ARTICLE 53

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TEXT OF ARTICLE 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

INTRODUCTORY NOTE

1. Article 53 deals with the respective responsibilities of the Security Council and of regional arrangements or agencies in the maintenance of international peace and security. In paragraph 1, which contains provisions for the utilization by the Security Council of regional bodies for enforcement action under its authority, the powers of those bodies are delimited with respect to the taking of enforcement action on their own authority by requiring that no such action should be taken by them without the authorization of the Security Council. The only exception to this restriction occurs with respect to measures taken in case of renewal of aggressive policy by an enemy State.

2. Paragraph 2 of the Article defines an enemy State as any State which during the Second World War had been an enemy of any of the signatories of the Charter.

3. During the period under review, there was no instance of the utilization by the Security Council of any regional organization for enforcement action under its authority, nor was there any instance of measures taken or considered against an enemy State as defined in Article 53 (2), or any reference to such measures in the documents or proceedings of the Security Council.

4. While there was no resolution adopted by the Security Council which could be deemed as having a bearing on the provisions of Article 53 (1), there were instances of relevant constitutional discussions shedding some light on the interpretation and application of those provisions, especially as to the meaning of the term "enforcement action" in relation to certain specific measures adopted by a regional agency. Those are dealt with below in the Analytical Summary of Practice under the heading "The question of the nature and scope of enforcement action under Article 53 (1) and the requirement of authorization of such action by the Security Council".

5. The General Survey indicates the four questions in which constitutional discussions dealt with the interpretation of Article 53 (1). Also indicated therein are the cases in which questions relating to Article 53 (1) arose in discussions in the Security Council and in the General Assembly without any decisions relevant to that Article having been adopted by the two organs.

I. GENERAL SURVEY

6. During the period covered by this Supplement, Article 53 (1) was explicitly invoked in three letters as the basis of the requests for the convoking of a meeting of the Security Council.

7. The constitutional discussions in the Security Council bearing on the interpretation of the provisions of Article 53 (1) are dealt with in the Analytical Summary of Practice. They centred on the question of the meaning of the term "enforcement action" as used in Article 53 (1) and occurred in connexion with the following four questions:

(a) Letter of 5 September 1960 from the USSR (action of the Organization of American States relating to the Dominican Republic).

(b) Complaint by Cuba (letter of 22 February 1962).

(c) Letter of 8 March 1962 from the representative of Cuba concerning the Punta del Este decisions.

(d) Situation in the Dominican Republic.

8. Also in the Security Council, during consideration of the complaints presented by Cuba, the
USSR and the United States (22–23 October 1962), one representative, having gained the impression from an earlier statement of the United States representative to the effect that since the measures of one representative, having gained the impression from an earlier statement of the United States of the USSR and the United States (OAS) it thus fell squarely within the competence of that Organization, expressed dissent from that point of view. He recalled that on an earlier occasion he had maintained that although regional agencies or arrangements had rights and responsibilities recognized under the Charter, which considered as having priority over the competence of the United Nations. While flexibility was desirable in relations between the two bodies, it could not be extended to the point of undermining the Council's authority. The representative further recalled that, in previous debates, the United States representative had expressed the view that enforcement action consisted of coercive measures involving the use of air, sea or land forces, of the type falling within the scope of Article 42 of the Charter. It was therefore clear that the action contemplated by the United States must be regarded as enforcement action which was inadmissible in terms of Article 53 since it was undertaken without the authorization of the Security Council.²

9. Implicit and explicit references to Article 53 in relation to the Organization of African Unity (OAU) were made during consideration by the Security Council of the complaint by Senegal³ and of the situation in Southern Rhodesia.⁴ Whereas in both cases it was suggested that the Council should employ the assistance of the OAU in dealing with the situation in the respective territories, in the latter instance a resolution⁵ was adopted in which the Security Council specifically called upon the OAU to do all in its power to assist in the implementation of the said resolution, in conformity with Chapter VIII of the Charter.

10. On several occasions in the proceedings of the Security Council and of the General Assembly, Article 53 (1) was referred to incidentally⁶ or was cited in connexion with Articles 52⁷ and 54⁸ as well as with Article 2 (4)⁹ and Article 51¹⁰ of the Charter.

11. In the General Assembly, Article 53 (1) was invoked in the debates of the First Committee in connexion with the following agenda items: “Complaint by Cuba of threats to international peace and security arising from new plans of aggression and acts of intervention being executed by the Government of the United States of America against the Revolutionary Government of Cuba”¹¹ and “The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty”¹².

12. During the consideration of the first of those items, reference to that Article was made in connexion with the decision of the OAS to exclude the current Government of Cuba from that Organization on the grounds of the incompatibility of the social system of Cuba with those of the countries of the inter-American system.¹³

13. During the consideration of the second item, the view was expressed that one of the exceptions to the Charter’s prohibition of the use of force was contained in the provisions of Article 53 concerning enforcement action. However, the use of force for the purpose of enforcement action was not automatic and it required prior authorization by the Security Council.¹⁴ At the conclusion of the debate, a draft resolution was adopted, in which it was stated inter alia: “8. Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI, VII and VIII.”¹⁵

14. References to Article 53 were also made, implicitly and explicitly, both in the Sixth Committee¹⁶ and in the Special Committee on the Principles of International Law concerning Friendly Relations and Co-operation among States¹⁷ during their deliberations on the agenda item entitled “Consideration of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations”, and more particularly during the discussion of the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations.

