

Chapter XI

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER

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INTRODUCTORY NOTE

Chapter XI does not constitute a review of the action of the Security Council under Chapter VII of the Charter. In principle it presents the instances in the proceedings of the Council in which proposals placed before the Council have evoked discussion regarding the application of Chapter VII. Appropriate references are given to chapter VIII to facilitate the

consultation of the material in conjunction with the record of decisions contained in that chapter. Further observations on the method adopted in the compilation of this chapter will be found in the introductory note to chapter VIII, and the reservation in the introductory note to chapter X regarding the entry of decisions in that chapter applies also to chapter XI.

Chapter VII of the Charter. Action with respect to threats to the peace, breaches of the peace, and acts of aggression

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

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.

Article 41

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

Article 42

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

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLES 39-40 OF THE CHARTER

NOTE

The inter-connexion of discussion on Articles 39 and 40 within the Security Council has rendered impracticable the separate presentation of material relating to these Articles.

The questions in connexion with which draft resolutions related to Articles 39 and 40 were submitted to the Council were: the Spanish question;¹ the Greek frontier incidents question;² the Indonesian question (II);³ the Palestine question;⁴ the identic notifications dated 29 September 1948;⁵ and the complaint of aggression upon the Republic of Korea.⁶

Decisions explicitly under Chapter VII of the Charter have been exceptional.⁷ In connexion with certain questions before the Council, the Council has found it necessary to address itself to the problem of bringing about the cessation of attendant hostilities through the instrumentality of its own resolutions or through the activity on the spot of its subsidiary organs. As a guide to the steps of this nature, reference should be made to the Analytical Table of Measures in chapter VIII, and for information regarding the operation of the subsidiary organs in question, reference should be made to the series: "Organization and Procedure of United Nations Commissions".⁸ Conclusions regarding the relation of these steps to Chapter VI or to Chapter VII of the Charter require to be based on the evidence of the relevant proceedings as a whole. Such evidence will be found in the present chapter and in related material concerning Article 2 (7) in chapter XII, part I.⁹

No distinction of procedure would appear to have been introduced to differentiate proceedings under Chapter VI from proceedings under Chapter VII of the Charter.¹⁰ Not the invocation of one or the other Chapter, but the Council's appraisal of the character of the question before it, in the light of its primary responsibility for the maintenance of peace, and the Council's evaluation of the facts adduced in each case, have been determinative of its procedure. The procedure followed has been general and appropriate to the consideration of questions both under Chapter VI and Chapter VII.¹¹

The invocation of Article 39 has given rise to discussion whether the circumstances under consideration by the Council corresponded to those envisaged in that Article,¹² and whether, in consequence, the proposed action of the Council was excepted, by the proviso of Article 2 (7), from the principle of non-intervention in matters of domestic jurisdiction.¹³ While discussion has mainly consisted of the appreciation, in terms of Article 39, of the actual situation before the Council, observations have on occasion been directed towards the general meaning to be attached to the terms of Article 39: notably, in the report of the Sub-Committee on the Spanish Question and in the ensuing discussion, regarding the distinction between imminent and potential "threat to the peace";¹⁴ in connexion with the Greek frontier incidents question, regarding the designation in advance of certain actions as falling within the meaning of Article 39;¹⁵ in connexion with the Palestine question, regarding the significance of the omission of the term "international" from the first part of the text of Article 39.¹⁶

On certain occasions the Council has, when confronted with a draft resolution under Articles 39 or 40, concluded its consideration by the adoption of a decision without reference to a specific Article of the Charter.¹⁷ Subsequent discussion has in consequence arisen regarding the relation of the decision to the Charter; and divergent views have been expressed regarding the criteria to be applied in determining whether the decision was, or was not, a decision under Chapter VII.¹⁸ Interest also attaches to the changes of terminology which were on certain occasions consequential

¹² Spanish question; Indonesian question (II) (see Cases 4 and 7); Palestine question.

¹³ Spanish question; Indonesian question (II); Complaint of aggression upon the Republic of Korea. For relevant case histories, see chapter XII, part I.

¹⁴ Case 1.

¹⁵ Case 2. See also chapter XII, Case 23.

¹⁶ Case 9. See also Case 11 and chapter XII, Case 23 (ii).

¹⁷ Case 4. See also Case 9.

¹⁸ Throughout the consideration of the Indonesian question (II) by the Council, the Netherlands, one of the parties, contended that the Council did not possess competence to intervene in the matter, much less to apply measures under Chapter VII of the Charter. The contention of the Netherlands was based primarily on two grounds: (a) the matter of the Indonesian question came within the domestic jurisdiction of the Netherlands; and (b) the Indonesian question and developments in connexion therewith did not present any danger to international peace or security, and did not result in breaches of the peace or acts of aggression in the sense of the Charter. Therefore, under Article 2 (7) of the Charter, the Council was precluded from intervening in the matter. In the discussions related to a number of proposals and decisions, some representatives referred to or invoked specific Articles in Chapter VII of the Charter as providing the authority for the proposals submitted or the decisions taken. The standpoint that some of the decisions were taken under the authority of certain Articles in Chapter VII of the Charter was contested by some other representatives. They held that inasmuch as the texts of the resolutions adopted did not mention under what particular authority the decisions were taken, such decisions could not be construed as having been taken under Chapter VII of the Charter. Only the Council acting as a body, they contended, could specify under what authority a decision was taken.

¹ Case 1.

² Cases 2 and 3.

³ Cases 4-7.

⁴ Cases 8-13.

⁵ Case 14.

⁶ Case 15.

⁷ Palestine question: decision of 15 July 1948 (Determination under Article 39); decisions of 15 July and 16 November 1948 (Measures under Article 40). Cf. complaint of aggression upon the Republic of Korea: decision of 25 June 1950 (Determination of breach of the peace).

⁸ United Nations Publications, 1949-1950.X.

⁹ See Cases 9 and 10.

¹⁰ Reference should, however, be made to chapter III, Cases 64 and 73, for discussion regarding Article 32 in relation to chapter VII.

¹¹ See especially Cases 9 and 10. See also Case 14.

upon the adoption of a resolution under Chapter VI rather than under Chapter VII.¹⁹

Discussion has also turned on the purposes for which the powers of Chapter VII may be exercised, and the distinction has been stressed between the use of those powers to remove a threat to the peace and their use in the enforcement of terms of settlement.²⁰

With regard to the material relating to Article 40, attention may be drawn to the consideration of the character of provisional measures under that Article²¹ and the significance to be attached to the provision that such measures shall not prejudice the rights, claims, or position of the parties.²²

CASE 1.²³ THE SPANISH QUESTION: In connexion with the recommendations of the Sub-Committee on the Spanish Question presented on 1 June 1946

¹⁹ See Cases 9 and 10. See also Case 17. On certain occasions attention has been directed to questions of terminology not arising from the text of the Charter. For consideration of the distinction between "cessation of hostilities" and "cease-fire", see the following statements in connexion with the Indonesian question (II):

208th meeting: Poland, p. 2512.

213th meeting: Philippines, p. 2598; United States, p. 2604.

214th meeting: India, p. 2624.

215th meeting: France, p. 2666; Poland, p. 2656.

217th meeting: Syria, p. 2714; United States, p. 2709. For consideration of the distinction between a resolution ordering a cease-fire and one calling upon the parties to cease fire, see the following statements in connexion with the Palestine question:

296th meeting: United Kingdom, p. 4; United States, pp. 6-7.

297th meeting: Syria, p. 9.

374th meeting: France, p. 37; United Kingdom, p. 38; Acting Mediator, p. 31.

For consideration of the distinction between "cessation of hostilities" and "truce", see the following statements in connexion with the Palestine question:

275th meeting: United States, pp. 1-4.

277th meeting: Egypt, pp. 24-25; United States, p. 31.

282nd meeting: United States, p. 7.

283rd meeting: France, pp. 6-9.

317th meeting: United States, pp. 38-39.

433rd meeting: Acting Mediator, p. 6.

For consideration of the distinction between "truce" and "armistice", see the following statements in connexion with the Palestine question:

374th meeting: United Kingdom, p. 10; Acting Mediator, pp. 8-9.

380th meeting: France, p. 23; USSR, pp. 15-16; United States, p. 27; Acting Mediator, p. 9.

381st meeting: Canada, p. 25; Colombia, pp. 23-24; Lebanon, p. 28.

433rd meeting: Acting Mediator, p. 6.

²⁰ See chapter XII, Case 23.

²¹ See Cases 3, 4, 6, 9, 14.

²² See Case 5. In addition, the following statements in connexion with the Indonesian question (II) bearing on withdrawal of troops as a provisional measure may be cited:

172nd meeting: USSR, p. 1665.

173rd meeting: Netherlands, p. 1705; United States, p. 1704.

208th meeting: India, p. 2507.

209th meeting: Philippines, p. 2535; United States, p. 2527.

210th meeting: Australia, pp. 2554-2555; Brazil, p. 2548.

211th meeting: Poland, p. 2575.

393rd meeting: Colombia, p. 20.

397th meeting: Indonesia, p. 13.

403rd meeting: Norway, p. 11.

²³ For texts of relevant statements see:

35th meeting: United Kingdom, pp. 184-185.

44th meeting: Australia, p. 314; France, p. 322; Poland, p. 323.

46th meeting: Mexico, p. 363; France, p. 359.

47th meeting: Australia, pp. 375-376; Poland, pp. 370-371.

[Note: The Sub-Committee on the Spanish Question reported that the situation in Spain did not warrant a determination under Article 39, but that it was a situation the continuance of which was likely to endanger the maintenance of international peace and security. Discussion arose on the question whether a potential threat to the peace came within the scope of Article 39, and on the applicability of the terms of Articles 34 and 39 to the situation in Spain.]

CASE 1 (i)

At the 34th meeting on 17 April 1946 the representative of Poland submitted a draft resolution which provided, *inter alia*,²⁴

"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;"

At the 35th meeting on 18 April 1946 the representative of the United Kingdom stated:

"The severance of diplomatic relations is one of the first enforcement measures prescribed in Chapter VII of the Charter, which is not invoked here, and can only be invoked if the Council determines 'the existence of any threat to the peace, breach of the peace, or act of aggression'.

"I cannot admit that the case so far made against the Spanish Government has established the existence of such a threat to the peace, breach of the peace, or act of aggression . . ."

After the introduction of the Polish draft resolution, discussion centred on the terms of reference of the Sub-Committee which, it was proposed by the representative of Australia, should make further inquiries.²⁵

The Sub-Committee on the Spanish Question stated in its report of 1 June 1946 in part V on "Other measures [than under Chapter VIII] available to the United Nations":²⁶

"30 . . .

"(a) Although the activities of the Franco régime do not at present constitute an existing threat to the peace within the meaning of Article 39 of the Charter and therefore the Security Council has no jurisdiction to direct or to authorize enforcement measures under Article 40 or 42, nevertheless such activities do constitute a situation which is a potential menace to international peace and security and which therefore is a situation 'likely to endanger the maintenance of international peace and security' within the meaning of Article 34 of the Charter."

²⁴ 34th meeting: p. 167. For the submission of the Spanish question, see chapter VIII, p. 306.

²⁵ For consideration of the terms of reference of the Sub-Committee, see chapter X, Case 8, and chapter XII, Case 2.

²⁶ S/75, O.R., 1st year, 1st series, Special Suppl., rev. ed., p. 10. For the structure of the report, see chapter VIII, pp. 306-307; for statements on Article 41, see Case 16; and on domestic jurisdiction, see chapter XII, Case 2.

With regard to the Sub-Committee's finding on Article 39 of the Charter, the meaning of the words "threat to the peace" gave rise to a difference of opinion both in the Sub-Committee and in the Council.

The report of the Sub-Committee contained the following statement in part IV on "Jurisdiction of the Security Council and its power to take action under Chapter VII of the Charter":²⁷

"20. The juridical meaning of Article 39 is that the Security Council has to measure the situation as at the moment of the proposed action on its part, it being the clear intention of the Charter that the Security Council should only call for direct enforcement measures, which include the actual waging of war, provided it is affirmatively satisfied that a threat to the peace, or a breach of the peace, or an act of aggression has actually come into existence.

"21. A very sharp instrument has been entrusted to the Security Council by the United Nations under Chapter VII of the Charter, and the Security Council must be careful that this instrument is not blunted nor used in any way which would strain the intentions of the Charter or which would not be applicable in all similar cases.

"22. In the opinion of the Sub-Committee the Security Council cannot, on the present evidence, make the determination required by Article 39. No breach of the peace has yet occurred. No act of aggression has been proved. No threat to the peace has been established. 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."

The representative of Poland, however, made a reservation to the report on the grounds that the report conveyed the view that an incipient menace would not fall within the scope of Article 39. He declared:²⁸

"The Polish representative believes that paragraphs 20-23 of the Sub-Committee's report contain implicitly a legal doctrine concerning the powers and duties of the Security Council under Article 39 of the Charter. This doctrine is reflected in the conclusions reached in paragraphs 27 and 30 (a) of the report. While accepting the analysis of facts and the recommendations of the Sub-Committee he reserves his opinion as to the legal doctrine mentioned.

"The functions of the Security Council are preventive as well as repressive. The Security Council is free, within the purposes and principles of the Organization, to determine whether a situation is a threat to the peace in the sense of Article 39. The Charter does not demand that such a situation, in order to be recognized as a threat to the peace, be an immediate danger of a breach of peace or act of aggression within the next few days, weeks or even months. Potential, as well as imminent, dangers can be construed as a threat to the peace in the sense of Article 39... Unless threats to the peace are taken care of by the Security Council at an early stage while they still are potential and easy to remove, the United Nations may find themselves in face of situations beyond their power to control.

"The enumeration in Article 41 of the Charter of steps such as interruption of postal, telegraphic and radio communications and the severance of diplomatic relations indicates clearly that potential threats to the peace are also covered by Article 39. If only imminent threats to the peace were envisaged in Article 39, measures short of economic and military sanctions would be meaningless.

"For the reasons indicated, the Polish representative cannot agree with the statement that the activities of the Franco regime do not represent a threat to the peace within the meaning of Article 39 of the Charter and that the Security Council has no jurisdiction to direct, in this case, severance of diplomatic relations. While he supports the recommendations of the Sub-Committee he does so without prejudice to the rights of the Security Council."

In the discussion following the submission of the Sub-Committee's report, the President, speaking as the representative of France, expressed the view that the reservation by the representative of Poland was based on an erroneous construction of part IV of the report. He observed:

"His reservation [*the reservation of the representative of Poland on the report of the Sub-Committee*] places a special interpretation on the recommendation contained in the report; he takes the recommendation to imply that the Security Council has no direct jurisdiction to act in cases where the threats to peace are only potential. Article 39 of the Charter contains the word 'threat'; by itself, this word seems to me to imply necessarily a state of affairs which is no more than a virtual possibility. So long as there is no act of aggression and so long as there is only a threat, such a threat is perforce contingent, latent or, in other words, 'potential'. The French text of Article 34 of the Charter, however, contains the words '*si... cette situation semble devoir menacer le maintien de la paix*', and the English text speaks of a situation 'likely to endanger... peace'. Consequently, Article 34 of the Charter also refers to a threatening or dangerous situation.

"If the two Articles of the Charter referred to are compared, it seems to me that the report merely meant to say that we ought to rely on Article 39 or Article 34, according to whether the threat is more or less remote, or more or less imminent. The report relies on Article 34, because of its estimate of the facts and as a result of assessing the more or less imminent nature of the threat. But this does not mean that Article 39 is not applicable except when a threat is already on the point of being transformed into action. If a different interpretation were admitted, I could understand the Polish representative's reservation, for such an interpretation might result in a situation somewhat like the following one.

"If we cast our minds back, we shall see that the situation brought about by the Fascist or Hitlerite régimes could never have given rise to a decision based on Article 39 of the Charter until the very last moment. We know by experience that at the last moment it is too late to act.

"I do not think that that is really what the report means. It simply means that, according to whether the threat is more or less serious, we may rely either on Article 39 or on Article 34; and the report after judging the facts elected to rely on Article 34."

²⁷ S/75, O.R., 1st year, 1st series, Special Suppl., rev. ed., pp. 8-9.

²⁸ S/75, O.R., 1st year, 1st series, Special Supplement, rev. ed., pp. 11-12.

At the 46th meeting on 17 June, he stated:

"There is a threat which is not yet an actual threat, that is to say, which has not yet been translated into acts of aggression but is a potential threat."

Dissent from this aspect of the Sub-Committee's report was further expressed by the representatives of the USSR and Poland in the discussion. At the 45th meeting on 13 June the representative of the USSR stated:

"While bringing forward a considerable array of facts confirming that the Franco régime is a menace to peace, the Sub-Committee nevertheless has not dared to draw the right conclusion from all the material it has used. It is stated in the Sub-Committee's proposal that the situation in Spain does not at present constitute a threat to peace and that this situation does not come under the definition of Article 39 of the Charter.

"Such a conclusion is incorrect. It is due to a restrictive interpretation of Article 39. The Sub-Committee came to the conclusion that the situation in Spain constituted merely a potential threat to peace. In introducing the idea of a potential threat to peace, the Sub-Committee renounced the precise sense of Article 39. Such a conclusion may be the basis for an incorrect and dangerous doctrine, capable of diminishing the significance of the relevant Articles of the Charter, in so far as the action of the Security Council on the strength of these Articles is concerned. The outcome is that a real threat to peace would exist only if fascist Spain took practical action of a military nature. But this would not be merely a threat to peace; it would be an act of aggression."

