

Chapter XI

**CONSIDERATION OF THE PROVISIONS OF CHAPTER VII
OF THE CHARTER**

TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTORY NOTE	167
PART I. CONSIDERATION OF THE PROVISIONS OF ARTICLES 39-40 OF THE CHARTER	
Note	169
**PART II. CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER	171
PART III. CONSIDERATION OF THE PROVISIONS OF ARTICLES 42-47 OF THE CHARTER	172
PART IV. CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER	173

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.¹

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 measure 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

¹ For observations on the method adopted in the compilation of this chapter, see: *Reper-toire of the Practice of the Security Council 1946-1951*, Introductory Note to chapter VIII, II. Arrangements of chapters X-XII, p. 296.

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 fulfilment 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 the 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 sub-committees.

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-defence 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-defence 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**

During the period under review, the only question in connexion with which a draft resolution related to Article 39 was submitted to the Council was the Palestine question.² The resolution³ adopted on that occasion recalled the Council's resolutions of 15 July 1948 and 11 August 1949 referring to Article 40 and contained preambular language apparently derived from that Article. References⁴ to the same resolutions were contained in the decisions taken in connexion with the sub-item of the Palestine question entitled "Status of compliance given to the General Armistice Agreements and the resolutions of the Security Council adopted during the past year".

References⁵ to Article 40 or to Chapter VII of the Charter have been made in the course of discussion of proposals to adopt provisional measures. In these instances interest attached to the question whether the powers of the Council under Chapter VII may be exercised for purposes of its decisions under Chapter VI.

During the consideration of a proposal to call an emergency special session of the General Assembly to make appropriate recommendations in connexion with the grave situation created by actions undertaken against Egypt, the question whether the Council had been acting under Chapter VI or VII in dealing with the matter was discussed for its bearing on the validity of the proposal.⁶

² See Case 1.

³ See in chapter VIII, under Palestine question, the resolution of 19 January 1956.

⁴ See in chapter VIII, under Palestine question, the resolutions of 4 April 1956 and 4 June 1956.

⁵ See in chapter X, Cases 8 and 10.

⁶ See chapter VI, Case 2.

⁷ See chapter VI, Case 1.

On another occasion,⁷ a proposal for action under Chapter VII in respect of a matter which was being dealt with by an emergency special session of the General Assembly was the occasion for discussion of the effect on the responsibility of the Security Council for action under Chapter VII of the fact that the General Assembly was dealing with the question.

Section C of the tabulation in part III of chapter X lists instances of the submission of other questions in which language derived from Article 39 was employed.

CASE 1.⁸ THE PALESTINE QUESTION: In connexion with the decision of 19 January 1956 condemning the attack by Israel armed forces in the area east of Lake Tiberias

[*Note*: A proposal that the attack should be determined to constitute an aggression within the meaning of Article 39 was not voted upon. The resolution adopted mentioned no Article of the Charter, but provided that if Israel did not comply with its obligations in the future, the Council would consider "what further measures under the Charter" would be required "to maintain or restore the peace".]

At the 709th meeting on 22 December 1955, the representative of Syria submitted a draft resolution,⁹ in the

⁸ For texts of relevant statements, see:

709th meeting: Syria, paras. 41-43;

710th meeting: France, paras. 71-75; USSR, para. 98; United Kingdom, para. 37; United States, para. 56;

711th meeting: Iran, paras. 48, 53;

714th meeting: Iran, paras. 45, 48; USSR, paras. 56, 96-97; United Kingdom, paras. 89-91, 102; Yugoslavia, para. 7;

715th meeting: Iran, paras. 86, 92; USSR, para. 162; United Kingdom, paras. 111-112.

⁹ 709th meeting: para. 43, S/3519, O.R., 10th year, Suppl. for Oct.-Dec. 1955, pp. 41-42.

preamble of which the Council would have recalled its cease-fire resolution of 15 July 1948 and its resolutions of 24 November 1953 and 29 March 1955 concerning the Qibya and Gaza incidents respectively. After noting that the Council had called upon Israel to take effective measures to prevent the recurrence of such military action, and expressing deep concern that Israel had not heeded these Council resolutions, and after considering also that further military action by Israel would tend to disturb the peace and security of the area, the following operative paragraphs were proposed :

“ *The Security Council,*

“ . . .

