

## ARTICLE 42

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## TEXT OF ARTICLE 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

## INTRODUCTORY NOTE

1. During the period under review, Article 42 was explicitly and implicitly referred to in three draft resolutions and in an amendment which are dealt with in the General Survey. The General Survey refers also to a number of instances in which Article 42 was invoked together with Article 41: in that connexion, the study on Article 41 in this *Supplement* should be consulted as indicated in paragraph 4 below. Further, a number of explicit references to Article 42 made in the discussions in the Security Council and the General Assembly are reported on in the General Survey.

2. An issue which arose in four instances during discussions in the Security Council concerned the circumstances in which the use of force could be decided upon by the Council in accordance with Article 42. The four decisions of the Council, all made in connexion with the situation in Southern Rhodesia, shed light on the application and interpretation of that Article. Together with a précis of relevant constitutional discussions in each case, they are dealt with in the Analytical Summary of Practice under the heading "The question of circumstances under which the use of force in accordance with Article 42 could be decided upon by the Security Council".

3. Reference to a certain relationship between Articles 42 and 43 is made in Article 106. That Article provides for consultations with a view to "such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security" on the part of the five permanent members of the Security Council, and states that the provision shall apply "pending the coming into force of such special agreement<sup>1</sup> referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42".

4. In a number of instances, Article 42 was referred to together with Article 41 in such a way that separate treatment of Article 42 would be impracticable and repetitious and might distort the significance of those references. Thus the reader is advised to

consult in this *Supplement* the references to Article 42 in connexion with the following under Article 41:

(a) Decisions of the General Assembly to which in its proceedings objections were raised on the ground that they fell within the scope of Article 42 and therefore were beyond the competence of the General Assembly;<sup>2</sup>

(b) The statements made by the Secretary-General in the Security Council and in the General Assembly during consideration of the situation in the Republic of the Congo in connexion with the question whether the resolutions of the Security Council dated 14 July, 22 July and 9 August 1960 were adopted under Chapter VII of the Charter;<sup>3</sup>

(c) Statements made during consideration by the Security Council of the items: letter dated 5 September 1960 from the USSR (Action of OAS relating to the Dominican Republic); letter dated 8 March 1962 from the representative of Cuba concerning the Punta del Este decision and situation in the Dominican Republic; and during consideration of the inclusion in the agenda of the Council of the complaint by Cuba (letter dated 22 February 1962), also concerning the Punta del Este agreements, within the context of the constitutional discussions whether the measures provided for in Articles 41 and 42 could be deemed to constitute "enforcement measures" within the meaning of Article 53.<sup>4</sup>

(d) Statements made during consideration by the Security Council of the question of race conflict in South Africa;<sup>5</sup>

(e) Statements made during consideration by the Security Council of the situation in Southern Rhodesia.<sup>6</sup>

5. In view of the close interrelationship between Article 42 and Article 39 as well as Article 41, the reader should also consult the studies on both those Articles in this *Supplement*.

<sup>2</sup> See this *Supplement* under Article 41, paras. 8 and 9.

<sup>3</sup> *Ibid.*, paras. 14–17.

<sup>4</sup> *Ibid.*, para. 20.

<sup>5</sup> *Ibid.*, paras. 26–32.

<sup>6</sup> *Ibid.*, paras. 33–48; 61–67.

<sup>1</sup> See also this *Supplement* under Article 43.

## I. GENERAL SURVEY

6. During the period under review, there was no decision of the Security Council bearing explicitly on Article 42.

7. A reference which might be deemed as implicitly referring to Article 42 was made in resolution 221 (1966) relating to Southern Rhodesia in which the Security Council determined that the situation constituted a threat to the peace and called upon the Government of a Member State to prevent, by the use of force if necessary, the arrival of an oil tanker at a designated port, and to arrest and detain another tanker upon its departure from the same port if its cargo were discharged there.<sup>7</sup> Amendments which would have explicitly invoked Article 42, together with Article 41, were not adopted.<sup>8</sup>

8. Article 42, together with Article 43, was explicitly referred to in another draft resolution on which no action was taken by the Security Council.<sup>9</sup>

9. In another draft resolution, also not adopted, a reference which might be considered as relevant to the language of Article 42 was made in connexion with a provision which should have called upon the Government of a Member State to take the measures provided for in Chapter VII of the Charter, in order to prevent "by the use of air, sea, or land forces" any supplies from reaching a Non-Self-Governing Territory.<sup>10</sup>

10. In the same draft resolution, a reference was made to a resolution of the Security Council 221 (1966) in which the use of force by the Government mentioned was authorized. The draft resolution would again have called upon that Government to take all necessary measures, including the use of force, to abolish the "racist minority régime" in that territory.<sup>11</sup>

11. In an amendment submitted to a draft resolution in which Articles 39 and 41 were explicitly invoked, the Security Council would have deplored the refusal of that Government to use every means, including force, to bring about the downfall of that régime.<sup>12</sup> The draft resolution was adopted, but the amendment was not.