At the 47th meeting on 18 June 1946, the representative of Poland declared:

"In signing the Sub-Committee's report, I have made a reservation as to the interpretation of Article 39 of the Charter, and I should like to repeat it here and to explain my reasons.

"The report of the Sub-Committee makes a distinction between a potential and an actual threat to peace, and then interprets Article 39 to mean that the term 'threat to the peace' used there refers only to an actual threat and not to a potential threat. I find it impossible to make sense of such a distinction. Any threat to the peace is potential by nature. It may mature tomorrow, after tomorrow, or in five years. It is a question of time. If the threat to the peace is no longer potential, then we have to do with actual aggression.

"Furthermore, if we should restrict our interpretation of Article 39 to mean that potential threats are not covered by it, which would mean that we should have to wait for open acts of aggression, then the whole organization of the United Nations, and particularly the Security Council as that branch of the United Nations which is entrusted with the maintenance of peace, would become ineffective. Under this narrow interpretation of Article 39, namely, that it does not cover a potential threat to the peace, the Security Council would be unable to act in such cases as that of Fascist Italy prior to the actual invasion of Ethiopia, or Nazi Germany prior to the actual dropping of bombs on Polish cities.

"It would seem, moreover, that the sanctions enumerated in Article 41 clearly indicate that when Article 39 speaks of a threat to peace, it refers not

only to an act of aggression which has already been committed, or to a threat which might materialize in a few weeks or months, but to any threat, however potential. Otherwise such sanctions as the interruption of postal, telegraphic, radio and other means of communication and the severance of diplomatic relations would have no meaning. If the threat to the peace is so immediate that it is about to materialize into actual warfare, the only sanctions which have any meaning are military sanctions. Article 41, however, clearly sets out weaker forms of sanctions, and I think we have to keep this in mind in our interpretation of Article 39..."

In answer to the remarks made by the representative of Poland, the representative of Australia stressed that the issue lay not on any difference of legal interpretation but on the differing appreciation of the facts of the situation. He said:

"I would say that the difference of opinion which was made evident this afternoon was not really a difference of legal interpretation at all. The representative of Poland has emphasized that a threat to the peace may occur long before an actual breach of the peace. We do not dissent from that. The Sub-Committee has never dissented from it, and in a statement made by the representative of France, Mr. Parodi, that was made abundantly clear. There may be facts which show that there is a threat to the peace and it may well be that the actual breach of the peace may not occur until some time later. It all depends upon the circumstances of the case, and it requires an examination and investigation of the facts.

"In this case the Sub Committee appointed by the Council to look into the facts found on the evidence submitted to it that the situation did not come within the meaning of Article 39 and that there was no existing threat to the peace. It is not, therefore, a question of legal interpretation; it is a question of evidence, a question of proving things. Certain statements were made at the Security Council originally which have not been borne out by the evidence. It may well be that the evidence can be brought forward on some future occasion in order to disturb those findings and show that another finding should be made but we shall have to wait for such an occasion."

At the 48th meeting on 24 June 1946, the representative of Poland presented the draft resolution submitted by him at the 34th meeting, with the reference to Articles 39 and 41 of the Charter deleted.²⁹ The representative of Australia observed that the Polish draft resolution was an attempt to get the Council to act under Chapter VII of the Charter. The draft resolution was in direct contradiction to the report of the Sub-Committee, which had revealed that the necessary basis for the proposed action under Chapter VII did not exist. The question was not how far governments were prepared to go, but to what extent the facts within the meaning of Article 39 had been proved to exist. The representative of China also spoke to this effect. The representatives of France, Mexico and the USSR expressed support of the draft resolution. The draft resolution was put to the vote and rejected by 4 votes in favour and 7 against.³⁰

²⁹ 48th meeting: p. 383.

³⁰ 48th meeting: p. 388.

CASE 2.³¹ THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with United Kingdom amendment to United States draft resolution for the establishment of a commission of investigation and good offices: amended paragraph voted upon and adopted on 29 July 1947; draft resolution as a whole rejected on 29 July 1947.

[*Note:* In pursuance of a draft resolution submitted on 27 June 1947 to implement a majority recommendation of the Commission of Investigation, discussion arose as to whether the Council might designate in advance certain types of action as a threat to the peace. An amended text designed to accentuate the requirement of a definitive finding on action committed was adopted, but the draft resolution as a whole failed of adoption.]

At the 147th meeting on 27 June 1947, the Security Council had before it the United States draft resolution³² for the establishment of a commission of investigation and good offices in pursuance of the majority recommendations of the Commission of Investigation concerning Greek Frontier Incidents.³³ At the 162nd meeting on 22 July, the representative of the United Kingdom proposed as an amendment to the United States draft resolution the insertion of the following text derived from the recommendations of the Commission:³⁴

"2. ... In view of the gravity of the present situation, if in the future one of the four States concerned is found to be supporting armed bands formed on its territory which cross into the territory of one of the other States, or if such State is found to be refusing, in spite of the demands of that other State, to take the necessary measures on its own territory to deprive such bands of any aid or protection, that shall be considered by the Security Council as a threat to the peace within the meaning of the Charter of the United Nations."

At the 164th meeting on 23 July, the representative of the United States accepted the wording of the United Kingdom amendment.³⁵

At the 159th meeting on 17 July, the representative of Poland expressed his objection, "as a matter of principle", to the recommendation of the Commission in this respect. He stated:

"... The recommendation is really equivalent to proposing a definition of the concept of 'threat to the peace'... The San Francisco Conference deliberately decided not to accept any definition of a 'threat to the peace' which would bind the Security Council in the future... because it was thought unwise to bind the Security Council by general defini-

tions which might be applicable in one place but entirely out of place in another."

At the 164th meeting, the representative of the USSR also opposed the proposal on the grounds that it was "at variance with the Charter of the United Nations". He stated:

"The Security Council cannot describe, as a breach of the peace, an act which has not yet taken place. The Charter does not authorize the Security Council to do so..."

The representative of France considered that the proposal would be open to certain criticism:

"It is that, by the wording thus proposed, the Security Council is committing itself in advance; it is deciding beforehand that if such things occur, it will consider them to be a threat to the peace. When the Commission made this recommendation in the report it was, I feel, quite normal. It meant that, if such things did occur one day, the Commission would recommend the Security Council to consider them as a threat to the peace. If the Security Council itself now decides that, in the event of such things happening tomorrow or the day after, it will consider them to be a threat to the peace, I fear it would be committing itself and prejudging the decision it would have to take if those things actually did occur."

In supporting the proposal as worded in the United Kingdom amendment to the draft resolution, the representative of the United States stated:

"The proposal contained in that sentence is really a declaration; it is an exhortation and a warning. It has no operative or executory power. That would require a decision by the Security Council, and that is the meaning of the language used. The Security Council has got to find that those facts exist before that situation becomes an admitted threat to the peace."

The representative of China contended that the Council was "perfectly within its rights in issuing warnings in certain circumstances" He added:

"... That is what we are trying to do here. After all, the Security Council is a political body; and as such and by virtue of its responsibility to maintain peace in every part of the world, it has the right, in this particular case, to warn or to remind the four countries concerned that if one or more of them does certain things, it will be violating provisions of the Charter, and rather serious consequences may result. That is the purpose of this paragraph; it is not laying down the law or attempting to interpret the Charter in advance; it is simply a warning from the Council by virtue of its responsibilities."

Also at the 164th meeting, the representative of Australia formally submitted, and the representatives of the United States and the United Kingdom accepted, the following text:³⁶

"Giving support to armed bands formed on any one of the four States concerned and crossing into the territory of another State, or refusal by any one of the four Governments in spite of the demands of the State concerned to take the necessary measures to deprive such bands of any aid or protection, shall be avoided by the Governments of Albania, Bulgaria,

³¹ For texts of relevant statements see:
147th meeting: United States, pp. 1123-1124.
158th meeting: Colombia: pp. 1322-1323.
159th meeting: Poland, p. 1353.
160th meeting: USSR, pp. 1377-1378.
161st meeting: Bulgaria, pp. 1396-1397.
164th meeting: Australia, pp. 1469-1470; Bulgaria, p. 1461; China, pp. 1464-1465; Colombia p. 1467; France, pp. 1454-1456; Poland, p. 1466; USSR, p. 1457; United States, p. 1458.
³² S/391, 147th meeting: pp. 1124-1126. See chapter VIII, p. 311.
³³ S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, p. 154.
³⁴ S/429, O.R., 2nd year, Suppl. No. 15, p. 145.
³⁵ 164th meeting: p. 1454.

³⁶ 164th meeting: pp. 1469, 1470.

Greece and Yugoslavia, as a threat to the peace within the meaning of the Charter of the United Nations."

The representative of Australia stated in support of this amendment:

"It is an expression of our point of view at the moment; that is, we are in a serious position at the moment, and we regard any one of those acts as constituting a threat to the peace. However, it does not bind the Council in any way in the future, because the Security Council, on any report before it, must make a definitive finding to that effect before any action or further action can be contemplated by the Security Council under Chapter VII of the Charter."

At the 170th meeting on 29 July 1947, the amended paragraph of the United States draft resolution was adopted by 9 votes in favour, 1 against, with 1 abstention. At the same meeting the United States draft resolution, as a whole, was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).³⁷

CASE 3.³⁸ THE GREEK FRONTIER INCIDENTS QUESTION: In connexion with draft resolutions submitted by the representatives of Australia and the United States: voted upon and not adopted on 19 August 1947.

[*Note:* In the course of proceedings on the Greek frontier incidents question, Greece requested on 31 July 1947 that the Security Council consider the question under Articles 39 and 40. Draft resolutions based upon Articles 39 and 40 were submitted by the representatives of Australia and the United States. Both draft resolutions failed of adoption.]

By letter dated 26 June 1947,³⁹ the representative of Greece outlined briefly the situation in Greece as viewed by his Government and, while advocating the adoption by the Council of the recommendations of the Commission of Investigation, expressed the view that the Council should "prepare the way for decisive action in case these recommendations by themselves prove to be inadequate". The letter concluded:

"The state of affairs described by Greece in her original complaint as one 'likely to endanger the peace', under the circumstances now prevailing is a definite and existing threat to the peace, breach of the peace or act of aggression. If it becomes the view of the Council that to make the necessary determination there has to be a charge by one of the concerned that such a threat, breach of the peace or act of aggression exists, it is requested that this statement be accepted as such a charge."

By letter dated 31 July 1947,⁴⁰ the representative of Greece requested the Council to take up consideration of this communication.

³⁷ 170th meeting: pp. 1604, 1612.

³⁸ For texts of relevant statements see:

177th meeting: Australia, pp. 1807-1809; Colombia, pp. 1809-1810; Greece, pp. 1817-1821; President (Syria), pp. 1821-1822; Yugoslavia, pp. 1822-1824.

180th meeting: Australia, pp. 1905-1906; Bulgaria, pp. 1912-1913; United States, pp. 1908-1910.

183rd meeting: USSR, pp. 1968, 1972-1973, 1976.

188th meeting: Australia, pp. 2076-2078; Albania, pp. 2081-2084; Poland, pp. 2085-2086; Bulgaria, pp. 2094-2096.

³⁹ S/389. See chapter VIII, p. 311.

⁴⁰ S/451, O.R., 2nd year, Suppl. No. 17, pp. 151-153.

At the 177th meeting on 6 August 1947, the Security Council had before it the report of the Commission of Investigation concerning Greek Frontier Incidents,⁴¹ and the letter dated 31 July 1947 from the representative of Greece⁴² transmitting a letter from the Minister of Foreign Affairs of Greece of the same date requesting

"... that the Council first determine the undeniable fact 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. This having been determined, Greece requests that the Council then take immediate provisional measures under Article 40 calling upon the parties to cease their attacks and to comply with their obligations under the Charter..."

The representative of Australia submitted a draft resolution⁴³ which, as amended at the 188th meeting at the suggestion of the representative of the United States, read as follows:⁴⁴

"The Security Council,

"Having received and considered the report of the Commission of Investigation established by the resolution of the Council dated 19 December 1946,

"1. *Determines* that the situation on the northern borders of Greece constitutes a threat to the peace under Article 39 of the Charter of the United Nations;

"2. *Calls upon* the parties involved, namely Greece, Albania, Yugoslavia and Bulgaria, to cease all acts of provocation, and frontier violations along the borders of Greece on the one hand and Yugoslavia, Bulgaria, and Albania on the other;

"3. *Directs*, in accordance with Article 40 of the Charter of the United Nations, that Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other hand, should at once enter into direct negotiation in an endeavour to relieve the tension at present existing and with a view to the resumption of normal and peaceful diplomatic relations;

"4. *Calls upon* the Governments concerned to report before 6 September 1947 the steps taken to give effect to this resolution.

"To ensure that this decision is put into effect there shall be appointed observers with the duty of reporting directly to the Security Council. Pending the appointment of such observers by the Council and their arrival on the spot, the Subsidiary Group of the Commission of Investigation is directed to report to the Council regarding the compliance of the parties with this decision."

In support of the draft resolution, the representative of Australia stated at the 180th meeting on 12 August 1947:

"... Other representatives here, either directly or by implication, have stated that there is a threat to the peace, although not specifically mentioning Article 39 and so bringing it under Chapter VII."

Having recalled the statements by representatives that the situation was a threat to the peace, the representative of Australia continued:

"So let us face up to the fact that we have all admitted and stated that the situation constitutes a

⁴¹ S/360/Rev.1, O.R., 2nd year, Special Suppl. No. 2, Vols. I and II.

⁴² S/451, O.R., 2nd year, Suppl. No. 17, pp. 151-153.

⁴³ S/471, 177th meeting: p. 1808.

⁴⁴ S/471/Add.1, 188th meeting: pp. 2093-2094.

threat to the peace. We accept that determination, and it automatically brings the situation under Chapter VII, which compels us squarely to face the situation.

"In accordance with the provisions of Article 39, we could immediately proceed to recommend. But we do not do that; we put the question on the basis of Article 40 by proposing certain provisional measures. What are those provisional measures? To enter into direct negotiation—direct negotiation is an obligation under the Charter—to relieve the tension at present existing, with a view to the resumption of normal and peaceful diplomatic relations. That is not a serious obligation. Nobody is blamed there. Nobody is condemned. We merely direct the parties to do certain things which they have all said they are prepared to do."

At the 177th meeting on 6 August, after the representative of Greece had made a statement calling upon the Security Council "to take as quickly as possible practical and effective action against the Balkan aggressors", the President (Syria) stated:

"...I should explain that the Security Council has not yet decided to deal with this matter under Chapter VII. We are dealing with it under Chapter VI."

At the 180th meeting on 12 August, the representative of the United States, while submitting minor amendments to its text, expressed his support of the Australian draft resolution. The representative of the United States also submitted a draft resolution which, he indicated, would be withdrawn in case the Australian draft resolution was adopted by the Council. The United States draft resolution read as follows:⁴⁵

"The Security Council,

"Having considered the report of the Commission of Investigation established by resolution of the Council of 19 December 1946, and having considered the information supplied by the Subsidiary Group of the Commission of Investigation and the oral and written statements made to the Council by Albania, Bulgaria, Greece and Yugoslavia,

"Finds that Albania, Bulgaria and Yugoslavia have given assistance and support to the guerrillas fighting against the Greek Government and have continued to do so subsequent to the period covered by the report of the Commission of Investigation;

"Determines that such assistance and support to the guerrillas by Albania, Bulgaria and Yugoslavia constitute a threat to the peace within the meaning of Chapter VII of the Charter;

"Calls 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;

"Directs the Subsidiary Group to report to the Security Council on the compliance of Albania, Bulgaria and Yugoslavia with this order:

"Calls upon Albania, Bulgaria and Yugoslavia to co-operate with Greece in the settlement of their disputes by peaceful means and to keep the Security Council informed of the progress of the settlement.

"The Security Council remains seized of the question and will take such further action in con-

nexion with the enforcement of its order and the settlement of the dispute as may from time to time be necessary."

At the 183rd meeting on 14 August, the representative of the USSR, in opposing the Australian draft resolution, referred to its provision for the "resumption of normal and peaceful diplomatic relations", which, he stated, "would seem to be a proposal that could be welcomed". He added:

"...In the Australian resolution, however, this provision is made conditional on the adoption of another unacceptable provision, according to which the resumption of diplomatic relations is to be effected in accordance with Article 40 of the Charter of the United Nations, i.e., an Article which can apply only if the Security Council has already decided that the dispute or situation constitutes a threat to international peace."

The representative of the USSR further stated that the Australian draft resolution was "practically identical" with the United States draft resolution, to which he also objected.

At the 188th meeting on 19 August 1947, the Australian draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).⁴⁶ At the same meeting, the United States draft resolution was not adopted. There were 9 votes in favour and 2 against (one vote against being that of a permanent member).⁴⁷

CASE 4.⁴⁸ THE INDONESIAN QUESTION (II): In connexion with decision of 1 August 1947 calling upon the parties to cease hostilities and to settle their disputes by peaceful means.⁴⁹

[*Note: The question was brought before the Council under Article 39 as a breach of the peace, and a draft resolution was submitted which provided for a determination to this effect and called for compliance with specified provisional measures under Article 40. In consequence of doubts expressed regarding the applicability of Article 39, reference to specific Articles of the Charter was omitted from the resolution as adopted. Views were expressed at later meetings on whether the resolution had or had not been adopted under Article 39 or under Article 40.]*

⁴⁶ 188th meeting: p. 2094.

