## Article 40

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TEXT OF ARTICLE 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

INTRODUCTORY NOTE

1. This study consists of examples of practice which appear to be related to the application and interpretation by the Security Council of the provisions of Article 40. The decisions treated here have been selected to illustrate the manner in which they were made, as well as the types of action taken by the Council in situations in which members of the Council either called for action under Articles 39 and/or 40, or held the view that the action taken was within the meaning of Article 40 and Chapter VII of the Charter.

2. The General Survey contains an account of Council action on questions in connexion with which action explicitly under Article 40 was either proposed by members or taken by the Council. A brief account of the contexts in which decisions bearing on Article 40 were taken and of the nature of the provisional measures instituted under it, as well as of the circumstances in which the Council, while instituting measures of the nature of provisional measures, refrained from invoking the Article, is also given. Also included are examples of practice illustrative of similarities in nature between provisional measures taken by the Council under Article 40 and measures taken by it under provisions other than those in Chapter VII.

3. Examples of affirmative Council action explicitly under Article 40 are few, and such decisions have been taken only in connexion with the Palestine question. During the consideration of the Indonesian question (II), some members of the Council contended that certain of its previous decisions in that case represented action under Article 40; this interpretation was contested by other members. The question whether, in the absence of explicit invocation of Article 40, the decisions referred to amounted to action under that Article, is treated in the Analytical Summary of Practice below.

4. In the instances of affirmative action under Article 40 mentioned in the preceding paragraph, the Council first made a determination under Article 39, or related its current action to a previous determination under that Article. In discussions relating to draft resolutions proposing action under Articles 39 and 40, as well as under Article 41, an incidental question often raised has been whether the Council could take action under Article 40 without first making a determination under Article 39, or whether action of a provisional nature taken in the absence of a determination under Article 39 amounted to action under Article 40. The practice of the Council in regard to this question, together with a summary of the pertinent constitutional discussion, is set forth in the Analytical Summary.

5. While the provisional measures ordered by the Council "shall be without prejudice to the rights, claims, or position of the parties concerned", and their purpose is
solely "to prevent an aggravation of the situation", some proposals for action under Article 40 have nevertheless encountered opposition on the ground that the measures proposed, if complied with, would in fact be prejudicial to its rights, claims or position. Examples of the practice of the Council on such occasions, together with a summary of the related discussion, are also set forth in the Analytical Summary.

6. The final provision of Article 40 states: "The Security Council shall duly take account of failure to comply with such provisional measures." In connexion with the application and interpretation of this provision, the question has arisen as to the nature of the further action the Council may take in the event of its finding that one or the other of the parties concerned had failed to comply with the measures instituted by it. The Analytical Summary contains an outline of the practice of the Council in this regard, as illustrated by a number of decisions it took on the Indonesian question (II) and the Palestine question.

I. GENERAL SURVEY

7. The items in connexion with which action explicitly under Article 40 was either proposed by members of the Security Council or taken by the Council were the following: (a) the Greek frontier incidents question; (b) the Indonesian question (II); (c) the Palestine question; and (d) the Berlin question. In certain other questions, such as that of the complaint of aggression upon the Republic of Korea, the India-Pakistan question, and the question of Guatemala, the Security Council, while calling upon the authorities or the parties concerned or upon Members of the United Nations in general to comply with certain measures of a provisional nature, did not, however, invoke Article 40 as the authority under which it acted. In the Palestine question, between 9 December 1947 and 15 July 1948 the Council took a number of decisions by which it called upon the parties concerned to comply with a number of measures of the nature of provisional measures, without, however, invoking Article 40. The Council invoked Articles 39 and 40 for the first time at its 358th meeting on 15 July 1948.

8. The practice of the Security Council in ordering provisional measures in respect to the questions mentioned in the preceding paragraph is set out below, together with an account of the context of decisions explicitly rested on Article 40 and of the nature of the measures called for, as well as of the context of those decisions in which the Council, while instituting measures of a provisional nature, refrained from invoking Article 40.

9. In connexion with the Greek frontier incidents question, the representative of Greece stated in a letter dated 26 June 1947, that there was "a definite and existing threat to the peace, breach of the peace or act of aggression". In a further letter dated 31 July 1947, the Minister for Foreign Affairs of Greece requested that the Council first determine "that there exists a threat to the peace, breach of the peace or act of aggression within the meaning of Article 39 of the Charter", and next,

1/ The Berlin question appeared on the agenda of the Security Council under the title "Identical notifications dated 29 September 1948 from the Governments of the French Republic, the United States of America and the United Kingdom to the Secretary-General".

2/ The question of Guatemala appeared on the agenda of the Security Council under the title "Cablegram dated 19 June 1954 from the Minister for External Relations of Guatemala addressed to the President of the Security Council".


that it take "immediate provisional measures under Article 40 calling upon the parties to cease their attacks and to comply with their obligations under the Charter". During its consideration of the question, the Council had before it at its 177th and 180th meetings two draft resolutions 5/ under which the Council would determine that the situation constituted a threat to the peace under Article 39 and would call upon the parties concerned to comply with certain provisional measures. One draft resolution 6/ called upon all the parties involved to cease all acts of provocation and frontier violations, and directed the parties, in accordance with Article 40, to enter at once into direct negotiations with a view both to relieving existing tensions and to resuming normal and peaceful diplomatic relations. The other draft resolution 7/ called upon Albania, Bulgaria and Yugoslavia "to cease and desist from rendering any further assistance or support in any form to the guerrillas fighting against the Greek Government", and further called upon them "to co-operate with Greece in the settlement of their disputes by peaceful means". The two draft resolutions were voted 8/ upon at the 188th meeting of the Council on 19 August 1947, and failed of adoption because of the negative vote of a permanent member.

10. On two occasions in the course of the consideration of the Indonesian question (II), action explicitly under Article 40 was proposed. At the 171st meeting on 31 July 1947, when the Council first began consideration of the question, it had before it a draft resolution 9/ under which the Council would determine that the hostilities in Indonesia constituted a breach of the peace under Article 39 and would call upon the parties concerned, under Article 40, to comply with the following specific provisional measures "without prejudice to the rights, claims, or position of either party: (a) To cease hostilities forthwith, and (b) To settle their disputes by arbitration in accordance with article XVII of the Linggadjati Agreement, signed at Batavia on 25 March 1947". The draft resolution was later amended to eliminate the references to Articles 39 and 40; the amended draft resolution was voted upon and adopted at the 173rd meeting of the Council on 1 August 1947. 10/

11. The second occasion on which action under Article 40 was proposed was after the receipt by the Council in October 1947 of the reports 11/ of the Consular Commission on the observance of the cease-fire in Java and Sumatra. The reports provided evidence that the cease-fire resolution of 1 August 1947 had not been fully implemented. During


6/ Draft resolution submitted by Australia (see footnote 5 above).

