitimacy of Governments, in short a problem of an internal constitutional nature. Another representative said¹⁹ that Article 39 was clear as regards the duties of the Security Council whenever there existed a threat to the peace or a breach of the peace. Article 40 further elaborated the duties of the Council in order to prevent an aggravation of a situation likely to cause a breach of international peace and security. The United Nations

¹¹ S C, 17th yr., Suppl. for Oct.—Dec., p. 148, S/5183. See also the letter submitted by the representative of the USSR on 23 October 1962 which referred to “the threat to peace by the United States” (*Ibid.*, p. 149, S/5186), while the letter from the United States on 22 October 1962 asked the Security Council to deal with the dangerous threat to the peace and security of the world caused by the establishment in Cuba by the USSR of launching bases and the installation of long-range ballistic missiles (*Ibid.*, p. 146, S/5181). The first preambular paragraph of the draft resolution submitted by the United States read: “*Having considered* the serious threat to the security of the Western Hemisphere and the peace of the world caused by the continuance and acceleration of foreign intervention in the Caribbean.” (S C, 17th yr., 1022nd mtg., para. 80, S/5182). The draft resolution introduced by the USSR would have condemned the actions of the Government of the United States aimed at violating the United Nations Charter and at increasing the threat of war, and would have called on the three States concerned to establish contact and enter into negotiations for the purpose of removing “the threat of an outbreak of war” (*Ibid.*, para. 180, S/5187). The draft resolution co-sponsored by Ghana and the United Arab Republic also contained a reference to “the threat to international peace and security” (*Ibid.*, 1024th mtg., para. 113, S/5190).

¹² S C, 18th yr., Suppl. for Oct.—Dec., p. 112, S/5488.

¹³ S C, 19th yr., Suppl. for Jan.—March, p. 140, S/5598.

¹⁴ S C, *Ibid.*, Suppl. for July—Sept., p. 145, S/5861.

¹⁵ S C, 20th yr., Suppl. for July—Sept. p. 144, S/6581.

¹⁶ S C, 19th yr., Suppl. for July—Sept., p. 263, S/5930.

¹⁷ S C, 15th yr., 915th mtg., paras. 156 and 157.

¹⁸ *Ibid.*, 916th mtg.: Ecuador, paras. 65 and 66.

¹⁹ *Ibid.*, 917th mtg.: Ceylon, para. 38.

was in the Congo, in all its aspects, because it had been invited by the legitimate and unquestioned Government so that its action could in no way be regarded as an intervention in matters essentially within the domestic jurisdiction of the Republic of the Congo. Referring to this statement the Secretary-General said²⁰ that Articles 39 and 40 might be considered as the background for action taken, although that was not quite clear legally. On another occasion the Secretary-General stated²¹ that his own view, which he had expressed to the Council, was that the resolutions²² of the Security Council might be considered as implicitly taken under Article 40 and, in that sense, as based on an implicit finding under Article 39. However, he emphasized that neither the Security Council nor the General Assembly had ever endorsed that interpretation, much less put such an endorsement in a resolution.²³

13. In connexion with the India-Pakistan question at the 1239th meeting of the Security Council on 17 September 1965 when the Council considered the “Preliminary report of the Secretary-General on his visits to the Governments of India and Pakistan”,²⁴ the Secretary-General stated²⁵ that the Council could order the two Governments concerned, pursuant to Article 40 of the Charter, to desist from further military action and to this end to issue cease-fire orders to their military forces. The Council might also declare that failure by the Governments concerned to comply with this order would demonstrate the existence of a breach of the peace within the meaning of Article 39. The representative of India said²⁶ that the Council must call upon Pakistan to desist from carrying out hostilities and asked it under Article 39 to determine the existence of an act of aggression on the part of Pakistan. The representative of Pakistan expressed doubt²⁷ as to the necessity of action under Article 39 as suggested by the Secretary-General. He further observed that hitherto all action concerning the Kashmir dispute had been taken under Chapter VI of the Charter and the departure from past practice would be a momentous decision, the implications of which would have to be

²⁰ *Ibid.*, para. 64.

²¹ *Ibid.*, 920th mtg., para. 75.

²² S C resolutions 143 (1960), 145 (1960) and 146 (1960). No similar comments were made with regard to S C resolutions 161 (1961) and 169 (1961).

²³ Similar views were expressed by the Secretary-General at the fifteenth session of the General Assembly in his statement made at the 953rd plenary meeting on 17 December 1960. At that meeting the Secretary-General said that the main instrument provided for the achievement of the aim of the United Nations in the Congo — stable and peaceful political conditions — had been the United Nations Force set up by the Security Council without explicit reference to Article 39 or 40, and *a fortiori*, without basing itself on Article 41 or 42. He had brought this to the attention of the Security Council at early stages both in substance and in form, so there could not be any misunderstanding on this point (G A (XV), Plen., 953rd mtg., para. 180).

²⁴ S C, 20th yr., Suppl. for July—Sept., p. 295, S/6683.

²⁵ S C, 20th yr., 1239th mtg., para. 20. For the question of designation in advance of certain circumstances as coming within the purview of Article 39, see this study in the Analytical Summary of Practice under D.

²⁶ *Ibid.*, para. 107.

²⁷ *Ibid.*, 1240th mtg., para. 65.

carefully weighed. Another representative stated²⁸ that the adoption of the suggestion that Articles 39 and 40 be applied to enforce the cease-fire might turn out to be quite unnecessary. However, it appeared to be a logical step to take in order to put an effective stop to a war as yet local in nature which might escalate to such a degree as to endanger world peace.

14. Explicit references to Article 39 were made, *inter alia*, during the consideration of the following items: Complaint by USSR (U-2 incident);²⁹ Complaints by Cuba, USSR and United States (22-23 October 1962);³⁰ and the situation in the Dominican Republic.³¹ Explicit references to Article 39 together with Articles 40 and 41 were made during the consideration of the situation in Territories in Africa under Portuguese administration;³² and together with Article 41 during the consideration of a letter dated 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic).³³

15. An explicit reference to article 39 was further made in the advisory opinion of 20 July 1962 entitled

²⁸ *Ibid.*, 1241st mtg.: China, para. 107. In S C resolution 211 (1965) adopted at the 1242nd meeting on 20 September 1965 (S C, 20th yr., 1242nd mtg., para. 69) demanding that the cease-fire take effect on a specified date, no reference was made to Articles 39 and 40 of the Charter.

²⁹ S C, 15th yr., 858th mtg.: France, paras. 7, 9 and 10. In the draft resolution submitted by the USSR the Security Council would have considered that the incursions by United States aircraft into the territory of the Soviet Union created "a threat to universal peace" (third preambular para.), condemned the incursions by United States aircraft into the territory of other States and regarded them "as aggressive acts" (operative para. 1). This draft resolution was rejected by 7 votes to 2, with 2 abstentions (*ibid.*, 857th mtg., para. 99, S/4321; 860th mtg., para. 87).

³⁰ S C, 17th yr., 1023rd mtg.: Romania, para. 69.

³¹ S C, 20th yr., 1196th mtg.: USSR, para. 205; 1198th mtg.: Cuba, para. 68; 1222nd mtg.: Malaysia, para. 107.

³² S C, 18th yr., 1047th mtg.: Ghana, paras. 37 and 38.

³³ S C, 15th yr., 893rd mtg.: USSR, para. 18.

"Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)", of the International Court of Justice in connexion with the operation in the Congo. The Court stated that it was not necessary for it to express an opinion as to which Article or Articles of the Charter were the basis for the resolutions of the Security Council,³⁴ but it could be said that the Operation of the United Nations in the Congo (ONUC) did not include the use of armed force against a State which the Security Council, under Article 39, had determined to have committed an act of aggression or to have breached the peace. The armed forces which were utilized in the Congo were not authorized to take military action against any State. The operation did not involve "preventive or enforcement measures" against any State under Chapter VII and therefore did not constitute "action" as that term was used in Article 11.³⁵

16. Reference to Article 39 was contained in the report of the Sixth Committee to the General Assembly at its eighteenth session wherein it was stated that several representatives had emphasized in the debate on the principles of refraining from the threat or use of force in international relations, the close and essential relationship between Article 2 (4) and Chapters VI and VII of the Charter, and particularly Article 39 which "went to prove that the function of interpreting and applying the principle prohibiting the threat or use of force was assigned by the Charter to the Security Council".³⁶

³⁴ See S C resolutions 143 of 14 July 1960, 145 of 22 July 1960, 146 of 9 August 1960, 161 of 21 February 1961 and 169 of 24 November 1961.

³⁵ "Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)", Advisory Opinion of 20 July 1962: I. C. J. Reports 1962, p. 177. For references to Article 39 in the dissenting opinions, see *ibid.*, opinion of Judge Moreno Quintana, p. 243; opinion of Judge Koretsky, pp. 269, 274 and 275; opinion of Judge Bustamante, pp. 292, 293, 295 and 300.

³⁶ G A (XVIII), Annexes, a. i. 71, A/5671, para. 59.

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

17. In connexion with the situation in Southern Rhodesia the Security Council had before it a draft resolution containing an explicit reference to Article 39. It was argued that this reference was insufficient without the determination that the situation in Southern Rhodesia according to the terms of Article 39 constituted a "threat to the peace, breach of the peace or act of aggression".

Decision of 16 December 1966 in connexion with the situation in Southern Rhodesia

a. Précis of proceedings

18. In a letter³⁷ dated 5 December 1966 addressed to the President of the Security Council the repre-

sentative of the United Kingdom stated that since the rebellion in Southern Rhodesia had not been brought to an end, and following consultations with other Commonwealth Governments, he had been instructed by the Government of the United Kingdom to request a meeting of the Security Council at which his Government would propose certain additional measures to be taken against the illegal régime in Rhodesia.

