

ARTICLE 41

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TEXT OF ARTICLE 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

INTRODUCTORY NOTE

1. During the period under review the Security Council adopted one resolution in which Article 41 was explicitly invoked.¹ Three draft resolutions also explicitly invoking Article 41 were not adopted by the Council. They are reviewed in the General Survey, which also contains references to letters of submission explicitly invoking Article 41.

2. The General Survey also deals with statements made by the Secretary-General during the consideration of the situation in the Congo in the Security Council and the General Assembly in which he maintained that the Security Council in its resolutions had not invoked Articles 41 and 42, which provided for enforcement measures.

3. Also reviewed therein are statements relating to Article 41 made in the Security Council in connexion with the consideration of the question of race conflict in South Africa.

4. In both these instances, resolutions were adopted by the Security Council which could not be deemed to have a bearing on Article 41.

5. The General Survey also includes references to items during the consideration of which the question of whether the measures provided for Articles 41 and 42 could be deemed to constitute "enforcement action" within the meaning of Article 53 was raised.

6. Explicit references to Article 41 made in the Security Council and the General Assembly are also listed.

7. Two new headings are added in the Analytical Summary of Practice, namely "The question of the mandatory character of measures adopted by the Security Council explicitly under Article 41" and "The question of circumstances under which measures provided for in Article 41 should be adopted by the Security Council". No material, however, was found for inclusion under the heading entitled "The question of recourse to measures specifically under Article 41 to secure compliance with decisions of the Security Council."

8. During the period under review the General Assembly took a number of decisions to which objections were raised on the grounds that the General Assembly had exceeded its competence, since those

¹ For the reasons of treatment of a resolution of 16 December 1966, see this *Supplement* under Article 39, para. 4.

decisions fell properly within the scope of Article 41,² which authorizes the Security Council to decide on measures not involving the use of armed force to give effect to its decision and to call upon Members of the United Nations to apply such measures.

9. The following resolutions of the General Assembly may be referred to as examples of such decisions: resolution 1568 (XV), 1899 (XVIII), 1979 (XVIII) and 2074 (XX) entitled "Question of South West Africa"³ resolutions 1598 (XV) and 1663 (XVI) entitled "Question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa"; resolutions 1761 (XVII), 1881 (XVIII), 1978 (XVIII) and 2054 (XX) entitled "The policies of *apartheid* of the Government of the Republic of South Africa";⁴ resolution 1807 (XVII) entitled "Terri-

² For similar statements made in connexion with the competence of the Security Council under Article 39, see in this *Supplement* under Article 39, para. 8. In the statements referred to below, usually the term "sanctions" was used. This term covers also measures under Article 42. Sometimes Article 41 was referred to explicitly together with Article 42.

³ For statements concerning the exclusive competence of the Security Council in connexion with these resolutions, see G A (XV), 4th Com., 1114th mtg.: Ecuador, para. 29; Philippines, para. 23; G A (XVIII) 4th Com., 1465th mtg.: Uruguay, para. 55; 1471st mtg.: Denmark, para. 31; 1473rd mtg.: Australia, para. 46; Japan, para. 74; United Kingdom, para. 70; G A (XX), 4th Com., 1582nd mtg.: Denmark, para. 42; Norway, para. 43; Sweden, para. 25; United Kingdom, para. 52.

⁴ For statements such as those mentioned in footnote 2, in connexion with these resolutions, see G A (XV), Spec. Pol. Com., 241st mtg.: India, para. 18; 242nd mtg.: United Kingdom, para. 18; 243rd mtg.: Canada, para. 2; 244th mtg.: Ceylon, para. 20; Italy, para. 14; Portugal, para. 47; G A (XV), Plen., 981st mtg.: Sweden, para. 72; G A (XVI), Spec. Pol. Com., 277th mtg.: France, para. 10; 278th mtg.: Australia, para. 21; India, para. 13; Portugal, para. 12; 279th mtg.: Venezuela, para. 4; 282nd mtg.: Turkey, para. 12; 285th mtg.: Mexico, para. 40; Venezuela, para. 32; G A (XVII), Spec. Pol. Com., 341st mtg.: Colombia, para. 24; Guatemala, paras. 47 and 49; Ivory Coast, para. 55; Sweden, para. 76; Thailand, para. 34; G A (XVII), Plen., 1164th mtg.: Ivory Coast, paras. 182-184 and 189; G A (XVIII), Spec. Pol. Com., 383rd mtg.: Brazil, paras. 13 and 14; 386th mtg.: United Kingdom, para. 9; 390th mtg.: Japan, para. 35; 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., 1395th mtg.: Italy, para. 180; Netherlands, para. 194; Norway, para. 141; Sweden, para. 161.

tories under Portuguese administration” and resolution 2107 (XX) entitled “Question of Territories under Portuguese administration”.⁵ An examination of the questions raised by the practice of the General

⁵ For statements such as those mentioned in footnote 2 in connexion with the resolutions cited above, see G A (XVII), 4th Com., 1415th mtg.: Bolivia, para. 34; G A (XX), 4th Com., 1592nd mtg.: Denmark, para. 30; Italy, para. 33; Norway, para. 36.

Assembly, cited in this paragraph, is found in the study of Article 11.⁶

10. In view of the interrelationship between Article 41 and Articles 39 and 42, the reader should also consult the studies on those two Articles.

⁶ See this *Supplement* under Article 11, paras. 40, 41, 43, 49, 50, 55, 56, 64, 65, 71, 81 and 82.

I. GENERAL SURVEY

11. During the period under review, Article 41, together with Article 39, was explicitly invoked in a resolution⁷ of the Security Council adopted in connexion with the situation in Southern Rhodesia.

12. Article 41 was likewise explicitly invoked in three draft resolutions which were not adopted by the Security Council. The first instance occurred in connexion with a draft resolution⁸ submitted at the 934th meeting on 15 February 1961 by the USSR during the consideration of the situation in the Republic of the Congo. By its terms the Council would deem it essential that the sanctions provided for in Article 41 of the Charter be applied to Belgium as an aggressor which by its actions was creating a threat to international peace, and would call on the States Members of the United Nations for the immediate application of these sanctions. The second was in connexion with the draft resolution⁹ submitted by Cuba during the consideration of the item entitled: “Letter dated 8 March 1962 from the permanent representative of Cuba addressed to the President of the Security Council (S/5086)” concerning the Punta del Este decision, whereby the Security Council would request the International Court of Justice to give an advisory opinion on seven questions, one of which was whether the term “enforcement action” in Article 53 could be considered to include the measures provided for in Article 41, and whether the list of measures in Article 41 was exhaustive. Both draft resolutions were rejected¹⁰ by the Security Council. Article 41 was again explicitly invoked in a draft resolution¹¹ submitted in the course of the consideration of the situation in Southern Rhodesia, which was not adopted by the Council.