12. Explicit references to Article 42 were made,

<sup>7</sup> See para. 34 below.

<sup>8</sup> See para. 35 below.

<sup>9</sup> See para. 24 below.

<sup>10</sup> See para. 41 below.

<sup>11</sup> *Ibid.*

<sup>12</sup> See para. 50 below.

*inter alia*, during consideration by the Security Council of the following items: Complaints by Cuba, the USSR and the United States;<sup>13</sup> (22–23 October 1962); the Cyprus question<sup>14</sup> and Question relating to the policies of *apartheid* of the Government of the Republic of South Africa.<sup>15</sup> In the General Assembly such references were made, *inter alia*, during consideration of the following questions: United Nations Emergency Force;<sup>16</sup> Question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa.<sup>17</sup> The situation in Angola;<sup>18</sup> Obligations of Members, under the Charter of the United Nations, with regard to the financing of the United Nations Emergency Force and the Organization's operations in the Congo; advisory opinion of the International Court of Justice;<sup>19</sup> Comprehensive review of the whole question of peace-keeping operations in all their aspects;<sup>20</sup> 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.<sup>21</sup>

<sup>13</sup> S C, 17th yr., 1024th mtg.: Ghana para 109.

<sup>14</sup> S C, 18th yr., 1078th mtg.: Cyprus, para. 98.

<sup>15</sup> S C, 19th yr., 1217th mtg.: Sierra Leone, para. 103; 1129th mtg., Indonesia, paras. 12, 13, 22, 26.

<sup>16</sup> G A (XIV), Plen., 842nd mtg.: USSR, para. 6.

<sup>17</sup> G A (XV/2) Spec. Pol. Com., 235th mtg.: Mali, para. 7; Plen., 981st mtg.: Ghana, para. 41; G A (XVI), Spec. Pol. Com., 277th mtg.: France, para. 7; 285th.: Ivory Coast, para. 11; G A (XVII), Spec. Pol. Com., 333rd mtg.: Ivory Coast, para. 11; 336th mtg.: Nepal, para. 34; G A (XVIII), Spec. Pol. Com., 387th mtg.: Mali, para. 22, G A (XX), Plen., 1395th mtg.: Sweden, para. 166.

<sup>18</sup> G A (XVI), Plen., 1089th mtg.: Poland, para. 44; 1090th mtg.: Ukrainian SSR, para. 67; 1091st mtg.: Bulgaria, para. 73; 1097th mtg.: Albania, para. 78; 1098th mtg.: Guinea, para. 70. A draft resolution submitted by Bulgaria and Poland proposing that the General Assembly suggest to the Security Council that it consider, in urgent manner and under Articles 41 and 42 of the Charter, the application of sanctions against Portugal was rejected by the General Assembly on 30 January 1962 by 43 votes to 26, with 32 abstentions (G A (XVI), Annexes, a. i. 27, p. 22, A/L. 383; G A (XVI), Plen., 1102nd mtg.: para. 106).

<sup>19</sup> G A (XVII), 5th Com., 965th mtg.: Romania, para 4.

<sup>20</sup> G A (XX), Spec. Pol. Com., 464th mtg.: Ghana, para. 15; 465th mtg.: USSR para. 56; 466th mtg.: Czechoslovakia, paras. 28, 31; 482nd mtg.: Jamaica, para. 23; 483rd mtg.: Mongolia, para. 26.

<sup>21</sup> G A (S-IV), Annexes, a. i. 7, pp. 56–64, A/5407 para. 9 (a); 5th Com., 990th mtg.: Czechoslovakia, paras. 11 and 12; 1002nd mtg.: Lebanon, para. 34.

## II. ANALYTICAL SUMMARY OF PRACTICE

**The question of circumstances under which the use of force in accordance with Article 42 could be decided upon by the Security Council**

DECISIONS OF 20 NOVEMBER 1965, 9 APRIL 1966, 23 MAY 1966 AND 16 DECEMBER 1966 IN CONNEXION WITH THE SITUATION IN SOUTHERN RHODESIA

13. In one instance dealt with below, the Se-

curity Council adopted a resolution calling for the use of force, if necessary, by the United Kingdom Government in certain defined limited circumstances.

14. In three other instances, draft resolutions or amendments asking the Security Council to apply coercive measures under Article 42 against Southern Rhodesia or to authorize the use of force by the United Kingdom Government to remove a racist régime in Southern Rhodesia were not adopted.

15. In connexion with those decisions of the Security Council, the constitutional discussions concerned the circumstances of a constitutional or factual nature in which the provisions of Article 42 could be applied against Southern Rhodesia, or in which a request could be made by the Security Council to the Government of the United Kingdom to use force for the indicated objective.