³ S C, 20th yr., 1212th mtg., para. 33.
⁴ S C, 20th yr., 1258th mtg., para. 51.
⁶ S C, 19th yr., 1103rd mtg., para. 79.
⁷ See paras. 36 and 50 below. See also this Supplement, under Article 52, para. 21.
⁸ See paras. 19, 25, 39, 47 and 50 below.
⁹ G A (XXI), Annexes, a. i. 87, A/6230, para. 129. See also this Supplement under Article 2 (4).
¹⁰ G A (XX), Annexes, a. i. 90 and 94, A/6165, para. 29. See also paras. 38, 40 and 53 below.
¹¹ G A (XVI), Annexes, a. i. 78.
¹² G A (XX), Annexes, a. i. 107.
¹³ G A (XVI), 1st Com., 1239th mtg., para. 7; 1241st mtg., para. 11; 1243rd mtg., para. 12.
¹⁴ G A (XX), 1st Com., 1397th mtg., para. 21; 1402nd mtg., para. 47; 1406th mtg., para. 32.
¹⁵ G A resolution 2131 (XX). For relationship between Article 2 (4) and Article 53, see also this Supplement, under Article 2 (4), para. 260.
¹⁶ G A (XX), Annexes, a. i. 90 and 94, A/6165, para. 29.
¹⁷ Ibid., A/5746, paras. 77—79; G A (XXI), Annexes, a. i. 87, A/6230, paras. 128 and 129.
II. ANALYTICAL SUMMARY OF PRACTICE

The question of the nature and scope of enforcement action under Article 53 (1) and the requirement of authorization of such action by the Security Council

15. During the period under consideration, the Security Council adopted no resolution which could be considered as indicating the nature or delimiting the scope of the term "enforcement action" as provided for in Article 53 (1) of the Charter. The four decisions of the Security Council which, together with the relevant proceedings, are reviewed below, may be deemed to throw light on the practice of the Council in regard to certain decisions of the OAS purportedly to be of the nature of an enforcement action. A number of specific issues were raised during the discussion preceding the adoption of these decisions. Those included the following: (a) whether the severance of diplomatic relations or the partial interruption of economic relations decided upon by the OAS against one of its members constituted enforcement action; (b) whether the exclusion of a Government from the OAS and the severance of economic relations decided upon by that Organization constituted enforcement action; (c) whether the deployment by the OAS of an inter-American peace force in the territory of one of its members constituted enforcement action; and (d) whether actions, which could be undertaken by a State in the exercise of its sovereign rights, if undertaken pursuant to a decision of a regional organization, would constitute enforcement action requiring authorization by the Council.


16. By a letter dated 5 September 1960 addressed to the President of the Security Council, the First Deputy Minister for Foreign Affairs of the USSR requested, on the basis of Article 53 of the Charter, an urgent meeting of the Council to consider a decision adopted by the OAS concerning the Dominican Republic and to endorse that decision which was designed to remove the threat to peace and security created by the actions of the Dominican authorities.

17. At the 893rd meeting, on 8 September 1960, the Council decided without vote, to include the question in its agenda.

18. At that meeting, the representative of the USSR submitted a draft resolution under the third preambular paragraph of which the Security Council, "Being guided by Article 53 of the Charter of the United Nations" would approve the resolution of the Sixth Meeting of Consultation of Ministers of Foreign Affairs of the American States dated 20 August 1960. At the same meeting, the representatives of Argentina, Ecuador and the United States jointly submitted a draft resolution whereby the Security Council, having received the report from the Secretary General of the OAS transmitting the Final Act of the Sixth Meeting of Consultation of Ministers of Foreign Affairs of the American States (S/4476), would take note of that report, "and especially of resolution 1, approved at the aforesaid Meeting, whereby agreement was reached on the application of measures regarding the Dominican Republic".

19. In introducing his draft resolution, the representative of the USSR stated that the decision of the OAS on the necessity of taking enforcement action, including the breaking of diplomatic relations with the "Trujillo régime" by all States members of that Organization and the partial interruption of economic relations with the Dominican Republic, while fully in accord with Articles 39 and 41 of the Charter, constituted enforcement action within the meaning of Article 53. However, on the basis of that Article, the only organ empowered to authorize the application of enforcement action by regional organizations was the Security Council and any enforcement action taken by a regional agency without its authorization would be contrary to the Charter of the United Nations. In a subsequent intervention, that representative said that the enforcement measures taken against the Dominican Republic were specified in Article 41 of the Charter among the measures not involving the use of force which could be employed by the Council in the event of any threat to the peace, breach of the peace or act of aggression. They were enforcement measures because they could be utilized by the Council to force an aggressor to cease acts of aggression against another State and to prevent the recurrence of aggression. Since the purpose of the measures taken against the Dominican Republic was to force its Government to desist from actions which constituted a danger to peace and security, it could not be contended that they were not enforcement measures or were outside the scope of Article 53. Moreover, even if each State, including any member of a regional organization, were to act individually when applying such measures as the interruption of economic relations, it would in fact be participating in the application of sanctions decided upon and applied pursuant to the collective decisions taken by the members of the OAS. Therefore, according to the provisions of Article 53, the Security Council had the duty to approve the decisions of the OAS and to adopt appropriate decisions of its own. Such an approval not only would give legal force to the decisions of the regional body aimed at safeguarding international peace and security, but would also render them more effective, since they would then have the support of the whole of the United Nations. If, as had been contended, only Article 54, according to which the Security Council should be kept informed of acti-
vities undertaken by regional agencies, applied to the matter before the Council, that would have the effect of consigning the Council to the role of a passive observer in matters relating to the maintenance of international peace and security.