13. Article 41 was further explicitly referred to in two letters submitting questions for consideration by the Security Council: a letter dated 22 February 1962¹² from the representative of Cuba submitting a complaint against the United States

and a letter dated 8 March 1962¹³ from the representative of Cuba concerning the Punta del Este decisions.

14. During consideration of the situation in the Congo, Article 41, together with Articles 39, 40 and 42 was referred to by the Secretary-General in the Security Council as well as in the General Assembly in connexion with the question whether the resolutions¹⁴ of the Security Council of 14 July, 22 July and 9 August 1960 were or were not adopted under the provisions of Chapter VII of the Charter.¹⁵

15. At the 884th meeting of the Security Council, on 8 August 1960, the Secretary-General pointed out that the Charter stated in several Articles the obligations of Member States to the Organization in a situation such as that in the Congo, the solution of which was a question of peace or war. After quoting Articles 25, 40, 41 and 49, the Secretary-General said that the resolutions of the Security Council of 14 July and 22 July 1960 had not been explicitly adopted under Chapter VII, but on the basis of an initiative under Article 99. For that reason he had felt entitled to quote three Articles under Chapter VII and reiterated that in a perspective which might well be short rather than long, the problem facing the Congo was one of peace or war, and not only in the Congo.¹⁶ At the 887th meeting, on 21 August 1960, the Secretary-General said that the Council, without stating so explicitly, could not be deemed to have instructed the Secretary-General to act beyond the scope of his own request or contrary to the specific limitations regarding non-intervention in internal conflicts. “Moreover”, he said, “in the light of the domestic jurisdiction limitation of the Charter, it must be assumed that the Council would not authorize the Secretary-General to intervene with armed troops in an internal conflict, when the Council had not specifically adopted enforcement measures under Articles 41 and 42 of Chapter VII of the Charter.”¹⁷ At the 920th meeting

⁷ S C resolution 232 (1966) of 16 December 1966. See also paras. 50–59 below.

⁸ S C, 16th yr., 934th mtg., para. 112, S/4706, oper. para. 2.

⁹ S C, 17th yr., Suppl. for Jan.—March, p. 96, S/5095, oper. para. 3.

¹⁰ S C, 16th yr., 942nd mtg., para. 89; S C, 17th yr., 998th mtg., para. 158.

¹¹ For consideration of the proceedings and relevant constitutional discussion connected with draft resolution S/7285/Add. 1, see paras. 61–67 below.

¹² S C, 17th yr., Suppl. for Jan.—March, p. 82, S/5080. Also invoked were Articles 24 (1), 34, 35 (1), 52, 53 and 103.

¹³ *Ibid.*, p. 88, S/5086. Also invoked were Articles 24 (1), 34, 35 (1), 40, 52, 53 and 103.

¹⁴ S C resolution 143 (1960) adopted at the 873rd meeting on 14 July 1960; resolution 145 (1960) adopted at the 879th meeting of 22 July 1960; resolution 146 (1960) adopted at the 886th meeting on 9 August 1960; no similar comments were made with regard to resolution 161 (1961) adopted at the 942nd meeting on 21 February 1961 and resolution 169 (1961) adopted at the 982nd meeting on 24 November 1961.

¹⁵ See also this *Supplement* under Article 39, para. 12.

¹⁶ S C, 15th yr., 884th mtg., paras. 21–26.

¹⁷ S C, 15th yr., 887th mtg., para. 44.

on 13/14 December 1960 the Secretary-General stated:

"In interventions in the course of this debate in the Council, I have pointed out that the Council has never explicitly referred to the Charter Article on the basis of which it took action in the Congo. In particular, it is significant that the Council did not invoke Articles 41 and 42 of the Chapter VII, which provide for enforcement measures and which would override the domestic jurisdiction limitation of Article 2 (7). I mention this as one of the reasons why some far-reaching interpretations of the mandate of the Force . . . are, quite frankly, difficult to understand. Those interpretations would require at least that the Security Council had clearly taken enforcement measures under Articles 41 and 42."

After having quoted his statement made at the 887th meeting, related above, the Secretary-General stated further:

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

"It is true that, in its resolution of 9 August (S/4426), the Council referred to Articles 25 and 49 as the basis for the legal obligation imposed on the States concerned by the Council's action, but this is certainly not the same as invoking enforcement measures.

"My own view, which I have expressed to the Council, is that the resolutions may be considered as implicitly taken under Article 40 and, in that sense, as based on an implicit finding under Article 39. But what I should like to emphasize is that neither the Council nor the Assembly has ever endorsed this interpretation, much less put such endorsement in a resolution. What is even more certain is that the Council in no way directed that we go beyond the legal basis of Article 40 and into the coercive action covered by Articles 41 and 42. Certainly the Organization, as represented by the Security Council and the General Assembly, must consider its responsibility as an executive organ to take carefully into account the limits on its authority as indicated by the facts which I have just recalled".¹⁸

16. In the General Assembly, during the fourth emergency special session, at the 859th plenary meeting on 18 September 1960 the Secretary-General said that the Security Council itself had not resorted to any decision regarding enforcement measures. It had never invoked Article 41 or Article 42 of the Charter, much less delegated to the Secretary-General any right to take any decision on enforcement measures. The power of the Secretary-General in such circumstances resided exclusively in the moral and legal weight of the decisions of the Security Council itself. If that weight in this case, in the view of some, had proved insufficient, it seemed to him to be not the first case in the history of the United Nations.¹⁹

¹⁸ S C, 15th yr., 920th mtg., paras. 73-75. For other explicit references to Articles 41 and 42, see *ibid.*, Ceylon, para. 107; 932nd mtg.: France para. 89; 941st mtg.: Pakistan, para. 122.

¹⁹ G A (ES-IV), Plen., 859th mtg., para. 168.

17. At the fifteenth session of the General Assembly at the 953rd plenary meeting on 17 December 1960, the Secretary-General said that the main instrument provided for the action in the Congo had been the United Nations Force set up by the Security Council without explicit reference to Articles 39 or 40 and, *a fortiori*, without basing itself on Articles 41 and 42. As at early stages he had brought this, both in substance or in form, to the attention of the Security Council, there could not have been any misunderstanding on this point.²⁰

18. At the same session of the General Assembly the Secretary-General stated, at the 839th meeting of the Fifth Committee on 17 April 1961, that the operations in the Congo did not constitute sanctions or enforcement action as contemplated in Articles 42 and 43 of the Charter, they were essentially internal security measures taken by the Security Council at the invitation of the Government concerned to counteract the threat to international peace. As he had stated on several occasions, without any objections being raised, the resolutions of the Security Council could be considered as having been implicitly adopted under Article 40, but certainly not under Articles 41 or 42.²¹

19. During consideration of the question of race conflict in South Africa in the Security Council,²² the view was expressed that economic sanctions and other measures, including a total arms embargo, should be applied by the Security Council to South Africa. It was maintained, on the other hand, that the extreme measures provided for in Chapter VII of the Charter had never been intended and could not reasonably be interpreted to apply to situations like the one before the Council. The founders of the United Nations had been very careful to reserve the right of the Organization to employ mandatory coercive measures in situations where there was 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. It was also stated that the Security Council was not competent to force the Government of South Africa to change its policies by the application of sanctions which would in this instance be contrary to the provisions of the Charter. It was further observed that for the Security Council to move to action under Chapter VII of the Charter would be to exceed its powers. After the adoption²³ of a draft resolution²⁴ in which the Council solemnly called upon all States to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South

²⁰ G A (XV), Plen., 953rd mtg., para. 180. For another explicit reference to Articles 41 and 42, see G A (XV), Plen., 967th mtg.: Yugoslavia, para. 139.