1. *Decision of 20 November 1965*

a. *Précis of proceedings*

16. By a letter<sup>22</sup> dated 10 November 1965, the President of the General Assembly transmitted to the President of the Security Council the text of General Assembly resolutions 2012 (XX) and 2022 (XX), on the question of Southern Rhodesia which the Assembly adopted at its 1357th and 1368th plenary meetings, on 12 October and 5 November 1965, respectively.

17. By a letter<sup>23</sup> 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 purporting, illegally and unilaterally, to declare independence for Rhodesia, and the United Kingdom representative requested the convening of an urgent meeting of the Council.

18. By a letter<sup>24</sup> 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 urgent meeting of the Council to consider the serious situation in Southern Rhodesia resulting from the unilateral declaration of the independence of the Territory by the white minority government, which had created a threat to international peace and security.

19. By a letter<sup>25</sup> dated 11 November 1965, the representatives of Afghanistan, Ceylon, Cyprus, Ghana, India, Iran, Iraq, Jordan, Kuwait, 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 of the Council to consider the grave situation in Rhodesia arising out of the unilateral declaration of independence by the white minority government of that Territory, which aggravated an already explosive situation and threatened international peace and security.

20. By a letter<sup>26</sup> 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 the question of Southern Rhodesia adopted by the Assembly, at its 1375th plenary meeting on the same date.

21. At the 1257th meeting, on 12 November 1965, the Security Council decided<sup>27</sup> to include the letters in its agenda.

22. At the 1258th meeting, on 12 November 1965, the representative of Jordan submitted a draft resolution<sup>28</sup> as follows:

*"The Security Council*

*"1. Decides to condemn the unilateral declaration of independence made by a racial 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 this illegal régime."*

*Decision*

At the 1258th meeting, on 12 November 1965, the draft resolution submitted by Jordan was adopted<sup>29</sup> by 10 votes to none, with 1 abstention.

23. At the 1259th meeting, on 13 November 1965, the representative of the United Kingdom submitted a draft resolution<sup>30</sup> 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;*

*"Determining that the continuance of the resulting situation is likely to endanger the maintenance of international peace and security;*

*"..."*

*"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;*

*"..."*

24. At the same meeting, the representative of Ivory Coast submitted on behalf of the African delegations a draft resolution<sup>31</sup> in the following terms:

*"The Security Council,*

*"..."*

*"Bearing in mind that the declaration of independence in Southern Rhodesia by the racial minority settler régime constitutes a rebellion against the United Kingdom Government,*

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

*"Noting that the measures envisaged by the*

<sup>22</sup> S C, 20th yr., Suppl. for Oct.—Dec., p. 355, S/6897.

<sup>23</sup> *Ibid.*, p. 354, S/6896.

<sup>24</sup> *Ibid.*, p. 357, S/6902.

<sup>25</sup> S C, 20th yr., Suppl. for Oct.—Dec., 358, S/6903.

<sup>26</sup> *Ibid.*, p. 359, S/6908.

<sup>27</sup> S C, 20th yr., 1257th mtg.: paras. 1—5.

<sup>28</sup> S C, 20th yr., 1258th mtg.: para. 24, S/6921/Rev. 1.

<sup>29</sup> S C, 20th yr., 1258th mtg.: para. 29, same text as S C resolution 216 (1965).

<sup>30</sup> S C, 20th yr., 1259th mtg.: para. 31, S/6928.

<sup>31</sup> S C, 20th yr., 1259th mtg.: para. 70, S/6929.

United Kingdom Government will be ineffective without the use of force.

“... ”

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

“... ”

“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;

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

“... ”

25. At the 1264th meeting on 19 November 1965, on behalf of Bolivia and Uruguay the representative of Uruguay submitted a draft resolution<sup>32</sup> the text of which follows:

“*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;

“... ”

“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;

“... ”

26. At the same meeting, the Council decided to consider the draft resolution submitted jointly by Bolivia and Uruguay as a matter of priority<sup>33</sup>.

27. At the 1265th meeting, on 20 November 1965, the President (Bolivia) informed<sup>34</sup> the Council that operative paragraph 1 of the joint draft resolution had been modified by the sponsors so that the Council would determine the situation as being “extremely grave” rather than as “of grave concern”.

<sup>32</sup> S C, 20th yr., Suppl. for Oct.—Dec., p. 390, S/6955.

<sup>33</sup> S C, 20th yr., 1264th mtg.: para. 3.

<sup>34</sup> S C, 20th yr., 1265th mtg.: para. 3.

#### *Decision*

At the 1265th meeting, on 20 November 1965, the revised joint draft resolution submitted by Bolivia and Uruguay was *adopted*<sup>35</sup> by 10 votes to none, with 1 abstention. No action was taken on draft resolutions, submitted by the United Kingdom and Ivory Coast.