“ 1. *Condemns* Israel for the outrageous attack which was carried out by its military forces on 12 December 1955 against the territory and armed forces of Syria :

“ 2. *Decides* that the said action is a violation of the resolution of 15 July 1948, the Syrian-Israel Armistice Agreement and Israel's obligations under the Charter :

“ 3. *Decides further* that the said armed attack constitutes an aggression under the provisions of Article 39 of the Charter :

“ 4. *Calls upon* the Members of the United Nations to adopt the necessary measures for applying economic sanctions against Israel :

“ 5. *Decides* to expel Israel from the United Nations under Article 6 of the Charter for her persistent violation of the principles of the Charter :

“ 6. *Decides* that Israel should pay adequate compensation for the loss of and damage to life and property caused by the said attack :

“ 7. *Requests* the Secretary-General of the United Nations to render to the Security Council progress reports on the implementation of this resolution.”

By letter ¹⁰ dated 9 January 1956, the representative of the USSR requested the President of the Security Council, in accordance with rule 38 of the rules of procedure of the Council, to put the Syrian draft resolution to the vote together with the USSR amendments submitted in that letter which proposed the deletion of operative paragraphs 3, 4 and 5 of the Syrian draft resolution and their replacement by the following paragraphs :

“ 3. *Calls upon* Israel to take all necessary measures to prevent such actions :

“ 4. *Warns* Israel that any future recurrence of such actions will bring about a situation requiring the Security Council to consider the question of the application of Article 39 of the United Nations Charter.”

At the 710th meeting on 12 January 1956, the Council also had before it a joint draft resolution ¹¹ submitted by

France, the United Kingdom and the United States. After an operative paragraph condemning the Israel attack as a flagrant violation of the cease-fire provisions of the Council resolution of 15 July 1948, of the terms of the General Armistice Agreement between Israel and Syria, and of Israel's obligations under the Charter, the joint draft resolution included the following paragraphs :

“ *The Security Council,*

“ . . .

“ *Expresses* its grave concern at the failure of the Government of Israel to comply with its obligations :

“ *Calls upon* the Government of Israel to do so in the future, in default of which the Council will have to consider what further measures are required to maintain or restore the peace ;”

At the same meeting, the representative of France, speaking in support of the joint draft resolution, stated that the operation carried out by Israel armed forces on 12 December 1955 had been “ an aggressive act by its very nature . . . an act of such a nature as to come as close as possible to a breach of the peace ”. However, the military action had been limited in duration and scope and was not intended to open general hostilities against Syria. He added :

“ . . . That is the only reason why it does not fall within the scope of Chapter VII of the Charter. It was by only a very slight margin that the Council escaped having to intervene under Article 39 and the following articles of the Charter.

“ It is fortunate, certainly, that we have not been reduced to that extremity. The Security Council must nevertheless draw the inference of this case, and give the parties a solemn warning of the serious danger to peace which further incidents like those just past would involve.”

He further remarked that the three-Power draft resolution which condemned Israel for its military action, also expressed “ concern for the future ” and made it clear “ that military action of this kind is to be condemned, whether or not undertaken by way of retaliation ”. He also contended that “ the Council whose function is to preserve the peace rather than to dispense justice or distribute *a posteriori* condemnation and blame, would be failing in its duty if it did not try to find ways of making it more difficult for such incidents to recur ”.

The representative of the USSR stated that, bearing in mind that Israel had in fact disregarded the Security Council's earlier resolutions of censure for its attacks in Gaza and Qibya, the Council should “ solemnly warn Israel that any recurrence of such actions could bring about a situation requiring the Security Council to consider the question of the application of Article 39 of the Charter ”. This Article, he recalled, “ speaks of action by the Security Council to maintain or restore international peace and security in connexion with breaches of the peace and acts of aggression ”.

¹⁰ S/3528, O.R., 11th year, Suppl. for Jan.-Mar. 1956, pp. 1-2.

¹¹ S/3530 and Corr.1, O.R., 11th year, Suppl. for Jan.-Mar. 1956, pp. 2-3.

At the 711th meeting on 12 January 1956, the representative of Iran introduced a number of amendments¹² to the joint draft resolution. With reference to the second of the above-quoted paragraphs of the joint draft resolution, he stated that its terms "do not indicate in a sufficiently clear and precise manner the Council's intention to take strong and appropriate action, should there be any repetition of acts of violation of this kind". Accordingly, he proposed the deletion of this paragraph and its replacement by the following :

"Declares that the commission of such acts in the future will constitute a breach of the peace within the meaning of Article 39 of the Charter, requiring consideration by the Security Council of the measures provided for in Chapter VII of the Charter."