²¹ G A (XV), 5th Com., 839th mtg., para. 6. For another statement containing references to Articles 41, 42 and 43, see *ibid.*, 842nd mtg.: Pakistan, para. 32.

²² For consideration of the provisions of Article 39 in connexion with this item, see this *Supplement* under Article 39, paras. 41-55.

²³ S C, 18th yr., 1056th mtg., para. 18.

²⁴ S C, 18th yr., 1054th mtg., para. 62, S/5384. Same text as S C resolution 181 (1963) of 7 August 1963.

Africa,²⁵ one representative pointed out that the fact that operative paragraphs 2 and 3 of the draft resolution, as amended, called upon the Member States to take certain action did not give them a mandatory character. The words "calls upon" were found in Chapter VI as well as Chapter VII of the Charter. They had been repeatedly employed by the General Assembly and by the Security Council and in the customary practice of the United Nations they did not carry mandatory force.²⁶ During the further consideration of the question in connexion with a draft resolution²⁷ one representative stated that the recommendations to the Governments which the draft resolution contained were consistent with the powers of the Security Council under Chapter VI and were within the framework of that Chapter. They were directed to a special situation and did not partake of the character of sanctions or other mandatory action envisaged under Article 41 in Chapter VII.²⁸

20. In connexion with the consideration by the Security Council of the items: letter of 5 September 1960 from the USSR (Action of the OAS relating to the Dominican Republic),²⁹ letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions,³⁰ situation in the Dominican Republic,³¹ and in connexion with the consideration of the inclusion in the agenda of the Council of the complaint by Cuba (letter of 22 February 1962),³² explicit references were made to Articles 41 and 42 within the context of constitutional discussion of the question whether the measures provided for in these two Articles could be deemed to constitute "enforcement action" within the meaning of Article 53.³³

21. In the Security Council explicit references to Article 41 were made, *inter alia*, in the course of the consideration of the following items: complaint concerning South Africa,³⁴ the situation in Angola,³⁵ the situation in the Territories in Africa under Portuguese administration,³⁶ the Palestine question.³⁷

²⁵ In para. 5 of resolution 182 (1963) of 4 December 1963, the Security Council, in addition, called upon all States to cease forthwith the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa. The calls contained in resolutions 181 (1963) and 182 (1963) were reaffirmed in para. 12 of resolution 191 (1964) of 18 June 1964.

²⁶ For text of relevant statements, see S C, 18th yr., 1052nd mtg.: United States, para. 65; 1053rd mtg.: Philippines, paras. 22 and 23; Venezuela, para. 72; 1054th mtg.: France, para. 105; USSR, paras. 51 and 56; United Kingdom, para. 90; 1056th mtg.: United States, paras. 27 and 28.

²⁷ S C, 18th yr., 1076th mtg., paras. 50–60, S/5469, same text as S C resolution 182 (1963).

²⁸ S C, 18th yr., 1078th mtg., para. 21.

²⁹ See this *Supplement* under Article 53, paras. 19, 20 and 24.

³⁰ *Ibid.*, paras. 34, 36, 38, 39 and 40.

³¹ S C, 20th yr., 1222nd mtg.: Malaysia, paras. 107 and 108.

³² See this *Supplement*, under Article 53, paras. 28 and 30.

³³ See footnotes 29, 30 and 32 above.

³⁴ S C, 15th yr., 856th mtg.: Guinea, paras. 76 and 77; 16th yr., 954th mtg.: Mali, para. 77.

³⁵ S C, 16th yr., 950th mtg.: USSR, para. 148.

³⁶ S C, 18th yr., 1047th mtg.: Ghana, para. 37.

22. In the General Assembly explicit references to Article 41 were made, *inter alia*, during consideration of the following questions: supplementary estimates for the financial year 1960; United Nations activities in the Congo (ONUC) for the period 14 July to 31 December 1960;³⁸ the situation in Angola,³⁹ the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa,⁴⁰ the policies of *apartheid* of the Government of the Republic of South Africa,⁴¹ complaint by Cuba,⁴² comprehensive review of the whole question of peace-keeping operations in all their aspects⁴³ and consideration of the financial situation of the Organization in the light of the report of the Working Group on the Examination of the Administrative and Budgetary Procedures of the United Nations.⁴⁴

23. In the Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States dated 16 November 1964 and submitted to the General Assembly at its twentieth session, Article 41 was explicitly referred to during the consideration of the principle that "states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations". These references were made in connexion with the question whether the term "force" included political, economic, and other forms of pressure.⁴⁵

³⁷ S C, 19th yr., 1164th mtg.: Syria, para. 116; 1182nd mtg.: Syria, para. 63.

³⁸ G A (XV), 5th Com., 811th mtg.: Pakistan, para. 12.

³⁹ G A (XV/2), Plen., 992nd mtg.: Guinea, para. 46; G A (XVI), Plen., 1089th mtg.: Poland, para. 44; 1090th mtg.: Ukrainian SSR, para. 67; 1091st mtg.: Bulgaria, paras. 73 and 74; 1097th mtg.: Albania, para. 78; 1098th mtg.: Guinea, para. 70; 1102nd mtg.: Senegal, para. 68. Under a draft resolution, submitted by Bulgaria and Poland in connexion with this question, the General Assembly would have suggested to the Security Council to consider in an urgent manner and under Articles 41 and 42 of the Charter, the application of sanctions against Portugal until it implemented all the resolutions of the Assembly and the Council (G A, (XVI), Annexes, a. i. 27, p. 22, A/L.383). This draft resolution was rejected by the General Assembly by 43 votes to 26, with 32 abstentions. (G A (XVI), plen., 1102nd mtg., para. 106).