19. At the 1331st meeting on 8 December 1966 the Security Council decided³⁸ to include the letter in its agenda.

20. At the same meeting the representative of the United Kingdom introduced³⁹ a draft resolution⁴⁰ with these provisions:

³⁸ S C, 21st yr., 1331st mtg., p. 1.

³⁹ *Ibid.*, para. 25.

⁴⁰ S C, 21st yr., Suppl. for Oct.—Dec., p. 170, S/7621, Rev. 1.

³⁷ S C, 21st yr., Suppl. for Oct.—Dec. p. 110, S/7610.

"The Security Council,

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

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

"...

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

"...".

21. At the 1335th meeting on 13 December 1966 the representative of Uganda⁴¹ introduced amendments⁴² to the United Kingdom draft resolution submitted jointly with Mali and Nigeria. In the second amendment it was proposed to insert before operative paragraph 1 of the draft resolution two new operative paragraphs the first of which read:

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

22. At the 1338th meeting on 15 December 1966 the representative of Uganda introduced⁴³ a revised text⁴⁴ of the amendments submitted by Mali, Nigeria and Uganda, according to which before operative paragraph 1 of the United Kingdom draft resolution would be inserted two new operative paragraphs, the first of which read:

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

23. At the 1339th meeting on 16 December 1966 the representative of the United Kingdom submitted⁴⁵ a revised text of his draft resolution.⁴⁶

24. At the 1340th meeting on 16 December 1966 the representative of the United Kingdom accepted⁴⁷ that part of the amendment submitted by Mali, Nigeria and Uganda, to insert a new operative paragraph 1 by which the Council would determine that the situation in Southern Rhodesia constituted a "threat to international peace and security".

Decision

At the 1340th meeting on 16 December 1966 the amendment to the United Kingdom revised draft resolution was adopted⁴⁸ by 14 votes to none, with 1 abstention.

At the same meeting the revised United Kingdom draft resolution, as amended, was adopted⁴⁹ by 11 votes to none, with 4 abstentions.

⁴¹ S C, 21st yr., 1335th mtg., paras. 3-23.

⁴² S C, 21st yr., Suppl. for Oct.-Dec. p. 179, S/7630.

⁴³ S C, 21st yr., 1338th mtg., paras. 149 and 150.

⁴⁴ S C, 21st yr., Suppl. for Oct.-Dec., p. 181, S/7630/Rev. 1.

⁴⁵ S C, 21st yr., 1339th mtg., paras. 2-4.

⁴⁶ S C, 21st yr., Suppl. for Oct.-Dec., para. 170, S/7621/Rev. 1.

⁴⁷ S C, 21st yr., 1340th mtg., para. 59.

⁴⁸ *Ibid.*, para. 85.

⁴⁹ *Ibid.*, para. 110. See also resolution 232 (1966).

b. Précis of relevant constitutional discussion

25. The representative of the United Kingdom in introducing his draft resolution stated that, in its resolution 217 (1963), the Security Council had determined that the "continuance in time" of the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia had constituted a threat to international peace and security. That situation had continued for more than a year and was of such nature that the Council should invoke certain measures under Articles 39 and 41.

26. One representative maintained that the time was past for appeals to those who had failed to abide by resolution 217 (1965). The Security Council must go beyond that stage and must call for binding measures on all Member States in accordance with their obligations under the Charter, since the presence of a racist minority régime in Southern Rhodesia had become a threat to peace under Article 1 (1) and Article 39. Circumstances indicated that there might be a breach of the peace at any moment. For this reason there should be a specific mention in the draft resolution of the fact that the situation was a threat to the peace. It was not sufficient to bring out this point implicitly by merely referring to resolution 217 (1965) and Article 39 of the Charter. It was the primary obligation of the Council, under Article 39 of Chapter VII, to determine "the existence of any threat to the peace, breach of the peace, or act of aggression" and then to decide on whatever measures were appropriate. If the Council did not specifically determine that there was a threat to the peace and only decided on measures, that would be comparable to handing down a sentence providing for the punishment but omitting any mention of the crime. If the problem was placed in its proper context as a threat to the peace, then the adoption of effective collective measures was justifiable.

27. Another representative expressed the view that it was not enough merely to refer to Article 39 of the Charter. The Security Council must under Chapter VII define explicitly the concepts contained in Article 39 which make action taken by international bodies legitimate and justify whatever measures they might adopt. The relevant paragraph of the United Kingdom draft resolution should expressly use the terms "the existence of any threat, breach of peace or act of aggression". The very nature of these events had removed the Rhodesian situation from the United Kingdom's domestic jurisdiction and made it a matter of international concern.

28. The view was also expressed that in any resolution to be adopted by the Council, it should determine first that a situation existed which threatened peace within the meaning of Article 39. The United Kingdom draft resolution omitted specific mention of this question of fact and it was not sufficient to bring out this point by implication, that is, by a mere reference to resolution 217 (1965) and Article 39. Determination that the situation threatened international peace and security should precede the adoption of any suitable measures under Chapter VII. The Security Council must, as a first step, declare

unequivocally that there was a situation which in fact posed a threat to international peace and security and, needless to say, that situation did exist.⁵⁰

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

29. In three instances relating to the situation in Southern Rhodesia the issue arose whether: (a) in view of the constitutional relationship between the United Kingdom and Southern Rhodesia the matter was within the domestic jurisdiction of Southern Rhodesia; (b) whether the question of Southern Rhodesia was an internal matter of the United Kingdom, for which it was responsible; and (c) whether the situation in Southern Rhodesia although a domestic matter of the United Kingdom, fell within the competence of the Security Council, since it constituted a threat to international peace and security.

Decisions of 13 September 1963, 20 November 1965, and 16 December 1966 in connexion with the situation in Southern Rhodesia

Decision of 13 September 1963

a. *Précis of proceedings*

30. In a letter⁵¹ dated 2 August 1963 the representatives of Ghana, Guinea, Morocco and the United Arab Republic requested the President of the Security Council to convene a meeting of the Council to consider the situation in Southern Rhodesia in relation to: (a) General Assembly resolution 1760 (XVII) of 31 October 1962; (b) the resolution of the Special Committee on the situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted at its 177th meeting on 20 June 1963; and (c) implementation of Article 73 of the Charter with respect to the British Non-Self-Governing Territory of Southern Rhodesia. In an attached explanatory memorandum reasons were given why the Governments of Ghana, Guinea, Morocco and the United Arab Republic considered that the continuance of the situation in Southern Rhodesia was likely to endanger the maintenance of international peace and security and why it was therefore necessary that the Security Council should consider this item as a matter of urgency. It was, *inter alia*, stated therein that if the British Government should hand over unconditionally military and air force units and all the attributes of sovereignty, save its nominal recognition, to the Government of Southern Rhodesia

⁵⁰ For texts of relevant statements, see S C, 21st yr., 131st mtg.: United Kingdom, para. 22; 1332nd mtg.: Argentina, paras. 31–33; 1340th mtg.: Jordan, para. 10; Uruguay, paras. 32 and 33.

⁵¹ S C, 18th yr., Suppl. for July–Sept., p. 64, S/5382.

as currently constituted, that would create a serious danger to world peace.⁵²

31. By letter⁵³ dated 30 August 1963 from the Chargé d'affaires of the Permanent Mission of the Congo (Brazzaville) on behalf of the delegations of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo, (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda and Upper Volta, the President of the Security Council was informed that the representatives of these delegations had unanimously decided to give their complete support to the terms of the letter of 2 August 1963 addressed to him by the representatives of Ghana, Guinea, Morocco and the United Arab Republic, and to the request for a meeting on the question.

32. At the 1064th meeting on 9 September 1963 the Security Council decided⁵⁴ to include the question in its agenda.

33. At the 1068th meeting on 12 September 1964 the representative of Ghana introduced⁵⁵ a draft resolution⁵⁶ co-sponsored by Morocco and the Philippines, by which the Security Council (in the second preambular paragraph) would recall General Assembly resolutions 1514 (XV) of 14 December 1960, 1747 (XVI) of 28 June 1962 and 1760 (XVII) of 31 October 1962, and the resolution⁵⁷ adopted on 20 June 1963 by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (of which the eighth preambular paragraph stated: "*Mindful* of the aggravation of the situation in Southern Rhodesia, which situation constitutes a threat to international peace and security").

Decision

At the 1069th meeting on 13 September 1963 the three-Power draft resolution failed of adoption⁵⁸ by a vote of 8 to 1, with 2 abstentions, the negative vote being that of a permanent member.

b. *Précis of relevant constitutional discussion*

34. In the course of the discussion, the representative of Ghana and a number of other repre-

⁵² By *note verbale* dated 28 August 1963 to the President of the Security Council, the representative of Ghana requested that "a memorandum in regard to Southern Rhodesia submitted to the Security Council on 2 August 1963, together with documents and notes supplementary thereto" be published as a Security Council document. In the memorandum it was stated that the transfer of the armed forces to Southern Rhodesia which the British Government was proposing would constitute a most serious threat to the security of the African continent and might well involve a threat to world peace (S/5403, paras. 16, 17, and Corr. 1 (mimeographed)).

⁵³ S C, 18th yr., Suppl. for July–Sept., p. 151, S/5409.

⁵⁴ S C, 18th yr., 1064th mtg., para. 9.

⁵⁵ S C, 18th yr., 1068th mtg., para. 4.

⁵⁶ S C, 18th yr., Suppl. for July–Sept., p. 164, S/5425/Rev. 1.

⁵⁷ For the text of the resolution, see G A (XVIII), Annexes, a. i. 23 Addendum, A/5446/Rev. 1, chap. III, para. 282.