20. One representative, who supported the USSR draft resolution, noted that the question of the relationship between regional arrangements and the Security Council in matters relating to the maintenance of international peace and security was defined in Chapter VIII of the Charter, and particularly in Article 53. He maintained that the application of Article 53 would not limit the rights of the OAS any more than they were already limited by Chapter VIII. In Chapter VIII, in general, and in Article 53, in particular, the duties of the Security Council were clearly defined, and they could not be abrogated or disposed of. The representative was not able to subscribe to the opinion that the term "enforcement action" referred only to the use of military force. The right to use armed forces in with action respect to a threat to the peace was given solely to the Security Council under Chapter VII of the Charter. There was no provision in the Charter which gave that right to any regional arrangement or organization. Therefore, if the case of the use of force had to be excluded from the scope of Article 53, that meant that the drafters of that Article had to have in mind only those measures or sanctions short of military action. Sanctions or enforcement measures of an economic or political character could be initiated by the Security Council, as provided for in Article 41, or by regional arrangements, as provided for in Article 53. But in the latter case enforcement actions, as they are called in the Charter, had to have the approval of the Security Council.

21. In introducing the three-Power joint draft resolution, the representative of Argentina observed that that was the first time that the question of the interpretation of Article 53 in connexion with steps taken by regional agencies was reviewed in the Council. Noting that supporters of the USSR draft resolution were of the opinion that under Article 53 the Security Council was competent to approve the measures taken by the OAS, he maintained that, a contrario sensu, such a view also implied that the Council was entitled to annul or revise those measures. While he did not think that it was the proper time to take a final decision on the matter, he expressed great doubts as to whether the above-mentioned interpretation was the correct one as there were strong reasons in support of the argument that measures taken regionally would be subject to the Security Council's ratification only if they called for the use of armed force. Regional organizations must have authority to solve problems confined within the limits of the region involved. That would not weaken the United Nations but would free it from many problems which should be handled within a smaller radius. Another co-sponsor of the three-Power draft resolution, the representative of the United States, disputing the contention that the decisions of the OAS required the endorsement of the Security Council under Article 53, considered it significant that no member of the OAS had sought authorization from the Security Council under that Article for the steps it had taken in connexion with those decisions. According to the representative of Ecuador, the third co-sponsor of the draft resolution, if Article 53 were examined in the light of other provisions and of the spirit of the Charter, it would be found that it lacked the clarity which would justify its use in the sense indicated both in the USSR draft resolution and in its letter of submission. In that connexion, he noted that several questions might be raised about the scope of the first paragraph of that Article for which no adequate answer had yet been found. For example, it was not clear whether the enforcement action for which the Security Council's authorization was necessary was that which called for the use of armed force, as provided for in Article 42. Nor was it clear whether the second sentence of Article 53 applied only to action which a regional agency might take in a case which the Security Council had entrusted to it from the beginning. Moreover, the question might be asked whether the Security Council's authorization was necessary only for action which, like the use of force, would be in violation of international law if it were taken without the Council's approval, but not for action, like the breaking of diplomatic relations, which was within the exclusive right of a sovereign State. In view of the questions raised, he was of the opinion that Article 53 should not be so used to make action by a regional agency rigidly dependent upon authorization by the Security Council, thereby impairing the capacity of such an agency to take prompt and effective measures for the maintenance of international peace and security in the context of regional conditions.

22. The representatives who supported the three-Power draft resolution felt that the authorization of the Security Council would be required only in the case of decisions of regional agencies the implementation of which would involve the use of force. That was not the case with the decisions of the OAS relating to the Dominican Republic. Moreover, the specific reference to Article 53 in the USSR draft resolution would create obstacles to the efficient functioning of regional organizations, since it would imply recognition of the need for authorization by the Security Council in order to complete decisions which, as in the case under consideration, were valid and complete in themselves. It was also observed that the decisions of the OAS involved non-military measures taken against one of its members by its other members. For that reason, the implementation of those decisions did not require authorization by the Security Council. However, if the measures in question were taken against a State not a member of that regional organization, the situation would be different.

23. One representative stated that it was in accordance with common sense to interpret the term "enforcement action" in Article 53 as covering only such actions contemplating the exercise of force in a manner which would not normally be legitimate for any State or group of States, except under the authority of a Security Council resolution. The measures decided upon by the OAS with regard to
the Dominican Republic were acts of policy within the competence of any sovereign State and, consequently, within the competence of the members of the OAS acting collectively. If the resolutions of the OAS were to be reviewed by the Security Council, that would mean that all actions of the OAS would be subject to a veto of a permanent member of the Security Council. Another representative stated that he was inclined to consider the sphere of applicability of Article 53 to be limited to those measures which could not be legitimately adopted by any State, except on the basis of a Security Council resolution. The view was also expressed that neither the United Nations Charter nor the proceedings of the organs of the United Nations made it possible to establish with certainty the scope and the content of the “enforcement action” as it should be understood within the meaning of Article 53. Moreover, to attempt to apply that Article to the case under consideration would be self-contradictory, since the provisions invoked would involve the authorization of the Security Council which must be given in advance.