⁴⁰ G A (XV), Spec. Pol. Com., 233rd mtg.: Ghana, para. 7; 235th mtg.: Mali, para. 7; 237th mtg.: Liberia, para. 11; 238th mtg.: Guinea, para. 13; Poland, para. 25; 243rd mtg.: Guinea, para. 29; G A (XVI), Spec. Pol. Com., 275th mtg.: Ghana, para. 9; 277th mtg.: France, para. 10; 285th mtg.: Ivory Coast, para. 8; Mexico, para. 40; Venezuela, para. 32; 287th mtg.: India, paras. 13 and 15.

⁴¹ G A (XVII), Spec. Pol. Com., 333rd mtg.: Ivory Coast, para. 11; 336th mtg.: Nepal, para. 34; 341st mtg.: Colombia, para. 24; Ivory Coast, para. 55; G A (XVII), Plen., 1164th mtg.: Ivory Coast, paras. 182–184 and 189; G A (XVIII), Spec. Pol. Com., 386th mtg.: United Kingdom, para. 9; 387th mtg.: Mali, para. 22; G A (XX), Spec. Pol. Com., 476th mtg.: India, para. 10; 478th mtg.: Malaysia, para. 25; 479th mtg.: Iraq, para. 17; Tunisia, para. 49; G A (XX), Plen., 1395th mtg.: Sweden, para. 166.

⁴² G A (XVI), 1st Com., 1243rd mtg.: Bulgaria, para. 12.

⁴³ G A (XX), Spec., Pol. Com., 466th mtg.: Czechoslovakia, para. 31; 483rd mtg.: Mongolia, para. 26.

⁴⁴ G A (S-IV), 5th Com., 996th mtg.: Cameroon, para. 8; 998th mtg.: France, para. 22.

⁴⁵ G A (XX), Annexes, a. i. 90 and 94, p. 77, A/5746, paras. 51 and 52.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question whether the Security Council could take action under Article 41 without first making a determination under Article 39

24. In connexion with the consideration of the question of race conflict in South Africa the issue arose whether the Security Council could decide upon the application of sanctions before making a determination under Article 39.⁴⁶

25. In connexion with the consideration of the situation in Southern Rhodesia, it was proposed to take certain measures similar to those provided for in Article 41. It was argued that the Security Council should make a determination under Article 39 and should decide upon the application of sanctions against Southern Rhodesia according to Articles 41 and 42.

1. DECISION OF 18 JUNE 1964 IN CONNEXION WITH THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA

a. *Précis of relevant proceedings*

26. By a letter⁴⁷ dated 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, 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 existing in South Africa in the light of the report⁴⁸ submitted by the Secretary-General in accordance with paragraph 8 of Security Council resolution 182 (1963) of 4 December 1963 and the new developments in the Republic of South Africa. The South African Government's negative reaction to that resolution, in particular, and the worsening of the situation as a result of the continued application of the policy of *apartheid* in South Africa, the letter stated, were a matter of concern especially to the States of Africa and Asia, which considered that the Security Council should take effective measures to obtain the compliance of the Government of South Africa with the earlier resolutions of both the General Assembly and the Security Council, and the discharge of its obligations as a Member State.

27. At the 1133rd meeting on 16 June 1964 the

⁴⁶ For the consideration of the provisions of Article 39 in connexion with this question see this *Supplement* under Article 39, paras. 44-46.

⁴⁷ S C, 19th yr., Suppl. for April-June, p. 96, S/5674.

⁴⁸ *Ibid.*, p. 19, S/5658.

representative of Norway submitted a draft resolution,⁴⁹ which read as follows:

"The Security Council,

"...

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

"...

"Taking into account the recommendations and conclusions of the Group of Experts, (seventh preamb., para. 7)

"...

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

"...

"8. Decides to establish an expert committee, composed of representatives of each present member of the Security Council, to undertake a technical and practical study, and report to the Security Council as to the feasibility, effectiveness, and implications of measures which could, as appropriate, be taken by the Security Council under the United Nations Charter;

"..."

Decision

At the 1135th meeting on 18 June 1964 the draft resolution was adopted⁵⁰ by 8 votes to none, with 3 abstentions as resolution 191 (1964).

b. *Précis of relevant constitutional discussion*

28. During the discussion, it was maintained that the Charter embodied various measures and provisions to deal with a situation such as that prevailing in South Africa, which was a threat to international peace and security. The Security Council should consider the question of the racial policies of the Government of South Africa under Chapter VII of the Charter and should decide to authorize The United Nations to apply the necessary coercive measures provided for in Articles 41 and 42. The measures being sought were primarily the economic sanctions listed in Article 41, backed if necessary by a blockade, which was one of the coercive measures provided for in Article 42. The object in view was to employ sanctions as a method of persuading the Government of South Africa to abandon its policy of *apartheid* before the situation exploded into a breach of the peace. Only the Security Council had the power to decide to authorize mandatory collective action of this kind and 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 Article 39. Not until then could it consider the matter before it under Chapter VII. The resolutions of the Council of 7 August and

⁴⁹ S C, 19th yr., 1133rd mtg., para. 3.

⁵⁰ S C, 19th yr., 1135th mtg., para. 43. The Expert Committee established under this resolution submitted its report to the President of the Security Council on 27 February 1965 (see S C, 20th yr., Spec. Suppl. No. 2, S/6210 and Add. 1).

4 December 1963 declared that the situation in South Africa was "seriously disturbing international peace and security". These words, while denoting a graver situation than the words "seriously endangering international peace and security", did not make it possible for the Security Council to exercise its powers under Articles 41 and 42. If, however, the Council could consent to consider the situation in South Africa under Chapter VII and to include in its resolution a provision on economic sanctions, it would open the way to a peaceful solution of the problem.

29. The view was also expressed that since the policy of *apartheid* as practised in South Africa had become a threat to international peace and security, the application of economic sanctions by the Security Council was the only legal and peaceful recourse left open to resolve the issue and remove the threat to the peace. Another reason for imposition of economic sanctions against South Africa was that the continuance of the prevailing situation there would result in a breach of international peace and security.

30. One representative, on the other hand, pointed out that the Group of Experts,⁵¹ recalling the conviction of the Security Council that the situation in South Africa was seriously disturbing international peace and security, had proposed that the logistics of sanctions should be urgently examined. In the view of that representative, it was not for the Group of Experts to recommend to the Council the application of economic sanctions. A decision of this nature was only properly to be taken in accordance with the provisions of Article 41 on the condition that there existed a threat to the peace, a breach of the peace, or an act of aggression, as provided in Article 39. No such threat to the peace existed since it could not be contended that the racial policies of the Government of South Africa directly endangered the maintenance of international peace and security. The problem of the imposition of sanctions on South Africa could be studied; but to ensure the effectiveness of economic sanctions, the sanction of force would have to be at least in the background. No study could demonstrate that sanctions would be effective. Would the Security Council be prepared to take action under Article 42 and attempt by force to compel the Government of South Africa to change its policies?