⁴⁷ 188th meeting: pp. 2098-2099.

⁴⁸ For texts of relevant statements see:

171st meeting: Australia, pp. 1622-1627; China, p. 1633; India, p. 1620; Netherlands, p. 1645.

172nd meeting: Belgium, pp. 1653-1654; USSR, pp. 1659-1665; United Kingdom, pp. 1655-1656; United States, pp. 1657-1659.

173rd meeting: Australia, p. 1708; Brazil, pp. 1682-1683; France, pp. 1676-1678; India, pp. 1683-1684; USSR, pp. 1689-1692; United Kingdom, pp. 1674-1675.

184th meeting: Colombia, p. 1988.

185th meeting: Poland, p. 2015.

192nd meeting: Netherlands, p. 2144.

193rd meeting: United States, pp. 2175-2176.

195th meeting: Australia, pp. 2215-2217.

209th meeting: Poland, p. 2222; United States, p. 2526.

210th meeting: Australia, p. 2553.

215th meeting: Australia, p. 2667.

390th meeting: Australia, p. 6.

398th meeting: Belgium, p. 11; United States, p. 3.

⁴⁹ For consideration of the claim of domestic jurisdiction, see chapter XII, Case 7.

⁴⁵ S/486, 180th meeting: pp. 1910-1911 (footnote).

By letter dated 30 July 1947, the representative of Australia drew the attention of the Council "to the hostilities in progress in Java and Sumatra between the armed forces of the Netherlands and the Republic of Indonesia", and stated that his Government considered that "these hostilities constitute a breach of the peace under Article 39".⁵⁰

At the 171st meeting on 31 July 1947, the representative of Australia submitted the following draft resolution:⁵¹

"The Security Council,

"Noting with concern the hostilities in progress between the armed forces of the Netherlands and of the Republic of Indonesia, and

"Having determined that such hostilities constitute a breach of the peace under Article 39 of the Charter of the United Nations,

"Calls upon the Governments of the Netherlands and of the Republic of Indonesia, under Article 40 of the Charter of the United Nations, to comply with the following measures, such measures to be 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."

In submitting his proposal, the representative of Australia stated:

"It is with a deep sense of responsibility that the Australian Government has drawn the attention of the Council under Article 39 of the Charter of the United Nations to the situation in Indonesia. We had certainly hoped that circumstances would never arise which would make it necessary for Chapter VII to be invoked, and we have done so only after making strenuous attempts, in consultation with other Governments, particularly the United Kingdom, the United States and India, to bring about a solution by negotiation and mediation.

"However, although the parties to any dispute are bound to seek a solution by mediation and negotiation under Article 33, all attempts to bring the parties together have failed, and it is felt that further delay is not justified because of the loss of life being sustained . . .

...

"This is the first time a case has been brought before the Council under Chapter VII. Under Article 39, we are alleging a breach of the peace, but we assume that this means a breach of international peace and applies to cases where hostilities are occurring, but where it is not alleged that one particular party is the aggressor or has committed an act of aggression."

The representative of Australia continued that, since it was well established that hostilities were in progress, there was no occasion for the Council to undertake an investigation of the facts under Article 34. Further he emphasized that the hostilities represented not merely "police action" but were "in fact warfare; that is, in international law, armed conflict between two States".

The representative of China pointed out that the Australian draft resolution expressly excluded "pre-judging the rights, claims or position of either party", and that it called on the Council to perform its primary duty, which was to stop the fighting and to solve the dispute by peaceful means.

The representative of the Netherlands* denied that Chapter VII was applicable to the situation. He stated:

"Assuming purely and simply for argument's sake that the Charter is applicable — which I deny — to what is now taking place in Java and Sumatra, where then, I ask, is there any danger to international peace or security, let alone breaches of the peace or acts of aggression in the sense of the Charter? In what countries outside the Netherlands' territory are there any signs of danger to peace caused by this action?"

At the 172nd meeting on 1 August, the representative of Belgium expressed the view that the Council would not, under the Charter, be justified in applying Article 40 without first having determined the existence of a threat to the peace, a breach of the peace or an act of aggression, in accordance with the actual terms of Article 39. The representative of the United Kingdom stated that it was not Article 39 but rather Articles 34 and 35 which would be applicable to the case, "not as a dispute between the Netherlands and the Indonesian Republic, but because the fighting in progress may well create a situation leading to international friction". The representative of the United States at the 172nd meeting submitted an amendment to the Australian draft resolution which contained no reference to any Article of the Charter,⁵² and which the representative of Australia accepted. Referring to the Australian draft resolution, the representative of the United States stated:

"The invocation of Articles 40 and 39, however, raises very complex and serious questions of law. The question of sovereignty, and the question of the competence of the Council to deal with the case, have been brought up by the representative of the Netherlands and, in our opinion, also merit the respectful attention of the Council. These are very important questions. The fact that there is shooting and that men are being killed in that region of the world is also very important. Thus it is a legitimate concern of the Council, no matter what concept of sovereignty is involved or what may ultimately be decided to be the fact."

The representative of the USSR characterized the actions of the Netherlands "as a breach of the peace", and stated that the Council was obliged, by its primary responsibility for the maintenance of international peace, to take decisions which would restore peace and "put an end to aggression". He submitted a proposal, by way of an addition to the United States amended version of the Australian draft resolution, to consider it necessary that the troops of both sides should be immediately withdrawn to the positions they occupied before the beginning of military operations. This proposal was rejected at the 173rd meeting on 1 August 1947.⁵³

At the same meeting, the Council adopted the United States amended version of the Australian draft resolution together with a Polish amendment.⁵⁴

⁵⁰ S/449, O.R., 2nd year, Suppl. No. 16, annex 40, pp. 149-150.

⁵¹ S/454, 171st meeting: p. 1626.

⁵² 172nd meeting: p. 1658.

⁵³ 173rd meeting: p. 1710.

⁵⁴ For text of the decision, see chapter VIII, p. 316.

At subsequent meetings when the Indonesian question was discussed, several members made statements in regard to their understanding of the Articles of the Charter under which the decision of 1 August 1947 had been taken.

At the 184th meeting on 14 August, the representative of Colombia stated his understanding that the Council had taken action under Article 39.

At the 185th meeting on 15 August, the representative of Poland stated:

"By admitting the case under Article 39 of the Charter, the Security Council accepted the situation as a breach of international peace, and recognized the competence of the Security Council to deal with it. Although the resolution (of 1 August 1947) did not expressly mention Article 39, it is quite clear that under this Article, and only under this Article, can the case be dealt with here, and measures provided by the Charter be applied."

At the 193rd meeting on 22 August, the representative of the United States, adverting to the resolution of 1 August, stated:

"My Government believes that the Security Council acted properly and in entire conformity with the Charter in calling upon the parties to cease hostilities. We consider that so far as the Charter is concerned, paragraph (a) of the Council's resolution of 1 August 1947 is a provisional measure under Article 40. In our view that decision was properly taken and did not prejudice the contentions of the parties with regard to whether or not the Indonesian Republic was an independent State under international law."

At the 195th meeting on 26 August, the representative of Australia stated:

"Although the resolution of 1 August omitted reference to Articles 39 and 40 of the Charter, it is very clear that the Indonesian question was brought before the Council under Chapter VII of the Charter, and it is very clear that action was taken under Article 40 in that certain provisional measures were taken or decisions made.

"In his speech the other day, the United States representative accepted that premise. He even went on to say that if the parties did not carry out the decision of 1 August 1947, the Council would have to decide what further action was necessary; and further action could take the form only of enforcement measures...

"Therefore it is very clear that it is well within the competence of this Council to take further action at this very moment under Chapter VII, and it follows automatically that this matter is outside the sphere of domestic jurisdiction covered by Article 2, paragraph 7."

Following the outbreak of hostilities in Indonesia for a second time, the representative of the United States, at the 398th meeting on 11 January 1948, remarked:

"In our view, the Netherlands military action is in conflict with the Renville Truce Agreement and with the Security Council resolutions of 1 August and 1 November 1947. As the delegation of the United States has frequently made clear, it is our opinion that these two Security Council resolutions were adopted under the provisions of Article 40, Chapter VII of the Charter, and that, therefore, in

accordance with Article 25 of the Charter, the Netherlands Government was and is under obligation to comply with their provisions."

The representative of Belgium contested the viewpoint of the representative of the United States, and made the following statement:

"The resolutions of 1 August and 1 November 1947 do not make the slightest mention of Article 40 of the United Nations Charter. There is no doubt whatever that if the members of the Security Council had intended to take such a serious step as to apply Chapter VII, they would have felt it necessary to say so and to justify such a step.

"When the resolutions of 1 August and 1 November were adopted, there were some extremely spirited debates on the question of the competence of the Security Council; it was even agreed that that question remained entirely unprejudiced.

"The Security Council could not possibly be bound by the interpretation given by the United States delegation; such an interpretation must be considered as the opinion of its author, and his alone."

CASE 5.⁵⁵ THE INDONESIAN QUESTION (II): In connexion with draft resolutions for the withdrawal of forces submitted by the representatives of Australia and the USSR: voted upon and rejected on 31 October 1947.

[Note: On 1 August 1947, the Security Council had called for the immediate cessation of hostilities, but military conflicts continued. At the commencement of October, the question arose whether to require the withdrawal of the military forces to their initial positions could, in view of the possibly prejudicial character of such a step, be rightly regarded as a provisional measure under Article 40; or whether such a step was incumbent on the Council to bring about compliance with the earlier resolution.]

At the 207th meeting on 3 October 1947, the representative of the USSR submitted a draft resolution to consider 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".⁵⁶

The representative of the United States, at the 209th meeting on 9 October, stated:

"The United States delegation assumes that this proposal is also made under Article 40 of the Charter; that is, that it is made in consideration of the fact that the Security Council should take into account failure to comply with the provisional measures, namely, the orders to cease hostilities. Therefore, we have to examine our position in this matter as a judicial body—quasi-judicial at least. We must first see what authority we have to pass a draft resolution such as the one before us.

"Article 40 contains the following provision: 'Such provisional measures shall be without prejudice to

⁵⁵ For texts of relevant statements see:

207th meeting: USSR, pp. 2488-2492.

208th meeting: Poland, pp. 2509-2514.

209th meeting: USSR, pp. 2537-2543; United States, p. 2527.

210th meeting: Australia, pp. 2552-2555; Poland, pp. 2549-2552.

⁵⁶ 207th meeting: p. 2491. See chapter VIII, p. 318.

the rights, claims or position of the parties concerned.' At once the question arises as to whether the Security Council has any adequate evidence that the conclusion implicit in this draft resolution and the action for which it provides would, if carried out, affect the rights, claims or position of the parties concerned. Unless such evidence is established, I believe the Security Council should not, in law or in reason, pass this draft resolution. The position that the United States delegation takes in the matter is that we do not have such evidence. We do not have any foundation for concluding that it is necessary for these troops, on both sides, to be withdrawn; and we do not have any evidence that would justify a conclusion by us that the withdrawal of troops would not prejudice the rights, claims or position of the parties concerned."

The representative of the USSR, at the same meeting, replied:

"... the United States representative's argument is without foundation, if only because we are dealing precisely with the question of how to implement a provisional measure taken by the Security Council, that is to say, how to implement the decision on the cessation of hostilities.

"We know that the decision is not being implemented and that the Security Council is therefore faced with the problem of taking further measures designed to remedy this situation. Thus the decision which the Security Council must take should no longer be simply a provisional measure. It should be a decision which would ensure the implementation of the former decision on the cessation of hostilities; that former decision which could in fact be considered as a provisional measure. The United States representative's reference to Article 40 is therefore irrelevant, since it proves nothing, or, if anything, it proves precisely the contrary of what was intended, namely, that the Security Council 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 which has occurred in Indonesia."

At the 210th meeting on 11 October 1947, the representative of Poland stated that he did not see "how the resolution for a withdrawal of forces to the positions occupied before the commencement of hostilities can possibly be opposed on the basis of an interpretation of Article 40". We maintained that it was "in the spirit of Article 40 that all measures be provided for a peaceful settlement which would be effective without prejudging the rights of any of the parties", and that no one could dispute the fact that the occupation of a large part of the territory of the Republic of Indonesia was prejudging the rights of the Republic to a great extent.

The representative of Australia expressed his delegation's sympathy with the USSR draft resolution because of its conformity with that part of the Charter which stated that provisional measures "shall be without prejudice to the rights, claims or positions of the parties concerned", but submitted a draft resolution of his own, since in his view the USSR draft resolution was impracticable.

Both the USSR and Australian draft resolutions were rejected at the 217th meeting on 31 October 1947.

CASE 6.⁵⁷ THE INDONESIAN QUESTION (II): In connexion with the draft resolution submitted by the representative of Poland relating to failure to comply with provisional measures: voted upon and rejected on 1 November 1947.

[*Note:* The report of the Consular Commission dated 14 October 1947 provided evidence that the cease-fire resolution of 1 August 1947 had not been fully effective.⁵⁸ A draft resolution was submitted which invoked the final provision of Article 40 and foreshadowed the application of enforcement measures. The Council rejected this draft resolution on 1 November 1947. On the same day, the Council conferred upon the Committee of Good Offices the task of assisting the parties in reaching agreement on an arrangement to ensure the observance of the cease-fire resolution. Observations were made on this occasion and at a later meeting regarding the character of certain provisions of the resolution of 1 November 1947 as provisional measures.]

At the 215th meeting on 29 October 1947, the representative of Poland stated that the Council possessed "full proof of action contrary to its recommendations on the part of the Netherlands Government", and, therefore, was justified in proceeding to stronger measures. He continued:

"The Committee of Good Offices must take due note of this defiance, in accordance with the last part of Article 40 of the Charter, and due warning must be given to the Government of the Netherlands that it is making a situation which necessitates, under the terms of the Charter, the application of enforcement measures provided by Articles 41 and 42 of the Charter."

The representative of Poland then submitted a draft resolution, the operative part of which read as follows:⁵⁹

"The Security Council"

"Finds 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;

"Calls upon the Government of the Netherlands to withdraw all armed forces and civil administration from the territory of the Republic of Indonesia, instructs the Consular Commission in Batavia to supervise the compliance by the Government of the Netherlands and the Government of the Republic of Indonesia with the resolutions of the Council of 1 August and 26 August 1947, and with the present resolution, and report thereupon to the Security Council;

"Requests the Committee of Good Offices of the Security Council in the dispute to take into consideration, under Article 40 of the Charter, the fact that the Government of the Netherlands did not comply with the resolutions of the Security Council of 1 August and 26 August 1947;

"Calls the attention of the Government of the Netherlands to the fact that the failure to comply

⁵⁷ For texts of relevant statements see:

215th meeting: Poland, pp. 2653, 2661.

217th meeting: United States, pp. 2706-2710.

398th meeting: Belgium, pp. 10-11; United States, pp. 2-10.

⁵⁸ See chapter VIII, p. 318.

⁵⁹ S/589, 215th meeting: pp. 2661-2662.

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 its 219th meeting on 1 November 1947, the Council rejected the Polish draft resolution.

At the same meeting, the Council adopted the resolution whereby it called upon the parties concerned to consult with each other as to the means to be employed in order to give effect to the cease-fire resolution and, pending agreement to cease any activities contravening that resolution; and advised the parties concerned and the Committee of Good Offices that the resolution of 1 August should be interpreted as meaning that the use of armed forces to extend control over territory not occupied on 4 August 1947 was inconsistent with the resolution of 1 August 1947.⁶⁰

Referring to this resolution, the representative of the United States stated that it represented only a provisional measure, and that it did not amount to a final measure or a finding of facts or a finding of guilt. The resolution was being offered to clarify the situation and expedite the carrying out of the original provisional measure. It was designed "to supply the defect which was said to be the cause of the failure of the original provisional measure".⁶¹

At the 398th meeting on 11 January 1949, the representative of the United States, commenting on the second outbreak of hostilities in Indonesia, stated that the Netherlands military action was in conflict with the resolution of 1 November 1947, which, in the opinion of the United States, was adopted under the provisions of Article 40, Chapter VII of the Charter.⁶² At the same meeting, the representative of Belgium* contested the United States interpretation; he stated that the resolution did not "make the slightest mention of Article 40 of the United Nations Charter", and said that the Council "could not possibly be bound by the interpretation given by the United States delegation; such an interpretation must be considered as the opinion of its author and his alone".⁶³

CASE 7.⁶⁴ THE INDONESIAN QUESTION (II): In connexion with decision of 24 December 1948 calling upon the parties to cease hostilities and to release political prisoners.⁶⁵

[Note: Following the second outbreak of hostilities in Indonesia, the Council had before it on 22-23 December 1948 a draft resolution,⁶⁶ with amendments, certain provisions of which were rejected, and certain provisions adopted as in the decision of 24 December 1948. Observations were made on whether the situation in Indonesia corresponded to the circumstances provided for in Article 39 of the Charter. Among the parts

⁶⁰ For text of the resolution, see chapter VIII, p. 318.