7/ Draft resolution submitted by the United States (see footnote 5 above).

8/ S C, 2nd yr., No. 79, 188th mtg., pp. 2094, 2098 and 2099.

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

10/ The measures decided upon in the resolution of 1 August 1947 were subsequently claimed by a number of members to have been taken under Article 40 and Chapter VII of the Charter. A number of other members and the representative of the Netherlands, one of the parties concerned, contested that interpretation. For an analytical summary of the proceedings concerning the question, see para. 16 of the study on Article 39, as well as para. 19 of the present study under the heading "A. The question whether decisions amounted to action under Article 40 in the absence of explicit invocation of the Article".

11/ Telegram from the Consular Commission at Batavia (S C, 2nd yr., No. 97, 211th mtg., footnote 1 to p. 2570 (S/581)); report by the Consular Commission dated 22 October 1947 (S C, 2nd yr., Special Suppl. No. 4 (S/586/Rev.1)).
the consideration of the reports, at the 215th meeting on 29 October 1947, a draft resolution 12/ was submitted under which the Council would find that "the forces of the Government of the Netherlands have failed to comply with the resolutions of the Security Council of 1 August and 26 August 1947", 13/ and would call "the attention of the Government of the Netherlands to the fact that the failure to comply with the provisional measures shall, under Article 40 of the Charter, be taken into account by the Security Council, and that it creates a situation which, under the requirements of the Charter, may lead to the necessity of applying enforcement measures". At the 219th meeting on 1 November 1947, the above-mentioned draft resolution was voted upon and rejected. At the same meeting, however, the Council adopted a resolution 14/ which, while not citing any Article of the Charter, called upon the parties to comply with certain measures such as "to consult with each other, either directly or through the Committee of Good Offices, as to the means to be employed in order to give effect to the cease-fire resolution and, pending agreement, to cease any activities or incitement to activities which contravened that resolution and to take appropriate measures for safeguarding life and property".

12. As indicated in paragraph 7 above, the Council, in its consideration of the Palestine question during the period prior to 15 July 1948, took a number of decisions by which it called upon the parties concerned to carry out certain provisional measures with a view to preventing a deterioration in the situation; it did not, however, invoke Article 40 or bring the situation under Chapter VII of the Charter. The Council, by its decision of 15 July 1948, for the first time invoked Articles 39 and 40 of the Charter, thus bringing the situation under Chapter VII. While the decision of 15 July 1948 made express mention of Article 40 and a number of subsequent decisions either repeated the reference to Article 40 or recalled and reaffirmed that decision in ordering provisional measures, the nature of the measures so ordered did not differ materially from that of some of the measures decided on by the Council prior to 15 July 1948. The range and types of measures instituted by the Council both before and after its decision of 15 July 1948 are summarized below.

13. Summary of decisions prior to 15 July 1948:

(a) By its resolution 15/ of 1 April 1948, the Council called upon Arab and Jewish armed groups in Palestine "to cease acts of violence immediately". By its resolution 16/ of 16 April 1948, the Council called upon "all persons and organizations...

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13/ The resolution of 26 August 1947 (S C, 2nd yr., No. 84, 195th mtg., text in footnote 1 to pp. 2224 and 2225 (S/521); vote p. 2232), after taking into consideration that military operations were being continued in the territory of the Indonesian Republic, reminded the parties of the resolution of 1 August 1947 and called upon them to adhere strictly to it.
14/ For text of draft resolution, see S C, 2nd yr., No. 103, 218th mtg., pp. 2723 and 2724; for the vote on the draft resolution as amended (S/597), see ibid., 219th mtg., p. 2750. The resolution of 1 November 1947 was subsequently claimed by a number of members to represent action under Article 40. The claim, however, was contested by a number of other members and by the representative of the Netherlands. For an analytical summary of the proceedings concerning the question, see para. 19 below under the heading "A. The question whether decisions amounted to action under Article 40 in the absence of explicit invocation of the Article".
15/ S C, 3rd yr., Suppl. for April, pp. 4 and 5, S/714-I.
16/ Ibid., pp. 7 and 8, S/723.
in Palestine and especially upon the Arab Higher Committee and the Jewish Agency to take immediately, without prejudice to their rights, claims, or positions, and as a contribution to the well-being and permanent interests of Palestine," the following measures: (i) cease all activities of a military nature, as well as acts of violence; (ii) refrain from bringing into Palestine armed or fighting personnel; and (iii) refrain from any political activity which might prejudice the rights, claims, or positions of either community.

(b) By its resolution 17/ of 22 May 1948, the Council called upon all Governments and authorities, "without prejudice to the rights, claims or position of the parties concerned, to abstain from any hostile military action in Palestine and to that end to issue a cease-fire order to their military or para-military forces to become effective within thirty-six hours after midnight New York Standard Time, 22 May 1948".

(c) The resolution 18/ of the Council of 29 May 1948, the provisions of which were similar in many respects to those in its resolution of 22 May 1948, also called upon all Governments and authorities concerned to order, among other things, "a cessation of all acts of armed force for a period of four weeks". The Council invited the States members of the Arab League and the Jewish and Arab authorities in Palestine to communicate to it their acceptance of its decision by 6 p.m. of 1 June 1948, and decided that "if the present resolution is rejected by either party or by both, or if, having been accepted, it is subsequently repudiated or violated, the situation in Palestine will be reconsidered with a view to action under Chapter VII of the Charter".

14. Summary of decisions of, and subsequent to, 15 July 1948:

(a) By its resolution 19/ of 15 July 1948, the Council, having determined, for the first time in its consideration of the Palestine situation, that the situation constituted a threat to the peace within the meaning of Article 39 of the Charter, ordered the Governments and authorities concerned, "pursuant to Article 40 of the Charter of the United Nations, to desist from further military action and to this end to issue cease-fire orders to their military and para-military forces". The Council ordered further "as a matter of special and urgent necessity an immediate and unconditional cease-fire in the City of Jerusalem to take effect 24 hours from the time of the adoption" of its resolution.

(b) By its resolution 20/ of 4 November 1948, the Council, after referring to previous decisions that brought the situation under Chapter VII of the Charter, called upon "the interested Governments, without prejudice to their rights, claims or position with regard to a peaceful adjustment of the future situation of Palestine", (1) "To withdraw those of their forces which have advanced beyond the positions held on 14 October (1948), the Acting Mediator being authorized to establish provisional lines beyond which no movements of troops shall take place"; and (ii) to establish, through negotiations directly between the parties or conducted through United Nations intermediaries, permanent truce lines and such neutral or demilitarized zones as might appear advantageous, in order to ensure the full observance of the truce.