⁵¹ By resolution 182 (1963), the Security Council, in oper. para. 6, requested the Secretary-General to establish under his direction a group of experts "to examine methods of resolving the present situation in South Africa through full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole. . . and to consider what part the United Nations might play in the achievement of that end". In its report dated 20 April 1964 submitted to the Secretary-General, the Group of Experts recommended that "use should be made of the interval before a final reply is required from the South African Government on the proposal for a national convention to enable an expert examination to be made of the economic and strategic aspects of sanctions. There seems to us to be an urgent need for a further practical and technical study of the 'logistics' of sanctions by experts in the economic and strategic field, particularly in international trade and transport." (See S C, 19th yr., Suppl. for April-June, p. 19, S/5658 and Add. 1-3.)

31. Another representative stated that it was the Security Council only which could decide to apply economic sanctions against South Africa and could take the responsibility in regard to the political and legal aspect of the question of sanctions. His Government was ready to support and co-operate in a technical and practical study of the feasibility, effectiveness and implications of measures which could be taken under the Charter. The study should be carried out by experts representing all members of the Security Council and appointed by them.

32. After the submission of the draft resolution by the representative of Norway, one representative pointed out that the situation in South Africa did not provide a basis under the Charter for the application by the Security Council of coercive measures, since the Charter did not empower the Council to take such a step in a situation of that kind. However, his Government would be prepared to support the initiation of a study of sanctions and to participate in it with the reservation that its willingness to participate, represented in no way an advance commitment to support at any specific time the application under the Charter of coercive measures with regard to the South African situation or any other situation. Another representative observed that the appointment of an expert committee to study the logistics of sanctions appeared to be an appropriate course of action at that stage of the question, so that the Council might be enabled to reassess the situation in South Africa and recommend specific sanctions that might be advisable and feasible.⁵²

2. DECISIONS OF 12 AND 29 NOVEMBER 1965 IN CONNECTION WITH THE SITUATION IN SOUTHERN RHODESIA⁵³

a. *Précis of relevant proceedings*

33. By a letter⁵⁴ 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 its 1357th and 1368th plenary meetings, on 12 October and 5 November 1965, respectively.

34. By a letter⁵⁵ 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 on that day purporting, illegally and unilaterally, to declare independence for Rhodesia and requested the convening of an urgent meeting of the Council.

⁵² For text of relevant statements, see S C, 19th yr., 1127th mtg.: Liberia, paras. 71 and 76; Sierra Leone, paras. 102-105; 1129th mtg.: Indonesia, paras. 12, 13, 21, 22 and 31; Tunisia, para. 106; 1130th mtg.: Czechoslovakia, para. 26; 1131st mtg.: Norway, paras. 69 and 71; United Kingdom, paras. 86, 89-92 and 98; 1132nd mtg.: Ivory Coast, (President), para. 19; 1133rd mtg.: United States, para. 30; 1134th mtg.: Brazil, para. 13.

⁵³ For consideration of the provisions of Article 39 in connexion with this question, see this *Supplement*, under Article 39, paras. 38 and 83-99.

⁵⁴ S C, 20th yr., Suppl. for Oct.-Dec., p. 355, S/6897.

⁵⁵ *Ibid.*, p. 354, S/6896.

35. In a letter⁵⁶ 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 of independence had created a threat to international peace and security.

36. In a letter⁵⁷ 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 by the white minority government of that Territory. This declaration of independence aggravated an already explosive situation and threatened international peace and security.

37. By a letter⁵⁸ 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, which was adopted at the 1375th plenary meeting on 11 November 1965.

38. At the 1257th meeting, on 12 November 1965, the Security Council decided⁵⁹ to include the five letters in its agenda.

39. At the 1258th meeting, on 12 November 1965, the representative of Jordan submitted a draft resolution⁶⁰ which read as follows:

"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 adopted⁶¹ as resolution 216 (1965) by 10 votes to none, with 1 abstention.

⁵⁶ *Ibid.*, p. 357, S/6902.

⁵⁷ *Ibid.*, p. 358, S/6903.

⁵⁸ *Ibid.*, p. 359, S/6908.

⁵⁹ S C, 20th yr., 1257th mtg., paras. 1—5.

⁶⁰ S C, 20th yr., 1258th mtg., para. 24.

⁶¹ *Ibid.*, para. 29.

40. At the 1259th meeting, on 13 November 1965, the representative of the United Kingdom submitted a draft resolution⁶² which read as follows:

"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 para.)

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

"..."

"3. Calls upon all States to refrain from any action which could give aid and comfort to that régime, and, in particular, to refrain from supplying arms, equipment, or war material to it,

"..."

41. At the same meeting, the representative of Ivory Coast submitted, on behalf of the African delegations, a draft resolution⁶³ which read as follows:

"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 preamb. para)

"Noting that the measures envisaged by the United Kingdom Government will be ineffective without the use of force (fourth preamb. para)

"..."

"1. Determines that the situation resulting from this declaration of independence constitutes a threat to international peace and security;

"..."

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

"..."

"8. Calls upon all States to enforce on the illegal régime in Southern Rhodesia a complete interruption of economic relations including an embargo on supplies of oil and petroleum products, and of rail, sea, air, postal, telegraphic, radio and other means of communication and severance of diplomatic and consular relations, in accordance with Article 41 of the United Nations Charter;

"..."

42. At the 1264th meeting, on 19 November 1965, the representative of Uruguay submitted⁶⁴ a draft resolution jointly sponsored with Bolivia, stating:

"The Security Council,

"..."

"1. Determines that the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia is of grave

⁶² S C, 20th yr., 1259th mtg., para. 31, S/6928.

⁶³ S C, 20th yr., 1259th mtg., para. 70, S/6929.

⁶⁴ S C, 20th yr., 1264th mtg., paras. 2 and 8. For full text of draft resolution, see *ibid.*, Suppl. for Oct.—Dec., p. 390, S/6955.

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;

"...

"6. *Calls upon* all States not to recognize this illegal authority and not to entertain any diplomatic or other relations with it;

"...

"8. *Calls upon* all States to refrain from any action which would assist and encourage the illegal régime and, in particular, to desist from providing it with arms, equipment and military material, and to do their utmost in order to break all economic relations with Southern Rhodesia including an embargo on oil and petroleum products;

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

"..."