⁶¹ 217th meeting: p. 2707.

⁶² 398th meeting: p. 3.

⁶³ 398th meeting: p. 11. See also Chapter XII, Case 10.

⁶⁴ For texts of relevant statements see:

388th meeting: Netherlands, pp. 2-31.

389th meeting: Indonesia, pp. 31-42; United States, pp. 42-49.

390th meeting: Australia, pp. 5-14; China, pp. 1-5.

391st meeting: USSR, pp. 29-41.

392nd meeting: Canada, p. 12; France, pp. 7-12; United Kingdom, pp. 3-7.

⁶⁵ For the claim of domestic jurisdiction, see chapter XII, Case 11.

⁶⁶ See chapter VIII, p. 321.

of the three-Power joint draft resolution and the Australian amendment rejected by the Council were the following: The Security Council (a) "considers such resumption of hostilities to be in conflict with the resolution adopted by the Security Council at its 171st meeting of 1 August 1947"; (b) "calls upon the parties immediately to withdraw their armed forces to their respective sides of the demilitarized zones established under the truce agreement of 17 January 1948"; and (c) "instructs the Committee of Good Offices to report assessing the responsibility for the outbreak of hostilities".]

In the discussion preceding the adoption of the resolution of 24 December 1948, the representative of the Netherlands*, questioning the competence of the Council to intervene, stated at the 388th meeting on 22 December 1948:

"Under the Charter the Security Council can take action only when international peace and security are endangered. It is evident that the events in Indonesia, however regrettable they may seem, do not constitute a danger to the maintenance of international peace and security in the sense of Articles 33 and 34, let alone a threat to the peace or breach of the peace or act of aggression in the sense of Article 39 of the Charter. What happened in Indonesia was not a breach of international peace, but rather a breach of internal peace. Breaches of internal peace, whether they are labeled strikes, mutiny, revolution, rebellion or whatever other name may be applied to a given situation, are and remain the exclusive responsibility of the Members of the United Nations on the territory of which those unfortunate occurrences take place.

"Since there exists no threat to the peace, breach of the peace or act of aggression, as required for the application of Chapter VII, paragraph 7 of Article 2 applies in full force without the limitation contained in its final clause."

The representative of Indonesia* at the 389th meeting held, on the other hand, that war had broken out in Indonesia, and that there was no longer a threat to the peace; a breach of the peace had occurred.

The representative of the United States recalled that, in the view of his Government, the cease-hostilities resolution of 1 August 1947 was taken as a provisional measure under Article 40, and stated: "My Government considers that the Security Council today is faced with at least as grave a situation as that of August 1947, and we believe the Council must act accordingly." He further stated:

"The simple, massive fact is that the Council's own order of 1 August 1947 has been contravened. This is a matter with which the Security Council must deal immediately and without awaiting any further reports from the Committee. As I said earlier, this is not a situation in which there can be any uncertainty as to whether there has in fact been any outbreak of hostilities. It seems to me that the Council is obligated under the Charter at this stage of its deliberations immediately to order a cessation of hostilities in Indonesia and to require the armed forces of both parties immediately to withdraw to their own sides of the demilitarized zones which are delineated in detail in the truce agreement of 17 January 1948. I must reiterate my Government's view that the Council's cease-fire resolution of 1

August 1947 continues to be binding on both parties and that it has been violated by the recent armed action taken by the Netherlands authorities in Indonesia."

At the 391st meeting, the representative of the USSR characterized the acts of the Netherlands as "a calculated and planned act of aggression carried out in violation of the decisions and principles of the United Nations", and concluded that they constituted "a breach of international peace and security". He demanded that the Council "condemn the aggression committed in Indonesia by the Government of the Netherlands". Furthermore, his delegation considered that the hostilities should end immediately and that the Council should demand the withdrawal of the Netherlands forces to the positions occupied before the resumption of hostilities as a preliminary step towards the settlement of the dispute.

The representative of the United Kingdom at the 392nd meeting considered that "the Indonesian situation is surely one which, in the terms of the Charter, may lead to international friction, and that it has for some time past shown signs of so doing". He said that he would support the three-Power draft resolution, and added that his Government

"does not commit itself to any view of the legal issues which have been argued on both sides as regards the Council's competence or the particular clauses of the Charter which authorize this or that action... The question of Indonesia is not the only one with which this Council has had to deal in which the legal issues have been doubtful and in which more than one view has been admissible as to what the proper role of the United Nations should be, but we hope that both parties to the present unhappy dispute will understand our attitude in the spirit in which I have defined it. We believe that if the Council adopts the resolution before us it will avoid the reproach either — as the representative of China has suggested — of washing its hands of a situation which cries out for remedy, or of exceeding its powers in matters which are solemnly protected by the domestic jurisdiction clause of the Charter."

CASE 8. THE PALESTINE QUESTION: In connexion with the consideration by the Council of the special report of the Palestine Commission of 16 February 1948 on the problem of security in Palestine.

[*Note:* At the 253rd meeting on 24 February 1948, the Security Council had before it the special report of the Palestine Commission wherein the Commission indicated that it would be unable to implement the plan of partition recommended by the General Assembly without the assistance of an effective international force. In the ensuing discussion the view was expressed that attempts to alter by force the settlement envisaged by the General Assembly resolution might be deemed to constitute a threat to the peace; but that armed forces might not be used to enforce a political settlement. The question was also raised whether the situation as regards public order within Palestine could be regarded as relating to the maintenance of international peace.]⁶⁷

⁶⁷Owing to the inter-relation of the discussion with the general problem of the responsibility of the Council for the maintenance of international peace and security, the material is included in relation to Article 24 in chapter XII, Case 23.

CASE 9.⁶⁸ THE PALESTINE QUESTION: In connexion with decision of 22 May 1948 calling upon the parties to issue a cease-fire order.

[*Note:* By the decision of 1 April 1948, the Security Council had sought to arrange a truce by negotiation between the Jewish Agency for Palestine and the Arab Higher Committee; by the decision of 17 April 1948, it had called upon these organizations to take certain specified measures with a view to the establishment of peace and order; by the decision of 23 April 1948, it had established the Truce Commission for Palestine.

At the 293rd meeting on 17 May 1948, the Security Council had before it a draft resolution to determine the situation in Palestine a breach of the peace and to order the cessation of military action. Discussion arose whether the determination required by Article 39 related to international peace rather than to peace not so qualified; and whether the situation in Palestine could rightly be denoted a threat to international peace. Observations were also made on the inexpediency of engaging in the circumstances on the application of Chapter VII of the Charter rather than relying on continued mediatory effort in accordance with Chapter VI. The determination under Article 39 was rejected by the Council; whereafter the wording of the draft resolution relating to the cessation of military action was modified, notably by the substitution of the phrase "calls upon" for the term "orders". In this modified form the draft resolution was approved by the Council.]

At the 292nd and 293rd meetings on 15 and 17 May 1948, the Security Council had before it the communications regarding developments in Palestine subsequent to the expiration of the Mandate.⁶⁹ At the 292nd meeting, the representative of the Jewish Agency for Palestine* urged the Council to determine the existence in Palestine of a threat to international peace, a breach of the peace, and acts of aggression, and to call upon the Arab States to desist from aggression on penalty of action under Chapter VII of the Charter. The representative of the Arab Higher Committee* questioned the right of the Jewish Agency to term as aggression the entry of Arab forces which had been invited by the Arab Higher Committee to assist them in maintaining law and order. With the termination of the Mandate, Palestine had become an independent nation and the Jews constituted a rebellious minority.

At the 293rd meeting, the representative of the United States stated that the Council had adequate information to find that the situation with respect to Palestine constituted a threat to the peace and a breach

⁶⁸ For texts of relevant statements see:

292nd meeting: Arab Higher Committee, pp. 7-9; Jewish Agency for Palestine, pp. 4-7.

293rd meeting: Colombia, p. 9; USSR, p. 8; United States, p. 2.

294th meeting: Syria, p. 9; Ukrainian SSR, pp. 2-3, 13-14.

295th meeting: Colombia, pp. 24-26; USSR, pp. 39-41.

296th meeting: Belgium, pp. 11-12; China, p. 22; United Kingdom, pp. 2-5; United States, pp. 7, 9.

297th meeting: Syria, pp. 8-9; Ukrainian SSR, pp. 5, 8.

298th meeting: Argentina, pp. 31-32; Canada, pp. 14-15; Colombia, p. 30; France, pp. 17-19; Syria, pp. 20-22.

299th meeting: USSR, p. 7.

302nd meeting: Syria, p. 48; United States, pp. 43-44.

306th meeting: United States, pp. 14-15.

⁶⁹ See chapter VIII, p. 328.

of the peace within the meaning of Article 39. Accordingly, he submitted the following draft resolution:⁷⁰

"The Security Council,

"Taking into consideration that previous resolutions of the Security Council in respect to Palestine have not been complied with and that military operations are taking place in Palestine,

"Determines that the situation in Palestine constitutes a threat to the peace and a breach of the peace within the meaning of Article 39 of the Charter;

"Orders all Governments and authorities to cease and desist from any hostile military action and to that end to issue a cease-fire and stand-fast order to their military and para-military forces to become effective within thirty-six hours after the adoption of this resolution;

"Directs the Truce Commission established by the Security Council by its resolution of 23 April 1948 [Document S/727] to report to the Security Council on the compliance with these orders."

In introducing the draft resolution, the representative of the United States explained that the order to the parties concerned should be issued as a provisional measure under Article 40. Considering, however, that additional information would be desirable before the Security Council made a decision, he submitted a questionnaire to be put to all the parties concerned. He subsequently explained that it was not intended to suspend action by the Council until the replies had been received.

In the course of the discussion on the text of the questionnaire at the 293rd to 295th meetings, the representatives of Colombia, the Ukrainian SSR and the USSR stated that there was no need for a questionnaire. The information at the disposal of the Council enabled it to take immediate action in order to remedy the alarming situation in Palestine.

The representative of Syria thought that the questions were intended to clarify the situation and the position of the respective parties. The replies to these questions should therefore be available before the Council passed any resolution.

At the 295th meeting on 18 May, the Security Council adopted the questionnaire in an amended form.⁷¹ The questions were addressed to the Governments of Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan and Yemen, also to the Arab Higher Committee and to the Jewish authorities in Palestine. The Council requested replies to these questions within 48 hours as from noon, 19 May 1948, New York Standard Time.

Discussion on the United States draft resolution was continued at the 296th to 299th meetings and 301st to 302nd meetings between 19 and 22 May.

At the 296th meeting on 18 May, the representative of the United Kingdom questioned the wisdom and expedience of invoking Article 39 "at this stage". He stated:

"I may be wrong, but I think that in all other passages in the Charter where peace and security are mentioned, these words are qualified by the adjective 'international', which does not figure in the

first part of this Article 39. Certainly, that adjective does appear in the cases of Articles 33, 34 and 37. I believe that the omission of the word 'international', in the first part of Article 39, may be due to an oversight. This belief is strengthened by the fact that that same Article 39 goes on to prescribe what may be done 'to maintain or restore international peace and security'. If that is so, what the Security Council has to do, under this Article, is to determine that there is a threat to, or breach of, international peace and security."

He added that, since the juridical status of Palestine, after the termination of the mandate, was uncertain, his Government had doubts whether there was a threat to, or breach of, the international peace. Secondly, invocation of Article 39 would raise the question of whether there had been an "act of aggression" involving the search for a definition of the aggressor which would lead to "interminable and probably unprofitable wrangles". Thirdly, it would launch the Security Council on Chapter VII, under which the Council might have to take action with forces it did not yet possess. Accordingly, he submitted an amendment:⁷² (a) to insert the following paragraph at the beginning of the preamble: "*Bearing in mind* the change in the juridical status of Palestine consequent upon the termination of the Mandate and the necessity for further clarification of this status"; (b) to eliminate the reference to Article 39; and (c) to substitute the words "Calls upon all parties concerned in Palestine" for the words "Orders all Governments and authorities".

The representative of the United States did not agree with the interpretation offered by the representative of the United Kingdom and opposed the amendment. In referring to the contention that the omission of the word "international" in the first part of Article 39 might be due to an oversight, he stated:

". . . How can that be when another very significant word was substituted for it; namely, the word 'any'? 'Any' includes 'international' and includes all other kinds of threats to the peace, breaches of the peace, or acts of aggression. I would claim that that word was substituted with great care and with full understanding of its importance, so that the Security Council, having found 'any threat to the peace', might be able to proceed to the inquiry with respect to the application of remedies, or a prevention of that further step of extension of the conflagration into a breach of international peace, for this Article further says 'and shall make recommendations. . .'; then we strike something astonishing—the distinctive 'or'—or decide what measure shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

The representative of the United States further contended that application of Article 39 did not require search for the aggressor:

"We do not have to determine . . . , who is the aggressor, who is at fault, if both parties are at fault, or which one is more at fault than the other. But as the guardians of the peace of the world, it is our primary duty to find out, under Article 39, whether there exists any threat to the peace."

The representative of the United States observed that the adoption of the United Kingdom amendment "would

⁷⁰ S/749, 293rd meeting: p. 2.

⁷¹ S/753, O.R., 3rd year, Suppl. for May 1948, pp. 90-91.

⁷² S/755, 296th meeting: p. 6.

transfer this case from Chapter VII of the Charter into Chapter VI". To this he was opposed on the ground that the Council had repeatedly tried to act under Chapter VI alone, and it had failed to obtain the necessary results. After having recalled the resolutions of 5 March, 1 April, 17 April and 23 April 1948, which called for a cessation of hostilities in Palestine without success, he emphasized that the Council had carried out its function of recommendation provided for in Chapter VI of the Charter and was now confronted with a draft resolution which would take it into Chapter VII in order to cope with an international situation calling for action to prevent a conflagration.

The representatives of Belgium, China, Canada and Argentina supported the United Kingdom amendment and maintained that the Security Council should continue its efforts of negotiation and mediation. They argued against the invocation of Chapter VII of the Charter, stating that the uncertain juridical status of Palestine made it difficult to determine whether international peace was involved, and that it was inadvisable to embark upon measures of coercion without agreement among the permanent members of the Council and without adequate means of enforcement.

At the 297th meeting on 20 May, the representative of the Ukrainian SSR stated that there was no doubt that a threat to peace and a breach of the international peace existed in Palestine. The situation was that several States had sent their armed forces into Palestine. On the other hand, the State of Israel, which was recognized by a number of governments, decided to defend itself with its own armed forces. He added that the interpretation given by the representative of the United Kingdom to Article 39 was arbitrary.

The representative of Syria supported the interpretation given by the representative of the United Kingdom. He expressed the view that the word "any" in Article 39 was an adjective qualifying the threat or breach, but not the peace itself. "Any" threat to peace or "any" breach of peace did not mean "any" peace. It was therefore clear that, although the word "international" was omitted in the first part of Article 39, the meaning was international peace. Consequently, Article 39 could not be applied in the case of Palestine. He stated:

"... the international status of Palestine should be studied to ascertain whether or not international peace is being disturbed. It would be disturbed, for example, by a dispute between two or more States fighting over a certain situation; but such is not the case in Palestine. . ."

The representative of Syria also objected to the use of the word "orders" in the United States draft resolution and suggested that "calls upon" or "recommends" would be more in keeping with the terms of the Charter:

"The Charter always refers to the Security Council's 'making recommendations' or 'calling upon'. Certainly those who drafted the Charter paid attention to the point that it would not be consistent with the sovereignty of the States to address orders to them."

At the 298th meeting on the same day, the President, speaking as the representative of France, favoured the invocation of Article 39 on the following grounds: (a) The hostilities in Palestine had assumed the character

of a threat to the international peace the moment the regular forces of several countries crossed their frontiers and entered a territory which, whatever its status, was not their own. (b) The Security Council could not, under Article 39, refuse to note the existence of a threat to the peace when such a threat existed, and such a recognition would not be inconsistent with further efforts of negotiation and mediation. (c) The United States draft resolution made no reference to aggression and therefore avoided the involved and problematic question of naming the aggressor. The representative of France also contended that continued efforts of pacific settlement under Chapter VI, as proposed by the United Kingdom, were not inconsistent with the recognition that there was a threat to peace as envisaged in the United States draft resolution within the framework of Chapter VII. He believed that adoption of the draft resolution would increase the effectiveness of the instruments at the disposal of the Council, the Mediator and the Truce Commission, who would thus "be better equipped to receive due attention from the parties concerned".

The representative of the USSR at the 299th meeting on 21 May, considered that the Security Council should determine that a threat to international peace existed in connexion with the hostilities in Palestine in which eight States were involved. It could not be argued that the relatively limited scale of military operations did not constitute a serious threat, in view of the fact that minor incidents in the past had resulted in great wars.

At the 302nd meeting on 22 May, the representative of the United States offered further evidence to establish the fact that there was a threat to the peace and a breach of the peace in Palestine. After having referred to the proclamation by the Arab States of a blockade of the territorial waters of Palestine, he stated:

"It is impossible to maintain that foreign shipping off the coast of Palestine is subject to the exercise of belligerent rights, and at the same time, to assert that there is no threat to the peace or breach of the peace within the meaning of Article 39 of the Charter."