(c) By its resolution 21/ of 16 November 1948, the Council decided that, "in order to eliminate the threat to the peace in Palestine and to facilitate the transition from

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17/ S C, 3rd yr., Suppl. for May, p. 97, S/773.
18/ Ibid., pp. 103 and 104, S/801.
19/ S C, 3rd yr., Suppl. for July, pp. 76 and 77, S/902.
21/ Ibid., pp. 13 and 14, S/1080.

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the present war to permanent peace in Palestine, an armistice shall be established in all sectors of Palestine", and called upon "the parties directly involved in the conflict in Palestine, as a further provisional measure under Article 40 of the Charter, to seek agreement forthwith, by negotiations conducted either directly or through the Acting Mediator on Palestine, with a view to the immediate establishment of the armistice including: (a) The delineation of permanent armistice demarcation lines beyond which the armed forces of the respective parties shall not move; (b) Such withdrawal and reduction of their armed forces as will ensure the maintenance of the armistice during the transition to permanent peace in Palestine".

(d) By its resolution 22/ of 11 August 1949, the Council, after "Having noted with satisfaction the several Armistice Agreements concluded by means of negotiations between the Parties involved in the conflict in Palestine in pursuance of its resolution of 16 November 1948 (S/1080)"refirmed, "pending the final peace settlement, the order contained in its resolution of 15 July 1948 to the Governments and authorities concerned, pursuant to Article 40 of the Charter of the United Nations, to observe an unconditional cease-fire and, bearing in mind that the several armistice agreements include firm pledges against any further acts of hostility between the Parties and also provide for their supervision by the Parties themselves, relies upon the Parties to ensure the continued application and observance of these Agreements".

(e) The Council on a number of occasions subsequent to its resolution of 11 August 1949, when its attention was drawn to a serious violation of the armistice agreements or when hostilities broke out between the parties, adopted resolutions 23/ re-affirming its decision of 15 July 1948 and calling for a cessation of hostilities and the taking of other measures obligatory under the provisions of the armistice agreements governing the mutual relations of the parties.

15. During the consideration of the Berlin question, the representatives of France, the United Kingdom and the United States of America, in drawing the Council's attention to the serious situation which they considered had arisen as a result of the "unilateral imposition" by the Government of the Union of Soviet Socialist Republics of restrictions on transport and communications between the Western zones of occupation in Germany and Berlin, stated 24/ that the action of the Soviet Government had created a threat to the peace within the meaning of Chapter VII of the Charter. At its 370th meeting on 22 October 1948, the Council had before it a draft resolution 25/ which, citing Article 40 of the Charter but without making a prior determination under Article 39, called upon the four occupying Powers to prevent any incident of a nature to aggravate the situation in Berlin, "To put into effect, simultaneously" the steps required for immediate removal of restrictions on transport and commerce, and to call for an immediate meeting of the four Military Governors to arrange for the unification of currency in Berlin, and thereafter to reopen negotiations in the Council of Foreign Ministers on all outstanding problems concerning Germany as a whole. At the 372nd

22/ S C, 4th yr., No. 38, 437th mtg., p. 13.
23/ See Security Council resolutions of: (a) 17 November 1950 (S C, 5th yr., Suppl. for Sept.-Dec., pp. 122-124, S/1907); (b) 8 May 1951 (S C, 6th yr., 545th mtg., paras. 15 and 115, S/2130); (c) 13 May 1951 (S C, 6th yr., 546th mtg., para. 2 and 547th mtg., para. 170, S/2152/Rev.1); (d) 24 November 1953 (S C, 8th yr., Suppl. for Oct., Nov. and Dec., pp. 57 and 58, S/3139/Rev.2).
25/ Draft resolution submitted by Argentina, Belgium, Canada, China, Colombia and Syria (S C, 3rd yr., No. 119, 370th mtg., pp. 5 and 6, S/1048).
meeting of the Council on 25 October 1948, the draft resolution failed to be adopted because of the negative vote of a permanent member of the Council.

16. In connexion with the item "complaint of aggression upon the Republic of Korea", the Council adopted at its 473rd meeting on 25 June 1950 a resolution by which, without explicitly citing Articles 39 or 40, it made a determination in the language of Article 39 that "the armed invasion of the Republic of Korea by armed forces from North Korea" constituted "a breach of the peace" and called for "an immediate cessation of hostilities" and further called upon the North Korean authorities to withdraw forthwith their armed forces to the 38th parallel. Whether the measures ordered by the Council amounted to action under Article 40 was not formally stated by the Council.

17. In its consideration of the India-Pakistan question, the Security Council called upon the parties to comply with a number of measures without bringing the question under Chapter VII of the Charter. Among the measures decided on by the Council were those: (a) calling upon the parties to take all measures within their power to improve the situation and to refrain from any manner of action which might aggravate the situation; (b) recommending to the parties certain measures to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite in the State of Jammu and Kashmir; and (c) calling upon the parties, "without prejudice to their rights or claims and with due regard to the requirements of law and order", to prepare and execute within a stated period a programme of demilitarization.

18. In the question of Guatemala, while the Minister for Foreign Affairs of Guatemala, by a cablegram addressed to the President of the Security Council, requested a meeting of the Council in order that, in accordance with Articles 35 and 39, the Council might take the measures necessary "to prevent the disruption of peace and international security in this part of Central America and also to put a stop to the aggression in progress against Guatemala", the Security Council itself made no determination that the situation came under Article 39. At its 675th meeting on 20 June 1954, the Council adopted a resolution calling for "the immediate termination of any action likely to cause bloodshed" and requesting "all Members of the United Nations to abstain, in the spirit of the Charter, from rendering assistance to any such action". The precise Charter authority under which the resolution of 20 June 1954 was adopted was not stated in its text nor mentioned in the related proceedings.