43. At the same meeting, the Council decided that priority should be given to the consideration of the draft resolution submitted by Bolivia and Uruguay.⁶⁵

44. At the 1265th meeting, on 20 November 1965, the President (Bolivia) informed⁶⁶ the Council that operative paragraph 1 of the draft resolution submitted by Bolivia and Uruguay would be 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, as amended, was *adopted*⁶⁷ by 10 votes to none, with 1 abstention, as resolution 217 (1965).

b. Précis of relevant constitutional discussion

45. The representative of the United Kingdom, in his introductory statement, informed the Security Council that his Government was resolved that an attempt to impose a constitutional solution in Southern Rhodesia by military force would thrust into a more distant future the right and just solution to the problem. Accordingly, the Governor, who remained the only constitutional authority in Southern Rhodesia, had informed the former Prime Minister and other Ministers that they no longer held office. Further, the representative requested that every Member State of the United Nations should refuse to recognize this illegal régime, ignore any passports issued by it and refuse to give credence to any person claiming to be its representative. He stated

⁶⁵ S C, 20th yr., 1264th mtg., para. 3.

⁶⁶ S C, 20th yr., 1265th mtg., para. 3.

⁶⁷ *Ibid.*, para. 4.

further that the Government of the United Kingdom had prohibited all export of arms to Southern Rhodesia, and had no doubt that all Member States would impose a like prohibition. In addition, his Government had imposed exchange control restrictions and prohibited all exports of United Kingdom capital to Southern Rhodesia and trusted that all the States Members would take similar action. Southern Rhodesia was also denied access to the London capital market and all the advantages in trade, through the Ottawa Agreement, through Commonwealth preference, and through export credits. His Government also proposed to ban the import into the United Kingdom of Southern Rhodesian tobacco and sugar and invited Member States to take such action as was appropriate under their own laws to ensure that these measures would have their full effect.

46. During the discussion, it was maintained that the Security Council should determine that the situation in Southern Rhodesia constituted a threat to international peace and security and subsequently should decide to apply against Southern Rhodesia enforcement measures provided for in Articles 41 and 42 of the Charter. What was required was a complete interruption of diplomatic and economic relations including a total embargo on all trade with Southern Rhodesia and an interruption of rail, sea, air, postal, telegraphic, radio and other means of communication, to be accompanied by the use of force, without which these measures would be meaningless.

47. It was also stated that the Security Council might consider in the language of Article 42 whether the measures provided for in Article 41 could be adequate. Sanctions as such, to be of any significance for the purpose of Article 41, could only be those which would bring pressure to bear as promptly and effectively as the situation demanded.

48. Two representatives observed that the Security Council should also decide to take, besides the measures provided for in Articles 41 and 42, those provided for in Article 43.⁶⁸

B. The question of recourse to measures specifically under Article 41 to secure compliance with decisions of the Security Council

C. The question of the mandatory character of measures adopted by the Security Council explicitly under Article 41

49. The Security Council, in resolution 232 (1966) in which it explicitly invoked Article 41 with Article 39, decided to apply selective economic sanctions against Southern Rhodesia. The discussion preceding the adoption of that resolution centred upon its mandatory character.

⁶⁸ For text of relevant statements, see S C, 20th yr., 1257th mtg.: Ghana, para. 61; United Kingdom, paras. 24-30; 1258th mtg.: India, para. 72; Mali, para. 52; USSR, para. 133; 1259th mtg.: Ivory Coast, paras. 50 and 69; 1260th mtg.: Guinea, para. 121; United Republic of Tanzania, para. 57; Malaysia, paras. 96 and 102; 1262nd mtg.: Jamaica, paras. 22 and 34; 1263rd mtg.: Somalia, para. 44.

DECISION OF 16 DECEMBER 1966 IN CONNEXION WITH
THE SITUATION IN SOUTHERN RHODESIA⁶⁹

a. *Précis of the relevant proceedings*

50. By a letter⁷⁰ dated 5 December 1966, the representative of the United Kingdom informed the President of the Security Council that since the rebellion in Southern Rhodesia had not been brought to an end, and following consultation with other Commonwealth Governments, his Government had instructed him to request an early meeting of the Council at which his Government would propose certain additional measures to be taken against the illegal régime in Rhodesia.

51. At the 1331st meeting, on 8 December 1966, the Security Council decided⁷¹ to include the letter in its agenda.

52. At the same meeting, the representative of the United Kingdom submitted a draft resolution⁷² with the following provisions:

"The Security Council,

"Reaffirming its resolutions 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965, and 221 (1966) 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,

"Reaffirming that to the extent not superseded in this resolution, the measures provided for in resolution 217 (1965) of 20 November 1965, as well as those initiated by Member States in implementation of that resolution, shall continue in effect,

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

"1. Decides that all States Members of the United Nations shall prevent:

"(a) The import into their territories of asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products and hides, skins and leather originating in Southern Rhodesia and exported therefrom after the date of this resolution;

"(b) Any activities by their nationals or in their territories which promote or are calculated to promote the export of these commodities from Southern Rhodesia and any dealings by their nationals or in their territories in any of these commodities originating in Southern Rhodesia and exported therefrom after the date of this resolution, including in particular any transfer of funds to Southern Rhodesia for the purposes of such activities or dealings;

"(c) Shipment in vessels or aircraft of their registration of any of these commodities originating

⁶⁹ For consideration of the provisions of Article 39 in connexion with this question, see this *Supplement*, under Article 39, paras. 39 and 113–117.

⁷⁰ S C, 21st yr., Suppl. for Oct.—Dec., p. 109, S/7610.

⁷¹ S C, 21st yr., 1331st mtg., preceding para. 1.

⁷² *Ibid.*, para. 25; for text of draft resolution, see *ibid.*, Suppl. for Oct.—Dec., p. 169, S/7621/Rev. 1.

in Southern Rhodesia and exported therefrom after the date of this resolution;

"Any activities by their nationals or in their territories which promote or are calculated to promote the sale or shipment to Southern Rhodesia of arms, ammunition of all types, military aircraft, military vehicles, and equipment and materials for the manufacture and maintenance of arms and ammunition in Southern Rhodesia,

"... notwithstanding any contracts entered into or licences granted before the date of this resolution;

53. At the 1335th meeting, on 13 December 1966, the representative of Uganda submitted jointly with Mali and Nigeria, amendments⁷³ to the United Kingdom draft resolution. In the amendments, it was proposed to insert two new operative paragraphs and to renumber former operative paragraph 1 as operative paragraph 3. In addition, the following amendments were proposed:

"3. Amend sub-paragraph (a) of former operative paragraph 1 as follows: In the third line, insert between leather and originating the following: coal and all manufactured goods.

"4. After sub-paragraph (d) of former operative paragraph 1, insert the following sub-paragraph:

"(e) Participation in their territories or territories under their administration or in land or air transport facilities or by their nationals or vessels of their registration in the supply of oil or oil products to Southern Rhodesia.

"5. After former operative paragraph 1 (now operative paragraph 3), insert the following five operative paragraphs:

"..."

"8. Calls upon all States not to render financial or other economic aid to the illegal racist régime in Southern Rhodesia;

"..."

54. At the 1338th meeting, on 15 December 1966, the representative of Uganda submitted a revised text⁷⁴ of the above mentioned amendments, in which the text of the other amendments as listed in the preceding paragraph remained unchanged.