At the 714th meeting on 18 January 1956, the representative of Yugoslavia submitted a draft resolution¹³ "in the hope that it will render possible a unanimous decision". The second operative paragraph of this draft resolution read as follows :

"2. Calls upon the Government of Israel to refrain from such military action in the future, in default of which the Council will have to consider what other measures provided for in the Charter are required to maintain or restore the peace ;"

At the same meeting, the representative of Iran, when submitting new amendments¹⁴ to the three-Power draft resolution to replace his original amendments, stated :

"The fact that in its resolution the Council will unequivocally state that should Israel fail to comply with its obligations, it will have to consider what further measures are required to maintain or restore the peace, has also given us some satisfaction. My delegation believes that the only interpretation to be placed upon such a provision is that, if Israel commits further violations on the same scale, the Council will consider applying Chapter VII of the United Nations Charter, as would be normal in such a case."

The representative of the USSR, in examining the revised text of the joint draft resolution, inquired whether its sponsors considered that :

"... in the event that Israel again took action similar to the attack on Syrian territory in the vicinity of Lake Tiberias, such action should lead to the consideration by the Security Council of what they describe as 'measures... required to maintain or

restore the peace', and that these measures should include the possible application of Article 39 of the Charter. If that is the case, and we consider that that is our common point of view, this should be reflected in the Council's resolution."

The representative of the United Kingdom, in replying to this question, remarked that, in his view, should Israel fail to comply with its obligations in the future, "the Council would have to consider what further measures were required under the Charter to maintain or restore the peace... of course the possibility of the consideration of the application of Article 39 is in question". He added that it would be redundant and unnecessary to include in the relevant paragraph of the revised joint draft resolution any specific reference to the Charter.

The representative of the USSR proposed that the joint draft resolution should state plainly that the further measures referred to were those provided for in the Charter, thus having the resolution "carry much more weight" and "become much more definite". He contended that the resolution "would indicate how the Council should consider a given action or situation in the event of non-observance of this Council decision".

The representative of the United Kingdom, on behalf of the sponsors of the joint draft resolution, stated that they had agreed¹⁵ to add the words "under the Charter" in the relevant paragraph, which would then read :

"Calls upon the Government of Israel to do so in the future, in default of which the Council will have to consider what further measures under the Charter are required to maintain or restore the peace ;"

At the 715th meeting on 19 January 1956, the representative of Iran expressed the hope "that the Israel Government will in future refrain from the use of force, which would necessarily oblige the Council to consider the application of the provisions of Chapter VII of the Charter".

At the same meeting, the revised joint draft resolution¹⁶ was adopted unanimously.¹⁷

After the adoption of the resolution, the representative of the USSR drew attention to the relevant paragraph previously quoted, and stated :

"... it will be remembered that the Charter provides for the application of the provisions of Article 39 in the event of a threat to peace and security in any area."

¹² 711th meeting : paras. 48, 53 ; S/3532.

¹³ 714th meeting : para. 29 ; S/3536, O.R., 11th year, Suppl. for Jan.-Mar. 1956, pp. 4-5.

¹⁴ 714th meeting : para. 39 ; S/3537, O.R., 11th year, Suppl. for Jan.-Mar. 1956, pp. 5-6.

¹⁵ 714th meeting : para. 102 ; S/3530/Rev.3.

¹⁶ S/3530/Rev.3.

¹⁷ 715th meeting : para. 141 ; S/3538, O.R., 11th year, Suppl. for Jan.-Mar. 1956, pp. 6-7.

Part II

**CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER

Part III

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

CASE 2.¹⁸ CABLEGRAM DATED 5 NOVEMBER 1956 FROM THE MINISTER OF FOREIGN AFFAIRS OF THE UNION OF SOVIET SOCIALIST REPUBLICS CONCERNING "NON-COMPLIANCE BY THE UNITED KINGDOM, FRANCE AND ISRAEL WITH THE DECISION OF THE EMERGENCY SPECIAL SESSION OF THE GENERAL ASSEMBLY OF 2 NOVEMBER 1956 AND IMMEDIATE STEPS TO HALT THE AGGRESSION OF THE AFORESAID STATES AGAINST EGYPT": In connexion with the rejection of the provisional agenda on 5 November 1956.