At the same meeting, the representative of Syria further defined the position of the Arab States as follows:

"We never acknowledged that there was a threat to the peace. We explained very clearly that we were there at the application of the majority of the people of Palestine, a country which has no international status to enable it to be considered as another State of the Arab States, so that entering it could not be considered as an act of aggression or a threat to peace."

The first paragraph of the preamble of the United Kingdom amendment, referring to the necessity for further clarification of the juridical status of Palestine, was rejected by 6 votes in favour, none against and 5 abstentions.⁷³

The first paragraph of the operative part of the United States draft resolution, which invoked Article 39, was rejected by 5 votes in favour, none against and 6 abstentions.⁷⁴

⁷³ 302nd meeting: p. 40.

⁷⁴ 302nd meeting: p. 54.

The representative of the United States then accepted the United Kingdom amendment to the second operative paragraph which substituted the words "Calls upon" for the word "Orders". The representative of the United Kingdom, in turn, agreed to the suggestion made by the representative of the United States to substitute the phrase: "Calls upon all Governments and authorities to abstain from any hostile military action in Palestine" for the words: "Calls upon all parties concerned in Palestine to abstain from acts of armed force against each other". The representatives of the United States and of the United Kingdom also accepted a Chinese oral amendment to insert the phrase "without prejudice to the rights, claims or position of the parties concerned" after the word "authorities".⁷⁵

The United Kingdom amendment, as further amended by the representatives of the United States and China, was adopted by 10 votes in favour, none against, with 1 abstention. It read⁷⁶ as follows:

"Calls 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, on 22 May 1948."

Referring to this resolution at a subsequent meeting, the representative of the United States explained that he had finally gone along with the United Kingdom amendment which invoked Chapter VI, in the hope that it would bring about a cease-fire.⁷⁷

CASE 10.⁷⁸ THE PALESTINE QUESTION: In connexion with decision of 29 May 1948, calling for the cessation of hostilities for a period of four weeks.

[Note: At the 306th meeting on 27 May 1948, the Council had before it two draft resolutions: one to make a determination under Article 39 and to order the cessation of military operations, the other for a final effort to bring about the cessation of fighting without recourse to Chapter VII. Further observations were made on the applicability of Article 39 to the situation in Palestine. The Council rejected the determination under Article 39, but called upon the Governments and authorities concerned to cease acts of force during a period of four weeks and to observe certain standstill arrangements.]

At the 306th meeting on 27 May, the representative of the USSR submitted the following draft resolution which was subsequently revised:⁷⁹

⁷⁵ 302nd meeting: pp. 54-55, 58.

⁷⁶ 302nd meeting: p. 59. For full text of resolution, see chapter VIII, pp. 328-329.

⁷⁷ 306th meeting: pp. 14-15.

⁷⁸ For texts of relevant statements see:

306th meeting: USSR, pp. 17-18; United Kingdom, pp. 28-29.

307th meeting: China, pp. 1-2; Jewish Agency for Palestine, pp. 11-13; Ukrainian SSR, pp. 16-17; Canada, p. 17; United States, pp. 19-22.

308th meeting: Colombia, pp. 26-27; France, pp. 40-41; United States, p. 43.

309th meeting: USSR, pp. 8-9; United Kingdom, pp. 11-13; Belgium, p. 13.

310th meeting: Syria, pp. 24-25; Colombia, pp. 32-33; France, pp. 33-34.

⁷⁹ S/794/Rev.2, 306th meeting: pp. 17-18.

309th meeting: p. 9; O.R., 3rd year, Suppl. for May 1948, pp. 101-102. See chapter VIII, p. 329.

"Considering that the Security Council's resolution of 22 May on the cessation of military operations in Palestine has not been carried out in view of the refusal of the Arab States to comply with this decision,

"Considering that military operations in Palestine in view of this are increasing in intensity and that the number of casualties is growing, and

"Considering that, as a result of these events, the situation in Palestine constitutes a threat to peace and security within the meaning of Article 39 of the Charter of the United Nations,

"The Security Council

"Orders the Governments of the States involved in the present conflict in Palestine to secure the cessation of military operations within thirty-six hours after the adoption by the Security Council of this resolution."

At the same meeting, the representative of the United Kingdom submitted a draft resolution⁸⁰ calling for a cessation of hostilities for a period of four weeks as a preliminary act of mediation. The last paragraph read as follows:

"Decides that, if the present resolution is rejected by either party or by both, the situation in Palestine will be reconsidered with a view to action under Chapter VII of the Charter."

In presenting his draft resolution, the representative of the United Kingdom stated:

"My Government recognizes, in view of the failure of previous recommendations under Chapter VI, that if the proposals which I am about to submit do not prove effective, it will be necessary to invoke Chapter VII."

At a later meeting he explained that the purpose of including in the draft resolution the threat to resort to Chapter VII was "to bring pressure for peace and a last breathing space in which peace could be sought, without landing us immediately into what is known as 'enforcement action'".⁸¹

At the 307th meeting on 28 May, in supporting the USSR draft resolution, the representative of the United States, after having recalled the original draft resolution (S/749) which he had submitted at the 293rd meeting and which invoked Article 39, stated:

"We believe, of course, that when we offered our resolution—and when it was rejected—there existed the fact of a threat to the peace and a breach of the peace. We did not at first discuss whether it was of an international character, but subsequently we saw that it was . . . We began on the assumption that it was 'any threat', as stated in Article 39 of the Charter. But gradually the evidence of its international character became more persuasive, until nobody was able to deny it."

He then referred to statements of the Governments of the Arab States admitting that the purpose of their intervention was to create a united Palestinian State as clear evidence that their political objective was international in its character.

At the 308th meeting on 28 May, the President, speaking as the representative of France, submitted a

⁸⁰ S/795, 306th meeting: pp. 29-30.

⁸¹ 309th meeting: p. 10.

draft resolution⁸² to order a cessation of hostilities in Jerusalem and envisaging action under Chapter VII of the Charter in case of non-compliance by the parties.

At the suggestion of the representative of Belgium, the President later agreed to substitute the words "Calls upon" for the word "Orders".⁸³

At the 309th meeting on 29 May, in objecting to the USSR draft resolution, the representative of Belgium stated:

"The determination of the existence of a breach of the peace in accordance with Article 39 has no meaning unless it is connected with the whole series of enforcement measures provided for in Chapter VII. As soon as that finding is reached, the Council must be prepared to apply those enforcement measures, including armed force if necessary. We have no objection to that in principle, but we doubt whether the application of such measures would be possible or effective in the present state of international relations."

At the 310th meeting on 29 May, the President, speaking as the representative of France, remarked that if a threat to the peace was an established fact—as, in his opinion, was the case with the Palestine hostilities—"it is the duty of the Security Council to declare it". The consideration of "measures of execution", provided for in Articles of Chapter VII other than Article 39, could be taken up later by the Council, if necessary.

The USSR draft resolution was voted upon paragraph by paragraph, with the first paragraph being divided into two parts, and was rejected, having failed to obtain the affirmative votes of seven members. The first part, up to the words "has not been carried out", obtained 5 votes in favour, none against, and 6 abstentions. The second part, ". . . in view of the refusal of the Arab States to comply with this decision", obtained 2 votes in favour, none against, and 9 abstentions. The remaining paragraphs received 5 votes in favour, none against, and 6 abstentions.⁸⁴

The United Kingdom draft resolution, as revised at the 310th meeting,⁸⁵ was adopted in an amended form, paragraph by paragraph. The paragraph contemplating action under Chapter VII in case of non-compliance with the resolution was adopted by 7 votes in favour, none against, with 4 abstentions.⁸⁶

The French draft resolution was subsequently withdrawn.

CASE 11.⁸⁷ THE PALESTINE QUESTION: In connexion with decision of 15 July 1948 determining the situation in Palestine a threat to the peace within the meaning of Article 39 and ordering, in pursuance of Article 40, the cessation of military action.

⁸² S/798, 308th meeting: p. 40.

⁸³ 308th meeting: pp. 45-46.

⁸⁴ 310th meeting: pp. 36-37.

⁸⁵ 310th meeting: p. 37; S/795/Rev.2; *O.R.*, 3rd year, *Suppl.* for May 1948, pp. 102-103.

⁸⁶ 310th meeting: pp. 38-63. For text, see chapter VIII, pp. 329-330.

⁸⁷ For texts of relevant statements see:

334th meeting: Syria, pp. 43, 44, 46, 52-53; United Kingdom, pp. 54-55; United States, pp. 39-41.

[Note: In the discussion preceding this decision, reference to the International Court for an advisory opinion was proposed with a view to ascertaining whether the situation in Palestine came within the scope of Chapter VII. In connexion with this proposal, observations were made on the legality of the decision of 15 July 1948. The proposal for recourse to the International Court was rejected.]

At the 330th meeting on 7 July 1948, the Security Council began consideration of measures for the prolongation of the four-weeks truce in Palestine. At the 331st meeting on the same day, the Council adopted a resolution⁸⁸ containing "an urgent appeal" to that effect, in pursuance of which the Mediator unsuccessfully first proposed an extension of the truce for thirty days and then appealed for an unconditional cease-fire for a period of ten days. By the 333rd meeting the Mediator had reported that hostilities had been resumed in Palestine.

At the 334th meeting on 13 July, the representative of the United States submitted a draft resolution⁸⁹ to invoke Article 39 and to order, under Article 40, an immediate cease-fire in Palestine.

In opposing the United States draft resolution on the ground that Article 39 applied to a threat to international peace and not to a civil war, as was the case in Palestine, the representative of Syria submitted a draft resolution to request the International Court of Justice, pursuant to Article 96 of the Charter, "to give an advisory legal opinion as to the international status of Palestine after the termination of the Mandate". He explained that such an opinion might enable the Security Council to determine whether the Arab action in Palestine should be considered as an aggression to be dealt with under Chapter VII of the Charter.⁹⁰

The representative of France stated that the Syrian proposal to seek legal advice would necessarily entail a cessation of hostilities, otherwise it would be of no use "if at the same time recourse was again had to arms to determine the solution of the Palestine question".⁹¹

At the 338th meeting on 15 July, the United States draft resolution was voted upon paragraph by paragraph and adopted with amendments.⁹² The first paragraph of the operative part, invoking Article 39, was adopted by 8 votes to 1, with 2 abstentions. The second operative paragraph, ordering, pursuant to Article 40, a cessation of hostilities, was adopted by 9 votes to 1, with 1 abstention. The third paragraph, contemplating action under Chapter VII in case of non-compliance, was adopted by 8 votes to 1, with 2 abstentions. The

335th meeting: Belgium, p. 4; Canada, p. 5; China, pp. 6-7.

336th meeting: China, pp. 34-35; Colombia, p. 26; France, pp. 22-25; USSR, pp. 30, 33.

337th meeting: Argentina, p. 9; Syria, pp. 11-12.

338th meeting: Ukrainian SSR, p. 30.

339th meeting: Argentina, pp. 12-13; Canada, p. 12; China, pp. 13-14; United Kingdom, p. 13; United States, pp. 14-15; USSR, pp. 16-17.

340th meeting: Egypt, pp. 19, 27; Israel, pp. 29, 32.

⁸⁸ S/875, 331st meeting: p. 35. See chapter VIII, p. 331.

⁸⁹ S/890, 334th meeting: pp. 40-41.

⁹⁰ S/894, 334th meeting: pp. 43-44, 52-53. For discussion, see also chapter VI, Case 28.

337th meeting: p. 12.

⁹¹ 336th meeting: p. 24.

⁹² 338th meeting: p. 66. For text, see chapter VIII, p. 332.

fourth paragraph, calling upon the parties for co-operation with the Mediator with a view to the maintenance of peace, was adopted by 9 votes to none, with 2 abstentions, after the phrase "pursuant to Article 40 of the Charter" had been rejected, having failed to obtain the affirmative votes of seven members. The fifth operative paragraph, ordering an immediate and unconditional cease-fire in Jerusalem, was adopted unanimously.

At the 339th meeting on 27 July, the representative of Syria, speaking in support of his draft resolution on recourse to the International Court, stated that the legality of the resolution adopted by the Council at its previous meeting on 15 July, was doubtful since the Arab States were "defending the lawful inhabitants" of Palestine and could not, therefore, be considered as aggressors. The International Court should clarify the international status of Palestine "before the Security Council proceeds with any other measures".

The representative of Colombia proposed, and the representative of Syria accepted, an amendment to specify that the request to the International Court should not delay or impair the normal course of mediation.⁹³

In opposing the Syrian draft resolution, the representative of Canada remarked that recourse to the International Court "would inevitably hinder and postpone the negotiations for a peaceful settlement" in Palestine.

The representative of Israel* held that the juridical status of Palestine had no relevance to any determination of a threat to the peace or an act of aggression within the meaning of Chapters VI or VII, since the word "State" did not occur in either of those Chapters in connexion with the definition of threats to the peace and acts of aggression.

The Syrian draft resolution as amended, was voted upon at the 340th meeting on 27 July, and rejected by 6 votes in favour, 1 against, with 4 abstentions.⁹⁴

CASE 12.⁹⁵ THE PALESTINE QUESTION: In connexion with decisions of 16 November 1948, calling for the establishment of an armistice; of 29 December 1948, calling for an immediate cease-fire in southern Palestine; and of 11 August 1949, reaffirming the cease-fire order and calling upon the parties to ensure observance of the armistice agreements.

⁹³ 339th meeting: pp. 11, 18.

⁹⁴ 340th meeting: pp. 33-34.

⁹⁵ For texts of relevant statements see:

380th meeting: Belgium, pp. 20-21; France, p. 23; Syria, p. 6.

381st meeting: Canada, pp. 25-26; Egypt, pp. 20-22; Lebanon, pp. 28-30; Syria, pp. 8-9.

394th meeting: United Kingdom, pp. 13-14; President (Belgium), p. 27.

395th meeting: France, p. 43; Syria, p. 33.

396th meeting: China, p. 23; Egypt, p. 10; France, pp. 11-12, 18-20; USSR, pp. 5-7; United Kingdom, pp. 15-17, 18-20, 23.

433rd meeting: France, pp. 3-4.

434th meeting: Canada, pp. 28-30; France, pp. 35-36.

435th meeting: President (USSR), pp. 6-7.

437th meeting: President (USSR), pp. 8-11; France, pp. 2-4; United States, pp. 5-8.

[Note: In connexion with the establishment of the armistices in Palestine the distinction was emphasized between the decision on the establishment of an armistice and the negotiation of its terms. Consequent upon the conclusion of the armistice agreements, the question arose of the terms in which the Council should reaffirm the order of 15 July 1948 on the cease-fire in Palestine.]

At the 380th meeting on 15 November 1948, the representatives of Belgium, Canada and France submitted a draft resolution,⁹⁶ based upon the suggestions of the Acting Mediator, to decide that an armistice be established in Palestine, and to 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.

The representative of Syria contended that "an armistice cannot be imposed or ordered". It could only be accepted by the parties "when they find that it is according to their interest". In reply, the representative of France stated that, although the draft resolution "establishes the principle of an armistice in imperative terms", the last paragraph specified "that all the terms of the armistice shall be arranged by negotiations".

At the 381st meeting on 16 November 1948, the representative of Syria held that negotiation was not applicable in the case of the Palestine hostilities. He remarked that "to enter into negotiations would entail recognition by the Arabs . . . of the Jews in Palestine as a State". For the Arabs, it would mean dropping their claims, their rights, and relinquishing their position. This would be contrary to Article 40 and other Articles of the Charter which provided that any measures adopted should be without prejudice to the claims, rights and position of the parties.

The representative of Canada expressed his view that "a truce . . . can be imposed" but that "an armistice can only result from agreement". He added that "the call for an armistice which is contained in this resolution is urgent and imperative". It was "a further provisional measure under Article 40". He observed that 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 Assembly, since they were not matters within "the purview of the Council".

At the same meeting, the joint draft resolution was voted in parts and adopted.⁹⁷

Consequent upon the resumption of hostilities in the Negeb, the Council adopted the decision of 29 December 1948 calling upon the Governments concerned to order an immediate cease-fire and to implement the decision of 4 November 1948.⁹⁸

In response to the Security Council resolution of 16 November 1948, bilateral negotiations were entered into under United Nations chairmanship concerning the implementation of the Security Council resolutions

⁹⁶ For the text of the draft resolution, which was identical with the decision of 16 November 1948, see chapter VIII, p. 337.

⁹⁷ 381st meeting: pp. 53-55. For text, see chapter VIII, p. 337.

⁹⁸ 396th meeting: pp. 23-26. For text, see chapter VIII, pp. 337-338.

of 4 and 16 November 1948. These negotiations resulted in the conclusion of the four armistice agreements.⁹⁹

Article 1 of each armistice agreement stated certain principles to be observed by both parties during the armistice. The first principle, common to the four armistice agreements, read as follows:

"The injunction of the Security Council against resort to military force in the settlement of the Palestine question shall henceforth be scrupulously respected by both parties."

The agreements declared that, in pursuance of the principles stated and of the resolution of the Security Council of 16 November 1948, a general armistice between the armed forces of the parties to each agreement was established.