24. In connexion with the question whether the term “enforcement action” applied to the measures enumerated in Article 41 and in Article 42, one representative, while admitting that there were valid arguments to support the view that the term was restricted to the measures defined in Article 42, maintained that when Article 53 referred to enforcement action, whether taken by the Security Council through the utilization of a regional organization, or by a regional agency with the authority of the Security Council, it referred to both kinds of actions contemplated in Articles 41 and 42. Such an interpretation, however, was open to the objection that no enforcement action was required in regard to some of the measures that could be taken under Article 41 as, for example, the severance of diplomatic relations. It might therefore be argued that Article 53 was referring only to cases coming under Article 42 where the employment of force was necessary. But that interpretation would appear to be too restrictive. Since the enforcement action contemplated by Article 53 really meant the implementation of measures by the Security Council itself, through the utilization of the regional agency, or by the regional agency itself under the authority of the Security Council, it appeared that Articles 41 and 42 would fall within the scope of Article 53. But the question would then arise whether such an interpretation would not seriously impair the sovereign rights of individual States, including the right to sever diplomatic relations, since it would oblige a regional organization to obtain the authorization of the Council in order to allow a member of the regional organization to sever diplomatic relations with another State. Drawing attention to the difference between the individual rights of each State which was a member of a regional organization and the rights of States acting collectively as members of that organization, the representative wondered whether a State’s sovereign right to sever diplomatic relations remained the same if that State acted as a member of a regional organization and brought itself under Chapter VIII of the Charter, and especially under Article 53. In that case the position might be different since the rights and obligations of the individual State might become merged with the rights and obligations of the regional organization in relation to the Charter. Thus, while in its individual capacity a State had certain rights, some of those might be subordinated as a result of obligations incurred by another relationship established between the regional organization and the Charter. However, the issue before the Council was to a large extent within the competence of the members of the regional group and, in view of the difficulty concerning the interpretation of the term “enforcement action”, the Council should be guided by the opinion and advice of those members.

25. Both the co-sponsors and supporters of the three-Power draft resolution drew attention to the fact that the decisions of the OAS had been reported to the Security Council in accordance with the provision of Article 54 of the United Nations Charter and the relevant provisions of the charter of the OAS. In specifically deciding that the resolutions of the OAS should be transmitted to the Security Council only for its information, the Foreign Ministers of the member States of the OAS were clearly expressing their view that that action required only notification to the United Nations under Article 54. Thus, even though the representative of the Dominican Republic at the San José conference had alleged that the steps agreed upon would not be valid without the authorization of the Security Council, the twenty participating States had asked the Secretary-General to inform the Security Council of the decisions taken, without requesting its authorization. Moreover, because the decisions in question included only pacifying actions within the competence of regional arrangements, as envisaged in the Charter, and did not include the exercise of force, which would have been legitimate only on the basis of a resolution of the Security Council, they had only to be brought to the attention of the Security Council under Article 54. Having made its report to the Council, the OAS had fulfilled its obligation in that respect.24

Decision

At the 895th meeting, on 9 September 1960, the three-Power draft resolution was adopted by 9 votes to none, with 2 abstentions.25 The USSR draft resolution was not put to the vote.26

26. After the vote had been taken, there were conflicting interpretations of the meaning of the decision adopted by the Council. One member stated

24 For texts of relevant statements, see S C, 15th yr., 893rd mtg.: Argentina, paras. 30—32, 35—37 and 41; China, paras. 103 and 104; Ecuador, paras. 60 and 63—67; France, paras. 86, 87, 89 and 90; USSR, paras. 18, 22 and 23; United Kingdom, paras. 94, 96 and 97; United States, paras. 47 and 48; Venezuela, paras. 76, 77 and 80; 894th mtg.: President (Italy), paras. 44—47; Ceylon, paras. 9—11, 13, 18 and 20; Poland, paras. 30 and 32—34; Tunisia, para. 37; USSR, paras. 51—56, 59, 66, 68—70, 74 and 76.

25 S C, 15th yr., 895th mtg., para. 18.

26 Ibid., para. 19.

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22 See also this Supplement under Article 41.
23 See also this Supplement under Article 42.
that it was his understanding that the Council's decision to take note of the resolution of the OAS meant that none of the members objected to it and approved it in principle. He would have preferred, however, if that approval had been expressed more exactly and definitely, as proposed by his delegation. He interpreted the reluctance of certain members to consider the substantive issue at that time as meaning that they were leaving the door open so that, in other circumstances, they might fully support the provisions of the Charter to the open so that, in other circumstances, they might fully support the provisions of the Charter to the effect that regional agencies might apply sanctions only with the concurrence of the Security Council.

Other representatives, however, after emphasizing that the three-Power draft resolution had not been submitted under Article 53, interpreted the Council's decision not as a confirmation of the validity of the OAS decision, for none was necessary, but as an indication that the Council agreed with that decision. Contrary to the contention that the matter was being left open for future consideration by the Council, it was their opinion that consideration of the item was completed and that future proposals would be judged on their merits.77

27. The President (Italy) stated that examination of the question had been completed and that the Council had disposed of the matter.28

2. Decision of 27 February 1962, in connexion with the complaint by Cuba (Letter dated 22 February 1962)

28. By letter29 dated 22 February 1962, the Government of Cuba complained that the Government of the United States had induced the OAS to adopt certain enforcement measures of a political and economic nature against Cuba in violation of the United Nations Charter and in particular of Article 53 (1) since these measures were adopted and were being implemented without the authorization of the Security Council. An urgent meeting of the Council was therefore requested under Articles 34, 35 (1), 41, 52, 53 and 103 of the Charter so that it might adopt the measures necessary to bring to an end the illegal action taken by the Government of the United States against the Government of Cuba and thus prevent the development of a situation which endangered international peace and security.