By cablegram ¹⁹ dated 5 November 1956, the Minister of Foreign Affairs of the USSR requested the President of the Security Council to call an immediate meeting of the Council to discuss the following question:

"Non-compliance by the United Kingdom, France and Israel with the decision of the emergency special session of the General Assembly of the United Nations of 2 November 1956 and immediate steps to halt the aggression of the aforesaid States against Egypt."

Included in the cablegram was a draft resolution presented "with a view to the adoption of rapid and effective measures for stopping the aggressive war against the Egyptian people". According to the draft resolution, the Security Council considering "the necessity of taking immediate steps to put an end to the aggression launched against Egypt by the United Kingdom, France and Israel", (second preambular paragraph), would consider it essential,

"in accordance with Article 42 of the United Nations Charter, that all States Members of the United Nations, especially the United States of America and the Union of Soviet Socialist Republics, as permanent members of the Security Council having powerful air and naval forces at their disposal, should give military and other assistance to the republic of Egypt, which has been the victim of aggression, by sending naval and air forces, military units, volunteers, military instructors and other forms of assistance, if the United Kingdom, France and Israel fail to carry out this resolution within the stated time limits."

At the 755th meeting on 5 November 1956, the cablegram dated 5 November 1956 from the Minister for

Foreign Affairs of the USSR constituted item 2 of the provisional agenda. After the rejection of the provisional agenda,²⁰ several representatives explained their vote on grounds related to the substance of the question.

The representative of the USSR stated that the situation in Egypt required immediate action by the United Nations, and that the USSR Government proposed that action should be taken in accordance with Article 42 of the Charter.

The representative of the United Kingdom declared that the Soviet proposal that "all Member States — and especially the United States and the Soviet Union — should combine against the United Kingdom and France, with the approval and blessings of the United Nations . . . is an impossible proposal in terms of the United Nations . . . [which] was founded on the assumption, and its effectiveness was based on the presumption, that there would be unity among these four Great Powers".

The representative of Peru pointed out that the United Nations had reached the stage of carrying out provisional measures, the immediate purpose of which was to prevent the situation from deteriorating. The Security Council could not take any further steps before exhausting these provisional measures and before considering the major obstacles likely to impede their success. The purpose of the USSR proposal to include the item was obviously to circumvent the application of Article 40 of the Charter and, instead, to call for much more drastic measures at a time when peace was being restored and the parties were getting together with a view to a cease-fire and suspension of hostilities.

The representative of the USSR stated that his Government was proposing participation in the aid to be given to the victim of aggression by the forces of all Member States prepared to take part. This proposal was fully in accordance with the Charter. He further contended that the fact that the General Assembly was taking action on any question did not relieve the Security Council of the obligation to act, if the circumstances so demanded. This was emphasized by the fact that the General Assembly could not act under Chapter VII of the Charter. In the case under discussion, when reference was made to the use of armed forces of other Members of the United Nations, the Security Council was dealing with "an 'action' in connexion with a threat to the peace and Article 42 speaks of such action". Any objections based on the Charter were therefore unfounded.

¹⁸ For texts of relevant statements, see:

755th meeting: Peru, para. 60; USSR, paras. 41-42, 67-71.

¹⁹ S/3736, O.R., 11th year, Suppl. for Oct.-Dec. 1956, pp. 128-130.

²⁰ 755th meeting: para. 27.

Part IV

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

CASE 3.²¹ THE PALESTINE QUESTION: In connexion with report of the Secretary-General pursuant to the resolution²² of 4 April 1956 on the status of compliance given to the general armistice agreements and the resolutions of the Security Council adopted during the past year.

[Note: Article 51 was the subject of discussion in the Council in connexion with communications to and from the Secretary-General referred to in the Secretary-General's report to the Security Council.]

Pursuant to the resolution of 4 April 1956, the Secretary-General on 12 April 1956 transmitted a number of communications²³ to the President of the Security Council; on 2 May he transmitted a letter²⁴ to the President of the Council containing a preliminary report; and on 9 May he transmitted his final report²⁵ to the Security Council.

By aide-mémoires²⁶ and letters²⁷ dated 11 and 29 April, and 1, 2 and 3 May 1956, exchanged with the Secretary-General, the Governments of Egypt, Israel, Jordan, Lebanon and Syria, while reaffirming their unconditional acceptance of the cease-fire clause of the Egyptian-Israeli, Jordan-Israel, Lebanon-Israel and Syrian-Israeli General Armistice Agreements, reserved the right of self-defence as stipulated in the Charter.