In his report of 21 July 1949,¹⁰⁰ "on the present status of the armistice negotiations and the truce in Palestine", the Acting Mediator observed that the practical application of the Security Council's truce in Palestine had been substituted by effective armistice agreements voluntarily negotiated by the parties. He observed that since these agreements were self-enforcing and established the necessary machinery for its supervision, it was no longer necessary to impose upon the States concerned the restrictive conditions of the Security Council's truce. He suggested that the Council might review the situation in the light of the new conditions and take appropriate action consistent with the realities of the new situation while safeguarding the basic objective that fighting in Palestine should not be resumed. To this effect he attached to his report a draft resolution the third and fourth paragraphs of which read as follows:

"Declares that the armistice agreements, as an important step in the transition from truce to permanent peace in Palestine, render unnecessary the prolongation of the truce as provided in the resolution of the Security Council of 15 July 1948 (S/902);

"Reaffirms the order set forth 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 desist from further military action, and calls upon them to continue to observe an unconditional cease-fire;"

At the 433rd meeting on 4 August 1949, the representative of France stated that the armistice agreements recently concluded by the parties created a legal situation replacing the truce imposed by the resolution of 15 July 1948 and that it was hardly suitable for the Council to impress upon the parties injunctions with which they had in fact just complied. At the 434th meeting, on the same day, he submitted several amendments¹⁰¹ to the two paragraphs of the Acting Mediator's suggestions which had been incorporated in a draft resolution submitted by the representative of Canada.¹⁰²

⁹⁹ For texts, see: *Egyptian-Israeli General Armistice Agreement* (S/1264/Rev.1; O.R., 4th year, Special Suppl. No. 3, pp. 1-14); *Israeli-Lebanese General Armistice Agreement* (S/1296/Rev.1; O.R., 4th year, Special Suppl. No. 4, pp. 1-7); *Jordan Kingdom-Israel: General Armistice Agreement* (S/1302/Rev.1; O.R., 4th year, Special Suppl. No. 1, pp. 1-10); *Israeli-Syrian General Armistice Agreement* (S/1353/Rev.1; O.R., 4th year, Special Suppl. No. 2, pp. 1-11).

¹⁰⁰ S/1357, O.R., 4th year, Suppl. for Aug. 1949, pp. 1-7.

¹⁰¹ S/1364, 434th meeting: p. 35.

¹⁰² S/1365, 434th meeting: p. 28.

In support of his amendments, the representative of France said that the obsolescence of the truce should be stated specifically and that the wish of other members of the Council to reaffirm the cease-fire order of 15 July 1948 could be expressed in a more acceptable manner than originally proposed by the Acting Mediator.

At the 435th meeting on 8 August, the representatives of Canada and France submitted a joint draft resolution¹⁰³ in which the two paragraphs were revised as follows:

"Finds that the Armistice Agreements constitute an important step toward the establishment of permanent peace in Palestine and considers that these Agreements supersede the truce provided for in the resolutions of the Security Council of 29 May and 15 July 1948;

"Reaffirms 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;"

At the 437th meeting on 11 August, the joint draft resolution was adopted by 9 votes in favour, none against, with 2 abstentions.¹⁰⁴

CASE 13.¹⁰⁵ THE PALESTINE QUESTION: In connexion with decision of 8 May 1951 calling for cessation of fighting in and around the demilitarized zone established by the Israeli-Syrian General Armistice Agreement.

[Note: In the preceding discussion, observations were made to the effect that, before investigation of the facts involved in the complaint, the Council should order an immediate and unconditional cease-fire. Attention was drawn to the consideration that the situation was similar to that which preceded the decision of 15 July 1948 ordering, pursuant to Article 40, the cessation of further military action. In calling upon the parties to cease fighting, the decision of 8 May 1951 drew their attention to their obligations under the decision of 15 July 1948, and under Article 2 (4) of the Charter as well as to their commitments under the terms of the Armistice Agreement.]

At the 545th meeting on 8 May 1951, the Council considered, among several other complaints of violation of the armistice agreements in Palestine, an Israeli complaint¹⁰⁶ of "repeated assaults" by Syrian armed forces in and around the demilitarized zone established under the terms of the Israeli-Syrian Armistice Agreement. The complaint stated that, "while continuing

¹⁰³ S/1367, 435th meeting: pp. 2-3.

¹⁰⁴ 437th meeting, p. 13. For text, see chapter VIII, pp. 338-339.

¹⁰⁵ For texts of relevant statements see:

545th meeting: President (Turkey), pp. 8-9, 28; Brazil, pp. 9-10; France, pp. 7-8; Israel, pp. 11-12; Netherlands, pp. 10-11; Syria, pp. 18, 27, 28; United Kingdom, pp. 5-7; United States, pp. 4-5.

¹⁰⁶ S/2121, O.R., 6th year, Suppl. for April-June 1951, pp. 100-101. See chapter VIII, p. 341.

to defend itself vigorously in accordance with Article 51 of the Charter", the Government of Israel "once again calls upon the United Nations to secure a cessation of this flagrant Syrian aggression". In reply to these allegations, the representative of Syria held that the Israeli Government had provoked the armed clashes in order to carry out the work of draining the region of Huleh, within the demilitarized zone, in contravention of an order by the Chairman of the Mixed Armistice Commission to stop that work pending acceptable arrangements between the parties concerned, in accordance with the provisions of the Armistice Agreement.

The President (Turkey) drew attention to the draft resolution jointly submitted by France, Turkey, the United Kingdom and the United States to call for compliance with the obligations of Article 2 (4) of the Charter and the commitments under the Armistice Agreement.¹⁰⁷

The representative of France, at the same meeting, recalled that the Council had adopted a resolution on 15 July 1948¹⁰⁸ expressly recognizing that the position then existing in Palestine constituted a threat to the peace within the meaning of Article 39 and ordering the Governments and authorities concerned, pursuant to Article 40, to desist from further military action and to issue cease-fire orders to their military and para-military forces. He stated that the present situation in Palestine was not fundamentally different from that with which the resolution of 15 July 1948 had been concerned. It would be useless for the Council to continue consideration of the complaints of violation of the Israeli-Syrian General Armistice Agreement, unless it began by a firm declaration that the immediate cessation of hostilities was absolutely obligatory for the two States concerned.

The representative of the United States stated that the situation demanded immediate action. The action that the Council would take in this matter should be understood to be without prejudice to further Council deliberation. In assessing responsibility for the outbreak of fighting in those later deliberations, the Council might well wish to take into account the readiness of the parties to comply with Council directives. Whether or not Syria and Israel were directly responsible or implicated in the conflict, the Council should issue an unconditional cease-fire order, and the fighting should be ended by prompt, open compliance on the part of all concerned. No other course of action by the Council was permitted in view of the apparent threat to the peace and the obvious breach of the Armistice Agreement. Only then could the matter be properly investigated.

At the same meeting, the joint draft resolution was adopted by 10 votes in favour, with 1 abstention.¹⁰⁹

CASE 14.¹¹⁰ IDENTIC NOTIFICATIONS DATED 29 SEPTEMBER 1948: Proceedings subsequent to submission of the question under Chapter VII of the Charter.

[*Note:* After submission of the question under Chapter VII of the Charter, attention was drawn to the continued applicability of "the machinery of pacific

settlement". Without a prior determination under Article 39, the Council voted upon a draft resolution under Article 40. The draft resolution, which called for certain steps as a precedent to the resumption of negotiations, was not adopted.]

This question was submitted to the Security Council by the representatives of France, the United Kingdom and the United States as a threat to the peace within the meaning of Chapter VII of the Charter.¹¹¹

At the 363rd meeting on 6 October 1948, the representative of the United States stated:

"... the fact this matter comes before the Council under Chapter VII of the Charter does not mean that the Council is precluded from using any of the machinery of pacific settlement suggested in any other part of the Charter. In this case, as in all cases that come before it, the Security Council has the greatest flexibility of action in order to carry out the primary responsibility conferred upon it for the maintenance of peace."

After general discussion within the Council, the President (Argentina) conferred with the representatives of Belgium, Canada, China, Colombia and Syria, as a result of which certain questions were addressed to the Powers concerned by the President at the 366th meeting on 15 October 1948. After certain replies had been received at the 368th meeting on 19 October 1948, the President conferred further with the above-mentioned representatives.

At the 370th meeting on 22 October 1948, a draft resolution was submitted by the representatives of Argentina, Belgium, Canada, China, Colombia and Syria.¹¹² The draft resolution read as follows:

"The Security Council,

"Having carefully considered the series of events which have led to the present grave situation in Berlin,

"Conscious of the Council's primary responsibility for the maintenance of international peace and security, and

"Acting in accordance with Article 40 of the Charter in order to prevent an aggravation of the situation in Berlin, in particular, by preparing the way to its settlement,

"Calls upon the four Governments who have responsibilities in Germany and in Berlin as occupying Powers, France, the United Kingdom, the United States of America and the Union of Soviet Socialist Republics:

"(1) To prevent any incident which would be of a nature such as to aggravate the present situation in Berlin;

¹⁰⁹ For texts of relevant statements see:

361st meeting: USSR, p. 18; United States, pp. 20, 23.

362nd meeting: Belgium, p. 20; USSR, pp. 18, 22.

363rd meeting: United States, pp. 2-4, 6, 19, 25, 26-27.

364th meeting: France, pp. 37, 41, 45-46; United Kingdom, pp. 28, 35.

366th meeting: France, p. 11; Syria, pp. 6-7; USSR, p. 12; United States, p. 9.

368th meeting: United Kingdom, pp. 48-49; United States, pp. 55, 61-62.

372nd meeting: United States, pp. 10-12.

¹¹¹ See chapter VIII, p. 354, for the submission of the case to the Council and the course of proceedings.

¹¹² S/1048, 370th meeting, pp. 5-6.

¹⁰⁷ S/2130, 545th meeting: p. 4.

¹⁰⁸ S/902, O.R., 3rd year, Suppl. for July 1948, pp. 76-77.

¹⁰⁹ 545th meeting: p. 28. For text, see chapter VIII, p. 341.

"(2) To put into effect, simultaneously, namely on the day of the notification of this resolution to the four Governments concerned, the steps required for the fulfilment of points (a) and (b) which are set forth hereunder:

"(a) Immediate removal by all parties of all restrictions on communications, transport and commerce between Berlin and the Western Zones of Germany and the restrictions on transport and commerce to and from the Soviet Zone of Germany, it being understood that said restrictions are the ones applied by the parties after 1 March 1948;

"(b) An immediate meeting of the four Military Governors to arrange for the unification of currency in Berlin on the basis of the German mark of the Soviet Zone. The four Military Governors will fix the conditions for the introduction, circulation and continued use of the German mark of the Soviet Zone, as the sole currency for the whole of Berlin, and arrange for the withdrawal of the Western mark 'B';

"All the foregoing to be in accordance with the terms and conditions defined in the joint directive delivered to the four Military Governors in Berlin, agreed upon by the four Governments in Moscow, and issued on 30 August 1948, and to be carried out under the control of the Quadripartite Financial Commission, whose organization, powers and responsibilities are therein described.

"This measure must be totally fulfilled by the date indicated in paragraph (c);

"(c) The date referred to in the last part of paragraph (b) shall be 20 November 1948.

"(3) Within ten days following the fulfilment of the measures provided for in section (2), or on such date as is mutually agreed between the four Governments, to reopen the negotiations in the Council of Foreign Ministers on all outstanding problems concerning Germany as a whole."

At the 372nd meeting on 25 October, the draft resolution was rejected, one vote against being that of a permanent member of the Council.¹¹³

¹¹³ 372nd meeting: p. 14.

CASE 15. COMPLAINT OF AGGRESSION UPON THE REPUBLIC OF KOREA: In connexion with decision of 7 July 1950: establishment of a Unified Command.

[Note: The representative of the United Kingdom referred to the recommendations to Members in the resolutions of 25 and 27 June 1950 as having been made under Article 39.]

At the 476th meeting on 7 July 1950, the representative of the United Kingdom, having stated that further steps were necessary to co-ordinate the assistance which the resolution of 27 June recommended that the Members of the United Nations should furnish to the Republic of Korea, made the following statement in submitting the draft resolution for the establishment of a unified command:¹¹⁴

"Had the Charter come fully into force and had the agreement provided for in Article 43 of the Charter been concluded, we should, of course, have proceeded differently, and the action to be taken by the Security Council to repel the armed attack would no doubt have been founded on Article 42. As it is, however, the Council can naturally act only under Article 39, which enables the Security Council to recommend what measures should be taken to restore international peace and security. The necessary recommendations were duly made in the resolutions of 25 and 27 June, but in the nature of things they could only be recommendations to individual Members of the United Nations. It could not, therefore, be the United Nations or the Security Council which themselves appointed a United Nations commander. All the Security Council can do is to recommend that one of its members should designate the commander of the forces which individual members have now made available."

He saw no need for the constitution of further machinery by the Council, at least at the present time.

"In any event, since we believe the Security Council is acting under Article 39 of the Charter, its function is not an operative one; all it should do is to make sure that the individual efforts of the Members concerned are properly co-ordinated."

¹¹⁴ 476th meeting: pp. 3-4.

Reference should also be made to chapter III, Cases 64 and 73, for consideration of Article 32 in relation to Chapter VII of the Charter.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER

NOTE

The case histories entered in part II are those in which Article 41 was the central point of discussion. The note prefaced to each case suffices to indicate the bearing of the case on this Article.

CASE 16.¹ THE SPANISH QUESTION: In connexion with draft resolutions for the severance of diplomatic relations: voted upon and rejected on 24 June 1946.

¹ For texts of relevant statements see:

45th meeting: USSR, p. 337.

46th meeting: Australia, p. 350.

47th meeting: Australia, pp. 374-375; USSR, p. 367.

[Note: The presentation of a draft resolution to call upon Members of the United Nations, in accordance with Articles 39 and 41, to sever diplomatic relations with Spain gave rise to discussion on the distinction between action under Articles 41 and 42 of the Charter. The view was stated that action under Article 41 was preventive action. The view was also stated that action under Articles 41 or 42 constituted alternative courses dependent upon an initial determination under Article 39. The draft resolution, re-submitted with the omission of reference to the Articles of the Charter, was rejected.]

At the 34th meeting on 17 April 1946, the representative of Poland submitted a draft resolution, which read in part:²

"The Security Council...

"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."

The Sub-Committee on the Spanish question, in its report of 1 June 1946, stated that:³

"... the activities of the Franco régime do not at present constitute an existing threat to the peace within the meaning of Article 39 of the Charter and therefore the Security Council has no jurisdiction to direct or to authorize enforcement measures under Article 40 or 42..."

At the 45th meeting on 13 June, the representative of the USSR referred to the

"... incorrect conclusion to the effect that the Security Council has not the right or, as the Sub-Committee expresses it, the jurisdiction to take decisions regarding the severance of diplomatic relations with Franco, that is, to act in conformity with Article 41 of the Charter".

At the 46th meeting on 17 June, the Australian representative stated:

"[The representative of the USSR]... would order and direct the Members of the United Nations, under Chapter VII, to break off diplomatic relations. But once you start on that course, which can only be lawfully taken in the event of a threat to the peace or an act of aggression or breach of the peace, then the Charter makes it abundantly clear that you have to go on to the last stage in order to remove that threat. The last stage is, as I have said, the actual waging of war, and I am using an expression that cannot be misunderstood—military measures by air, land or sea—in order to achieve the desired objective."

In answer to this statement, the representative of the USSR at the 47th meeting on 18 June declared:

"Mr. Evatt, to whose remarks I listened with interest, stated that a measure such as the rupture of diplomatic relations with the Franco Government, if a decision to that effect were taken, might serve as a basis for the automatic adoption of further, more decisive measures, as he expressed it, for starting military action against Franco Spain. Such was the sense of Mr. Evatt's remarks."

"It seems to me that such an inference is based on an unfortunate misunderstanding. The fact is that a step such as the rupture of diplomatic relations, to which reference is made in Article 41 of the Charter, together with the other measures designed to remove any threat to peace which may arise, differs in character from the measures recommended in Article 42 of the Charter. I would emphasize that the measures recommended in Article 41 of the Charter are of a preventive character, while the meas-

ures prescribed by Article 42 of the Charter are applicable in cases of breaches of the peace and acts of aggression. It is no mere chance, therefore, that the Chapter containing the said Articles 41 and 42 is entitled: 'Action with respect to threats to the peace, breaches of the peace, and acts of aggression'. Consequently, various Articles under that head provide for measures of different kinds according to the extent of the threat to peace and also according to whether there exists a mere threat to peace or a breach of the peace—an act of aggression."

"I repeat that the inference drawn by Mr. Evatt seems to me to be based on some misunderstanding, since such an inference does not follow from the relevant Articles of Chapter VII of the Charter. The measures enumerated in Article 41 have as their object and purpose not the aggravation or intensification of the threat to peace, but, on the contrary, its removal. How is it possible, then, to argue that the adoption of measures in accordance with Article 41 of the Charter inevitably entails, or must entail further, more energetic measures, even to the extent of military measures against the Government concerned?"

At the same meeting, the Australian representative answered this statement as follows:

"I am not going to deal at any length with the technical question of the interpretation of Articles 41 and 42 of the Charter. Mr. Gromyko gave his interpretation of them this afternoon in order to make the point that action by the Security Council under Article 41 is preventive action, whereas action under Article 42 is action of a military character taken after a breach of the peace has occurred. But that interpretation cannot be established simply by asserting that it is the correct interpretation. If members will look at Article 41, they will find that one of the sanctions that may be adopted by the Security Council is the complete interruption of economic relations, that is to say, economic sanctions."