#### *b. Précis of relevant constitutional discussion*

28. Some representatives expressed the view that the United Kingdom should be invited to take more adequate measures than those announced by its representative,<sup>36</sup> not excluding the use of force, to bring the rebellion in Southern Rhodesia to an end as soon as possible. The Security Council should not be content merely to take note of United Kingdom statement, which endorsing the measures proposed it should add certain other measures within the scope of Chapter VII of the Charter and should not hesitate to recommend the application of the enforcement measures provided for in Articles 41, 42 and 43. It was also stated that the United Kingdom, as the administering Power, had itself declared that it would not use force to put down the rebellion in Southern Rhodesia and not want the Security Council to authorize the use of force under Article 42, for that purpose; however, military action was the only means for the solution of the problem, and the Security Council should decide on the application of the measures provided for in that Article.

29. It was further contended that only use of force or a combination of force and economic sanctions against the régime in Southern Rhodesia could be effective; economic sanctions alone would have no results. It was only by using force that the United Kingdom Government could restore law and order in Southern Rhodesia and thus create an atmosphere in which all races there could freely express their will. The view was further expressed that the Security Council should call upon the United Kingdom to put down the rebellion in Southern Rhodesia and should endeavour to ascertain whether the United Kingdom would be willing to receive United Nations assistance in the form of police and military units to protect the lives of the African leaders and those who were opposed to the current régime and to seal the border between Southern Rhodesia and Zambia.

30. It was further maintained that the situation called for the application of Chapter VII, which provided for with respect to breaches of the peace, and obviously the use of force would be involved. However, the success of such action would depend not on the majority in the Council, but on the few, for the Council could not advance any further than the intentions of the permanent members: a decision concerning the use of force required unanimity among the Great Powers. While the United Nations was the appropriate body to bring the situation in Southern Rhodesia under control, only the permanent members of the Council could guide the advance of the United Nations in the direction stipulated in the Charter.

<sup>35</sup> S C, 20th yr., 1265th mtg.: para. 4; same text as S C resolution 217 (1965).

<sup>36</sup> See this *Supplement*, under Article 41, paras. 45—48.

31. The representative of Uruguay observed that the draft resolution submitted jointly by Bolivia and Uruguay did not make any judgement which might imply advocacy of the use of armed force in the circumstances.<sup>37</sup>

2. *Decision of 9 April 1966*

a. *Précis of proceedings*

32. By a letter<sup>38</sup> dated 7 April 1966, the representative of the United Kingdom requested the President of the Security Council to convene an emergency meeting at which the United Kingdom Government would submit proposals to meet the situation which had arisen from the arrival of an oil tanker in Beira. Such an event 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. In was further stated in the letter that the approach to Beira of a second tanker also believed to be carrying oil destined for Rhodesia made the situation one of extreme urgency.

33. At the 1276th meeting, on 9 April 1966, the Security Council *decided*<sup>39</sup> to include the letter in its agenda.

34. At the same meeting the representative of the United Kingdom submitted a draft resolution<sup>40</sup> the text of which follows:

*"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,*

*"Considering that such supplies will afford great assistance and encouragement to the illegal régime in Southern Rhodesia, thereby enabling it to remain longer in being,*

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

*"2. Calls upon the Portuguese Government not to permit oil to be pumped through the pipeline from Beira to Southern Rhodesia;*

*"3. Calls upon the Portuguese Government not to receive at Beira oil destined for Southern Rhodesia;*

*"4. Calls upon all States to ensure the diversion of any of their vessels reasonably believed to be carrying oil destined for Southern Rhodesia which may be en route to Beira;*

*"5. Calls upon the Government of the United Kingdom of Great Britain and Northern Ireland to prevent, by the use of force if necessary, the arrival at Beira of vessels reasonably believed to be carrying oil destined for Southern Rhodesia, and empowers the United Kingdom to arrest and detain the tanker known as the *Joanna V* upon her departure from Beira in the event her oil cargo is discharged there."*

35. At the same meeting, the representative of Uganda submitted<sup>41</sup> amendments to the United Kingdom draft resolution on behalf of Mali, Nigeria and Uganda 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 political results,*

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

*"2. In operative paragraph 1 replace the words "the resulting situation" by the words "the situation prevailing in Southern Rhodesia" and after the word "peace" add the words "and security".*

*"3. After paragraph 3 insert the following new paragraph:*

*"4. Calls upon the Government of South Africa to take all measures necessary to prevent the supply of oil to Southern Rhodesia".*

*"4. Renumber the present paragraph 4 as paragraph 5.*

*"5. Replace the present paragraph 5 by the following text:*

*"6. Calls upon the Government of the United Kingdom to prevent by all means, including the use of force, the transportation into Southern Rhodesia of oil and other merchandise and empowers the United Kingdom to take measures necessary for the immediate implementation of this provision".*