55. At the 1339th meeting, on 16 December 1966, the representative of the United Kingdom submitted a revised text of the United Kingdom draft resolution,⁷⁵ which incorporated a new operative paragraph 1 (e) which read:

"(e) Any activities by their nationals or in their territories which promote or are calculated to promote the supply to Southern Rhodesia of all other aircraft and motor vehicles and of equipment and materials for the manufacture, assembly or maintenance of aircraft and motor vehicles in Southern Rhodesia; the shipment in vessels and aircraft of their registration of any such goods

⁷³ S C, 21st yr., 1335th mtg., para. 3. For amendments, see Suppl. for Oct.—Dec., p. 178, S/7630/Rev. 1.

⁷⁴ S C, 21st yr., 1338th mtg., para. 146. See Suppl. for Oct.—Dec., p. 180, S/7630/Rev. 1.

⁷⁵ S C, 21st yr., 1339th mtg., para. 3.

destined for Southern Rhodesia; and any activities by their nationals or in their territories which promote or are calculated to promote the manufacture or assembly of aircraft or motor vehicles in Southern Rhodesia.”

Decisions

At the 1340th meeting, on 16 December 1966, amendment No. 3 of the joint amendments submitted by Mali, Nigeria and Uganda, was *not adopted*,⁷⁶ the result of the vote being 8 votes in favour, none against, with 7 abstentions; amendment No. 4 was *adopted*⁷⁷ by 14 votes to none, with 1 abstention; paragraph 8 in amendment No. 5 was *adopted*⁷⁸ by 14 votes to none, with 1 abstention.

At the same meeting, the revised draft resolution submitted by the United Kingdom, as amended, was *adopted*⁷⁹ by 11 votes to none, with 4 abstentions, as resolution 232 (1966).

b. Précis of relevant constitutional discussion

56. The representative of the United Kingdom, in introducing his draft resolution, stated that in view of the situation in Southern Rhodesia the United Kingdom Government requested the Security Council to reinforce, with a resolution under Chapter VII of the Charter, the measures of economic pressures hitherto applied on a voluntary basis by Members of the United Nations and should invoke certain measures under Articles 39 and 41. If any State were to decide that it could not conform with the Council's decision, this would create a new situation. However, the United Kingdom was proposing selective sanctions only against Southern Rhodesia. It was necessary to proceed step by step in dealing with this situation which must not be allowed to develop into an economic or military confrontation involving the whole of Southern Africa. Such action could have incalculable consequences for the whole of central and Southern Africa, going far beyond the issues raised by the Rhodesian problem. The representative stated further that the following criteria should apply in the selection of the commodities for sanctions: they should be export commodities; the sanctions proposed should be those which would cause the greatest economic damage to the illegal régime, and the commodities should be those against which sanctions could be most effectively applied by Member States.

57. One representative stated that among the measures provided for by the Charter, his Government supported those which were listed in Article 41 and did not imply the use of force. Before resorting to this measure, it would be well to try such measures as might achieve the same purpose of maintaining international peace and security, avoiding armed confrontation, the results of which would be unpredictable. Adoption of the measures under

Article 41 might be the best way to remedy the situation. However, his Government would not support the adoption of measures which did not stand a chance of success. It wanted the collective measures to be, in the language of Article 1 (1) of the Charter, effective. If they were to be effective, they must be implemented by all States, whatever their economic interests or geographic position. The measures proposed in the United Kingdom draft resolution were not merely voluntary, as those set forth in resolution 217 (1965), but were binding on all Member States under Article 25 of the Charter. Any State failing to carry out the decisions of the Security Council would be openly violating the obligations it assumed under the Charter when it had become a Member of the United Nations.

58. Another representative maintained that the Security Council was asked to impose, under Chapter VII, mandatory economic sanctions of a substantial nature against the régime in Southern Rhodesia. The purpose of these sanctions was to bring about a peaceful settlement of the Rhodesia problem. They were necessary in order to make it clear to the illegal régime that the international community could not tolerate the existence of a discriminatory system based on minority rules in defiance of the United Nations and its principles. Unlike the voluntary sanctions adopted by the Council in the past, those requested now were mandatory.

59. It was also maintained that if the Security Council were to consider the draft resolution submitted by the United Kingdom, the sanctions should not be selective but comprehensive, applying commodities including petroleum products. To be effective, they should be applied under Article 41 of Chapter VII and should cover both exports, including the export of petroleum and petroleum products, and imports. Further, it was contended that these measures were also binding on non-members of the United Nations under Article 2 (6)⁸⁰.

D. The question of circumstances under which measures provided for in Article 41 should be adopted by the Security Council

60. In connexion with a draft resolution before the Security Council which would determine that the situation in Southern Rhodesia continued to constitute a threat to international peace and security and which would call upon all States to apply measures in accordance with Article 41, it was maintained that if the current informal talks which could lead to negotiations with the Salisbury régime did not succeed in solving the problem of Southern Rhodesia, then it would be for the Council to consider the question further. It was also stated that the adoption of a draft resolution providing for sanctions under Article 41 by Member States of the United

⁷⁶ S C, 21st yr., para. 88.

⁷⁷ *Ibid.*, para. 89.

⁷⁸ *Ibid.*, para. 94.

⁷⁹ *Ibid.*, para. 110.

⁸⁰ For text of relevant statements, see S C, 21st yr., 1331st mtg.: United Kingdom, paras. 22, 24, 31–33; 1332nd mtg.: Argentina, paras. 57 and 59; 1333rd mtg.: Japan, paras. 47–49; Senegal, para. 38; United States, para. 23; 1335th mtg.: Uganda, paras. 16–20; 1336th mtg.: India, para. 16; 1337th mtg.: Netherlands, paras. 90 and 91; 1340th mtg.: Jordan, paras. 11 and 12, Uruguay, para. 38.