⁵⁸ S C, 18th yr., 1069th mtg., para. 64.

sentatives maintained that a threat to international peace and security arose in connexion with the developments in Southern Rhodesia where the Government of the United Kingdom was ready to transfer to the settler minority government almost all the attributes of sovereignty, including its military force. The Security Council's attention was drawn to this dangerous situation in Southern Rhodesia which constituted a serious threat to peace and security not only to the neighbouring countries but also to the continent of Africa. The Council was asked to take preventive measures in the interest of international peace and security and to invite the United Kingdom Government not to transfer any new powers to the alien government in Southern Rhodesia.

35. The representative of the United Kingdom stated, before the adoption of the agenda, that Article 2 (7) clearly applied to the matter brought before the Council. The onus therefore lay on those countries which had brought the question before the Council to establish that a situation existed in Southern Rhodesia calling for action under Chapter VII of the Charter and thereby justifying the derogation from Article 2 (7) provided for in the last sentence of that paragraph. In subsequent interventions the representative contended that his Government, given the constitutional relationship between the Government of the United Kingdom and the Southern Rhodesian Government, was in no position to answer for the internal policies of the Government of Southern Rhodesia. These were matters essentially within the domestic jurisdiction of the Government of Southern Rhodesia and, as such, were beyond the competence of the Council. The contention that it was necessary to invoke the Council's authority was wrong in fact and wrong in terms of the Charter. Nothing said in the Council or put before it in the form of documentation had provided any basis for Security Council action under its responsibility for the maintenance of international peace and security. There was clearly no ground for action under Chapter VII of the Charter. No evidence had been produced that would justify consideration of the measures contemplated in Chapter VI of the Charter.⁵⁹

36. One representative stated that by voting for the relevant resolutions of the General Assembly and for the resolution of 20 June 1963 of the Special Committee he had indicated his view that the situation in Southern Rhodesia represented a threat to peace and security in the African continent.

37. The view was also expressed that while it was undeniable that the situation in Southern Rhodesia did not for the time being constitute an acute threat to international peace and security, there was no doubt that all the ingredients of a highly explosive situation were to be found there. One representative believed that transfer of military forces to Southern Rhodesia would not pose a threat to the Security of Southern Rhodesia's neighbours and of the African continent.⁶⁰

⁵⁹ For consideration of this case under Article 2 (7), see this *Supplement*.

⁶⁰ For texts of relevant statements, see S C, 18th yr., 1064th

*Decision of 20 November 1965*⁶¹

b. Précis of relevant constitutional discussion

38. In the course of the discussion one representative expressed the view that since a rebellion was involved in the situation in Southern Rhodesia, it seemed to set a limit to United Nations action. The issue was not between States and the conflict between the United Kingdom and Southern Rhodesia was therefore not of an international nature. The matter must be regarded as an internal problem of the United Kingdom and for this reason the Security Council should take no decision on it.⁶²

*Decision of 16 December 1966*⁶³

*b. Précis of relevant constitutional discussion*⁶⁴

39. During the discussion one representative stated that the United Kingdom had characterized the situation in Southern Rhodesia as a rebellion and hence as a domestic matter for the United Kingdom; however, at the same time, it had brought the subject before the Council under Chapter VII of the Charter, which deals with threats to the peace and breaches of the peace. These two aspects were not incompatible, but it was necessary to realize what was the basis of the Council's consideration of the matter. Concerning the request of the United Kingdom for a decision by the Security Council under Chapter VII, a clear warning that such a decision could be contemplated had been given in operative paragraph 1 of resolution 217 (1965). It was clear from that provision that it was not Southern Rhodesia which was threatening international peace and security; if the Council had taken that view it would have implied recognition of that Territory as a subject of international law. When the resolution spoke of a threat to the peace, it referred to the situation in Southern Rhodesia. That idea had also been at the basis of resolution 221 (1966) where the same specification, in the same words, was given in operative paragraph 1. The representative stated further that his delegation would support the United Kingdom proposals for selective mandatory sanctions under Chapter VII since the situation in Southern Rhodesia threatened international peace and security, although that fact was not clearly spelled out in the draft resolution.⁶⁵

mtg.: Ghana, paras. 18 and 21; United Kingdom, para. 6; 1065th mtg.: Mali, paras. 5, 10, 18, 19, 27, 29, 30 and 33; United Arab Republic, para. 63; 1066th mtg.: Tanganyika, paras. 106 and 115; Uganda, para. 91; United Kingdom, paras. 22, 23, 51, 61 and 76; 1068th mtg.: USSR, paras. 30, 31 and 37; 1069th mtg.: Brazil, para. 10; United Kingdom, para. 52; Venezuela, para. 17.

⁶¹ For the précis of proceedings connected with this decision, see paras. 83—94 below.

⁶² S C, 20th yr., 1258th mtg.: France, para. 11.

⁶³ For the précis of relevant proceedings, see paras. 18—24 above.

⁶⁴ See also paras. 25—28 above.

⁶⁵ S C, 21st yr., 1337th mtg. (mimeographed), Netherlands, pp. 38—41.

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

**1. THE QUESTION OF DETERMINATION UNDER ARTICLE 39 IN MATTERS IN WHICH IT WAS CONTENDED THAT "INTERNATIONAL" PEACE WAS NOT THREATENED OR BREACHED

**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

3. THE QUESTION OF DETERMINATION UNDER ARTICLE 39 IN MATTERS IN WHICH IT WAS CONTENDED THAT A SITUATION WAS "DISTURBING" RATHER THAN "THREATENING" INTERNATIONAL PEACE AND SECURITY

40. In the three instances dealt with under this heading, it was maintained that the term "disturbance of peace" meant a greater danger to the peace than a threat to it and that the absence of strife or of hostilities did not exclude the existence of a threat to the peace. It was contended on the other hand, that a disturbance of the peace did not amount to an actual threat to international peace and security.

Decisions of 7 August 1963, 4 December 1963 and 18 June 1964 in connexion with the question of race conflict in South Africa

Decision of 7 August 1963

a. *Précis of proceedings*

41. In a letter⁶⁶ dated 11 July 1963, the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta requested the President of the Security Council to convene a meeting of the Council to consider "the explosive situation existing in the Republic of South Africa, which constitutes a serious threat to international peace and security".

42. At the 1040th meeting, on 22 July 1963, the Security Council, decided⁶⁷ to include the letter in its agenda.

43. At the 1054th meeting on 6 August 1963, the representative of Ghana introduced a draft resolution⁶⁸ co-sponsored by Morocco and the Philippines which, after revision, included the statement "Being convinced that the situation in South Africa is seriously disturbing international peace and security", (eighth preambular para.).

Decision

At the 1056th meeting on 7 August the draft resolution, as amended,⁶⁹ was adopted⁷⁰ by 9 votes to none, with 2 abstentions, as resolution 181 (1963).

b. *Précis of relevant constitutional discussion*

44. In the course of the discussion it was maintained that the systematic policy of *apartheid* of the Government of the Republic of South Africa had been a serious danger to peace in Africa and to the security of the neighbouring countries. Furthermore, the military appropriations and the purchases of arms were far in excess of South Africa's defence requirements. These were obviously intended to be used for military objectives outside the territory of South Africa. This was also a threat to the peace and security of neighbouring African States. One representative pointed out that the Special Committee on the Policies of *apartheid* of the Government of the Republic of South Africa in its second interim report dated 17 July 1963,⁷¹ stated that any conflict in South Africa, precipitated by the racial policies of the Government, could not but have the most serious repercussions threatening the peace in Africa and the world.

45. One representative maintained that the application of sanctions under Chapter VII of the Charter in the situation before the Council would be bad law because the extreme measures provided for in that Chapter had never been intended and could not reasonably be interpreted to apply to situations of this kind. The founders of the United Nations had been careful to reserve the right of the Organization to employ mandatory coercive measures in situations where there had been an actuality of international violence or such a clear and present threat to the peace as to leave no reasonable alternative but resort to coercion. After the adoption of the draft resolution the representative said, referring to the eighth preambular paragraph of the resolution, that the sponsors, by changing their original formulation from "is seriously endangering international peace and security" to "is seriously disturbing international peace and security", had recognized that a number of Council members were not prepared to agree that the situation in South Africa was one which called for the kind of action appropriate in cases of threats to the peace or breaches of the peace under Chapter VII. This Chapter did not speak in terms of disturbances of the peace, even serious ones, but only of actual threats to the peace or breaches of the peace or acts of aggression. The resolution's preambular reference to disturbing the peace thus referred to those underlying elements of this serious situation which, if continued, were likely to endanger the maintenance of international peace and security. This was quite different from finding a fully matured

⁶⁹ Upon the request of the representative of the United States a separate vote was taken on operative para. 3 of the draft resolution relating to a boycott of South African goods and to an embargo of exports of strategic goods to South Africa, which was not adopted (S C, 18th yr., 1056th mtg., paras. 15-17).

⁷⁰ S C, 18th yr., 1056th mtg., para. 18.

⁷¹ G A (XVIII), Annexes, a. i. 30, A/5497 and Add. 1, annex. IV.

⁶⁶ S C, 18th yr., Suppl. for July-Sept., p. 11, S/5348.

⁶⁷ S C, 18th yr., 1040th mtg., para. 6.

⁶⁸ *Ibid.*, 1054th mtg., para. 62, S/5384.

threat to, or breach of, the peace in the current situation.