26/ S C, 3rd yr., No. 120, 372nd mtg., p. 14.
27/ S C, 5th yr., No. 15, 473rd mtg., pp. 7 and 13-18, S/1499.
28/ On the question whether the resolution of 25 June 1950 amounted to action under Article 39 and Chapter VII of the Charter, see para. 22 in the study on Article 39.
29/ Resolution of 17 January 1948 (S C, 3rd yr., Nos. 1-15, 229th mtg., pp. 120 and 121).
30/ Resolution of 21 April 1948 (S C, 3rd yr., Suppl. for April, pp. 8-12, S/726).
31/ Resolution of 14 March 1950 (S C, 5th yr., No. 12, 470th mtg., p. 4).
32/ S/3232.
33/ S C, 9th yr., 675th mtg., paras. 200-203.
II. ANALYTICAL SUMMARY OF PRACTICE

A. The question whether decisions amounted to action under Article 40 in the absence of explicit invocation of the Article

19. Besides instances of action in which the Security Council explicitly invoked Article 40 or Chapter VII, instances of action similar in substance to provisional measures under Article 40, but in which the Council did not invoke Article 40 or Chapter VII, have also been included in the General Survey above. In most cases in which the Council did not specify the Charter authority under which it was acting, no claim was made that the decisions of the Council represented action under Article 40. Some decisions, however, were later followed by discussion as to whether they amounted to action under Article 40. This point arose in connexion with the Indonesian question (II) in which the Council did not specify the Charter authority under which it took action and in which several members held different views as to the authority under which it was acting. For example, the resolution 34/ of 1 August 1947, by which the parties were called upon by the Council to comply with certain measures, gave rise to a discussion of the Charter authority underlying it. A summary of the relevant proceedings concerning this question will be found in the study on Article 39 35/ which deals with a cognate question with respect to that Article.

B. The question whether the Security Council could take action under Article 40 without first making a determination under Article 39 36/

20. In the proceedings related to a number of draft resolutions and amendments proposing action under Articles 40 or 41, the question came up as to whether the

34/ The resolution of 1 November 1947 (S C, 2nd yr., No. 103, 219th mtg., pp. 2749 and 2750) in connexion with the Indonesian question (II) was also claimed to represent action under Article 40 by some members. A number of other members and the representative of the Netherlands, one of the parties directly concerned, contested the claim.

35/ See paras. 15-19 in the study on Article 39.

36/ The question whether the Council could take action under Articles 39 to 42 of Chapter VII without first making a determination under Article 39 of the existence of a threat to the peace, breach of the peace, or act of aggression, came up incidentally in the proceedings related to the following draft resolutions and amendments: (a) the draft resolution in connexion with the Spanish question submitted by Poland at the 34th meeting of the Council on 17 April 1946 (S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167); (b) the amendment submitted by Australia (S C, 2nd yr., No. 62, 164th mtg., pp. 1469-1472), to the draft resolution submitted by the United States (S C, 2nd yr., No. 51, 147th mtg., pp. 1124-1125, S/391) in connexion with the Greek frontier incidents question; (c) the draft resolutions submitted by Australia and the United States (S C, 2nd yr., No. 79, 188th mtg., pp. 2093 and 2094, S/471 and S/471/Add.1 and S C, 2nd yr., No. 74, 180th mtg., footnote to pp. 1910 and 1911, S/486) in connexion with the Greek frontier incidents question; (d) the draft resolution submitted by Australia (S C, 2nd yr., No. 67, 171st mtg., p. 1626, S/454) in connexion with the Indonesian question (II); (e) the draft resolution in connexion with the Palestine question (S C, 3rd yr., Suppl. for Nov., pp. 1-6, S/1064) submitted to the Council at its 376th meeting (S C, 3rd yr., No. 124, p. 2) by the Sub-Committee established by the Council at its 375th meeting.
Council could take action under either of those Articles without first making a determination under Article 39. The same question, though formulated in another manner, was involved when discussion took place as to whether, in the absence of a determination under Article 39, certain provisional measures instituted by the Council amounted to action within the meaning of Article 40. The observations made in regard to this question, and those regarding a similar question in respect to Articles 41 and 42, have, for the sake of convenience, been included in summary form in the present study. This question was raised only incidentally in the proceedings related to certain draft resolutions, and, therefore, the decisions of the Council would not appear to reflect a definitive position on this particular question. An analysis of the relevant decisions of the Council shows the following: (a) in three instances in which the Council took affirmative decisions invoking Article 40, it first made a determination under Article 39 or referred to an earlier decision in which it had made such a determination; (b) two draft resolutions that invoked Article 40 but did not cite Article 39, were rejected by the Council; (c) in one instance the Council rejected a draft resolution which invoked Article 39 and called for action under Article 40; (d) in the case of another draft resolution that invoked Article 39 and then ordered a cessation of hostilities without, however, citing Article 40, the Council rejected the determination under Article 39 and adopted in substance the measure called for in the draft resolution; (e) in one case, after a draft resolution which invoked Articles 39 and 41 was replaced by a revised draft omitting the reference to those Articles, the revised draft was rejected; (f) in

37/ Resolutions of: (a) 15 July 1948 (S C, 3rd yr., No. 97, 338th mtg.); (b) 16 November 1948 (S C, 3rd yr., No. 126, 361st mtg., pp. 53 and 54) and (c) 11 August 1949 (S C, 4th yr., No. 38, 437th mtg.) in connexion with the Palestine question. A number of other resolutions on the same question recalled the resolutions of 15 July 1948 in their preamble.

38/ Decision of 1 November 1947 (S C, 2nd yr., No. 103, 219th mtg., p. 2751) rejecting the draft resolution submitted by Poland (S C, 2nd yr., No. 101, 215th mtg., pp. 2661 and 2662, S/589), in connexion with the Indonesian question (II); decision of 25 October 1948 (S C, 3rd yr., No. 120, 372nd mtg., p. 14) rejecting the six-Power draft resolution (G A (IV), Suppl. No. 2, p. 64, S/1048), in connexion with the Berlin question.

39/ In connexion with the Greek frontier incidents question, a draft resolution submitted by Australia at the 177th meeting (S C, 2nd yr., No. 71, p. 1808, S/471) and amended at the 188th meeting (S C, 2nd yr., No. 79, p. 2093, S/471 and S/471/Add.1) invoked Articles 39 and 40. The Council rejected the draft resolution at the 188th meeting (ibid., p. 2094).

40/ In the case of the Palestine question, the United States submitted a draft resolution at the 293rd meeting of the Security Council invoking Article 39 and ordering a cessation of hostilities (S C, 3rd yr., No. 67, 293rd mtg., pp. 2-4, S/749). The determination under Article 39 was rejected by the Council; whereafter the wording of the measure ordering cessation of hostilities -- which the sponsor had originally stated was a provisional measure under Article 40 -- was modified by the substitution of the phrase "calls upon" for the term "orders". In this modified form the draft resolution was approved by the Council (S C, 3rd yr., No. 72, 302nd mtg.).

41/ See the draft resolution submitted by Poland, in connexion with the Spanish question (S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167); revised draft resolution submitted by Poland (S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 389) and decision (S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 413).
another case, where, similarly, a draft resolution 42/ which invoked Articles 39 and 40 was replaced by a text omitting the reference to those Articles as well as to the determination that the situation constituted a breach of the peace, the revised text was adopted.