In his letters²⁸ to the President of the Council and the Foreign Minister of Syria, the Secretary-General noted the reservation of Syria and stated:

"... That reservation in no way detracts from the unconditional undertaking to comply with the provisions of article III, paragraph 2, of the General Armistice Agreement. The term 'self-defence' should therefore be interpreted in conformity with the stipulations of the said paragraph and with the Charter of the United Nations."

A similar interpretation was contained in the aide-

mémoires²⁹ dated 10 and 11 April 1956, and in his letters³⁰ dated 1, 2 and 3 May 1956 to the Prime Ministers of Egypt, Israel and Jordan, and to the Foreign Minister of Lebanon.

In his report to the Security Council, the Secretary-General stated:

"44. I have had to accept reservations as to self-defence, which according to Article 51 of the Charter, is an 'inherent right'. However, such a reservation is necessarily of an indeterminate nature. As already indicated, its meaning in a concrete situation can be determined only by the Security Council, as established in the Charter.

"45. The limit set to the effect of the cease-fire assurances by the reservation as to self-defence should, in my view, be so understood as not to bring the reservation into conflict with the substance of the cease-fire assurances themselves. In my replies to the Governments I have thus taken the stand that the reservation could not derogate from the obligations assumed under article II, paragraph 2, of the General Armistice Agreement between Egypt and Israel, or under article III, paragraph 2, of the other armistice agreements.

"46. This qualification also gives rise to questions which it is difficult to answer in hypothetical cases. However, my interpretation makes it clear that the reservation as to self-defence does not permit acts of retaliation, which repeatedly have been condemned by the Security Council."³¹

The report of the Secretary-General was considered by the Security Council at its 723rd to 728th meetings between 29 May and 4 June 1956.

At the 726th meeting on 1 June 1956, the representative of Peru, referring to the report of the Secretary-General, stated:

"The promise to comply with the armistice agreements has not been vitiated by the reservation concerning the right of self-defence which the parties have made in their observations before the Security Council and, previously, to the Secretary-General. This reservation has not affected and cannot affect the obligations arising from the armistice agreements. It follows from the letter and spirit of Article 51 of the Charter that the right of self-defence is a concomitant, let us say, of every juridical institution. It is an inalienable right sanctioned by the Charter, a right originating in natural law, which consequently is of the nature of an institution *per se* and can never be considered contingent upon other obligations."

²¹ For texts of relevant statements, see:

723rd meeting: Australia, para. 95;

725th meeting: Israel, paras. 38-39; Jordan, para. 107; Lebanon, para. 151; Syria, para. 7;

726th meeting: Peru, paras. 31-34.

²² S/3575, O.R., 11th year, Suppl. for Apr.-June 1956, pp. 1-2.

²³ S/3584, O.R., 11th year, Suppl. for Apr.-June 1956, pp. 15-17.

²⁴ S/3594, O.R., 11th year, Suppl. for Apr.-June 1956, pp. 27-30.

²⁵ S/3596, O.R., 11th year, Suppl. for Apr.-June 1956, pp. 30-66.

²⁶ S/3584 (IV), O.R., 11th year, Suppl. for Apr.-June 1956, p. 16.

²⁷ S/3596, Annex 1, A; Annex 2, A; Annex 3, A; Annex 4, A; O.R., 11th year, Suppl. for Apr.-June 1956, pp. 56-60.

²⁸ S/3596, Annex 3, C; O.R., 11th year, Suppl. for Apr.-June 1956, pp. 56-60.

²⁹ S/3584 (V and VI), O.R., 11th year, Suppl. for Apr.-June 1956, p. 17.

³⁰ S/3596, Annex 1, B; Annex 2, D; Annex 4, B; O.R., 11th year, Suppl. for Apr.-June 1956, pp. 56-61.

³¹ S/3596, O.R., 11th year, Suppl. for Apr.-June 1956, p. 41.

The representative of Peru contended further that under the Charter :

“... the right of self-defence does not change the previously existing legal situation. This is a legal consideration to which the Peruvian delegation thinks it advisable to draw attention, because, under the law which existed before the Charter, when once force had been used for purposes of self-defence, the legal provisions which had existed prior to the exercise of force were affected and could be altered. Under our present law, however - - and this strengthens the positions adopted by the Secretary-General - - the right of self-defence is exercised within the jurisdiction of the Council ; it does not alter or restrict the Council's jurisdiction, and the Council remains free to pronounce on that right ...”