46. Another representative stated that the Council must distinguish between a situation which had engendered international friction and one which constituted a threat to peace. There was no evidence that the actions of the Government of South Africa, however repellant they might be to everyone, were actions which threatened the territorial integrity or political independence of any Member State. The offence committed by the South African Government was not that of aggression or of endangering international peace and security, in any sense of those terms anticipated by the drafters of the Charter in 1945. It was, on the contrary, an offence against human dignity. To act under Chapter VII of the Charter would be for the Security Council to exceed its powers under the Charter. After the adoption of the resolution the representative stated that the resolution and the measures it called upon all States to take should not be regarded as being a resolution within the meaning of Chapter VII.⁷²

Decision of 4 December 1963

a. Précis of proceedings

47. In a letter⁷³ dated 23 October 1963, the representatives of Algeria, Central African Republic, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, India, Indonesia, Ivory Coast, Liberia, Madagascar, Malaysia, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta requested the President of the Security Council to convene a meeting of the Council to consider the report⁷⁴ of the Secretary-General submitted in pursuance of the Council resolution of 7 August 1963. It was stated in the letter that the situation, which according to that resolution "was seriously disturbing international peace and security", had been further exacerbated by recent developments in South Africa.

48. At its 1073rd meeting on 27 November 1963 the Security Council decided⁷⁵ to include the letter in its agenda.

49. At the 1076th meeting on 3 December 1963, the representative of Norway introduced a draft resolution⁷⁶ in which it was stated, *inter alia*:

"*Being strengthened* in its conviction that the situation in South Africa is seriously disturbing international peace and security, . . .", [ninth preambular para.].

⁷² For texts of relevant statements see S C, 18th yr., 1050th mtg.: Tunisia, paras. 42 and 73; 1051st mtg.: Liberia, para. 73; Madagascar, para. 13; 1052nd mtg.: Ghana, para. 3; United States, para. 65; 1054th mtg.: USSR, para. 43; United Kingdom, paras. 84, 85, 89 and 90; 1056th mtg.: United Kingdom, paras. 36 and 37; United States, para. 26.

⁷³ S C, 18th yr., Suppl. for Oct.—Dec., p. 41, S/5444 and Add. 1.

⁷⁴ *Ibid.*, p. 7, S/5438 and Add. 1—6.

⁷⁵ S C, 18th yr., 1073rd mtg., para. 7.

⁷⁶ *Ibid.*, 1076th mtg., paras. 59 and 60, S/5471; same text as resolution 182 (1963).

Decision

At the 1078th meeting, on 4 December 1963, the draft resolution submitted by Norway was adopted unanimously⁷⁷ as resolution 182 (1963).

b. Précis of relevant constitutional discussion

50. During the discussion one representative maintained that the practice of the policy of *apartheid* by the Government of South Africa constituted a serious threat to international peace and security. The wording of the eighth preambular paragraph of resolution 181 (1963) of 7 August 1963 stating that "the situation in South Africa is seriously disturbing international peace and security" was an indication that, although it was not mentioned in the Charter, a disturbance of the peace went one step further than a threat to the peace and fell logically between a threat and a breach of the peace. Another representative observed that a threat to the peace need not always take the form of armed conflict, but once a given situation contained all the ingredients of a strife, it could be construed as a threat to international peace. It was also stated that in the face of the failure to persuade the Government of South Africa to change its policies, the threat to the peace on the African continent and, therefore to international peace and security, remained unchanged. The view was further expressed that the members of the Security Council should not conclude that a threat to the peace did not exist because of the actual absence of an outbreak of hostilities. The situation was potentially dangerous and members of the Council would be negligent in their duty to safeguard international peace and security, if they deliberately ignored the dangers inherent in such a situation.

51. Two representatives stated that the situation in South Africa did not constitute a threat to the peace, breach of the peace or an act of aggression and therefore did not fall within the provisions of Chapter VII of the Charter.⁷⁸

Decision of 18 June 1964

a. Précis of proceedings

52. In a letter⁷⁹ of 27 April 1964, the representatives of Afghanistan, Algeria, Burma, Burundi, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mongolia, Morocco, Nepal, Niger, Nigeria, Pakistan, Philippines, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syria, Tanganyika, Thailand, Togo, Tunisia, Turkey, Uganda,

⁷⁷ S C, 18th yr., 1078th mtg., para. 137.

⁷⁸ For texts of relevant statements, see S C, 18th yr., 1073rd mtg.: Tunisia, paras. 70 and 71; 1074th mtg.: Ghana, para. 35; Sierra Leone, para. 60; 1075th mtg.: Madagascar, para. 50; 1076th mtg.: Philippines, para. 11; 1078th mtg.: United Kingdom, para. 9; United States, para. 65.

⁷⁹ S C, 19th yr., Suppl. for April—June, p. 96, S/5674.

United Arab Republic, Upper Volta, Yemen and Zanzibar requested the President of the Security Council to convene a meeting of the Council to resume consideration of the serious situation in South Africa which, according to the Security Council resolution 181 (1963) of 7 August 1963, was "seriously disturbing international peace and security" and which had deteriorated still further.

53. At the 1127th meeting, on 8 June 1964, the Security Council decided⁸⁰ to include the letter in its agenda.

54. At the 1133rd meeting on 16 June 1964, the representative of Norway introduced a draft resolution⁸¹ sponsored also by Bolivia, stating:

"The Security Council,

"...

"Recalling the resolutions of the Security Council of 7 August 1963 (S/5386), 4 December 1963 (S/5471) and 9 June 1964 (S/5761) (fourth preambular para.)

"Convinced that the situation in South Africa is continuing seriously to disturb international peace and security, (fifth preambular para.)

"...".

Decision

At the 1135th meeting on 18 June 1964 the draft resolution submitted by Bolivia and Norway was adopted⁸² by 8 votes to none, with 3 abstentions as resolution 191 (1964).

b. Précis of relevant constitutional discussion

55. During the discussion, before the submission of the two-Power draft resolution, one representative stated that under the terms of the Charter the Security Council was empowered to make a decision authorizing mandatory sanctions only when it had first declared the situation a "threat to the peace", a "breach of the peace", or an "act of aggression", according to the wording of Article 39. Not until then could the Security Council consider the item under Chapter VII. As yet, however, the situation had not caused an actual breach of the peace, nor was there any act of aggression to be considered. Thus, the peaceful solution to the problem of inducing the Government of South Africa to abandon its policy of *apartheid* depended upon the Council finding that the situation constituted a "threat to the peace". The resolutions of the Council, 181 (1963) of 7 August 1963 and 182 (1963) of 4 December 1963, instead of declaring the situation a threat that had been "seriously endangering international peace and security", had declared it to be a situation that was "seriously disturbing international peace and security". The words used, although denoting a graver situation than the words "seriously endangering international peace and security", had not enabled the Security Council to decide on peace-keeping action under Articles 41 and 42. Recent developments in South Africa could

only strengthen the conviction that the situation in South Africa had been seriously disturbing international peace and security. But how far could a situation unanimously acknowledged as seriously disturbing the peace continue to deteriorate further before it constituted a sufficient threat to the peace, within the meaning of Article 39, to warrant Council action? The representative pointed out further that in the previous debates in the Security Council on the question of race conflict in South Africa it was maintained, for example, that the phrase "disturbing the peace" referred to the underlying elements of a serious situation which, if continued, would be likely to endanger international peace and security. Yet in the next breath it was also argued that the phrase "disturbing the peace" was quite different from "a fully matured threat to or breach of the peace". Thus, it seemed that coercive measures could be invoked only when the threat was so imminent as to require an emergency meeting of the Council in order to try to prevent immediately threatening bloodshed. In the case of South Africa what possible effective peaceful action could be taken under such conditions? Moreover, the wording of Article 39 clearly indicated that the terms of the Charter envisaged a definite time lag between a "threat" and a "breach", or else both words would not have been included. This being so, Article 39 should, at least, be interpreted as indicating that the first duty of the Council was to safeguard the peace, to prevent the occurrence of an actual breach, rather than to restore the peace after a breach had taken place.⁸³

4. THE QUESTION WHETHER AN EXISTING SITUATION CONSTITUTES A THREAT TO THE PEACE, BREACH OF THE PEACE, OR ACT OF AGGRESSION

56. In eight instances dealt with below, in connexion with the situation in Angola (one instance), the situation in Territories in Africa under Portuguese administration (two instances), the question of race conflict in South Africa (two instances) and the situation in Southern Rhodesia (three instances), the question was discussed whether the actual situation fell within the meaning of the provisions of Article 39.

Decision of 15 March 1961 in connexion with the situation in Angola

a. Précis of proceedings

57. In a letter dated 20 February 1961, the representative of Liberia requested the President of the Security Council to convene a meeting of the Council to deal with the crisis in Angola; his Government, the letter stated, felt that immediate action should be taken by the Security Council to prevent further deterioration and abuse of human rights and privileges in Angola.⁸⁴

58. At the 944th meeting, on 10 March 1961,

⁸⁰ S C, 19th yr., 1127th mtg., para. 2.

⁸¹ *Ibid.*, 1133rd mtg., para. 3.

⁸² *Ibid.*, 1135th mtg., para. 43.

⁸³ *Ibid.*, 1129th mtg.: Indonesia, paras. 20-22, 25 and 26.

⁸⁴ S C, 16th yr., Suppl. for. Jan.-March, p. 145, S/4738.

the Council decided⁸⁵ to include the letter in its agenda.

59. At the 945th meeting on 14 March 1961 the representative of Liberia submitted a draft resolution,⁸⁶ co-sponsored by Ceylon and the United Arab Republic, according to which the Security Council would call upon the Government of Portugal to consider urgently the introduction of reforms in Angola for the purpose of implementing General Assembly resolution 1514 (XV) of 14 December 1960, with due respect for human rights and fundamental freedoms (operative paragraph 1) and would appoint a sub-committee of inquiry (operative paragraph 2).