*"6. Add the following two paragraphs at the end of the draft resolution:*

*"7. Calls upon all States to apply measures for the complete interruption of economic relations and of communications with the settler minority régime and any other means in conformity with Articles 41 and 42 of the United Nations Charter.*

*"8. Calls upon the Government of the United Kingdom to employ all measures including the use of armed force to bring down the settler*

<sup>37</sup> For text of relevant statements, see S C, 20th, yr., 1258th mtg.: India, para. 72; Mali, para. 52; 1259th mtg.: Ivory Coast, para. 69; 1260th mtg.: Ethiopia, paras. 19, 21; Guinea, para. 121; Malaysia, para. 102; United Republic of Tanzania, paras. 42, 57 and 58; Zambia, para. 69; 1261st mtg.: Uruguay, para. 45; 1262nd mtg.: Jamaica, paras. 23-34; 1263rd mtg.: Somalia, para. 44; 1264th mtg.: Ghana, para. 32; Jordan, para. 15; Uruguay, para. 9.

<sup>38</sup> S C, 21st yr., 1276th mtg.: para. 10, S/7235.

<sup>39</sup> S C, 21st yr., 1276th mtg.: preceding para. 7.

<sup>40</sup> S C, 21st yr., 1276th mtg.: para. 12, S/7236/Rev. 1; same text as S C resolution 221 (1966).

<sup>41</sup> S C, 21st yr., Suppl. for April-June, p. 32, S/7243.

minority régime in Rhodesia and to implement forthwith resolution 1514 (XV) of the General Assembly.”

### Decisions

At the 1277th meeting, on 9 April 1966, the amendments submitted by Mali, Nigeria and Uganda were voted upon separately but *not adopted*,<sup>42</sup> each having failed to obtain the affirmative vote of 9 members. The vote on amendments 1, 2 and 3 was 1 to none with 8 abstentions and on amendments 5 and 6, 6 to none, with 9 abstentions. Voting on amendment 4 was unnecessary.

The draft resolution submitted by the United Kingdom was adopted<sup>43</sup> by 10 votes to none, with 5 abstentions, as resolution 221 (1966).

#### b. *Précis of relevant constitutional discussion*

36. The representative of the United Kingdom said that adoption of the United Kingdom draft resolution would enable the United Kingdom to carry out its responsibilities in the Rhodesian situation without fear of illegality. Adoption of the draft resolution was indeed essential for the United Kingdom to take within the law all steps, including the use of force as the situation might demand, to stop the arrival at Beira of ships taking oil to the rebel régime in Rhodesia. Such a purpose was in accordance with Security Council resolution 217 (1965).

37. The sponsors of the amendments to the United Kingdom draft resolution stated that the United Kingdom should agree to the use of force in order to topple the minority régime in Southern Rhodesia. The proposal to include two additional operative paragraphs was in complete conformity with Articles 41 and 42. Since the United Kingdom had agreed to bring the question to the Security Council under Chapter VII of the Charter, the intentions of the Council should be clarified in the draft resolution. The scope of the United Kingdom draft resolution, however, was too limited, since it was asking the Council to approve the use of force only on the high seas. The Council should extend the use of force into Rhodesia and into other fields so that the illegal government in Southern Rhodesia could be removed. The United Kingdom Government should use force to intercept not only ships on the high seas but tankers coming from other places and all other vehicles that might bring anything that would give assistance to the régime in Salisbury. It should also have recourse to the use of force, in order to ensure safety of the frontiers of its colony of Southern Rhodesia, and to close Rhodesia's frontier with South Africa and Mozambique. What was the value of isolating the incident of a tanker's taking oil to Beira from the context of the larger question whether the Security Council should be called upon to impose mandatory sanctions under Articles 41 and 42 of Chapter VII? The United Kingdom Government should admit that the solution of the problem of Southern Rhodesia could never be accomplished without the use of force.

<sup>42</sup> S C, 21st yr., 1277th mtg.: paras. 175–178.

<sup>43</sup> S C, 21st yr., 1277th mtg.: para. 179.

38. One representative stated that the Security Council should adopt operative paragraph 5 of the United Kingdom draft resolution which provided for a limited authorization of the use of force. However, in principle, any resolution under the terms of Article 42 should be approved only in extreme cases: its provisions should be restrictive and applicable only in well-defined and limited instances. Referring to the new operative paragraphs proposed in the sixth of the amendments submitted by Mali, Nigeria and Uganda, the representative stated that they would be acceptable if the reference to Article 42 were deleted.<sup>44</sup>

### 3. *Decision of 23 May 1966*

#### a. *Précis of proceedings*

39. By a letter<sup>45</sup> dated 10 May 1966, the representatives of Algeria, Burundi, Cameroon, Chad, Congo (Brazzaville), Dahomey, Congo (Democratic Republic of), Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Kenya, Liberia, Libya, Malawi, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, 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 the Council immediately in order to examine the situation in Southern Rhodesia. It was stated in the letter that substantial quantities of oil and petroleum products were entering Rhodesia through other sectors in clear violation of the embargo decided upon by the Council. Further, 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 failed to guarantee the rights of the majority, would only aggravate an already explosive situation 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).