1. Decision of 24 June 1946 in connexion with the Spanish question

In the proceedings related to the draft resolution 43/ submitted by Poland in connexion with the Spanish question at the 34th meeting of the Security Council, members who opposed the draft resolution stated that they did not find that there was sufficient evidence to warrant the imposition of measures under Article 41 and that a case for the application of Chapter VII had not been made. They argued that the first Article of Chapter VII 44/ governed the whole Chapter and it was only if the Council made a determination of the existence of a threat to the peace, breach of the peace, or act of aggression that Chapter VII could be invoked and the enforcement measures prescribed therein taken.

22. A Sub-Committee of the Council was appointed at the 39th meeting to make studies in order to determine whether the situation in Spain had led to international friction and did endanger international peace and security, and, if so found, then to determine what practical measures the United Nations might take, it submitted its report 44/ at the 44th meeting of the Council. In part IV of its report entitled "Jurisdiction of the Security Council and its Power to take action under Chapter VII of the Charter", the Sub-Committee stated that "Before direct action under Articles 41 or 42 can be ordered, the Charter requires that the Security Council must determine, under Article 39, the existence of a threat to the peace or a breach of the peace, or act of aggression". After expressing what it believed was the juridical meaning of Article 39, the Sub-Committee stated that in its opinion "the Security Council cannot, on the present evidence, make the determination required by Article 39 ... Therefore, none of the series of enforcement measures set out in Articles 41 and 42 can at the present time be directed by the Security Council". In part VI of its report entitled "Conclusions and Recommendations addressed to the Security Council", the Sub-Committee again stated its view that the Council "has no jurisdiction to direct or to authorize enforcement measures under Article 40 or 42" because the situation did not constitute an existing threat to the peace within the meaning of Article 39.

23. In the debate following the submission of the Sub-Committee's report, one of the members of the Sub-Committee again stated that the Council was entitled to proceed towards any measures mentioned in Articles 41 or 42 only after a determination had been

42/ Draft resolution submitted by Australia in connexion with the Indonesian question (II) (S C, 2nd yr., No. 67, 171st mtg., p. 1626) and decision of 1 August 1947 (S C, 2nd yr., No. 68, 173rd mtg., pp. 1700-1703); for text, see S C, 2nd yr., No. 72, footnote 1 to p. 1839, S/459.

43/ S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167. The draft resolution provided:
"The Security Council,
Declares that the existence and activities of the Franco régime in Spain have led to international friction and endangered international peace and security;
Calls upon, in accordance with the authority vested in it under Articles 39 and 41 of the Charter, all Members of the United Nations who maintain diplomatic relations with the Franco Government to sever such relations immediately".

44/ S C, 1st yr., 1st Series, Special Suppl., S/75.
made under Article 39. At the 47th meeting of the Council, the draft resolution submitted by Poland was revised and re-submitted by the original sponsor with the reference to Articles 39 and 41 deleted. Opposition to the revised text was expressed on the ground that the draft resolution still represented an attempt to get the Council to act under Chapter VII, whereas the Sub-Committee had reported that the conditions for acting under Chapter VII did not exist in the Spanish situation. 46/

Decision

At the 48th meeting of the Security Council on 24 June 1946, the revised draft resolution was rejected. There were 4 votes in favour and 7 against.

2. Decisions of 19 August 1947 in connexion with the Greek frontier incidents question

24. At the 177th meeting on 6 August 1947, the Security Council had before it a draft resolution submitted by Australia under which the Council would determine that the situation on the northern borders of Greece constituted a threat to the peace under Article 39 and would direct, in accordance with Article 40, that the parties concerned enter into negotiations to relieve the existing tension and to resume normal and peaceful diplomatic relations. The sponsor of the draft resolution stated that his purpose in bringing the situation under Chapter VII was to compel the Council to face the situation squarely in view of the fact that the possibilities under Chapter VI had been exhausted. Action under Chapter VII would be binding in that it would amount to more than a recommendation, and once the situation was brought under Article 39, provisional measures under Article 40 could be proposed. He pointed out that by acting under Article 40 the Council was not blaming or condemning anyone.

25. At the 180th meeting on 12 August 1947, the Council had before it another draft resolution submitted by the United States under which it would determine that certain activities constituted a threat to the peace within the meaning of Chapter VII of the Charter and would call upon specifically named parties to carry out certain measures.

26. Objection to bringing the situation under Chapter VII was based on the ground that the existence of a threat to the peace had not been proven, and that, consequently, action under Article 40 could not be taken. It was argued that while the measure proposed under Article 40 in the draft resolution submitted by Australia was one that could be welcomed, the objection was to the Charter provisions under which it was being proposed. On this ground, both draft resolutions were called objectionable. 49/
Decisions

At the 188th meeting on 19 August 1947, the draft resolution submitted by Australia failed 50/ to be adopted. There were 9 votes in favour and 2 against (1 vote against being that of a permanent member). At the same meeting, the draft resolution submitted by the United States failed 51/ to be adopted. There were 9 votes in favour and 2 against (1 vote against being that of a permanent member).

3. Decisions of 22 and 29 May 1948 in connexion with the Palestine question

27. At the 293rd meeting on 17 May 1948, the Security Council had before it a draft resolution 52/ under which, for the first time in the Palestine question, the Council would determine that the situation in Palestine constituted a threat to, and a breach of, the peace under Article 39, and order all Governments and authorities concerned to cease and desist from any hostile military action and to issue a cease-fire order within a stated time. While the draft resolution did not state that the order to cease hostile action was being made under Article 40, the sponsor of the draft resolution stated that he considered that order as a provisional measure under Article 40.

28. The invocation of Article 39 was objected to on the grounds that the juridical status of Palestine after the termination of the Mandate was unclear and that action under that Article would bring the situation under Chapter VII, with all its possible consequences. An amended draft resolution, 53/ which omitted the determination under Article 39 and which substituted the phrase "calls upon" for the term "orders", was then submitted. The amended draft resolution did not alter in any other way the substance of the measure in the original draft resolution with which the parties were asked to comply.

29. The amendment was opposed on the grounds that it might have the effect of taking the situation "out of Chapter VII and into Chapter VI", which would be contrary to the intention of the sponsor, and that a number of earlier efforts to restore peace in the affected areas by resorting to the provisions of Chapter VI had failed. Only action consequent on a finding under Article 39, it was argued, would have a binding effect on those who were called upon to comply with it. 54/

Decision

At the 302nd meeting on 22 May 1948, when the draft resolution and the amended draft resolution were put to the vote, the determination under Article 39 was rejected.