Decision

At the 946th meeting on 15 March 1961, the three-Power draft resolution was not adopted,⁸⁷ having failed, with 5 votes to none and 6 abstentions, to obtain the affirmative votes of seven members.

b. *Précis of relevant constitutional discussion*

60. At the 944th meeting on 10 March 1961, the representative of Portugal said that under Article 24 (2) the competence of the Security Council was specifically limited to matters referred to in Chapters VI, VII, VIII and XII of the Charter. The action recommended in Chapter VII applied to cases foreseen in Article 39, that is to say, to threats to the peace, breaches of the peace or acts of aggression. Thus, the application of Chapter VII would have required the existence of a breach of international peace in the form of attempted aggression or aggression against the territorial integrity or political independence of a State or the threat of the use of force against such territorial integrity or independence. No such allegation was made against Portugal, nor could it have been made. Therefore, the case was obviously outside the scope of Chapter VII. Another representative stated that the powers of the Security Council were governed by Article 24 and by Chapters VI and VII of the Charter. These Chapters defined two spheres of action: first, any dispute, or any situation which might lead to international friction or might give rise to a dispute under Chapter VI; and secondly, threats to the peace, breaches of the peace, and acts of aggression as mentioned in Chapter VII. At their present stage the events in Angola did not seem to constitute an international dispute or a situation which might lead to a breach of international peace and security, or to represent an aggression or an actual threat to peace and security. It was also pointed out that the Security Council was dealing with a question of human rights and fundamental freedoms and the principle of self-determination of peoples and was not faced with anything likely to endanger international peace and security.

61. It was stated on the other hand that the violations by Portugal of the terms of the Declaration on the Granting of Independence to Colonial Coun-

tries and Peoples constituted definitely a threat to international peace and security and the Council should assume its responsibilities in the matter. It was also pointed out that in Angola a colonial war was beginning. As a result of the arbitrary division and subdivision of the continent of Africa without regard to tribal affiliation of ethnic groups, the Security Council was faced with a situation in Angola which was a threat to international peace and security, since it could not be expected that independent African States would supinely see their own kin suffer. This fact alone was sufficient to warrant an action by the Security Council in averting a crisis which might endanger world peace and order in that part of Africa.⁸⁸

Decisions of 31 July 1963 and 23 November 1965 in connexion with the situation in Territories in Africa under Portuguese administration

Decision of 31 July 1963

a. *Précis of proceedings*

62. In a letter⁸⁹ dated 11 July 1963, the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta requested the President of the Security Council to convene a meeting of the Council to consider the situation in the territories under Portuguese administration which constituted "a definite breach of peace and security in the African continent as well as a threat to international peace and security".

63. At the 1040th meeting, on 22 July 1963, the Security Council decided to include the letter in its agenda.⁹⁰

64. At the 1044th meeting on 26 July 1963, the representative of Ghana introduced a draft resolution⁹¹ jointly with Morocco and the Philippines, in which it was provided that:

"*The Security Council,*

"...

"*Convinced* that the situation prevailing in the Territories under Portuguese Administration in Africa is a threat to international peace and security, [fourth preambular para.]

"...

"4. *Determines* that the situation in the Territories under Portuguese Administration is seriously endangering peace and security in Africa;

"..."

⁸⁸ For texts of relevant statements, see S C, 16th yr., 944th mtg.: Portugal, paras. 40, 41 and 44; 945th mtg.: Ghana, paras. 79 and 80; Liberia, paras. 110-113; 946th mtg.: Chile, para. 71; Ecuador, para. 65.

⁸⁹ S C, 18th yr., Suppl. for July-Sept., p. 6, S/5347.

⁹⁰ S C, 18th yr., 1040th mtg., para. 6.

⁹¹ *Ibid.*, 1044th mtg., para. 4, S/5372.

⁸⁵ S C, 16th yr., 944th mtg., para. 8.

⁸⁶ *Ibid.*, 945th mtg., para. 107, S/4769.

⁸⁷ S C, 16th yr., 946th mtg., para. 165.

65. At the 1048th meeting, on 30 July 1963, the representative of Venezuela submitted amendments⁹² to the three-Power draft resolution, proposing, *inter alia*, to delete the fourth preambular paragraph and to replace in the fourth operative paragraph the words "is seriously endangering" by the words "is seriously disturbing".

66. At the 1049th meeting on 31 July 1963 the representative of Ghana informed⁹³ the Security Council that the sponsors accepted the amendments submitted by Venezuela.

Decision

At the 1049th meeting, on 31 July 1963, the three-Power draft resolution, as amended, was adopted⁹⁴ by 8 votes to none, with 3 abstentions, as resolution 180 (1963).

b. Précis of relevant constitutional discussion

67. In the course of the discussion it was maintained that Portugal's reluctance to initiate the process of decolonization in its territories was causing definite unrest in Africa. Whether this unrest was referred to as a situation which might lead to international friction in the terms of Article 34 of the Charter, or as a threat to the peace or breach of the peace within the meaning of Article 39 of the Charter, it was clear that in either case the Security Council was competent to consider the matter. It was also stated that the situation in the Portuguese colonies in Africa had rapidly deteriorated and threatened international peace and security. Portugal's refusal over a period of two years to recognize the decisions of the General Assembly which noted that the situation constituted a threat to international peace and security made it necessary to consider the application of Article 39 in order to adopt appropriate measures including sanctions, to induce Portugal to carry out the requests expressed by the General Assembly in its resolutions 1807 (XVII) and 1819 (XVII).

68. In reply to a contention that the draft resolution used the language of Chapter VII, one representative said that when the specific provisions of Articles 39, 40 and 41 were considered in connexion with the draft resolution it was clear that it was a complete departure from Chapter VII, since the measures defined in Article 41 were not included in it.

69. One representative contended that the use or threat of force for the purpose of bringing to an end a colonial régime was not justified under the Charter. If the continuation of the current situation in Portuguese territories was likely to endanger the maintenance of international peace and security, there had not yet been an imminent threat to the peace and still less had a stage been reached at which an actual breach of the peace had occurred. However, unless the international friction engendered by that situation could be eliminated, at some later date the world might be presented with a threat to the

peace. To claim that the situation was actually threatening international peace seemed to be an exaggeration; such a claim seemed to confuse the existence of circumstances which might endanger the maintenance of international peace and security with a situation in which a state of hostility between nations was imminent and in which there was, therefore, an actual threat to the peace. In considering whether any given question before the Security Council was one that should be treated under Chapter VI or Chapter VII of the Charter, there were several things which should be borne in mind. The representative could not accept the proposition that if the means provided by the Charter did not seem to be having the desired effect, resort to force or threat of force would therefore become permissible. The Council could not urge or even contemplate the use of non-peaceful means save in the specific circumstances permitted and contemplated in the Charter.

70. The representative went on to express concern over the argument that if the continued existence of the situation in the Portuguese territories did not amount as yet to a threat to the peace within the meaning of the Charter, it would not be difficult to create such a threat by taking direct action and instigating fighting. Such arguments were clearly contrary to the provisions and the spirit of the Charter.⁹⁵

Decision of 23 November 1965

a. Précis of proceedings

71. In a letter⁹⁶ dated 28 July 1965 the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Dahomey, Democratic Republic of the Congo, Ethiopia, Ghana, Guinea, Ivory Coast, Kenya, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Morocco, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta and Zambia requested the President of the Security Council to convene a meeting of the Council to consider once again the situation in Territories under Portuguese administration. In the letter it was stated that the obstinacy of Portugal in its desire to perpetuate its domination over its colonial territories constituted a serious threat to peace and security.

72. In a letter⁹⁷ dated 15 October 1965, the representatives of Liberia, Madagascar, Sierra Leone and Tunisia requested the President of the Security Council to call an urgent meeting of the Council to discuss the question of African territories occupied by Portugal and the question of *apartheid* in South Africa.

73. At the 1250th meeting on 4 November 1965

⁹⁵ For texts of relevant statements see S C, 18th yr., 1040th mtg.: Liberia, para. 85; Tunisia, para. 110; 1041st mtg.: Sierra Leone, para. 26; USSR, paras. 74 and 75; 1044th mtg.: Venezuela, para. 44; 1045th mtg.: United Kingdom, paras. 30-38; 1047th mtg.: Ghana, paras. 37 and 38.

⁹⁶ S C, 20th yr., Suppl. for July-Sept., p. 147, S/6585.

⁹⁷ S C, 20th yr., Suppl. for Oct.-Dec., p. 197, S/6791.

⁹² *Ibid.*, 1048th mtg., para. 21, S/5379.

⁹³ *Ibid.*, 1049th mtg., para. 5.

⁹⁴ *Ibid.*, para. 17.

the Security Council decided⁹⁸ to include both letters in its agenda.

74. At the 1266th meeting on 22 November 1965 the representative of Tunisia introduced⁹⁹ a draft resolution¹⁰⁰ co-sponsored by Ivory Coast, Jordan, Liberia, Madagascar, Malaysia and Sierra Leone which contained the statement:

"1. *affirms* that the situation resulting from the policies of Portugal, both as regards the African population of its colonies and the neighbouring States, endangers international peace and security;"

75. At the 1268th meeting on 23 November 1965 the representative of Uruguay proposed¹⁰¹ an amendment to operative paragraph 1 of the draft resolution substituting the words "seriously disturbs" for the word "endangers".

Decision

At the 1268th meeting on 23 November 1965 the amendment submitted by Uruguay was adopted¹⁰² by 10 votes to none, with 1 abstention.

The draft resolution submitted by Ivory Coast, Jordan, Liberia, Madagascar, Malaysia, Sierra Leone and Tunisia, as amended, was adopted¹⁰³ by 7 votes to none, with 4 abstentions, as resolution 218 (1965).

b. Précis of relevant constitutional discussion

76. During the discussion one representative stated that the Council should pronounce in unambiguous terms that Portugal's behaviour in Africa was contrary to the Charter of the United Nations and constituted a threat to international peace within the meaning of Chapter VII of the Charter.