29. At the 991st meeting, on 27 February 1962, during consideration of the adoption of the agenda, it was recalled that a few days previously, the question for which the Security Council was convened had been the subject of careful consideration in the General Assembly when it dealt with the item "Complaint by Cuba of threats to international peace and security arising from new plans of aggression and acts of intervention being executed by the Government of the United States of America against the Revolutionary Government of Cuba". The General Assembly had not seen fit to adopt any resolution or to make any recommendations to the Member States or to the Security Council but, in effect, it had rejected the substance of the complaint. Moreover, the question of the legal relationship between the OAS and the United Nations in respect of decisions reached by the regional body had been fully considered by the Council when it had discussed the question relating to the Dominican Republic in 1960.30 At that time, it had rejected the contention that the decisions of the sort complained of required Security Council authorization. In the view of certain representatives, the Council's decision then related precisely to those measures adopted by the OAS — concerning diplomatic and economic relations — of which the Cuban delegation was complaining. Nothing had happened since that time nor was there anything in the letter from the representative of Cuba which would lead the Council to reverse its decision.

30. On the other hand, it was contended that the General Assembly's discussion in connexion with the complaint submitted by Cuba concerned the unilateral aggressive action of the United States itself against Cuba. The question proposed for the consideration of the Council, however, dealt with a decision of the OAS which was directly at variance with the Purposes and Principles of the Charter, and especially of Article 53 under the terms of which enforcement action by regional agencies could not be taken without the authorization of the Security Council. It was stated further that enforcement measures within the meaning of Article 41 of the Charter were collective actions by States aimed at compelling another State, without the use of armed force, to follow a certain course of action against the will of that State. Coercion applied to a sovereign State was permissible under the Charter only when a State threatened international peace and security by its behaviour. It therefore meant that the decision in the matter of employing enforcement measures was the exclusive prerogative of the Security Council.

31. In reply to the argument that the relationship between the OAS and the United Nations had been considered in 1960 and that the Council had taken no definite decision on the matter but had merely taken note of the actions of the OAS, it was pointed out that the Council at that time had adopted an agenda, discussed the matter and decided "to take note". That was a course of action which might also be followed in the case under discussion. In view of the fact that the issue raised in connexion with the action against the Dominican Republic was not the same as that raised by Cuba — as each country had its own interests and its own problems — and in the light of developments relating to Cuba since that time, it was not understandable why certain representatives objected to the Council's consideration of the Cuban complaint.31

77 For texts of relevant statements, see S C, 15th yr., 895th mtg.: USSR, paras. 22 and 23; United States, paras. 31 and 32; Venezuela, para. 29.
88 Ibid., para. 33.
19 S C, 17th yr., Suppl. for Jan.—March, S/5080.
Decision

At the same meeting, the provisional agenda was voted upon and was not adopted, having failed to obtain the affirmative votes of seven members. There were 4 votes to none, with 7 abstentions.  

3. Decision of 23 March 1962 in connexion with the letter of 8 March 1962 from the Representative of Cuba concerning the Punta del Este decisions

32. By letter dated 8 March 1962 addressed to the President of the Security Council, the representative of Cuba stated that as a consequence of certain resolutions adopted at the Eighth Meeting of Consultation of Ministers for Foreign Affairs held at Punta del Este (Uruguay), enforcement action had been taken against Cuba without the authorization of the Security Council as required under Article 53 of the Charter. An urgent meeting of the Council was, therefore, requested so that under the terms of Article 96 of the Charter, and in accordance with Article 65 of the Statute of the International Court of Justice, the Court could be asked to give an advisory opinion on certain specific legal questions.

33. At the 992nd meeting, on 14 March 1962, the Council included the question in its agenda.

34. By a letter dated 19 March 1962, the representative of Cuba submitted a draft resolution under which the Security Council would request the International Court of Justice to give an advisory opinion on, inter alia, the following questions:

1. Under the United Nations Charter, does the Organization of American States have the right as a regional agency to take the enforcement action provided in Article 53 of the United Nations Charter without the authorization of the Security Council?

2. Can the expression ‘enforcement action’ in Article 53 of the United Nations Charter be considered to include the measures provided for in Article 41 of the United Nations Charter? Is the list of these measures in Article 41 exhaustive?

35. In his introductory statement, the representative of Cuba contended that at the Punta del Este conference certain decisions were adopted which entailed coercive measures against Cuba. Those measures of a collective nature were being implemented without the approval of the Security Council, as required under Article 53, and their extension to other regions of the world was contemplated. In his subsequent intervention, the representative explained that in Cuba’s interpretation of two Articles of the Charter as unequivocal as Article 52 and 53, what was claimed was that exceptional and extraordinary measures such as enforcement action should not be taken without the Council’s approval or in violation of regional instruments and, specifically, of principles of the Charter.

36. In support of the draft resolution, one representative expressed the view that the decision of the OAS to exclude Cuba from participation in the inter-American system on the ground of incompatibility of its social system, and the decision to cease trade with Cuba involved political and economic sanctions. As such, those decisions constituted enforcement action against Cuba. Such measures not only went beyond the competence of the regional organization, but were a violation of Article 53 of the Charter, since they were adopted without consulting the Security Council and were being implemented without its authorization. They were thus a gross violation of the Charter as a whole for, under Article 52, the activities of regional organizations must be subordinated to the principles of the Charter. Subsequently, the representative, commenting on the responsibilities of regional organizations in relation to the Security Council, maintained that the only decisions of a regional organization which required approval of the Security Council under Article 53 were those involving the use of enforcement measures. Those measures were enumerated in Article 41 of the Charter, and possibly included other measures as well, the purpose of which was to make some States submit to the will of other States. Although some of the actions mentioned in Article 41, such as the severance of diplomatic relations and the interruption of economic relations, could be taken by one State against another, when the same measures were taken as the result of a decision adopted by a group of States organized as a regional or other organization, their nature was thereby changed. Such actions taken collectively became enforcement measures against another State and constituted political action the scope and significance of which were completely different from those actions which might be performed in isolation by one State in regard to another State. It was clear that one State could not blockade all the other States. The same could be said of the severance of diplomatic relations. While one State might break off diplomatic relations with another State, it was not in a position to create a political vacuum around that State. But it was a different matter if the same action was taken by a group of States, particularly a group organized in a regional or some other organization. That could lead to other and far more serious consequences. That was the reason why the United Nations Charter contained a provision under which regional organizations were not entitled to take enforcement action without the authorization of the Security Council. The representative further recalled that the Security Council had sanctioned the adoption of enforcement measures by the OAS against the Dominican Republic and thus had discharged, with respect to those measures, the function entrusted to it by Article 53 of the Charter. However, it was necessary to re-examine the legal problem arising in connexion with the enforcement measures taken against Cuba and to establish the meaning of the term “enforcement action” as used in Article 53. By referring that question to the International Court of Justice as requested by the draft resolution under consideration,
it could not be said that the Security Council would be altering its decision of September 1960.