40. At the 1278th meeting, on 17 May 1966, the Security Council decided<sup>46</sup> to include the letter in its agenda.

41. At the 1279th meeting, on 17 May 1966, the representative of Nigeria submitted<sup>47</sup> a draft resolu-

<sup>44</sup> For texts of relevant statements, see S C, 21st yr., 1276th mtg.: Uganda, paras. 46 and 56; United Kingdom, paras. 21, 26; USSR, para. 127, 1277th mtg.: Argentina, para. 46; Mali, para. 171; Nigeria, paras. 25, 33; Sierra Leone, para. 64; Uruguay, para. 12.

<sup>45</sup> S C, 21st yr., Suppl. for April–June, p. 80, S/7285 and Add. 2.

<sup>46</sup> S C, 21st yr., 1278th mtg.: preceding para. 3.

<sup>47</sup> S C, 21st yr., Suppl. for April–June, p. 82, S/7285/Add. 1.

tion sponsored jointly by Nigeria, Mali and Uganda. The text follows:

*"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 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,*

*"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;*

*"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 joint draft resolution submitted by Mali, Nigeria and Uganda was voted upon and was not adopted<sup>48</sup>

<sup>48</sup> S C, 21st yr., 1285th mtg.: para. 33.

having failed to obtain the affirmative vote of nine members. The vote was 6 to 1, with 8 abstentions.

#### *b. Précis of relevant constitutional discussion*

42. Introducing the three-Power draft resolution, the representative of Nigeria pointed out that by operative paragraph 9 the Security Council would call upon the United Kingdom Government to take all necessary measures, including the use of force, to abolish the racist minority régime in Southern Rhodesia, but was not dictating the amount of force that was to be applied. It would be sufficient if the United Kingdom Government would apply no more force than was necessary to accomplish the task.

43. During the discussion it was contended that it had been proven that economic sanctions and even the oil embargo had failed to bring to an end the illegal régime in Southern Rhodesia. For that reason, other measures must be applied. The United Kingdom should declare that the use of force to end that régime was not ruled out and that further continuation of the rebellion would make the use of force imperative. It was also stated that the Security Council should decide to take appropriate measures, including the use of force if necessary, as provided for in Articles 41 and 42 of the Charter, in order to bring the illegal régime in Southern Rhodesia to an end. If, in the past, actions under Chapter VII had been authorized in circumstances such as the presence at Beira of Portuguese ships laden with oil likely to be pumped into Southern Rhodesia, why was it difficult to adopt a draft resolution providing for mandatory sanctions in a situation which the United Kingdom itself had described as being outside the law and involving a threat to international peace and security? Those who had voted for resolution 221 (1966) of 9 April 1966 were under a similar obligation to vote for new measures for action under Chapter VII. It was stated further that the effectiveness of the United Nations sanctions against Southern Rhodesia depended largely on the observance of those sanctions by neighbouring countries. If those Governments refused to fulfil their obligations under the Charter and ignored the decisions of the Security Council, then the Council had to enforce compliance with its decisions by all Member States, by the use of force against them if necessary.

44. One representative stated that the Security Council should consider the adoption of certain mandatory measures of a general nature under Chapter VII. Furthermore, measures calling for the use of armed force also could be considered. Within such a context, two situations of juridically different nature were to be differentiated. The first situation concerned the use of force in Southern Rhodesia by the United Kingdom as the administering Power. The second situation would arise if a request would be addressed to the United Kingdom to use its armed forces for purposes not directly connected with its status as an administering Power and which would affect third countries. The representative had certain reservations regarding the latter course which would allow considerable latitude to a given State in the actual application of such coercive measures. However, any request which the Security Council



might address to one or more States to use their armed forces for a particular purpose would not be binding on them since there had been no follow-up of the Charter provision regarding the establishment of United Nations forces. The agreements provided for in Article 43 and subsequent Articles of the Charter had not been signed, and the United Nations did not automatically have at its disposal units which would have been available under those agreements. For those reasons and because of the precedents which might be created, the representative could not support the proposal for the Council to request the United Kingdom to use force. In his subsequent statement the representative expressed the view that the Security Council should find a formula which would allow it to take a further step towards solving the problem of deciding upon obligatory sanctions without implying the use of armed force.