77. The representative of Portugal, referring to operative paragraph 1 of the draft resolution before the Council, maintained that Portugal's internal policy was not directed against any outsider. If outsiders were seeking to force a change, it did not follow that it was Portugal that endangered international peace and security. He protested against the allegation contained in operative paragraph 1 of the draft resolution and requested that the aggressive activities directed against Portugal from some neighbouring States be investigated.

78. The representative of Uruguay stated that if operative paragraph 1 of the draft resolution implied the application of Chapter VII, he would not be able to vote in favour of it, since it did not appear to his Government that non-permanent members of the Council could impose a declaration on the application of Chapter VII of the Charter. He understood that three of the sponsors of the draft resolution, the Ivory Coast, Jordan and Malaysia did not interpret operative paragraph 1 as implying the application of Chapter VII.¹⁰⁴

⁹⁸ S C, 20th yr., 1250th mtg., para. 7.

⁹⁹ *Ibid.*, 1266th mtg., para. 15.

¹⁰⁰ S C, 20th yr., Suppl. for Oct.—Dec., p. 382, S/6953/Rev. 1 replacing S/6953.

¹⁰¹ S C, 20th yr., 1268th mtg., para. 3.

¹⁰² *Ibid.*, para. 15.

¹⁰³ *Ibid.*, para. 30.

¹⁰⁴ For texts of relevant statements, see S C, 20th yr., 1255th

Decisions of 7 August 1963 and 18 June 1964 in connexion with the question of race conflict in South Africa

Decision of 7 August 1963¹⁰⁵

b. Précis of relevant constitutional discussion

79. In the course of the discussion one representative pointed out that in the situation before the Council a virtual breach of the peace already existed. For this reason the Security Council should apply measures laid down in the Charter for cases where a State's actions constituted a source of tension and a serious threat to international peace and security.

80. In submitting the joint draft resolution the representative of Ghana stated that its preambular paragraph 8 referred the Council to its resolution of 1 April 1960¹⁰⁶ in which the Council had stated that the situation in South Africa was such that if it had continued, it would endanger international peace and security.

81. It was stated, on the other hand, that there was no evidence before the Council that the actions of the Government of South Africa were actions which threatened the territorial integrity or political independence of any Member State. In those circumstances for the Council to move under Chapter VII would be to exceed its powers under the Charter. It was also pointed out that the Security Council was not competent to force the Government of South Africa to change its policies by the application of sanctions or other measures which would be contrary to the Charter in this instance.¹⁰⁷

Decision of 18 June 1964¹⁰⁸

b. Précis of relevant constitutional discussion

82. In the course of the discussion it was maintained that there was no question of a breach of the peace or of an act of aggression involved in the policies of *apartheid* in South Africa and no such threat to the peace existed currently. The failure of the Government of South Africa to comply with urgent requests of the Council to desist from the policies of *apartheid* did not of itself create the situation in which a determination under Article 39 could be made, since such policies did not directly endanger the maintenance of international peace and security. There were no elements discernible which would call for the kind of action appropriate in cases of threats to the peace or breaches of the peace under Chapter VII of the Charter. One representative, however, stated that the Council must determine that there was a threat to international peace and security in

mtg.: United Republic of Tanzania, para. 83; 1266th mtg.: Portugal, paras. 27 and 29; Tunisia, para. 15; 1267th mtg.: Uruguay, paras. 70 and 71.

¹⁰⁵ For the précis of proceedings connected with this decision, see paras. 41—43 above.

¹⁰⁶ S C, resolution 134 (1960) [S/4300].

¹⁰⁷ For texts of relevant statements see S C, 18th yr., 1051st mtg.: Madagascar, paras. 13 and 25; 1054th mtg.: France para. 105; Ghana, para. 66; United Kingdom, paras. 85 and 90.

¹⁰⁸ For the précis of the proceedings connected with this decision, see paras. 52—54 above.

accordance with Article 39 of the Charter, in order to decide upon an action appropriate in cases of threats to the peace or breaches of the peace under Chapter VII of the Charter.¹⁰⁹

Decisions of 20 November 1965, 9 April 1966 and 23 May 1966 in connexion with the situation in Southern Rhodesia

Decision of 20 November 1965

a. *Précis of proceedings*

83. By letter¹¹⁰ dated 10 November 1965 the President of the General Assembly transmitted to the President of the Security Council the texts of General Assembly resolutions 2012 (XX) and 2022 (XX), on the question of Southern Rhodesia which the Assembly had adopted at the 1357th and 1368th plenary meetings on 12 October and 5 November 1965, respectively.

84. By letter¹¹¹ dated 11 November 1965 the representative of the United Kingdom informed the President of the Security Council that the authorities in Rhodesia had made an announcement that day purporting, illegally and unilaterally, to declare independence for Rhodesia and requested the convening of an urgent meeting of the Council.

85. In a letter¹¹² dated 11 November 1965 the representatives of Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Kenya, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta and Zambia requested the President of the Security Council to convene an emergency meeting of the Council to consider the serious situation created in Southern Rhodesia as a result of the unilateral declaration of the independence of the Territory by the white minority Government. This declaration had created a threat to international peace and security.

86. In a letter¹¹³ dated 11 November 1965 the representatives of Afghanistan, Ceylon, Cyprus, Ghana, India, Iran, Iraq, Jordan, Kuwait, Libya, Madagascar, Mauritania, Morocco, Pakistan, Philippines, Sierra Leone, Somalia, Sudan, Syria, Thailand, Turkey and Uganda requested the President of the Security Council to convene an urgent meeting to consider the grave situation in Rhodesia arising out of the unilateral declaration of independence of the white minority Government of that Territory. This declaration aggravated an already explosive situation and threatened international peace and security.

¹⁰⁹ For texts of relevant statements, see S C, 19th yr., 1131st mtg.: United Kingdom, paras. 89 and 91; 1132nd mtg.: President (Ivory Coast), para. 17.

¹¹⁰ S C, 20th yr., Suppl. for Oct.—Dec., p. 355, S/6897.

¹¹¹ *Ibid.*, p. 354, S/6896.

¹¹² *Ibid.*, p. 357, S/6902.

¹¹³ *Ibid.*, p. 358, S/6903.

87. By letter¹¹⁴ dated 11 November 1965 the President of the General Assembly transmitted to the President of the Security Council the text of General Assembly resolution 2024 (XX), on Southern Rhodesia, adopted at the 1375th plenary meeting on 11 November 1965.

88. At the 1257th meeting on 12 November 1965 the Security Council decided¹¹⁵ to include the five letters in its agenda.

89. At the 1258th meeting on 12 November 1965 the representative of Jordan submitted the following draft resolution:¹¹⁶

"The Security Council

"1. Decides to condemn the unilateral declaration of independence made by a racist minority in Southern Rhodesia;

"2. Decides to call upon all States not to recognize this illegal racist minority régime in Southern Rhodesia and to refrain from rendering any assistance to the illegal régime."

Decision

At the 1258th meeting on 12 November 1965 the draft resolution submitted by Jordan was adopted¹¹⁷ by 10 votes to none, with 1 abstention, as resolution 216 (1965).

90. At the 1259th meeting on 13 November 1965 the representative of the United Kingdom submitted a draft resolution¹¹⁸ containing the clauses:

"The Security Council,

"Gravely concerned by the rebellious actions of the former régime in Southern Rhodesia in purporting to assume independence by illegal and unconstitutional means, [first preambular para.];

"Determining that the continuance of the resulting situation is likely to endanger the maintenance of international peace and security, [second preambular para.],

"..."

91. At the same meeting the representative of Ivory Coast submitted, on behalf of the African delegations, a draft resolution¹¹⁹ declaring:

"The Security Council,

"..."

"Bearing in mind that the declaration of independence in Southern Rhodesia by the racist minority settler régime constitutes a rebellion against the United Kingdom Government, [second preambular para.],

"Convinced that this declaration of independence constitutes a threat to international peace and security, [third preambular para.],

"..."

"1. Determines that the situation resulting from

¹¹⁴ *Ibid.*, p. 359, S/6908.

¹¹⁵ S C, 20th yr., 1257th mtg., paras. 1—5.

¹¹⁶ *Ibid.*, 1258th mtg., para. 24.

¹¹⁷ S C, 20th yr., 1258th mtg., para. 29.

¹¹⁸ *Ibid.* 1259th mtg., para. 31, S/6928.

¹¹⁹ *Ibid.*, para. 70, S/6929.

this declaration of independence constitutes a threat to international peace and security;

“...”

92. At the 1264th meeting on 19 November 1965 the representative of Uruguay submitted a draft resolution¹²⁰ sponsored jointly with Bolivia, whereby, it stated:

“*The Security Council,*

“...”

“1. *Determines* that the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia is of grave concern, that the Government of the United Kingdom of Great Britain and Northern Ireland should put an end to it and that its continuance in time constitutes a threat to international peace and security;

“...”

93. At the same meeting the Council decided that the draft resolution submitted by Bolivia and Uruguay be considered as a matter of priority.¹²¹

94. At the 1265th meeting on 20 November 1965 the President (Bolivia) informed¹²² the Council that operative paragraph 1 of the joint draft resolution submitted by Bolivia and Uruguay had been amended to read as follows:

“*Determines* that the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia is extremely grave, that the United Kingdom Government should put an end to it and that its continuance in time constitutes a threat to international peace and security.”

Decision

At the 1265th meeting on 20 November 1965 the joint draft resolution submitted by Bolivia and Uruguay, as amended, was adopted¹²³ by 10 votes to none, with 1 abstention, as resolution 217 (1965). No action was taken on the draft resolutions submitted by the United Kingdom and Ivory Coast.

b. Précis of relevant constitutional discussion

95. In his introductory statement the representative of the United Kingdom said that an attempt to establish in Africa an illegal régime based on minority rule was a matter of world concern. In his subsequent statement he further said that the events in Southern Rhodesia could at that stage only be described as creating “a situation the continuance of which could be a menace to international peace and security”. It had not yet developed to a point where there was an actual breach of international peace, where there was fighting between nations. It was the intention of the United Kingdom Government to see to it that the rebellion was so dealt with that such a situation did not arise.