37. Another representative expressed the view that the resolutions adopted at Punta del Este constituted a political sanction against a Member State decided upon by a regional agency of the United Nations without the previous authorization of the Security Council. Although Article 53 explicitly prohibited regional agencies to take such action, the OAS had, without any legal justification, usurped the right to take enforcement action against Cuba, in disregard of the Security Council and in open violation of the Charter.

38. Another supporter of the draft resolution contended that if Article 53 was examined in the light of other provisions and of the spirit of the Charter, it would be found wanting in clarity as to the meaning of the term “enforcement action”. Nor could the scope and content of the term be established with certainty from the practice and jurisprudence of the organs of the United Nations or from the records of the San Francisco Conference. He noted that no clear guidance was available on the question of whether or not Security Council authorization was necessary only for actions involving armed forces, as laid down in Article 42; nor was it clear whether such authorization was necessary only for action which would normally be in contravention of international law but not for such actions as were within the competence of a State. Some of the specialists in international law were of the opinion that enforcement action included all the measures envisaged in Articles 41 and 42 of the Charter on the grounds that they were coercive in nature and were, therefore, subject to the prior authorization of the Council, with the exception of measures against an “enemy State” and implicitly of measures taken under Article 51 of the Charter in exercise of the right of self-defence. Other specialists, expressing a different view, maintained that the concept of enforcement action included only the measures covered by Article 42 and that the measures described in Article 41, since they did not involve the use of armed force, were not coercive and did not therefore require the authorization of the Security Council. Furthermore, during the consideration by the Security Council in September 1960 of the decisions of the OAS taken in respect of the Dominican Republic, it appeared that there was a certain reluctance on the part of several members of the Council who had voted in favour of the draft resolution to regard their vote as reflecting a definite position on the question of whether or not the decisions of the OAS had constituted enforcement action in terms of Article 53. Therefore, there remained grounds for reasonable doubts as to the meaning of “enforcement action” under Article 53. For that reason the members of the Council should consider the advisability of the Council requesting an opinion of the International Court of Justice on the term “enforcement action” within the meaning of the Charter.

39. On the other hand, the representatives who opposed the draft resolution maintained that the decisions of Punta del Este did not constitute enforce-
sumption for the sake of argument, the representative stated that enforcement action taken by regional agencies in circumstances provided for in the first sentence of Article 53 (1), would create obligations, though not necessarily in a direct manner, for all Members of the United Nations under Articles 24, 25, 48 and 49. That is why Article 43 went on to limit the requirement of authorization by the Security Council to enforcement action. The Punta del Este meeting had not been held at the initiative of the Security Council, nor did the resolutions that it had adopted create obligations for Members of the United Nations not belonging to the regional organization. Therefore, Article 53 could not be made applicable to those resolutions. It was further maintained that the action taken at Punta del Este was essentially a matter of collective protection justified under Article 51 of the Charter to which Article 53 did not apply. As far as the exercise of the right of self-defence was concerned, the only obligation incumbent upon the OAS under Article 54 of the Charter was to keep the Security Council fully informed of activities undertaken or contemplated for the maintenance of international peace and security.

41. One representative, explaining why he did not believe that Article 53 applied to the Punta del Este decisions, observed that any provision which conferred a privilege on particular States, in the case in point on the permanent members of the Security Council possessing the veto, should be interpreted restrictively rather than broadly. Otherwise any one of those members of the Security Council would have the power to veto any resolution of a regional agency which might in any way be broadly considered to be an enforcement measure.

42. One member expressed the view that in so far as there might be a difference of opinion regarding the interpretation of Article 53, that difference could not be regarded as a purely juridical one. It was essentially a conflict of political nature involving contrary opinions as to the scope of the role of the Security Council, and of the veto power of its permanent members in relation to the operation of regional organizations. Such a conflict of political opinion could not be resolved by an advisory opinion of the Court but must be settled primarily by agreement between the major Powers. He hoped that when the Charter review was undertaken, the issue could be settled in that way. That view was reflected, in part, in the position of other representatives who contended that whereas the Cuban complaint might have been formulated in juridical terms, it was essentially political in character and implied a kind of approval or disapproval of the Punta del Este decisions and denial of authority to the competent organs that took those decisions.

43. The argument that the scope of the term “enforcement action” should be determined in negotiations by the great Powers because it involved a political issue was disputed by one representative who could not recall any provision of the Charter or any principle of international law upon which it could be based. If that suggestion meant that it was in the interest of certain States that part of the Charter should be amended, it might well be a matter for negotiation between the large and the small States, but the interpretation of a term or of an Article could never be the subject of negotiations. That representative then reiterated his position that if there was any doubt about the scope of Article 53 or any other legal questions relating to the Charter, an opinion could be given by the Court.