45. Another representative stated that he could not support the provisions for the use of force since such a step would be premature while there were means of reaching a peaceful solution and recommending measures which did not presuppose the use of force. Any resolution under Chapter VII of the Charter of the United Nations, and especially under Article 42, should be adopted only in extreme cases. Furthermore, the use of force pursuant to the Charter was based upon the principle of the prior consent of the State or States using such force. The Security Council could not compel any State to use its armed forces against its will. Moreover, the United Kingdom needed neither the authorization nor the endorsement of the Council to quell the régime in Southern Rhodesia. That was the United Kingdom's problem and its dilemma. Subsequently, he added that unless the agreements referred to in Article 43 had been signed, no State could be compelled to use force pursuant to Chapter VII without its own consent.

46. It was further argued that the primary duty of the Security Council was not to decide in favour of the use of armed force so long as there was a fair chance that the question could be solved by application of economic measures or by peaceful negotiations. Furthermore, the United Kingdom was still the legal authority in Southern Rhodesia and therefore was responsible for its affairs. Thus, the decision when and to what extent to use force lay in the first place with the United Kingdom Government. Moreover, there was insufficient basis in the Charter for the use of armed force as called for in the draft resolution. Article 41 provided for enforcement measures not involving the use of armed force, while Article 42 provided for military action. Article 42 left no doubt that military force might be used only in the event that the Security Council considered "that measures provided for in Article 41 would be inadequate or have proved to be inadequate". Operative paragraphs 5 and 9 of the draft resolution would constitute an application of military force under Article 42, although there was no declaration in the draft resolution that the economic measures provided for in Article 41 "would be inadequate or have proved to be inadequate". Thus, there was an insufficient basis for such a conclusion, and, consequently, the fundamental condition laid down by

the Charter for the application of Article 42 was not fulfilled. It was not possible at one and the same time to call for economic measures in accordance with Article 41, as was being done in paragraphs 2, 3 and 4 of the draft resolution, and for the use of force foreseen in Article 42, as was being done in other paragraphs of the draft resolution.<sup>49</sup>

#### 4. Decision of 16 December 1966

##### a. *Précis of proceedings*

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

48. At the 1331st meeting, on 8 December 1966, the Security Council decided<sup>51</sup> to include the letter in its agenda.

49. At the same meeting, the representative of the United Kingdom submitted<sup>52</sup> a draft resolution under which the Security Council, acting in accordance with Articles 39 and 41 of the Charter, would, *inter alia*, decide that all States Members of the United Nations would take a series of economic sanctions against Southern Rhodesia; would call upon them to carry out that decision in accordance with Article 25 of the Charter; and, having regard to the principles stated in Article 2 of the Charter, would urge States not Members of the United Nations also to act in accordance with that decision.

50. At the 1335th meeting, on 13 December 1966, on behalf of Mali, Nigeria and Uganda, the representative of Uganda submitted amendments and, at the 1338th meeting, on 15 December 1966, a revised text of those amendments.<sup>53</sup> *Inter alia*, the three-Power amendments would have replaced the second preambular paragraph of the United Kingdom draft resolution with the following:

"*Deeply concerned* that the Council's efforts so far and the measures taken by the administering Power have failed to bring the rebellion in Southern Rhodesia to an end,"

and would have inserted several new operative paragraphs, including the following:

"2. *Deplores*:

"(a) The refusal of the United Kingdom to use every means including force to bring about the

<sup>49</sup> For texts of relevant statements, see S C, 21st yr., 1278th mtg.: India, para. 64; Pakistan, paras. 81, 89, 91; Zambia, paras. 21, 23; 1279th mtg.: Nigeria, paras. 58, 64 and 65; Sierra Leone, paras. 85, 90; 1281st mtg.: Uruguay, paras. 31-36; 1283rd mtg.: Argentina, para. 18; 1284th mtg.: Bulgaria, para. 26; Netherlands, paras. 70-73; 1285th mtg.: Argentina, paras. 16 and 17; Uruguay, para. 23.

<sup>50</sup> S C, 21st yr., Suppl. for Oct.-Dec., p. 109, S/7610.

<sup>51</sup> S C, 21st yr., 1331st mtg., preceding para. 1.

<sup>52</sup> S C, 21st yr., 1331st mtg., para. 25, S/7621.

<sup>53</sup> S C, 21st yr., Suppl. for Oct.-Dec., pp. 178 and 179, S/7630; pp. 180-181, S/7630/Rev. 1.

downfall of the Ian Smith régime in Southern Rhodesia;”  
and

“5. *Invites* the Government of the United Kingdom to prevent by all means the transport to Southern Rhodesia of oil or oil products”.

51. At the 1339th meeting, on 16 December 1966, the representative of the United Kingdom submitted<sup>54</sup> a revised text of the United Kingdom draft resolution.