¹²⁰ S C, 20th yr., Suppl. for Oct.—Dec., p. 300, S/6955.

¹²¹ S C, 20th yr., 1264th mtg., para. 3.

¹²² *Ibid.*, 1265th mtg., para. 3.

¹²³ *Ibid.*, para. 4.

96. The representatives who supported the draft resolution submitted by Ivory Coast maintained that the unilateral declaration of independence by minority authorities in Southern Rhodesia precipitated a serious crisis constituting, in the words of the Charter, a threat to international peace and security. It was pointed out that the General Assembly in its resolution 2022 (XX) regarded the situation in Southern Rhodesia as one which “threatens international peace and security”. For this reason the Security Council must determine the situation as such and should therefore consider the possibility of taking an appropriate action under Chapter VII of the Charter, in order to prevent any deterioration of the situation, to reverse the process set in motion by the settler authorities and to safeguard the legal rights of the Zimbabwe people to independence and freedom. The situation in Southern Rhodesia was one of the eventualities for which Chapter VII was drafted and all elements were present in it for the Council’s intervention under that Chapter. It was also stated that the Government of the United Kingdom had requested the Security Council to endorse economic measures which it was ready to apply. Consequently, no action of the Council could be based on Chapters VI or XI of the Charter and the Council must consider the matter only under Chapter VII of the Charter. It must conduct its discussion in the light of that Chapter and must apply Article 39 and the other Articles of that Chapter. It was further stated that what had happened in Southern Rhodesia was a seizure of power. This could hardly be described as a situation which could be resolved by negotiations. The situation in Southern Rhodesia was entirely outside the scope of the provisions of Chapter VI of the Charter. What had taken place was a threat to the peace and it could be even claimed that an act of aggression within the meaning of Article 39 had been committed. By bringing the matter to the Security Council, the United Kingdom could only be regarded as asking for a determination by the Council that a threat to peace existed as the result of an act of aggression that had taken place. By the terms of Article 39 the Security Council thereupon became obligated to decide what measures under Articles 41 and 42 should be taken.

97. One representative stated that the Council should find that the situation in Southern Rhodesia constituted a threat to international peace and security since the submission of the matter had been made, and could have only been made, under the provisions of Chapter VII of the Charter. Before the Security Council could properly call upon other Member States to support measures of the kind contemplated by the United Kingdom, it was essential that it should find that a breach of international peace and security or a threat to international peace and security existed in the Southern Rhodesian situation.

98. Another representative said that in order to invoke Chapter VII of the Charter the Council had, under Article 39, to determine first whether or not there was a breach of the peace within the meaning of the Charter. The determination of the situation as falling within the meaning of Article 39 was

not a question of legal interpretation, but a question of evidence of proof, or of fact. There were uncontroversial facts concerning the situation in Southern Rhodesia, the most important of which was that an attempt had been made by Ian Smith's group to alter the constitutional arrangement by force. As a result of this an "explosive situation" had been created in Southern Rhodesia, in the words of General Assembly resolution 2024 (XX). These facts justified the finding by the Council that the situation constituted a threat to the peace and that the Council was called upon to take legitimate measures to check this explosive situation. The Council was expected, therefore, to determine that a breach of peace existed within the meaning of the Charter. After that the Council might request the United Kingdom to take all adequate and appropriate measures to maintain peace.

99. The representative of Uruguay pointed out that the draft resolution submitted by Bolivia and Uruguay did not take any position on the applications of Chapter VI or VII;¹²⁴ though the situation the Council was considering called for the application of Chapter VII, the two Governments would not be in a position to support a draft calling for the use of armed force at that time.

Decision of 9 April 1966

a. Précis of proceedings

100. By a letter¹²⁵ dated 7 April 1966 the representative of the United Kingdom requested the President of the Security Council to convene an emergency meeting of the Council at which the United Kingdom Government would make proposals to meet the situation which arose from the arrival in Beira of a tanker which might result in substantial supplies of oil reaching Southern Rhodesia in contravention of the oil embargo imposed by the Government of the United Kingdom in conformity with the decision of the Security Council in its resolution 217 (1965) of 20 November 1965. It was further stated in the letter that the approach of a second tanker to Beira believed to be carrying oil destined for Rhodesia made the situation one of extreme urgency.

101. At the 1276th meeting on 9 April 1966 the Security Council decided¹²⁶ to include the letter in its agenda.

¹²⁴ For texts of relevant statements, see S C, 20th yr., 1257th mtg.: Ghana, paras. 40 and 61; United Kingdom, para. 21; 1258th mtg.: India, paras. 72 and 74; Nigeria, para. 88; Mali, paras. 32, 41, 42, 48 and 52; USSR, paras. 132 and 133; 1259th mtg.: Algeria, para. 40; Ivory Coast, paras. 47-50, 65 and 69; Pakistan, para. 12; Sierra Leone, para. 88; 1260th mtg.: Ethiopia, paras. 19 and 21; Guinea, para. 121; Malaysia, paras. 92, 96 and 102; United Republic of Tanzania, paras. 42, 57 and 58; Zambia, paras. 67, 69 and 77; 1261st mtg.: Uruguay, para. 45; 1262nd mtg.: Jamaica, paras. 18, 20, 22, 23 and 34; 1263rd mtg.: Somalia, paras. 44 and 55; United Kingdom, para. 8; 1264th mtg.: Ghana, para. 32; Jordan, paras. 13-15.

¹²⁵ S C, 21st yr., 1276th mtg., para. 10, S/7235.

¹²⁶ *Ibid.*, preceding para. 7.

102. At the same meeting the representative of the United Kingdom introduced a draft resolution¹²⁷ which, in its revised form, contained the following clauses:

"The Security Council,

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

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

"...

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

"..."

103. At the same meeting, the representative of Uganda introduced amendments,¹²⁸ co-sponsored by Mali and Nigeria, to the United Kingdom revised draft resolution which read:

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

"Noting that economic measures have failed to produce the desired results,

"Deeply concerned at the reports that oil has been reaching Rhodesia,".

Decisions

At the 1277th meeting, on 9 April 1966, the amendments submitted by Mali, Nigeria and Uganda were voted on separately, but were not adopted.¹²⁹ The draft resolution submitted by the United Kingdom was adopted¹³⁰ by 10 votes to none, with 5 abstentions, as resolution 221 (1966).

¹²⁷ *Ibid.*, para. 12, S/7236/Rev. 1, same text as resolution 221 (1966).

¹²⁸ S C, 21st yr., 1276th mtg., paras. 44 and 49-56. See also *ibid.*, Suppl. for April-June, p. 32, S/7243.

¹²⁹ S C, 21st yr., 1277th mtg., paras. 174-178.

¹³⁰ *Ibid.*, para 179. By letter dated 27 April 1966 (S C, 21st yr., Suppl. for April-June, p. 59, S/7271) addressed to the Secretary-General, the Minister for Foreign Affairs of Portugal acknowledged the receipt of the text of resolution 221 (1966) and communicated Portugal's reservations towards it. In the communication it was stated that the preambular part of the resolution did not establish any facts and set forth only assumptions. The operative part contained clauses which would have meaning only if based on facts and not on hypotheses. This inconsistency did not appear to constitute a sound basis for a resolution which had such serious implications and was said to have been submitted under Chapter VII of the Charter. The text of the resolution did not mention a single event that had already occurred and which was deemed to constitute a genuine threat to international security or breach of the peace. Whereas Security Council resolutions 216 (1965) and 217 (1965) of 12 and 20 November 1965, respectively, described as a threat to peace the illegal situation alleged to exist in

b. *Précis of relevant constitutional discussion*

104. In the course of the discussion one representative maintained that the Council should consider the matter under Chapter VII of the Charter. To invoke this Chapter the Council had, under Article 39, to determine whether or not there was a breach of the peace within the meaning of the Charter. This was a question of fact. The draft resolution submitted by the United Kingdom, after mentioning the oil tanker which had arrived at Beira and the approach of another tanker, stated in operative paragraph 1 that the resulting situation constituted a threat to the peace. Thus the United Kingdom brought the matter within the scope of Chapter VII, but had not gone far enough. The threat to peace did not result from an oil tanker having arrived at Beira or from the approach of a second tanker. These were only manifestations of the main problem, which itself constituted a threat to peace: for this reason the Council must adopt wider measures, as provided for in Chapter VII of the Charter.

105. It was maintained, on the other hand, that the Territory of Southern Rhodesia was currently the responsibility of the United Kingdom alone. Since the crisis arising from the situation in Southern Rhodesia was an internal matter of the United Kingdom it was incumbent upon the Government of the United Kingdom to take all the action appropriate in the circumstances. The United Kingdom was obviously not satisfied with the co-operation of certain States. This was an international problem. It would, however, be artificial, and therefore without foundation, to invoke in this connexion the provisions of Chapter VII. Thus, currently, the only genuinely international problem did not constitute a threat to peace, while the important question of Southern Rhodesia, its deep and underlying cause, was an internal United Kingdom problem, and, in consequence, the responsibility of the United Kingdom Government alone.¹³¹

Decision of 23 May 1966

a. *Précis of proceedings*

106. By a letter¹³² dated 10 May 1966 the representatives of Algeria, Burundi, Cameroon, Chad, Congo (Brazzaville), Dahomey, Democratic Republic of the Congo, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Kenya, Liberia, Libya, Malawi, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Togo,

Rhodesia, resolution 221 (1966) merely indicated that the situation which might result from the fulfilment of hypotheses referred to in the preamble constituted a threat to the peace. This resolution was related, therefore, to possible future events which, if they occurred, would determine its implementation, and not to past or present events, which had not been verified. In other words, the resolution was a document containing only preventive provisions and was intended merely for general guidance. The necessary conclusion, therefore, was that it was not a mandatory resolution but simply a recommendation.