Generally, whenever the right of self-defence was exercised and the Council intervened under the Articles of the Charter relating to threats to the peace and breaches of the peace, it might be said that the Council acted to safeguard the previously existing legal position. There was no doubt that, when the interests of peace were involved, the Council had full jurisdiction “with regard to the incidents to which the actual exercise of the right of self-defence may give rise”.

CASE 4.³² THE TUNISIAN QUESTION (II) : In connexion with the application of Tunisia for the inclusion of the question in the agenda of the Security Council.

[Note : In an explanatory memorandum to the letter³² dated 29 May 1958, to the President of the Security Council requesting him to call a meeting for the consideration of the question : “ Complaint by Tunisia in respect of acts of armed aggression committed against it since 19 May 1958 by the French military forces stationed in its Territory and in Algeria ”, the representative of Tunisia stated : “ In a letter³³ of 13 February 1958, to the President of the Security Council, the representative of Tunisia informed the Security Council of the measures taken by the Tunisian Government in the exercise of its right of self-defence, in accordance with Article 51 of the Charter, following the aggression of Sakiët-Sidi-Youssef ”. The Tunisian Government had “ prohibited the French armed forces occupying positions in Tunisia against its wishes from engaging in any troop movements, sending French naval units into Tunisian ports, leading a parachuting reinforcement and flying French military aircraft over Tunisian territory ”. It was further stated in the letter of 13 February 1958, that should the French occupation forces “ attempt to violate these provisions, the Tunisian Government would then consider itself in a state of self-defence ”.]

At the 819th meeting on 2 June 1958, the repre-

³² For texts of relevant statements, see :

819th meeting : France, p. 33 ; Tunisia*, pp. 18-20.

³³ S/4013, O.R., 13th year, Suppl. for Apr.-June 1958, pp. 37-39.

³⁴ S/3951, O.R., 13th year, Suppl. for Jan.-Mar. 1958, pp. 12-13.

sentative of Tunisia* enumerated a series of events and incidents in which the French troops stationed in Tunisia and also the French army in Algeria were involved and stated that these events or “ any incidents of some importance ” had been brought to the attention of the Secretary-General by the representative of Tunisia, who had not failed to reserve, if necessary, the right to legitimate self-defence provided for by Article 51 of the Charter, “ should the situation be aggravated as a result of aggressive actions repeated by French forces in Tunisia or coming from Algeria ”.

The representative of France expressed the view that the reference to Article 51 by the Tunisian representative was “ an abusive reference ” designed to justify the whole series of arbitrary decisions taken not only against the French troops in Tunisia, but also against the French civil population and certain consulates of the frontier zone. That reference was also untenable juridically. Article 51

“ only authorizes the exercise of the right of legitimate defence if there has been an armed attack, and authorizes it until the Security Council has taken the measures necessary to maintain international peace and security. This text envisages therefore a single eventuality, that of armed aggression, and that did not exist at the time when Tunisia invoked Article 51, whose terms up to now have been interpreted very strictly. Furthermore, it might be pointed out that the Council had not yet been informed of the matter when the measures in question were taken.”

CASE 5.³⁵ LETTER DATED 22 MAY 1958 FROM THE REPRESENTATIVE OF LEBANON ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL CONCERNING : “ COMPLAINT BY LEBANON IN RESPECT OF A SITUATION ARISING FROM THE INTERVENTION OF THE UNITED ARAB REPUBLIC IN THE INTERNAL AFFAIRS OF LEBANON, THE CONTINUANCE OF WHICH IS LIKELY TO ENDANGER INTERNATIONAL PEACE AND SECURITY ” : In connexion with : the United States draft resolution of 15 July 1958 ; and with the Japanese draft resolution of 21 July 1958 voted upon and rejected on 22 July 1958.