50/ S C, 2nd yr., No. 79, 188th mtg., p. 2094.
51/ Ibid., pp. 2098 and 2099.
52/ Draft resolution submitted by the United States (S C, 3rd yr., No. 67, 293rd mtg., pp. 2-4, S/749).
53/ Draft resolution of the United Kingdom submitted as an amendment to the draft resolution of the United States (S C, 3rd yr., No. 69, 296th mtg., pp. 5 and 6, S/755).
54/ For texts of relevant statements, see S C, 3rd yr., No. 67, 293rd mtg.: United States, p. 2; No. 69, 296th mtg.: Belgium, pp. 10-12; United Kingdom, pp. 2-6; United States, pp. 6-10; No. 70, 298th mtg.: France, pp. 15-20; No. 72, 302nd mtg.: United Kingdom, pp. 45 and 46; United States, pp. 41-46.
by the Council. The draft resolution, as amended, \(^{55}\) was then adopted by 8 votes to none, with 3 abstentions. \(^{56}\)

The relevant part of the resolution read as follows:

"The Security Council,

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

30. Although the resolution of 22 May 1948 contained provisions in the language of Article 40, the representative of the United States, sponsor of the original draft resolution which contained a reference to Article 39 but which was rejected, stated \(^{57}\) at a subsequent meeting that the resolution represented action under Chapter VI.

31. At the 306th meeting on 27 May 1948, the Security Council had before it two draft resolutions: the first \(^{58}\) considered that the situation in Palestine constituted a threat to peace and security within the meaning of Article 39, and ordered the Governments of the States involved to secure the cessation of military operations within a stated period; the second \(^{59}\) called for a cessation of hostilities for a period of four weeks as a preliminary step to mediation, with the proviso, however, that if the decision of the Council was rejected by either party or both, the situation in Palestine would be reconsidered with a view to action under Chapter VII.

**Decisions**

At the 310th meeting on 29 May 1948, the first draft resolution determining that the situation came under Article 39 was rejected, \(^{60}\) after having been voted on in parts. At the same meeting, the second draft resolution, which did not invoke any Article of Chapter VII, but which indicated that the Council might invoke such an Article in the event of one or both the parties not accepting the measures called for by it, was adopted \(^{61}\) with amendments.

C. The question of action under Article 40 in cases in which it was contended that the measures proposed, if complied with, would not be "without prejudice to the rights, claims, or position of the parties concerned"

32. Article 40 provides that the provisional measures ordered by the Council "shall be without prejudice to the rights, claims, or position of the parties concerned". As stated in the Article, the objective of the Council in ordering them is "to prevent an
aggravation of the situation”. The provisional measures ordered need not necessarily become part of any final settlement of the questions underlying the situation under consideration by the Council. Whenever the Security Council has taken affirmative action under Article 40, it has done so on the basis that such action on its part or the consequences to the parties concerned of their compliance with the measures ordered would not prejudice the parties' rights, claims, or position before the Council. In these cases, it has disregarded the contentions of one or the other of the parties concerned that a particular provisional measure, if complied with, would not be without prejudice to its rights, claims, or position. Both the constitutional discussion that has ensued as a result of such contentions and the practice of the Council in the circumstances, as illustrated by the proceedings connected with the decisions of 4 and 16 November 1948 on the Palestine question, are set out below.

33. In certain cases, proposals that, in the course of the proceedings, were claimed to amount to action under Article 40 were rejected after questions had been raised whether such proposals, if adopted and complied with, would not prejudice the rights, claims, or position of the parties concerned. Illustrative of this position taken by the Council is the brief account of the proceedings connected with two decisions on the Palestine question and a decision on the Indonesian question (II) set out below.

1. Decision of 4 November 1948 in connexion with the Palestine question

34. The Acting Mediator for Palestine reported 62/ to the Council on 23 October 1948 that, in response to the resolution 63/ of 19 October 1948 by which the Council had called for a cease fire in the Negev, the Egyptian Government and the Provisional Government of Israel had informed him that cease fire orders had been issued to their forces. At the 373rd meeting on 26 October 1948, the Council had before it a report 64/ from the Acting Mediator on the observance of the truce in the Negev. At the same meeting, the Acting Mediator informed 65/ the Council that on 25 October 1948 his Chief of Staff had requested of the Government of Egypt and the Provisional Government of Israel that the forces of both sides should be withdrawn to the truce lines as they existed in the Negev sector on 14 October 1948.

35. At the 374th meeting on 28 October 1948, the Council had before it a draft resolution 66/ under which it would endorse an order of the Acting Mediator calling for a withdrawal of the military forces of Egypt and of the Provisional Government of Israel to the positions occupied by them on 14 October 1948 and would appoint a committee of the Council to report on the measures which it would be appropriate to take under Article 41 if either party or both should fail to comply with the order for withdrawal. The sponsors of the draft resolution stated that no party was entitled to gain military or political advantage through violations of the truce, and that the withdrawal of forces was a necessary measure to establish the status quo. One of the parties, in opposing the draft resolution, stated that apart from the impracticability of executing it, the draft resolution advocated the restoration of conditions that had already produced an alarming conflict and which, by their very nature, might generate a continuing dispute with far-reaching political effects. At the 375th meeting on 29 October 1948, the Council established a Sub-Committee to prepare a revised draft resolution.

62/ S/1049.
63/ G A (IV), Suppl. No. 2, p. 43, S/1044.
64/ S C, 3rd yr., No. 121, 373rd mtg., pp. 3-7, S/1055.
65/ Ibid., pp. 23 and 24.
resolution, taking into consideration the original draft resolution and the amendments suggested by various representatives.

36. At the 376th meeting on 4 November 1948, the Council had before it the draft resolution 67/ prepared by the Sub-Committee, and certain amendments to it. The representative of one of the parties concerned, in again expressing opposition to, among other things, the call for the withdrawal of forces contained in the new draft resolution, stated that its implementation would disturb an existing situation of peace, and would prejudice the territorial and political integrity of his country. 68/

Decision

At the 377th meeting on 4 November 1948, the draft resolution submitted by the Sub-Committee and the amendments to it were voted upon in parts. The draft resolution, as a whole as amended, was adopted 69/ by 9 votes to 1, with 1 abstention. The relevant parts of the resolution 70/ read as follows:

"The Security Council,

......

"Calls upon the interested Governments, without prejudice to their rights, claims or position with regard to a peaceful adjustment of the future situation of Palestine or to the position which the Members of the United Nations may wish to take in the General Assembly on such peaceful adjustment:

"(1) To withdraw those of their forces which have advanced beyond the positions held on 14 October, the Acting Mediator being authorized to establish provisional lines beyond which no movement of troops shall take place;

"(2) To establish, through negotiations conducted directly between the parties, or failing that, through the intermediaries in the service of the United Nations, permanent truce lines and such neutral or demilitarized zones as may appear advantageous, in order to ensure henceforth the full observance of the truce in that area. Failing an agreement, the permanent lines and neutral zones shall be established by decision of the Acting Mediator; and

"Appoints a Committee of the Council, consisting of the five permanent members' together with Belgium and Colombia, to give such advice as the Acting Mediator may require with regard to his responsibilities under this resolution and, in the event that either party or both should fail to comply with sub-paragraphs (1) and (2) of the preceding paragraph of this resolution within whatever time-limits the Acting Mediator may think it desirable to fix, to study as a matter of urgency and to report to the Council on further measures it would be appropriate to take under Chapter VII of the Charter."