44. In the view of certain representatives, the question of the powers of the Security Council with regard to decisions taken by regional organizations had been settled by the Security Council in September 1960 when it considered the action of the OAS in connexion with the Dominican Republic. It was recalled that while the resolution adopted on that occasion might not have defined what constituted enforcement action under Article 53, it had definitely established that the measures taken against the Dominican Republic did not fall within the terms of that Article. Furthermore, it might also be assumed that that position had been implicitly confirmed on 27 February 1962 when the Council decided not to adopt an agenda on a question which would have reopened the issue of the legal relations between the OAS and the United Nations in respect of decisions of that regional body. It was thus the contention of those representatives that if measures of the nature and scope taken against the Dominican Republic did not fall within the concept of enforcement action under the terms of Article 53, the same could be said of those adopted at Punta del Este, which were much more restricted in scope.

Decision

At the 998th meeting, on 23 March 1962, in a separate vote, operative paragraph 3 of the draft resolution was rejected by 7 votes to 4. The draft resolution as amended by the deletion of paragraph 3 was rejected by 7 votes to 2, with 1 abstention. One member did not participate in the voting.

4. DECISION OF 22 MAY 1965 IN CONNEXION WITH THE SITUATION IN THE DOMINICAN REPUBLIC

45. By letter dated 1 May 1965, the representative of the USSR requested an urgent meeting of the Security Council “to consider the question of the
armed interference by the United States in the internal affairs of the Dominican Republic”. At the 1196th meeting, on 3 May 1965, the question was included in the agenda.

46. At the 1202nd meeting, on 6 May 1965, the representative of the United States informed the Council of a decision of the OAS requesting the Governments of the American States that were willing and capable of doing so to make contingents of their land, naval, air or police forces available to the OAS in order to form an Inter-American Force that would operate under the authority of the Tenth Meeting of Consultation of the Ministers of Foreign Affairs for the sole purpose of co-operating in the restoration of normal conditions in the Dominican Republic and in the establishment of an atmosphere of peace and conciliation that would promote the functioning of democratic institutions there.

47. In the view of certain representatives, the landing of United States troops and the participation of these troops in the suppression of the struggle for freedom and independence of the people in that territory could only be regarded as an act of direct aggression and a flagrant intervention in the domestic affairs of a sovereign State. Consequently, any claim that the question was being considered by the OAS could not be accepted as reason for the Security Council not to carry out its duty in connexion with the situation in the Dominican Republic. In the first place, the action of the United States, and subsequently of the OAS, involved the use of armed forces and, as such, constituted enforcement action in that it represented an attempt to impose by force a particular line of conduct on an independent and sovereign State which had not even been accused of aggression. Moreover, the OAS was not authorized to decide upon enforcement action and still less to implement such a decision without the authorization of the Security Council since Article 53 categorically prohibited any enforcement action by regional agencies without the Council’s authorization.

48. In the view of another representative, the natural and logical subordination of the regional agency to the recommendations and decisions of the Security Council was reaffirmed in Articles 53 and 54. Although the actions of the OAS had been reported to the Council, the information which the regional agencies must supply to the Council on activities undertaken or contemplated for the maintenance of international peace and security, in accordance with Article 54, could not be considered an adequate substitute for the Council’s direct cognizance of the question which it might undertake whenever it deemed it necessary. In fact, under the provisions of Article 36 of the Charter, the Security Council may take cognizance of a dispute or a situation “at any stage” and recommend appropriate procedures or methods of adjustment, and cases which were under consideration by a regional agency were not excluded.

49. At the 1204th meeting, on 11 May 1965, the representative of Uruguay introduced a draft resolution. Under the terms of operative paragraphs 5 and 6, the Security Council would invite the OAS to keep the Council promptly and fully informed of the action taken by it with respect to the situation existing in the Dominican Republic and would also invite the OAS to co-operate with the Secretary-General of the United Nations in implementing that resolution.

50. In introducing his draft resolution, the representative of Uruguay noted that the problem of harmonizing the functions of the United Nations with those of regional organizations was a difficult one which had only been raised recently and generally in connexion with political problems and acute political crises which did not provide a favourable climate for impartial and objective consideration. His draft resolution was therefore not designed to deal with that problem since he did not believe that the current discussion was a propitious occasion for such consideration. What his delegation sought was to produce an agreement which would enable the Council to exercise its competence and assert its authority which no member had questioned. Consequently, it contained only a general reference in the third preambular paragraph to the “relevant provisions of Chapter VIII” without mentioning any particular provision of that Chapter that might give rise to differences of views. One member, however, objected to operative paragraphs 5 and 6 of the draft resolution on the grounds that he could not support any provision which would contain any direct or indirect expression of approval of the actions of the OAS which were contrary to the United Nations Charter since the regional organization had received no mandate from the United Nations Charter since the regional organization had received no mandate from the United Nations.