[Note : The request by the Government of Lebanon to the Government of the United States and the sub-

³⁵ For texts of relevant statements, see :

827th meeting (PV) : Lebanon*, pp. 43-45 ; USSR, p. 56 ; United States, pp. 26-30 ;

828th meeting (PV) : Canada, p. 7-10 ; France, p. 6 ; United Arab Republic*, p. 17 ;

829th meeting (PV) : USSR, p. 27 ; United States, pp. 11-15, 32 ;

830th meeting (PV) : Sweden, pp. 21-25 ; United Arab Republic*, p. 3 ;

831st meeting (PV) : China, p. 53 ; Jordan*, p. 12 ; United Kingdom, pp. 13-16 ; United Arab Republic*, pp. 55-57 ;

832nd meeting (PV) : Jordan*, pp. 26-30 ;

833rd meeting (PV) : Lebanon*, p. 6 ;

836th meeting (PV) : Lebanon*, pp. 3-5.

sequent request by the Government of Jordan³⁶ to the Governments of the United Kingdom and the United States for military help so as to preserve Lebanon's and Jordan's territorial integrity and political independence gave rise to discussion whether those requests as well as the help rendered were in accordance with the provisions of Article 51 of the Charter.]

At the 827th meeting on 15 July 1958, the representative of the United States stated that the request from the Government of Lebanon to another Member of the United Nations to come to its assistance was entirely consistent with the provisions and purposes of the United Nations Charter. The United States was acting pursuant to what the Charter regarded as an inherent right, the right of all nations to work together to preserve their independence. The United Nations, if it were to succeed in its efforts to maintain international peace and security, should support the efforts "of the legitimate and democratically elected Government to protect itself from aggression from without, even if that aggression is indirect". The United Nations had sought to provide means for dealing with such "aggressive developments" in the future when in 1949 and 1950 the General Assembly had adopted the Essentials of Peace and Peace through Deeds resolutions. The representative of the United States quoted the following provisions of the latter resolution :

"Condemning the intervention of a State in the internal affairs of another State for the purpose of changing its legally established government by the threat or use of force,

"1. Solemnly reaffirms that, whatever the weapons used, any aggression, whether committed openly, or by fomenting civil strife in the interest of a foreign power, or otherwise, is the gravest of all crimes against peace and security throughout the world ;

"2. Determines that for the realization of lasting peace and security it is indispensable : (1) that prompt united action be taken to meet aggression wherever it arises ;"

and stated that this resolution "applies very definitely" to the situation confronting the Council.

The representative of Lebanon* contended that in the face of the danger which threatened the independence of Lebanon and to maintain international peace and security in the Middle East, pending the fulfilment of the action which it had requested the Council to take, the Government of Lebanon had "decided to implement Article 51 of the Charter" which recognized the right of self-defence, individual or collective, and it had requested the direct assistance of friendly countries.

The representative of the USSR stated that the Charter "provides for the right to individual or collective self-defence if there is an armed attack upon a Member of the United Nations, pending action by the Security Council in defence of international peace and security". With regard to the question before the Council, the situation, however, was entirely different. The Security Council

"... is already acting. It has taken a decision which allows for the settlement of the situation inside the country. Nobody has attacked Lebanon and there is not even a threat of an armed attack in Lebanon. It is obvious that this reference to the Charter has absolutely no relevance to this case ..."

At the 828th meeting on 15 July 1958, the representative of France referred to the decision of the United States to reply immediately to the appeal of the Government of Lebanon to other Members of the United Nations for support and declared that in the view of the Government of France this decision was "justified under the provisions of Article 51 of the Charter".

The representative of the United Arab Republic* stated that it seemed "that Article 51... does not even allow" for the unilateral decision of the Government of the United States to intervene. Article 51 "demands armed aggression as a condition". There was further a decision of the Council which should be carried out and which was being carried out by the United Nations Observation Group in Lebanon.

At the 829th meeting on 16 July 1958, the Security Council had before it a draft resolution,³⁷ submitted by the United States, preambular paragraphs 3 and 4 of which read :

"The Security Council,

"...

"Recalling that the 'Essentials of Peace' resolution of the General Assembly of 1 December 1949 calls upon States to refrain from any threats or acts, direct and indirect, aimed at impairing the freedom, independence or integrity of any State, or at fomenting civil strife and subverting the will of the people of any State,

"Recalling that the 'Peace through Deeds' resolution of the General Assembly of 18 November 1950 condemned 'intervention of a State in the internal affairs of another State for the purpose of changing its legally established government by the threat or use of force' and solemnly reaffirms that 'whatever weapons used, any aggression, whether committed openly or by fomenting civil strife in the interest of a foreign power, or otherwise, is the gravest of all crimes against peace and security throughout the world'.

"..."

The representative of the United States noted that mention of these resolutions was relevant because it reminded the Council that the United Nations must meet and deal effectively with the problem of indirect aggression. The integrity and independence of a nation was as precious when "it is attacked from outside by subversion and erosion as when it is attacked in the field of military action".