¹³¹ For texts of relevant statements, see SC, 21st yr., 1277th mtg.: France, paras. 92-94; Jordan, paras. 82-85.

¹³² S C, 21st yr., Suppl. for April-June, p. 80, S/7285 and Add. 1 and 2.

Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta and Zambia requested the President of the Security Council to convene the Council immediately in order to examine the situation in Southern Rhodesia. It was stated in the letter that the measures adopted by the Council so far had proved ineffective in bringing down the racist régime in Southern Rhodesia and opening the way to a satisfactory solution to the problem of the Territory. As a result of the violation of the embargo on oil and petroleum products, the Security Council had decided to authorize the use of force to ensure the observance of the embargo, thus making use of the provisions of Chapter VII of the Charter. This use of force covered, however, only one minor sector, while substantial quantities of oil and petroleum products were entering Rhodesia in clear violation of the embargo, decided upon by the Council. Furthermore, the administering Power had made no effort to open negotiations with the leaders of African political parties with a view to establishing in Southern Rhodesia a Government consistent with the aspirations of the Zimbabwe people. Any arrangements arrived at between the Government of the United Kingdom and the Salisbury racist régime which excluded the genuine representatives of the Zimbabwe people, which failed to guarantee the rights of the majority, would only aggravate an already explosive situation and thus lead to a racial conflict that would envelop all Southern Africa. The Security Council should therefore devote the closest attention to this new situation which constituted a threat to international peace and security and should examine, under Chapter VII of the Charter, the necessary measures to establish majority rule in Southern Rhodesia in accordance with the Declaration set forth in General Assembly resolution 1514 (XV).

107. At the 1278th meeting, on 17 May 1966, the Security Council decided¹³³ to include the letter in its agenda.

108. At the 1279th meeting, on 17 May 1966, the representative of Nigeria introduced¹³⁴ a draft resolution co-sponsored with Mali and Uganda which stated:

"The Security Council,

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

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

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

¹³³ S C, 21st yr., 1278th mtg., preceding para. 3.

¹³⁴ S C, 21st yr., Suppl. for April-June, p. 82-83, S/7285/Add. 1.

which Chapter VII of the United Nations Charter alone confers upon it,

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

Decision

At the 1285th meeting, on 23 May 1966, the draft resolution submitted by Mali, Nigeria and Uganda failed of adoption¹³⁵ receiving 6 votes to 1, with 8 abstentions, and thus failing to obtain the affirmative vote of nine members.

b. Précis of relevant constitutional discussion

109. In the course of the discussion it was maintained that it was unthinkable that the situation existing in Southern Rhodesia could continue without constituting an ever more serious threat to international peace and security. Consequently the Security Council must decide to adopt mandatory enforcement measures provided for in Chapter VII in order to put an end to this serious threat to international peace and security.

110. One representative recalled that in its resolution 217 (1965) the Security Council stated that “... the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia is extremely grave ... and that its continuance in time constitutes a threat to international peace and security”. This wording he contended, did not bestow on the decisions contained in this resolution the same mandatory character as was implicit in decisions taken under Chapter VII of the Charter. In operative paragraph 1 of resolution 221 (1966) the Security Council declared that in the very specific and limited case dealt with, “the resulting situation constitutes a threat to the peace”. A declaration of the Security Council to the effect that a situation constituted a threat to international peace and security placed the matter within the purview of Chapter VII and thereupon opened the door to enforcement measures. However, thus far the Security Council had not clearly stated outright that the situation in Southern Rhodesia in general constituted a threat to international peace and security, although it had taken two steps in that direction. This implied that Member States and non-member States had not been under any binding obligation to carry out the decisions of the Council. In a subsequent intervention the representative reiterated that the Security Council had not determined that the general situation in Southern Rhodesia constituted a threat to international peace and security. The first operative paragraph of the joint draft resolution submitted by Mali, Nigeria, and Uganda, stated that “the situation in Southern Rhodesia continues to constitute a threat to international peace and security”. This wording contained the implication that the Security Council had already determined that the situation constituted a threat to

international peace and security. That did not correspond with the real situation.

111. Another representative expressed the view that once it had been decided by the Security Council that a threat to international peace existed, the Council had two roads open to it in keeping with the terms of Article 39: either to make recommendations or to adopt binding measures. The representative preferred an appeal rather than to decide at once on compulsory measures, the consequences of which, if they were not complied with, would become more and more inexorable.¹³⁶

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

112. During the discussion dealt with below in connexion with the previous determination by the Security Council that the “continuance in time” of the situation in Southern Rhodesia constituted a threat to international peace and security the question arose as to whether on the basis of this finding the Council could adopt measure provided for in Article 41 or whether it was necessary for this purpose for the Council to make a new determination explicitly under Article 39.

Decision of 16 December 1966 in connexion with the situation in Southern Rhodesia¹³⁷

b. Précis of relevant constitutional discussion

113. In introducing his draft resolution the representative of the United Kingdom stated that in its resolution 217 (1965) of 20 November 1965 the Security Council had determined that the “continuance in time” of the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia constituted a threat to international peace and security. That situation had continued for more than a year and it was against this background that the United Kingdom Government came before the Security Council with a request that it reinforce, with a resolution under Chapter VII of the Charter, the measures of economic pressure which hitherto had been applied on a voluntary basis by Members of the United Nations. The dangers to peace and stability in the whole region of Central and Southern Africa were acute. A small group of reckless men had provoked and were serving to prolong a most critical situation, fraught with great and growing dangers of interracial strife and bloodshed throughout Southern Africa. The Security Council could not permit the situation to deteriorate further. The combination of circumstances flowing from the initial actions of the Smith régime in

¹³⁶ For texts of relevant statements, see S C, 21st yr., 1278th mtg.: Senegal, para. 45; Zambia, para. 12; 1279th mtg.: Algeria, para. 22; Nigeria, paras. 52 and 79; 1280th mtg.: USSR, para. 101; 1281st mtg.: Uruguay, paras. 29–31; 1283rd mtg.: Argentina, para. 18; 1285th mtg.: Argentina, para. 18; Uruguay, para. 24.

¹³⁷ For the précis of proceedings connected with this decision, see paras. 18–24 above.

¹³⁵ S C, 21st yr., 1285th mtg., para. 33.

purporting illegally and unconstitutionally to declare its independence, affected not only the stability and progress of Rhodesia's immediate neighbours, but also the maintenance of international peace and security. The situation thus created was such that the Council should invoke certain measures under Articles 39 and 41 of the Charter.

114. One representative contended that the situation in Southern Rhodesia had been pronounced to be a threat to international peace and security since Security Council resolution 217 (1965) in its operative paragraph 1 laid down the determination that "its continuance in time constitutes a threat to international peace and security". Since the situation had continued for a much longer time than had been originally anticipated, it was beyond dispute that the Council regarded it as a threat to international peace and security. Furthermore, while the sovereignty of the United Kingdom over Rhodesia was unquestioned, the process of the transfer of that sovereignty to the people of Rhodesia had been thwarted, giving rise to a threat to international peace and security. The representative pointed out that Security Council resolution 221 (1966) had authorized the use of force, which, however limited, could not be carried out except in the exercise of the powers conferred on the Security Council by Chapter VII of the Charter. It was, therefore, established that the legal prerequisites of action under Chapter VII had already been fulfilled.

115. Another representative stated that the Security Council, in its resolution 217 (1965), had determined that the continuance in time of the situation resulting from the declaration of independence by the illegal authorities in Southern Rhodesia was a threat to international peace and security. That situation had continued for more than a year and it was the primary obligation of the Council, under Chapter VII, Article 39, to determine "the existence of any threat to the peace, breach of the peace, or act of aggression" and then to decide on whatever measures it considered appropriate.

116. It was further maintained that the question might also be raised whether the situation constituted

a threat to the peace, which was the condition under which sanctions could be imposed under Chapter VII. The answer lay in the fact that there were a number of unique elements in the Southern Rhodesian situation. The Security Council had already found that the continuance in time of such a situation was likely to lead to a threat to peace. This situation had not only continued; it had, on the contrary, grown more acute. The Council had before it a situation in a colony in which a small minority sought to subjugate the majority and endeavoured to suppress the political rights of a majority and to extend into a Non-Self-Governing Territory practices of racial discrimination, and where the sovereign authority for the Territory voluntarily came to the United Nations and asked it to take measures which would permit the restoration of the full rights of the people of Southern Rhodesia under the Charter. This was not a static but a deteriorating situation in which the danger to peace was growing and to which the Council properly must address itself.

117. One representative observed that the situation in Southern Rhodesia threatened international peace and security although that fact had not been clearly spelled out in the draft resolution of the United Kingdom.¹³⁸

****E. The question whether a determination within the meaning of Article 39 is a precondition of invoking the procedure under General Assembly resolution 377A (V)**

****F. The question whether without a determination under Article 39 and a decision in accordance with Article 42, a United Nations force may be established and employed by the Security Council**

¹³⁸ For texts of relevant statements, see S C, 21st yr., 1331st mtg.: United Kingdom, paras. 22 and 24; 1332nd mtg.: Argentina, para. 55; 1333rd mtg.: Japan, paras. 44-48; United States, paras. 17 and 19-22; 1335th mtg.: Pakistan, paras. 79 and 80; 1337th mtg.: Netherlands, para. 84; USSR, para. 69; 1340th mtg.: Jordan, para. 11; Uruguay, para. 32.