Decision

At the 1216th meeting, on 22 May 1965, the representative of the USSR submitted six revised amendments to the Uruguayan draft resolution in which he proposed, inter alia, to delete the above-mentioned paragraphs. The amendments were rejected. The

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49 S C, 20th yr., 1204th mtg., paras. 5 and 6 (S/6346).
48 In a revised draft resolution, these operative paragraphs appeared as paras. 6 and 7, respectively. See S C, 20th yr., 1214th mtg., paras. 51–59 (S/6346/Rev. 1).
46 Operative paras. 5 and 6 would have been replaced by a single paragraph which read: “6. Demands that the Government of the United States immediately withdraw its armed forces from the territory of the Dominican Republic”.
45 S C, 20th yr., 1196th mtg., preceding para. 1.
revised draft resolution voted upon as a whole was not adopted, having failed to obtain the affirmative votes of seven members. The vote was 5 votes to 1, with 5 abstentions. 60

51. In the subsequent discussion which did not lead to any decision bearing on Article 53, various representatives expressed the view that the establishment and functioning of the Inter-American Force and the action of the OAS with respect to the situation in the Dominican Republic did not constitute enforcement action within the meaning of Article 53 (1) of the Charter. It was their contention that the Force had been set up solely for the purpose of assisting in the restoration of normal conditions in the Dominican Republic, in maintaining the security of its inhabitants and the inviolability of human rights; furthermore, the purpose of the Force was to make it possible for the Dominican people to determine its future and to operate under democratic institutions free from outside interference. It was therefore not being employed to force any concession from a Dominican Government or to require a Dominican Government to follow or abstain from any particular course of action. The collective efforts of the OAS, consequently, could not properly be termed enforcement action under Article 53. The more relevant provisions in the case were those set forth in Articles 52 and 54, rather than in Article 53.

52. Two other representatives, however, had doubts as to whether the OAS had acted in conformity with the provisions of the Charter which, they felt, should prevail over all international agreements. 41 They recalled that the United Nations Charter did not permit military action of the type which had taken place in the Dominican Republic, whether that action had been unilateral or regional in character. Although collective measures in self-defence were permitted under the Charter, no enforcement action could be taken under regional arrangements without the authorization of the Security Council. Moreover, intervention and the use of force, whether carried out by one State or by a group of States, were always contrary to international legality, unless they were justified by such norms as those contained in Chapter VII of the Charter. In any event, the military intervention in the Dominican Republic could not be considered as a “peace-keeping operation” since an indispensable prerequisite was lacking, namely the consent of the party concerned. Thus, even if the multilateral character of the operation were to be admitted, if, after careful examination, it should be determined that the action in the Dominican Republic was coercive according to the provisions of the Charter, the only consequence that might result from its “regionalization” would be to make applicable the provisions of Article 53 of the Charter.

53. On the other hand, it was contended that the action taken in the Dominican Republic by the OAS was not enforcement action any more than was the action taken by the United Nations in Cyprus, the Congo or the Middle East, nor could there be any question as to the competence or the jurisdiction of the OAS to deal with the problem so long as its actions were consistent with the Charter.

54. After noting that the OAS was clearly subordinated, in the sphere of enforcement action involving the use of military power, to the superior authority of the Security Council, one representative stated that the use of force by regional organizations was permissible in two situations: in the exercise of the right of collective self-defence, under Article 51, and where its services were utilized by the Security Council, under Article 53. In applying that principle to the situation under consideration, however, it was first necessary to determine whether the action which was carried out by the OAS was an enforcement action. Should it be so, there could be no doubt that Article 53 had been violated. At the same time, attention was drawn to certain difficulties surrounding the meaning of the term “enforcement action” as used in that Article. For one thing, that phrase occurred only in Article 53 and not in either Chapter VI or VII of the Charter. Furthermore, even in Article 42 of the Charter, which was at the core of the Security Council’s authority to use force, the language carefully noted the phrase but just as carefully avoided its use. Consequently, any effort at interpretation must give the phrase its ordinary meaning, taking into consideration the context in which it occurred. In that regard, it was felt that the expression “enforcement” presupposed the existence of something to be enforced. But what the OAS was carrying out in Santo Domingo was in effect a conciliatory function, cooperating in the restoration of normal conditions in the Dominican Republic. That activity could not therefore be considered as falling within the meaning of the expression “enforcement action”. The fallacy of arguments to the contrary had resulted from misreading the phrase “enforcement action” as meaning “any action accompanied by force”. That was, however, a meaning which that phrase could not bear in the context of the Dominican situation. Even an operation undertaken for the pacific settlement of a dispute might involve a certain amount of the use of force. But that would not make it necessarily an “enforcement action” within the meaning of Article 53.

55. Another representative contended that the actions of the United States and the OAS were a gross violation of the Charter of the United Nations, in particular of Article 53, which categorically prohibited regional organizations from taking any enforcement action or using armed force without the authorization of the Security Council. He further recalled his earlier statement 62 in which he had said that the decision of the OAS establishing an Inter-American Force had been taken under pressure from the United States and thus was not only illegal from

60 Ibid., para. 69.

41 For consideration of the provisions of Article 103, see this Supplement under Article 103.

62 S C, 20th year, 1220th mtg., para. 34.
the point of view of the Charter but was also fraught with serious consequences for the cause of international peace and the future of the United Nations. 53

53 For texts of relevant statements, see S C, 20th yr., 1196th mtg.: USSR, paras. 205—209; 1198th mtg.: Cuba, para. 68; USSR, para. 144; 1200th mtg.: USSR, paras. 153 and 154; United States, paras. 162 and 163; 1202nd mtg.: USSR, paras. 46—50; 1203rd mtg.: Cuba, paras. 86, 87 and 95; 1204th mtg.: USSR, paras. 42—43 and 78; Uruguay, paras. 15—21; 1216th mtg.: USSR, paras. 52 and 81; 1220th mtg.: USSR, para. 110; United States, paras. 78—80; 1221st mtg., Jordan, paras. 22 and 23; Uruguay, paras. 42—44; 1222nd mtg.: Malaysia, paras. 101—111; USSR, paras. 62—64 and 66; United States, paras. 21 and 22; 1230th mtg.: USSR, paras. 52 and 53. Also for discussion of the item in relation to Article 52, see this Supplement under Article 52.