"It seems to me that a fair interpretation of the two Articles is this: once the Security Council has determined that there is a threat to the peace or a breach of the peace, it may decide to take action in accordance with either Article 41 or Article 42 and to apply all the measures contained in both these Articles in order, as Article 42 says, 'to maintain or restore international peace and security'; that is to say, to maintain peace if there has been no actual breach of the peace and to restore peace if there has been an actual breach."

"Once it is determined that a threat to the peace exists under Article 39, the Security Council is entitled to proceed towards any measures mentioned in Articles 41 or 42 in order to prevent a breach of the peace or to maintain international peace and security."

At the 48th meeting on 24 June 1946, the representative of Poland presented the draft resolution submitted by him at the 34th meeting with the reference to Articles 39 and 41 of the Charter deleted.⁴

At the same meeting, the Polish draft resolution was rejected by 4 votes in favour and 7 against.⁵

² 34th meeting, p. 167. See chapter VIII, p. 306. For other discussion in relation to article 39, see Case I.

³ S/75, O.R., 1st year, 1st series, Special Suppl., rev. ed., p. 10.

⁴ 48th meeting: pp. 383-384.

⁵ 48th meeting: p. 388.

CASE 17.⁶ THE PALESTINE QUESTION: In connexion with decision of 4 November 1948 calling for the withdrawal of forces and appointing a Committee of the Council to advise the Acting Mediator.

[Note: By the decision of 19 October 1948, the Council had defined certain measures incumbent on the Governments and authorities concerned under the decisions of the Council of 15 July and 19 August 1948. Following upon the decision of the Council of 19 October, the Acting Mediator requested the parties to withdraw their forces to the truce lines as they existed in the Negeb sector on 14 October. By the decision of 4 November 1948, the Council called upon the parties to comply with the request addressed to them by the Acting Mediator, and appointed a Committee of the Council to advise the Acting Mediator and to report to the Council on "further measures" under Chapter VII. Whereas the original draft resolution referred in this connexion solely to Article 41, the paragraph in question was amended to relate broadly to Chapter VII on the grounds that future action by the Council might not be confined within the terms of Article 41.⁷]

At the 374th meeting on 28 October 1948, following a report by the Acting Mediator on the implementation of the decision of 19 October, the representatives of China and the United Kingdom submitted a joint draft resolution which, in its revised text introduced at the 375th meeting⁸ after referring to the resolutions of 15 July and 19 August, read in part:

"Having decided on 29 May that, if the truce was subsequently repudiated or violated by either party or by both, the situation in Palestine would be reconsidered with a view to action under Chapter VII of the Charter;

"Endorses the request communicated to the Government of Egypt and the Provisional Government of Israel by the Acting Mediator on 26 October (S/1058); and

"Calls upon them to withdraw their military forces to the positions they occupied on 14 October, with a view to the establishment of a permanent truce line; and

"Appoints a committee of the Council, consisting of the five permanent members together with Belgium and Colombia, to examine urgently and report to the Council on the measures which it would be appropriate to take under Article 41 of the Charter if either party or both fail to comply with the preceding paragraph of this resolution within whatever time limit the Acting Mediator may think it desirable to fix."

The draft resolution was opposed by the representative of the USSR on the grounds that the Acting Mediator had not exhausted all possible ways and means under the previous resolution and that it would be premature to adopt the joint draft resolution.

⁶ For texts of relevant statements see:

374th meeting: Canada, p. 29; France, p. 37; USSR, p. 35; United Kingdom, pp. 12-13, 38.

375th meeting: France, pp. 3-6; United Kingdom, pp. 2-3; China, pp. 15-16.

376th meeting: Belgium, p. 2; France, pp. 7-8; Israel, pp. 14-15; United States, pp. 3-4.

⁷ See chapter VIII, p. 335.

⁸ S/1059/Rev.2, O.R., 3rd year, Suppl. for Oct. 1948, p. 72.

The composition of the sub-committee was supported by the representative of Canada who stated that, since it was to consider some form of enforcement action, the main responsibility during its deliberations must rest with the permanent members of the Security Council. The representatives of Belgium and Colombia could give useful assistance.

The representative of France held that it might be contradictory to refer to measures provided for in Article 41 in the last paragraph, and to a "request" addressed to the parties in a previous paragraph. The representative of the United Kingdom replied that, once the Council endorsed the request of the Acting Mediator and made it its own, it appeared unnecessary to alter the wording in the last paragraph.

Commenting on a statement by the representative of Israel⁹, the representative of China stated at the 375th meeting:

"Then there is the other complaint that the sponsors of this resolution sat supine when the Arab armies entered Palestine, that at that moment the sponsors of the present resolution did not call for action under Article 41 of Chapter VII, but that now, on the contrary, the sponsors are so very eager to apply Chapter VII... So far as my delegation is concerned, from the very beginning of this dispute, we have stood for submitting this question to the International Court of Justice for an opinion on the juridical status of Palestine after the withdrawal of the Mandatory Power. Without such an authoritative determination on that point, I submit that this Council could not have pronounced any party an aggressor in this matter.

"It is for that reason that this Council, even up to now, has not named any party as the aggressor in this whole conflict. When, on 29 May, we passed that resolution (S/801) to enforce peace *per se* without attaching any specific scheme on Palestine, my delegation supported the application of Chapter VII for that objective. On that occasion my delegation made it very clear that it was a simple action to enforce peace without any *arrière-pensée* with regard to the eventual settlement of the Palestine question. I think that the representative of the Provisional Government of Israel misunderstood and misinterpreted the motives of my delegation in joining with the delegation of the United Kingdom in sponsoring this resolution."

At the 376th meeting on 4 November, the Council had before it a new text of the draft resolution, submitted in the report of the Sub-Committee⁹ which had been established at the previous meeting.

The representative of the United States introduced several amendments,¹⁰ one of which was to replace the reference to Article 41 in the last paragraph by a reference to Chapter VII of the Charter. In support of this amendment, he stated that it would allow the proposed committee to consider the situation in the light of Chapter VII as a whole and would not restrict its work within the framework of Article 41.

The representative of France held that it was inadvisable to anticipate that the resolution might not be carried out and to make from the beginning a definite reference to the terms of Article 41, thus

⁹ S/1064, O.R., 3rd year, Suppl. for Nov. 1948, pp. 1-6.

¹⁰ S/1067.

being confined *a priori* within the terms of that Article. The proposed committee "should eventually take its stand on Chapter VII of the Charter as that would simply be the application of a previous resolution of the Security Council". However, it was possible that it might decide to take provisional measures under Article 40, or the more severe measures provided for in the Charter. Therefore, if the reference to Article 41 was suppressed, the resolution "would not lose any of its authority".

The representative of Israel stated:

"The draft resolution appears to us to be inconsistent not only with the surrounding conditions but also with itself and with the Charter. In particular, the last paragraph which implicitly contemplates the application of sanctions to the party which should fail to observe the conditions prescribed in a previous paragraph of the resolution seems to us to be in violation of the Charter. This paragraph proceeds on the assumption that non-compliance with provisional measures by a party to a dispute authorizes the Security Council to apply the provisions of Chapter VII against that party. This theory seems to us to be without foundation. Article 40, dealing with provisional measures, provides that the Security Council shall 'duly take note of failure to comply with provisional measures'. Whatever that phrase means it does not mean that the Security Council may apply the provisions of Chapter VII for non-compliance with provisional measures. The provisional measures under Article 40 are not ordered. The parties are called upon in the language of recommendation to accept them, and it seems clear that only in the case of a threat to

the peace, or if there is a determined breach of the peace or act of aggression may a consideration of the provisions of Chapter VII be undertaken by the Security Council, following on the provisions of Article 39.

"It is, I think, commonly recognized that the application of those provisions of the Charter is such an incisive interference by the international community in the life of Member States or non-member States, whose sovereign equality has to be respected, that it could only be used in the most extraordinary and exceptional cases. The subject now before the Security Council is not a breach of the peace, a threat to the peace or an act of aggression — nor is it even a report of continuing warfare.

"The subject is an anticipated or contingent violation of the Acting Mediator's instructions within the framework of the truce. The truce, however, is not peace. It is an incident of war and an interruption of hostilities. It seems to us to be most far-fetched to attempt the application of sanctions for non-compliance with certain regulations which belong to provisional measures concerning the conduct of a defensive war."

At the 377th meeting on 4 November 1948, the Council adopted the draft resolution recommended in the report of the Sub-Committee, as amended by the representative of the United States. The amendment, in which reference to Chapter VII was substituted for reference to Article 41, was adopted by 8 votes in favour, 1 against, with 2 abstentions.¹¹

¹¹ 377th meeting: pp. 38-43. For text, see chapter VIII, p. 336.

Part III

CONSIDERATION OF THE PROVISIONS OF ARTICLES 42-47 OF THE CHARTER

NOTE

The case histories entered in part III are those in which Articles 42-47 were the central point of discussion.

Reference should also be made to the report of the Military Staff Committee of 30 April 1947 on the general principles governing the organization of the armed forces to be made available by the Members of the United Nations. For a summary of the decisions of the Security Council in respect of individual articles of the report, reference should be made to chapter IX, pp. 366-367. The report included both recommendations agreed upon by all five permanent members of the Council, and the proposals of individual delegations on which unanimous decision had not been achieved in the Military Staff Committee. It has been considered inappropriate to insert passages from the report in the *Repertoire*, since the report requires consideration as a whole. In Case 18 are given those statements made in the Council during consideration of the report which bear more directly on the provisions of the Charter.

CASE 18.¹ REPORT OF THE MILITARY STAFF COMMITTEE

[Note: On 30 April 1947, the Military Staff Committee submitted its report on the general principles governing the organization of the armed forces to be

made available by the Members of the United Nations, as the first stage of its study of the provisions of Article 43.² In the consideration of the report by the Council certain statements were made directly bearing on Article 43 of the Charter.]

At the 138th meeting on 4 June 1947, the representative of the United States stated that the United Nations was not a world government, but was based on the principle of sovereign equality of all its Members. It could not, therefore, have a permanent standing armed force of its own in the same sense that individual nations possessed such forces. On the other hand, the founders of the United Nations had decided that the United Nations should not repeat the experience of the League of Nations, which had relied solely upon the individual action of Member States to carry out sanctions. It had therefore been decided

¹ For texts of relevant statements see: 138th meeting: Belgium, pp. 957-961; United States, pp. 953-957.

139th meeting: Australia, pp. 981-987; USSR, pp. 964-980.

140th meeting: Brazil, pp. 990-992; China, pp. 998-1002; Syria, pp. 996-997; United Kingdom, pp. 993-995.

141st meeting: President (France), pp. 1005-1009; Poland, pp. 1009-1012.

143rd meeting: President (France), pp. 1056, 1057; Belgium, pp. 1055-1056.

² S/336, O.R., 2nd year, Special Suppl. No. 1, pp. 1-32. For consideration of the report by the Council see chapter IX, p. 366.

that each nation should agree in advance to provide forces and facilities upon which the Security Council could call in order to prevent or suppress any act of aggression or breach of peace. To stop an aggressor, military bases were of vital importance to all three elements of armed forces—army, navy and air.

At the 139th meeting on 6 June 1947, the representative of the USSR agreed that "the experience of the past, and particularly that of the League of Nations, demonstrated that peace-loving nations may be required to carry out joint and effective action, including military action, in the interests of the maintenance of peace and security". The importance of the question was "determined by the place which Article 43 occupies in the Charter". Although "the necessity of incorporating into the Charter the provisions contained in this Article caused no doubts on the part of anyone" when the Charter was being drawn up, serious divergencies of opinion had appeared in the Military Staff Committee on the question of the general principles governing the organization of armed forces made available to the Council. There had been a divergency in the first place, on the question of the contributions of armed forces by permanent members of the Council. The USSR proposed that the five Powers should make available armed forces not only of equal over-all strength but also of the same composition. This principle of equality should be adopted because it preserved the equality of status conferred on the five Powers by the Charter. The permanent members, holding a special position in comparison with other nations, at the same time "occupy an equal position in relation to one another. They have equal rights in deciding all the important questions relating to the maintenance of peace." Secondly, there had been the question of bases, and the proposals concerning bases were unacceptable for several reasons, one of which was that there was no mention of bases in Article 43 or elsewhere in the Charter. Thirdly, there had been the proposal for "general guarantees of rights of passage", which was also inconsistent with the Charter. Under the Charter that right might be granted by a special agreement to be ratified by the signatory States.

The representative of Australia considered as most extraordinary the theory advanced by the representative of the USSR that the five Powers had been placed in a special position by the Charter. Such a theory was a direct contradiction of the Charter.

At the 140th meeting on 10 June 1947, the representative of China referred to three points in which no basic conflict in principle or policy existed, but which represented different interpretations of the provisions of the Charter. There were: first, the question whether Articles 43 and 45 should be considered simultaneously or successively; secondly the reservation arising from Article 51; and thirdly the question whether military bases came under the term "assistance and facilities" in Article 43. The representative of the United Kingdom, after observing that any one of the permanent members of the Council could arrest the movement of the United Nations forces, said that a partial answer was provided by Article 51, under which the remainder of the United Nations would be entitled to take action against that member. He considered that the forces already made available to the Council could legitimately be jointly employed to

that end for so long as the Council failed to take measures to maintain international peace and security.

At the 141st meeting on 16 June, the representative of Poland saw the possibility of the principle of equivalent contributions being used as a means of attempting to alter the distribution of military power among the permanent members of the Council, and the possibility of situations in which the implementation of Article 43 might be used for extraneous purposes not intended by the authors of the Charter.

At the 143rd meeting on 20 June, the representative of Belgium stated that, under Article 43, Members of the United Nations would be obliged to hold in reserve certain armed forces which they had undertaken to place at the disposal of the Security Council on its call. The Council would be able to make that call only in conformity with special agreements which would have already been duly concluded. The obligation to make armed forces available to the Security Council thus presupposed not only the conclusion of special agreements, but also a call from the Security Council. The armed forces could pass under the authority of the Council only after the Council had requested that they should be made available to it. The President (France) considered Article 43 to mean that the Council would be able to determine in advance what forces would be at its disposal should the necessity arise, on the basis of the special agreements negotiated between the Council and Members or groups of Members. The Council would have to pronounce a decision in each separate instance in order to make use of these forces.

CASE 19.³ THE PALESTINE QUESTION: In connexion with decision of 15 July 1948, which included provision of staff to assist the Mediator in the performance of his functions.

[Note: By reason of the dispatch to Palestine of fifty armed guards to assist the Mediator in the exercise of control functions during the truce, the question arose of the powers under which the Secretary-General had acted in providing the Mediator with those guards. The observation was made that the performance of United Nations duties by an armed force should only occur under Article 43 of the Charter. After a statement by the Secretary-General invoking his authority under Assembly and Council decisions relative to the Mediator's functions, and his powers under Article 97 of the Charter, the proposals of the Secretary-General for administrative arrangements concerning the operation of the truce were approved by the Council.]

At the 331st meeting on 7 July 1948, during the consideration by the Council of a request from the Mediator that the Council appeal to the parties for a prolongation of the truce, the representative of the USSR objected to the decision that had been taken by the Secretary-General to dispatch to Palestine fifty United Nations guards. The question had neither been discussed in the Council nor raised by any of its members. He therefore considered that practice "as being quite illegal".

³ For texts of relevant statements see:

331st meeting: USSR, pp. 32-33; representative of the Secretary-General, pp. 33-34.

338th meeting: President (Ukrainian SSR), p. 63; USSR, pp. 63, 64-65; representative of the Secretary-General, pp. 63-64.

In reply to these objections, the representative of the Secretary-General read a statement on his behalf, to the effect that the Secretary-General had been requested by the Mediator to supply him with fifty guards to assist the Mediator in the exercise of control functions in connexion with the Palestine truce. Subsequent to consultation with the Legal Department, the Secretary-General had called for volunteers from among the guards stationed at Headquarters and other members of the Secretariat, and had dispatched to Palestine fifty men, with side arms. However, the men had not been authorized to use those arms "except on instructions from the Mediator". Among the conclusions reached by the Legal Department was that the Secretary-General was empowered under General Assembly resolution 186 (S-2) of 14 May 1948 to "provide the Mediator with the necessary staff to assist in carrying out functions assigned to the Mediator by the General Assembly". The Secretary-General's statement, after referring to the powers of the Mediator under the Council decision of 29 May 1948, added:⁴

"This resolution of the Security Council was adopted under Chapter VI of the Charter and presumably in the exercise of Article 36, which provides that the Security Council may at any stage of a dispute or a situation recommend appropriate procedures or methods of adjustment. The truce provisions of the Security Council resolution of May 29, and of certain further recommendations by the Mediator to implement the Truce, were agreed to by the parties to the dispute. It is clear from the resolution of the General Assembly that the Secretary-General is authorized to provide the Mediator with the necessary staff to assist him in carrying out his official functions. These functions include the functions approved in the Assembly resolution and such other functions as may devolve on him in consequence of instructions from the Security Council. The checking and controlling of the observance of the truce terms agreed to by the parties to the dispute are unquestionably lawful functions of the Mediator.