#### *Decision*

At the 1340th meeting, on 16 December 1966, the amendment to the preamble quoted above was adopted<sup>55</sup> by 14 votes to none, with 1 abstention. The two amendments to the operative part quoted above were voted on but were not adopted because they failed to obtain at least nine affirmative votes.

The result of the vote on the first one was 6 to none, with 9 abstentions<sup>56</sup> and on the second 7 to none, with 8 abstentions.<sup>57</sup>

At the same meeting, the revised draft resolution submitted by the United Kingdom, as amended, was adopted<sup>58</sup> as resolution 232 (1966) by 11 votes to none, with 4 abstentions.

#### b. *Précis of relevant constitutional discussion*

52. During the discussion, one representative stated that the difference between voluntary and mandatory sanctions would become nominal if the mandatory sanctions were not of a universal and comprehensive character or were not otherwise effective. If the effects of mandatory sanctions of a general and comprehensive character were going to be economically ruinous, not only for Rhodesia, but for many other countries as well, a substitute for them would not be partial economic sanctions but the use of force. If it was agreed that only some coercive action could relieve the world community of the threat arising from the situation in Southern Rhodesia, then the Council had to choose between mandatory sanctions, which would inevitably apply to South Africa if they were to be effective, and a controlled use of force. No one ignored the difficulties of the use of force and its perils, but were there not greater dangers if inadequate action were taken under Chapter VII? The representative maintained further that it was a misconception to contend that Article 42 laid down a fundamental condition that economic measures should have proved inadequate before force was to be employed. Some stress had been laid on that arrangement during a previous debate, but the Charter did not warrant such a view. The words “would be inadequate or have proved to be inadequate” in Article 42 could

mean only that the proof of the inadequacy of economic measures was not a condition precedent to the taking of such action by air, sea or land forces as might be necessary to restore international peace and security. There was no basis for the argument that action under Chapter VII meant either economic measures or military operations. To contend that the Charter precluded a combination of the two was against all reason. It could not be denied that in certain situations economic measures would not be effective unless they were reinforced by police action.

53. Some representatives maintained that since the measures provided for under Article 42 should be implemented only in extreme cases, it was not for the United Nations to decide on the employment of military action against Southern Rhodesia. From the very outset of the crisis, the United Kingdom Government had called the unilateral declaration of independence an act of rebellion against the British Crown, and as such it should be suppressed by the constitutional authority with all the means at its disposal, including, if necessary, the use of military force. It was a prerogative which the constitutional authority was entitled to exercise. In fact, the United Kingdom had not hesitated to ask for authorization to use force in order to prevent the shipment of oil by way of Beira. Its reluctance to use force could be understood, but whether it was wise or necessary to rule the legitimate use of force entirely out of consideration was questionable. However, the use of force under the Charter was based exclusively on the consent of States. The Security Council could not impose the use of force on any State against its will if the State had not expressed its consent in accordance with the provisions of Article 43. Nor should the Council make such a specific recommendation to the constitutional authority. The use of force, if it was necessary, must be left to the administering Power. Furthermore, the Security Council could not oblige the United Kingdom to use force in Southern Rhodesia, and the United Kingdom did not need an authorization from the United Nations in order to do so, since the problem was still one which was within its territory. As the country bearing responsibility for Southern Rhodesia, the United Kingdom was entitled to employ force in its territory and was also entitled to the ultimate judgement of whether and in what circumstances such action should be taken.

54. It was also maintained that the Security Council must decide that all States would be obliged to implement the Council resolution imposing mandatory sanctions; otherwise the only alternative would be to resort to the use of force. It was further stated that the only means to overcome the rebellion in Southern Rhodesia was the use of force which the administering Power was empowered to employ in dealing with the situation.<sup>59</sup>

<sup>54</sup> S C, 21st yr., Suppl. for Oct.—Dec., pp. 169 and 170, S/7621/Rev. 1. In the revised text operative paragraph 1 was amended to extend economic sanctions against Rhodesia to the supply of aircraft and motor vehicles.

<sup>55</sup> S C, 21st yr., 1340th mtg.: para. 84.

<sup>56</sup> S C, 21st yr., 1340th mtg., para. 86.

<sup>57</sup> *Ibid.*, para. 91.

<sup>58</sup> *Ibid.*, para. 110; same text as resolution 232 (1966).

<sup>59</sup> For texts of relevant statement, see S C, 21st yr., 1332nd mtg.: Argentina, para. 57; 1333rd mtg.: Senegal, para. 37; 1335th mtg.: Mali, para. 67; Pakistan, paras. 81, 82, 88—92; 1336th mtg.: (S/PV): India, p. 3; 1337th mtg.: Netherlands, paras. 82 and 83; 1339th mtg.: China, paras. 39—41; 1340th mtg.: Jordan, para. 10.