68/ For texts of relevant statements, see S C, 3rd yr., No. 122, 374th mtg.: China, p. 13; Provisional Government of Israel, pp. 13-21; United Kingdom, pp. 9-13;
No. 123, 375th mtg.: Provisional Government of Israel, pp. 8-15;
No. 124, 376th mtg.: Egypt, pp. 20-22; Provisional Government of Israel, pp. 10-20.
Paragraphs 37-39

2. Decision of 16 November 1948 in connexion with the Palestine question

37. At the 380th meeting on 15 November 1948, the Security Council had before it a draft resolution, 71/ based upon the suggestions of the Acting Mediator, under which it would decide that an armistice be established in Palestine, and would call upon the parties, "as a further provisional measure under Article 40", to negotiate, either directly or through the Acting Mediator, with a view to the establishment of an armistice.

38. Those who opposed the draft resolution contended (a) that an armistice could not be imposed or ordered, and (b) that to call upon the Arabs to enter into negotiations with the Jews in Palestine would entail recognition by the Arabs of a Jewish State in Palestine which, for the Arabs, would mean dropping their claims and their rights, and relinquishing their position. That would be contrary to Article 40, which provided that any measures adopted should be without prejudice to the claims, rights and position of the parties.

39. The sponsors of the draft resolution stated that, although the text established the principle of an armistice in imperative terms, the last paragraph specified that all the terms of the armistice should be arranged by negotiation. The call for an armistice was a further provisional measure under Article 40. For an answer to the "political questions on which the transition from an armistice to a state of permanent peace will depend" it would be necessary to look to the deliberations of the General Assembly, since they were not matters within "the purview of the Security Council". 72/

Decision

At the 381st meeting on 16 November 1948, the draft resolution was voted upon in parts and adopted. 72/ The relevant parts of the resolution 74/ read as follows:

"The Security Council,

"Reaffirming its previous resolutions concerning the establishment and implementation of the truce in Palestine and recalling particularly its resolution of 15 July 1948 which determined that the situation in Palestine constitutes a threat to the peace within the meaning of Article 39 of the Charter;

"..."

"Decides that, in order to eliminate the threat to the peace in Palestine and to facilitate the transition from the present truce to permanent peace in Palestine, an armistice shall be established in all sectors of Palestine;

71/ Draft resolution submitted by Belgium, Canada and France (S C, 3rd yr., No. 125, 380th mtg., pp. 4 and 5, S/1079).
72/ For texts of relevant statements, see S C, 3rd yr., No. 125, 380th mtg.: Belgium, pp. 20 and 21; France, p. 23; Syria, p. 6; No. 126, 381st mtg.: Canada, pp. 25 and 26; Egypt, pp. 20-22; Lebanon, pp. 28-30; Syria, pp. 8 and 9.
73/ S C, 3rd yr., No. 126, 381st mtg., pp. 53-55.
"Calls upon the parties directly involved in the conflict in Palestine, as a further provisional measure under Article 40 of the Charter, to seek agreement forthwith, by negotiations conducted either directly or through the Acting Mediator on Palestine, with a view to the immediate establishment of the armistice including:

"(a) The delineation of permanent armistice demarcation lines beyond which the armed forces of the respective parties shall not move;

"(b) Such withdrawal and reduction of their armed forces as will ensure the maintenance of the armistice during the transition to permanent peace in Palestine."

3. Decisions of 31 October 1947 in connexion with the Indonesian question (III)

40. By its decision of 1 August 1947, the Council called upon the parties to the Indonesian question (II) to cease hostilities, and on 25 August 1947 it appointed a Consular Commission to report on the observance of its cease-fire instructions. In September and October of the same year the Council received reports from the Consular Commission indicating that military conflicts were still continuing. During its consideration of the situation in the light of the Consular Commission's reports, the Council had before it two draft resolutions, both calling for a withdrawal of the forces of the two parties concerned.

41. Under the first draft resolution, 75/ submitted at the 207th meeting on 3 October 1947, the Council would declare it necessary that "the troops of both sides, the Netherlands and the Indonesian Republic, should be immediately withdrawn to the positions which they occupied before the beginning of military operations". Under the second draft resolution 76/ it would call upon the parties to withdraw their respective forces at least five kilometres behind the positions held on 1 August 1947. Neither draft resolution invoked Article 40.

42. In the discussion on the first draft resolution, one member, after stating his assumption that the proposal was made under Article 40, as it was made in consideration of the fact that the Council should take account of failure by the parties to comply with provisional measures ordered by it, expressed the view that the measure proposed should be examined with a view to ascertain whether it met the requirements for action under Article 40. Unless the Council had adequate evidence that the conclusion implicit in the draft resolution and the action for which it provided would not, if carried out, affect the rights, claims, or position of the parties concerned, he believed the Council should not adopt the draft resolution. In the view of his delegation, there was no such evidence, either to conclude that it was necessary to withdraw the troops of both sides or to justify a conclusion that such withdrawal would not prejudice the rights, claims or position of the parties concerned.

43. The sponsor of the draft resolution stated that the problem before the Council was how it should implement its earlier decision on the cessation of hostilities. That decision clearly had not been implemented. In the circumstances, the further decision required of the Council should no longer simply be a provisional measure. Reference to

75/ Draft resolution submitted by the USSR (S C, 2nd yr., No. 95, 207th mtg., p. 2491, S/575).
76/ Draft resolution submitted by Australia (S C, 2nd yr., No. 101, 215th mtg., footnote to p. 2668).
Paragraphs 44-46

Article 40, therefore, was not relevant. The Council, in the circumstances confronting it, should take measures to ensure that one side was not placed in an unfavourable position in relation to the other in the settlement of the questions arising from the situation that had occurred.

44. Other members who argued in favour of the draft resolution stated that a proposal for the withdrawal of forces to the positions occupied by them before the commencement of hostilities could not be considered prejudicial to the parties, and could not, therefore, be opposed on the basis of an interpretation of Article 40. The occupation of a large part of the territory of one of the parties by the forces of the other was prejudicial to the rights of the former, and remedial action under Article 40 could properly be taken. 77/

Decisions

At the 217th meeting on 31 October 1947, the first draft resolution was rejected. 78/ There were 4 votes in favour, 4 against and 3 abstentions. At the same meeting, the second draft resolution was rejected. 79/ There were 5 votes in favour, 1 against and 5 abstentions.