". . . If, in the judgment of the Mediator, he requires guards as part of his staff in the fulfilment of his functions, these guards are clearly part of such staff as the Organization may require within the meaning of Article 97 of the Charter. The Secretary-General, therefore, is authorized both under the Charter and under the resolution of the General Assembly to furnish such guards to the Mediator to perform the functions previously described."

At the 338th meeting on 15 July 1948, during the consideration by the Security Council of the United States draft resolution invoking Articles 39 and 40 in regard to the situation in Palestine, the Council had before it two additional paragraphs suggested by the Secretary-General concerning administrative and finan-

⁴ 331st meeting: pp. 33-34

cial arrangements for the operation of the truce. The first of these paragraphs read as follows:⁵

"Requests the Secretary-General to provide the Mediator with the necessary staff and facilities to assist in carrying out the functions assigned to him under the resolution of the General Assembly of 14 May, and under this resolution."

In replying to a request of the representative of the USSR for clarification regarding the word "staff" used in this paragraph, the representative of the Secretariat referred to the statement of the Secretary-General and reiterated that "those guards could be considered as staff necessary to facilitate the performance of the duties of the Mediator".

The representative of the USSR then stated that "the practice of sending Secretariat members for armed guard duties" was "irregular and devoid of legal foundation," and added:

"The constitution of an armed force for the maintenance of international peace and security and the execution of all duties connected with that task are the prerogative of the Security Council under Article 43 of the Charter. As we know, such an armed force has not yet been formed, and it would be inconsistent with the Charter to entertain the fantastic notion of creating some sort of an armed force within the United Nations Secretariat. The creation of an armed force recruited from the Secretariat would be inconsistent both with the Charter and with the dictates of common sense.

"Furthermore, the United Nations Charter provides for situations arising before Article 43 is implemented and a Security Council force is established. Such provision is made in Article 106. . .

"The functions it is proposed to lay upon the Secretariat guards are essentially duties connected with the maintenance of international peace and security. . .

"All these facts taken together fully justify the USSR delegation's contention that this proposal is unacceptable, and that, in accordance with established practice and the General Assembly's previous decisions in such cases, the Secretariat should confine itself to the dispatch of clerical, technical and subsidiary staff, but not of sentries or armed guards."

The two additional paragraphs proposed by the Secretary-General were thereupon put to the vote and adopted by 8 votes in favour, none against, with 3 abstentions.⁶

⁵ 338th meeting: p. 63. For text of resolution, see chapter VIII, p. 332. For other discussion concerning the draft resolution, see Case 11, pp. 438-439.

⁶ 338th meeting: p. 66.

Part IV

CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER

NOTE

Only two case histories, in which Article 51 was the subject of observation within the Security Council, call for entry in part IV.

Reference should, however, also be made to the report of the Military Staff of 30 April 1947 on the general principles governing the organization of the armed forces to be made available by Members of the

United Nations.¹ Article 31 of the report contains conclusions bearing on Article 49 of the Charter, and Article 17 of the report contains conclusions bearing on Article 51 of the Charter. To Articles 17 and 31 of the report each of the five permanent members of the Council attached statements of position.

CASE 20 (i), (ii), (iii) and (iv). THE INDIA-PAKISTAN QUESTION: In connexion with decision of 21 April 1948 and with consideration by the Council of reports dated 22 November 1948, 5 December 1949, 3 February 1950 and 15 September 1950 relative to the situation in the State of Jammu and Kashmir.

[Note: During the consideration by the Council of measures envisaged in the decision of 21 April 1948, and thereafter of information concerning hostilities in the State of Jammu and Kashmir, the right of self-defence was invoked on various occasions. Observations were made regarding the limitations imposed by the Charter on the exercise of the right of self-defence under Article 51.]

CASE 20 (i)²

At the 284th meeting on 17 April 1948, the representatives of Colombia, Belgium, Canada, China, the United Kingdom and the United States submitted a draft resolution indicating measures to be taken by the parties to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir was to accede to India or Pakistan.³

Commenting on the draft resolution, the representative of China stated that, although it did not "recognize specifically the right of the Dominion of India and its duty of defending Jammu and Kashmir", there was nothing in the draft resolution which impaired the inherent right of self-defence in the event that the calculations of the sponsors were wrong and a large invasion of Jammu and Kashmir were to take place. The Dominion of India could fall back on the provisions of the Charter and "one of the Articles of the Charter (Article 51) specifically assures to all Members the inherent right of self-defence".

At the 286th meeting on 21 April, the joint draft resolution was adopted. Paragraph A. 1. (a), relating to the "withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting" etc., was adopted by 8 votes in favour with 3 abstentions. Paragraph A. 2. (a), relating to the progressive reduction of Indian Army forces "to the minimum strength required for the support of the civil power in the maintenance of law and order", was adopted by 8 votes in favour with 3 abstentions.⁴

CASE 20 (ii)⁵

At the 382nd meeting on 25 November 1948, the Council considered an interim report of the United Nations Commission for India and Pakistan and a letter dated 22 November from its Chairman,⁶ transmitting certain information received by the Government of Pakistan concerning military action in the State of Jammu and Kashmir.

At the same meeting, the representative of Pakistan* informed the Council that during the first half of May, Pakistan, as the result of similar action then taken by the Indian military forces, had to send its troops to halt the Indian forces at certain points beyond the Pakistan borders to stop streams of refugees that had started pouring into Pakistan. He stated that the situation in the State was deteriorating in view of the action of the Indian Government and that Pakistan could not afford to continue to look on and let the situation go on deteriorating.

The representative of India* declared that since a suggestion had been made that India was acting aggressively in Kashmir, it was only fair to point out to the Security Council that "since May, according to the statement that the representative of Pakistan made to the Commission of the Security Council, and perhaps somewhat earlier according to our own information, Pakistan forces have been and still are in the territory of Jammu and Kashmir, which we regard as Indian territory". The Indian military action was of a defensive character and no major offensive had been contemplated. He said:

"In all our statements before the Security Council, we made it clear that we reserved to ourselves the right of self-defence, the right of expelling from our territory those who had no right to be there... if we are told... that because of imagined offensives and alleged hostile intentions of the Government of India there is going to be a fresh effort by Pakistan in the sense of a counter-offensive, we must in these circumstances naturally exercise the prerogative that belongs to every Member of the United Nations: the prerogative of self-defence."

CASE 20 (iii)⁷

At the 466th meeting on 10 February 1950, during the consideration of the third interim report dated 5 December 1949 from the United Nations Commission for India and Pakistan and the report of 3 February from General McNaughton, the representative of India stated that Pakistan's admissions proved that it was rendering some assistance even before 20 April 1948 to the tribesmen invading the State of Jammu and Kashmir. He added:

"... the justification pleaded by Pakistan is that the sending of the troops was necessitated by considerations of self-defence. Such a plea might have passed muster in the old days, but now, fortunately, we have the United Nations and its Charter."

After quoting the text of Article 51, he continued:

"This Article imposes two limitations upon the right of self-defence; first, there must be an armed

¹ S/336, O.R., 2nd year, Special Suppl. No. 1, pp. 1-32.

² For texts of relevant statements see:

284th meeting: China, p. 9.

285th meeting: India, p. 16.

286th meeting: United Kingdom, pp. 16-17.

³ See chapter VIII, pp. 346-348.

⁴ 286th meeting: pp. 15, 17

⁵ For texts of relevant statements see:

382nd meeting: Pakistan, pp. 12-13; India, pp. 15-19.

⁶ S/1087, O.R., 3rd year, Suppl. for Nov. 1948, pp. 14-17.

⁷ For texts of relevant statements see:

466th meeting: India, pp. 4-5; Pakistan, pp. 18-19.

attack upon the Member that exercises the right; and, secondly, measures taken in the exercise of the right of self-defence must immediately be reported to the Security Council. In the present instance there was no armed attack on Pakistan, and admittedly the sending of the army into Kashmir was not reported to the Security Council.

"I am not making a small legal point. I am pointing this out because, if the matter had been reported at that stage to the Security Council, we should not have been in the difficult position in which we find ourselves today. I feel sure that the Pakistan Army would not have been allowed to go in, and the subsequent mischief to which the invasion led would have been avoided."

CASE 20 (iv)⁸

At the 536th meeting on 9 March 1951, during the consideration of the report dated 15 September 1950 from the United Nations Representative for India and Pakistan, the representative of India stated:

"I drew attention last year to Article 51 of the Charter. Let me draw attention to it once again. Under that Article, the right of self-defence begins only when there is an armed attack against a Member. In the present case there was never an armed attack against Pakistan by the Indian Army. Secondly, under that Article, measures taken by Members in the exercise of self-defence must be immediately reported to the Security Council. Pakistan did not inform the Security Council; indeed it was only after the United Nations Commission for India and Pakistan arrived on the sub-continent, nearly two months later, and the facts could no longer be concealed, that the Commission was informed of the presence in the State of regular Pakistan troops. Thirdly, and this is very important, under the Charter the right of self-defence continues only until the Security Council has taken measures necessary to maintain international peace and security.

"In the present case the Security Council, through the United Nations Commission for India and Pakistan, took the necessary measures and, in fact, the Commission succeeded in getting the parties to agree to the two resolutions which I have already mentioned. Under these resolutions a cease-fire has been achieved, a cease-fire line has been demarcated, and there are military observers to supervise the observance of the cease-fire order. None of the alleged grounds on which the Pakistan Army marched into Kashmir in May 1948 have any longer any validity. The line which that army was meant to hold, and more than that line, is now secured under the cease-fire arrangements already imposed."

CASE 21.⁹ THE PALESTINE QUESTION: In connexion with decision of 1 September 1951 calling upon Egypt to terminate the restrictions on the passage of ships through the Suez Canal.

[Note: In the preceding discussion, Egypt invoked Article 51 in justification of interference with the passage through the Suez Canal of goods destined for Israel. Observations were made to the effect that, under the terms of Article 51, application of the right

of self-defence was restricted to cases of armed attack, and was limited in time until the Security Council had taken action under the Charter. It was remarked that, in the existing circumstances, Egypt's practice did not correspond to the conditions set forth in Article 51, and it was so specified in paragraph 8 of the decision of 1 September 1951.]

At the 550th meeting on 1 August 1951, during the consideration of the complaint by Israel* regarding "restrictions imposed by Egypt on the passage of ships through the Suez Canal",¹⁰ the representative of Egypt* held that Egypt's right of self-preservation and self-defence recognized by Article 51 transcended all other rights. He stated:

"Self-preservation and self-defence has, even in our days, impelled some Powers to restrict the importation of many war materials, or as they are more usually called, strategic war materials, to areas covering many countries with which there was and there is no state of war. The importation into those areas of those strategic materials is not allowed, or, in other words, the exportation of such materials to those areas is not allowed..."

The representative of Egypt then quoted the following passage:

"... Article (51 of the Charter) safeguards the right of self-defence which is referred to as being 'inherent'. By so doing, it follows a long line of precedents where in connexion with international agreements of this kind the right of self-defence has been tacitly or explicitly reserved. In connexion with the Kellogg-Briand Pact of 1928, which contained no explicit reservation of the right of self-defence, the American Secretary of State, Mr. Kellogg, observed that the right was inherent and that there was no necessity of stating it expressly."

He continued:

"It is even stated by the same authors that: 'the provisions of Article 51 do not necessarily exclude this right of self-defence in situations not covered by this Article', and that this right is only subject to the undertaking by the Members of the United Nations to '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'.¹¹

He then adduced the following quotation:

"Although the right of self-defence is supposed to be established by a rule of general international law which has the character of '*jus cogens*' so that it cannot be affected by any treaty, it has been considered not as superfluous to stipulate this right expressly in the Charter. Neither the Covenant of the League of Nations nor the Pact of Paris contained an analogous provision..."

⁸ For texts of relevant statements see:

549th meeting: Egypt, p. 21.

550th meeting: Egypt, pp. 6-8; United Kingdom, p. 20.

551st meeting: Israel, pp. 10-11.

552nd meeting: Brazil, p. 13; United Kingdom, p. 3.

553rd meeting: Ecuador, p. 27; Egypt, pp. 14-15; Netherlands, pp. 4-5.

¹⁰ S/2241, O.R., 3rd year, Suppl. for July-Sept. 1951, pp. 9-10. For the submission of this question, see chapter VIII, p. 343.

¹¹ L. Goodrich and E. Hambro: *Charter of the United Nations, Commentary and Documents*, 1949, pp. 299, 301.

⁹ For text of relevant statements see: 336th meeting: India, pp. 5-6.

“The right of self-defence... is the right of an individual, or a State, to defend his person, property, or honour against a real or imminent attack. It is a right of the attacked or threatened individual or State, and of no other individual or State. Article 51 confers the right to use force not only upon the attacked State but also upon other States which unite with the attacked State in order to assist in its defence...”¹²

The representative of Egypt observed:

“This right, this sublimely primordial right, asserts itself all the more when it is seriously endangered. The fact that it is so endangered in relation to the role which is assumed in the Middle East by world political Zionism through Israel, is a nightmare for those who sleep and an ugly fact for those who are awake.”

The representative of the United Kingdom held that Article 51 was not applicable since the conditions set forth in that Article were absent in the present case. He remarked that Article 51 provided that the right of self-defence could only be exercised “until the Security Council has taken the measures necessary to maintain international peace and security”. He further stated:

“If Egypt were involved in actual hostilities, it would no doubt be justified in taking measures for its own defence. This is not, however, the situation at the present time.

“Hostilities are not in progress and have not been in progress for two and a half years. It cannot even be maintained that Egypt is under any imminent threat of attack from Israel. We must therefore conclude that the claim to exercise belligerent rights for the defence of Egypt cannot now be sustained and must be considered as an abuse of belligerent rights as these rights are recognized in international law.”

The representative of Israel*, at the 551st meeting on 1 August 1951, after referring to the “convincing refutation” which had already been made regarding the juridical aspect of this question, observed:

“Article 51 of the Charter allows a nation to undertake action of self-defence only on two conditions, both of which are absent here. One of them is that that country shall be the victim of armed attack, and not even the Egyptian representative himself has invoked any such prospect. The second is that the Security Council has not yet assumed responsibility for the maintenance of international peace and security in that area. The Security Council has undertaken its responsibilities in that area by underwriting the General Armistice Agreements and calling upon the parties to ensure their continued fulfilment.”

At the 553rd meeting on 16 August, the representative of the Netherlands contended that the restrictions exercised by the Egyptian Government were contrary not only to the spirit of the Armistice Agreements, but also to international law. He added:

“As regards international law, we believe that it cannot be maintained with reason that Egypt—or Israel for that matter—could consider itself actively a belligerent more than two years after the signing of an Armistice Agreement, and we are consequently

of the opinion that Egypt does not require to exercise the belligerent right of visit, search and seizure for any legitimate purpose of self-defence. Besides, as far as self-defence is concerned, something has changed in our world since the closing years of the nineteenth century. Today we, the Members of the United Nations, live—or at least should live—by the Charter of our Organization. On the right of self-defence, this Charter in Article 51, to which some preceding speakers have already made reference, is very explicit. It says *inter alia*: ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defence.’ But it limits this right of unilateral or joint action in self-defence by adding: ‘if an armed attack occurs against a Member of the United Nations’, and ‘until the Security Council has taken the measures necessary to maintain international peace and security’. Has there at this stage been an armed attack, and has such action been brought to the attention of the Security Council? I am not aware of it. On the contrary, there is an Armistice Agreement, which has now been in force for over two years. On the other hand, the Security Council has been dealing repeatedly with situations which arose out of the Armistice Agreements in order to bring about loyal observance thereof by all the parties concerned. Can it seriously be maintained, in those circumstances, that one party—or all parties for that matter—should invoke the defensive right of unilateral action, to the detriment of the other party and, moreover, to the detriment of other countries which were at no time connected with the conflict at all? We believe that the answer to that question can be only in the negative.”

At the same meeting the representative of Egypt further pointed out “the fact that neither in Article 51 nor in any other Article does the Charter exclude or even impair the right of self-preservation and self-defence”, and added: “Nor could Article 51 or any other Article of the Charter in fairness be cut away, as if with a pair of scissors, and isolated from the rest. Less still could we in fairness be asked to forego the unimplemented stipulations of the Charter, such as those dealing with human rights, with the United Nations system of collective defence or, as contained in Article 106, with the responsibilities of the parties to the Four-Nation Declaration for the purpose of maintaining international peace and security.”

In submitting a draft resolution jointly sponsored by France, the United Kingdom and the United States at the 552nd meeting on 16 August, the representative of the United Kingdom stated that it was not necessary for the Council to go into the debatable legal issues. The draft resolution was revised¹³ at the 553rd meeting on 16 August and adopted at the 558th meeting on 1 September 1951, by 8 votes in favour, none against with 3 abstentions.¹⁴ Paragraph 8 of the resolution provided that the Security Council “further finds that the practice (the Egyptian practice of interfering with the passage through the Suez Canal of goods destined for Israel) cannot in the prevailing circumstances be justified on the ground that it is necessary for self-defence”.

¹³ S/2298/Rev.1, 558th meeting: pp. 2-3.

¹⁴ 558th meeting: p. 3. For text, see chapter VII, pp. 343-344.

¹² Kelsen: *The Law of the United Nations*, 1950, pp. 791-792.