Nations would constitute a mandatory international agreement and consequently such a decision would require intensive consultations among the members of the Security Council.⁸¹

DECISION OF 23 MAY 1966 IN CONNEXION WITH THE SITUATION IN SOUTHERN RHODESIA⁸²

a. *Précis of the relevant proceedings*

61. In a letter⁸³ 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, Somali, Sudan, Togo, 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 while the Council had authorized the use of force, this covered only a minor sector, and substantial quantities of oil and petroleum products were entering Rhodesia in clear violation of the embargo, through other sectors. 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 people of Zimbabwe. Any arrangements arrived at between the Government of the United Kingdom and the Salisbury racist régime, which excluded the genuine representatives of the people of Zimbabwe and which had failed to guarantee the rights of the majority, would only aggravate an already explosive situation

⁸¹ On 9 April 1966, the Security Council adopted resolution 221 (1966) on the basis of a United Kingdom draft in connexion with the consideration of the situation in Southern Rhodesia. In that resolution the Security Council, *inter alia*, recalled its resolutions 216 (1965) of 12 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; expressed its grave concern at reports that substantial supplies of oil might reach Southern Rhodesia as a result of an oil tanker having arrived at Beira and the approach of a further tanker, which might lead to the resumption of pumping through the Companhia do Pipeline Moçambique Rhodesias pipeline with the acquiescence of the Portuguese authorities; considering that such supplies would afford great assistance and encouragement to the illegal régime in Southern Rhodesia thereby enabling it to remain longer in being (preamble); determined that the resulting situation constituted a threat to the peace; called upon the Government of Portugal not to permit oil to be pumped through the pipelines from Beira to Southern Rhodesia and not to receive at Beira oil destined for Southern Rhodesia; and called upon all States to ensure the diversion of any of their vessels reasonably believed to be carrying oil destined for Southern Rhodesia which might be en route for Beira (oper. paras. 1-4). In the amendments submitted to the United Kingdom draft resolution but not adopted, reference was made to Article 41 and 42. References to those Articles were made also in the constitutional discussion. For the précis of proceedings and of the constitutional discussions connected with resolution 221 (1966), see this *Supplement*, under Article 42, paras. 33-40.

⁸² For consideration of the provisions of Article 39 in connexion with this question, see this *Supplement*, under Article 39, paras. 106-111.

⁸³ S C, 21st yr., Suppl. for April-June, p. 80, S/7285 and Add. 2.

and would 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).

62. At the 1278th meeting, on 17 May 1966, the Security Council decided⁸⁴ to include the letter in its agenda.

63. At the 1279th meeting, on 17 May 1966, the representative of Nigeria submitted⁸⁵ a draft resolution sponsored jointly with Mali and Uganda, which read as follows,

"The Security Council,

"Recalling its resolution, 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 which Chapter VII of the United Nations Charter alone confers upon it,

"Gravely concerned by the reports that substantial supplies of oil are reaching Southern Rhodesia and that arrangements are being made to devise a permanent system of oil supply to that territory,

"Noting with regret that the administering Power has 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 people of Zimbabwe,

"Disturbed at the grave consequences which negotiations between the United Kingdom of Great Britain and Northern Ireland and the racist régime of Salisbury, without the participation of the genuine representatives of the people of Zimbabwe, might entail for the rights of that people to freedom and independence,

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

"2. Calls upon all States to apply measures with a view to the complete severance of economic relations and communications with Southern Rhodesia in accordance with Article 41 of the United Nations Charter;

⁸⁴ S C, 21st yr., 1278th mtg., preceding para. 3.

⁸⁵ S C, 21st yr., Suppl. for April-June, p. 82, S/7285/Add. 1.

"3. *Invites* the Portuguese and South African Governments, in particular, to take forthwith the necessary measures under Article 41 of the Charter to sever economic relations and communications with Southern Rhodesia;

"4. *Calls upon* all States, and particularly the Portuguese and South African Governments, to take all necessary measures to prevent the supply of oil and petroleum products to Southern Rhodesia;

"5. *Calls upon* the United Kingdom to take the measures provided for in Chapter VII of the Charter in order, by the use of air, sea or land forces, to prevent any supplies, including oil and petroleum products, from reaching Southern Rhodesia;

"...

"9. *Calls upon* the United Kingdom Government to take all necessary measures, including the use of force, to abolish the racist minority régime in Southern Rhodesia and to ensure the immediate application of General Assembly resolution 1514 (XV)."

Decision

At the 1285th meeting, on 23 May 1966, the draft resolution submitted by Mali, Nigeria and Uganda was put to the vote. The result of the vote was 6 in favour, 1 against, with 8 abstentions. The draft resolution was not adopted,⁸⁶ having failed to obtain the affirmative vote of nine members.

b. Précis of relevant constitutional discussion

64. In introducing the joint draft resolution submitted by Mali, Nigeria and Uganda, the representative of Nigeria stated that it provided for the Security Council to call upon all States to apply measures with a view to the complete severance of economic relations and communications with Southern Rhodesia in accordance with Article 41. The situation in Southern Rhodesia provided a set of circumstances for which the application of Article 41 was suitable.

65. The representative of the United Kingdom pointed out that if it was not possible to achieve a just settlement of the Rhodesian problem through the informal talks being pursued in order to find out whether an approach to London from Salisbury could lead to negotiations, a new situation would arise and the United Kingdom would need to consider the whole problem further. The purpose of the United Kingdom had been to isolate and contain the pro-

blem, not to extend it. However, further action by the United Nations at this time could do nothing to help and would be likely to prejudice the achievement of a just settlement which would protect the rights of all people of Rhodesia.

66. During the discussion the views were expressed that it was a matter of regret that enforcement measures as provided for in Articles 41 and 42 had not been taken by the Council and, instead, a decision had been made to impose permissive sanctions on the rebel régime. It was therefore necessary for the Council to adopt mandatory sanctions provided for in Chapter VII in order to fully realize the aims and objectives of its resolution 217 (1965). The Council should decide to take appropriate measures as provided for under Articles 41 and 42. One representative said that his Government had declared itself in favour of the application of sanctions under Chapter VII in complete accordance with principles and provisions of the Charter.

67. Another representative maintained that the time had come for the Council to consider the adoption of certain mandatory measures of a general nature under Chapter VII. Among those mandatory measures were the following: (a) to call upon all States not to recognize the illegal régime in Southern Rhodesia or to maintain diplomatic or any other relations with it; (b) to urge all States to take appropriate action to prevent the supply of oil and petroleum products to Southern Rhodesia; (c) to call upon all States to take the necessary steps for a complete severance of economic relations with Southern Rhodesia, with the exception, for humanitarian reasons, of the supply of foodstuffs, clothing and medicine. The representative stated further that the adoption of the draft resolution before the Council which contemplated obligatory measures would be tantamount to an international agreement imposing obligations not only on States members of the Security Council, but also on all Members of the United Nations by virtue of the commitments they assumed on signing the Charter. As with any international agreement containing specific and detailed obligations, this would require careful consideration and adjustment. It was therefore necessary to have intensive consultations among the members of the Council so as to find a formula it could approve. However, so far the Council had been unable to make use of such procedure to the extent necessary.⁸⁷

⁸⁷ For text of relevant statements, see S C, 21st yr., 1278th mtg.: Pakistan, paras. 81, 89 and 91; 1279th mtg.: Nigeria, paras. 52 and 53; Sierra Leone, para. 90; 1280th mtg.: USSR, para. 105; United Kingdom, paras. 43-46 and 61; 1281st mtg.: Uruguay, paras. 31 and 32; 1285th mtg.: Nigeria, para. 7; Uruguay, paras. 27 and 28.

⁸⁶ S C, 21st yr., 1285th mtg., para. 33.