45. Following the second outbreak of hostilities in Indonesia on 19 December 1948, the Council had before it on 22, 23 and 24 December 1948 80/ draft resolutions which would consider the resumption of hostilities to be in conflict with its earlier decisions and would call upon the parties (or one of the parties) to withdraw their troops to the lines of demarcation laid down in the truce agreement concluded between them on 17 January 1948. At the 392nd meeting on 24 December 1948, the above-mentioned draft resolutions were rejected, and the Council adopted a resolution calling upon the parties to cease hostilities.

D. The question of further action under the provision that "The Security Council shall duly take account of failure to comply with such provisional measures"

46. On a number of occasions the Council has noted, in a direct or indirect manner, varying degrees of failure by the parties to comply with provisional measures ordered by it. In such circumstances, the Council has had recourse to the following types of action: (a) it has reminded the parties of their obligation to comply and reaffirmed

77/ For texts of relevant statements, see S C, 2nd yr., No. 93, 207th mtg.: USSR, pp. 2488-2492; No. 94, 208th mtg.: Poland, pp. 2509-2514; No. 95, 209th mtg.: USSR, pp. 2537-2543; United States, pp. 2526-2528; No. 96, 210th mtg.: Australia, pp. 2552-2555; Poland, pp. 2549-2552.
78/ S C, 2nd yr., No. 102, 217th mtg., p. 2698.
79/ Ibid., p. 2700.
earlier resolutions calling for compliance with specific measures; 81/ (b) it has called upon the parties concerned to comply not only with earlier decisions, but also with additional measures which it has considered necessary or desirable for meeting any changes in the situation; 82/ (c) it has mentioned possible further action on its part under Chapter VII -- without, however, citing any specific Article under which it might take such action, in the event of failure by the parties to proceed to full compliance with the measures instituted by it. 83/ The Council has, however, rejected certain proposals for the institution of enforcement measures, whether such proposals explicitly invoked an Article of Chapter VII or not. 84/ Instances of Council action
in connexion with the Indonesian question (II) and the Palestine question which are illustrative of its practice in regard to this matter are set out below.

1. Decisions in connexion with the Indonesian question (II) 85/

47. Under the first resolution on the Indonesian question (II), adopted on 1 August 1947 at its 173rd meeting, the Council called upon the parties to cease hostilities forthwith. It was reported to the Council that military operations were still being continued some three weeks later. By its resolution of 26 August 1947, the Council noted this fact and reminded the parties of its resolution of 1 August 1947, and called for strict adherence to its earlier resolution. By its resolution of 1 November 1947, after taking note of reports which indicated that its resolution of 1 August 1947 had not been fully effective, the Council called upon the parties to take certain steps to implement its earlier cease-fire resolution. By its resolution of 24 December 1948, after noting with concern the resumption of hostilities in Indonesia, the Council again called upon the parties to cease hostilities immediately. Under its resolution of 28 December 1948, the Council, after noting that one of the parties had failed to comply with that part of the resolution of 24 December 1948 which applied to it, called upon that party to do so. By its resolution of 28 January 1949, after noting that its resolutions of 24 and 28 December 1948 had not been fully carried out, the Council called upon the parties to implement them and to carry out certain additional measures.

48. In none of the resolutions mentioned in the preceding paragraph did the Council refer to possible further action under Chapter VII. On one occasion when the Council was confronted with a draft resolution envisaging a possibility of enforcement action, it rejected the proposal. During October 1947, the Council had before it three reports from its Consular Commission in Indonesia which indicated that the Council's cease-fire resolution of 1 August 1947 had not been implemented. At the 215th meeting on 29 October 1947, the Council had before it a draft resolution 86/ which invoked the final provision of Article 40 and which foreshadowed the possibility of the application of enforcement measures. The sponsor of the draft resolution stated 87/ that the Council possessed "full proof of action contrary to its recommendations on the part of the Government of the Netherlands" and, therefore, the Council was justified in proceeding to stronger measures; due warning should be given to the Netherlands that it was responsible for a situation which necessitated, under the terms of the Charter, the application of enforcement measures provided by Articles 41 and 42. At its 219th meeting on 1 November 1947, the Council rejected the draft resolution, and proceeded to adopt another draft resolution, which according to its original sponsor, 88/ represented another provisional measure designed to remedy "the defect in the original provisional measure".

85/ A number of decisions of the Council on the Indonesian question (II) mentioned in paragraphs 47 and 48 were contended by a number of members to represent action under Article 40, while others contested such an interpretation. It is to be noted, however, that with the exception of the draft resolution submitted by Poland at the 215th meeting (S C, 2nd yr., No. 101, 215th mtg., pp. 2661 and 2662, S/589), which cited Article 40 and also mentioned possible enforcement action, no draft resolution put to the vote contained a citation of any Article of the Charter.


88/ S C, 2nd yr., No. 102, 217th mtg., United States, p. 2708.
2. Decisions in connexion with the Palestine question

49. The resolution of the Council of 22 May 1948 on the Palestine question, after taking into consideration that previous Council decisions had not been complied with and that military operations were occurring in Palestine, called upon the Governments and authorities, without prejudice to the rights, claims, or position of the parties concerned, to abstain from hostile military action and to issue a cease-fire order to their forces. The resolution of 29 May 1948 again called upon the Governments and authorities concerned to cease all acts of armed force, and decided to reconsider the Palestine situation with a view to action under Chapter VII in the event of any party rejecting or subsequently repudiating the resolution. The Council's resolution of 15 July 1948 brought the Palestine situation for the first time under Chapter VII. After calling upon the parties, under Article 40, to cease hostilities, the Council declared that failure on their part to comply with its decision would require the Council to consider further action under Chapter VII. By its resolutions of 19 August and 19 October 1948, the Council called the attention of the parties concerned to their obligations under the decision of the Council of 15 July 1948 and gave an interpretation of their obligations under that decision. On 4 November 1948, the Council adopted a resolution by which, after recalling its decisions of 15 July, 19 August and 29 May 1948, it called upon the interested Governments, in the terms of Article 40, to withdraw their forces and establish permanent truce lines. A Sub-Committee was also appointed to study and report, in the event of the parties failing to comply with the resolution, on further measures it would be appropriate to take under Chapter VII of the Charter. 89/ The resolutions of the Council of 29 December 1948, 8 May 1951, and 18 May 1951, after recalling or reaffirming earlier decisions of the Council, called upon the parties to take certain measures in order to fulfil their obligations under the earlier decisions.

89/ On the question of application of measures under Article 41 in the situation, see in this Repertory under Article 41.