The representative of the USSR pointed out that the Charter provided "specifically" that the right of self-defence "is enjoyed when there is a direct attack, when a State is threatened from outside". However, neither

³⁶ See chapter VIII, pp. 121-128.

³⁷ S/4050 and Rev.1.

the Council nor any other organ of the United Nations had noted that such a situation had prevailed in Lebanon and it had not done so because this situation did not exist.

At the 830th meeting on 16 July 1958, the representative of Sweden stated that when the Council proceeded to consider the question before it in the new situation created by the request of the Government of Lebanon to the Government of the United States for military assistance to maintain Lebanon's territorial integrity and political independence, two aspects must be kept apart. Citing Article 2(7), he observed, first, that a decision of one State to request assistance from another in order to stabilize the internal situation in the former, was not a question falling directly within the jurisdiction of the United Nations. On the other hand, it had been stated that the United States had acted in accordance with the principle expressed in the Charter on collective self-defence. It was "apparently considered that measures have been taken in accordance with Article 51, or at least in the spirit of this Article". According to the Charter, measures of this kind came under the examination of the Council. One of the conditions

"... for Article 51 to be applicable is that an armed attack has occurred against a Member State. The Swedish Government does not consider that this condition has been fulfilled in the present case, nor does my Government consider that there is an international conflict in the terms of Article 51."

At the 831st meeting on 17 July 1958, the representative of Jordan* stated that faced with a threat to its integrity and independence through imminent foreign aggression and an attempt by the United Arab Republic to create internal disorder and to overthrow the existing regime, the Jordan Government, in accordance with the provisions of Article 51, had requested the Governments of the United Kingdom and the United States to come to its immediate help.

The representative of the United Kingdom contended that there was nothing either in the Charter or in the established rules of international law to inhibit a Government from asking a friendly Government for military assistance as a defensive measure when it considered itself to be in danger. Nor was there anything to inhibit the Government thus appealed to from responding. He stated further that the method of indirect aggression, "the method of subversion and the attempt to overthrow the constituted authority can be just as dangerous as the open variety". This was the common factor linking the situation in Jordan and Lebanon, "the factor of indirect aggression".

The representative of China contested the interpretation of Article 51 by the representative of Sweden who "would limit the application of Article 51 to cases of direct aggression". In his view, in the present period of world history "indirect aggression is as dangerous as direct aggression".

The representative of the United Arab Republic* observed that in his belief the statement of the representative of Sweden on the applicability of Article 51 was "a very accurate interpretation" of the Charter.

At the 833rd meeting on 18 July 1958, the representative of Lebanon* stated that

"Article 51 does not speak of direct armed attack. It speaks of armed attack. It wishes to cover all cases of attack, direct or indirect, so long as it is an armed attack... is there any difference from the point of view of the effects between direct armed attack or indirect armed attack if both of them are armed and if both of them are designed to menace the independence of a country? ... if both of them are designed to suppress the independence of a country or could even threaten that independence? What difference is there between armed soldiers in uniform attacking a given region in a given country and these same troops still armed but without uniforms infiltrating secretly this area in order to regroup themselves there and then start hostilities, the same type of hostilities as those which would be started by uniformed troops? ... this distinction between direct armed attack and indirect armed attack is strictly fictitious."

At the 834th meeting on 18 July 1958, the United States revised draft resolution³⁸ was not adopted. There were 9 votes in favour, 1 against with 1 abstention (the negative vote being that of a permanent member).³⁹

At the 835th meeting on 21 July 1958, the representative of Japan submitted a draft resolution⁴⁰ in which it was provided:

"The Security Council,

"...

"1. Requests the Secretary-General to make arrangements forthwith for such measures in addition to those envisaged by the resolution of 11 June 1958, as he may consider necessary in the light of present circumstances, with a view to enabling the United Nations to fulfil the general purpose established in that resolution, and which will, in accordance with the Charter, serve to ensure the territorial integrity and political independence of Lebanon, so as to make possible the withdrawal of United States forces from Lebanon;

"..."

At the 836th meeting on 22 July 1958, the representative of Lebanon* stated that the Government of Lebanon had been of the opinion that the first action taken by the Security Council on 11 June 1958 might suffice in order to cope with the situation as it had existed at that time, but when experience had shown that this action had been inadequate to cope with the situation and when the danger had begun to threaten the independence and the territorial integrity of Lebanon, the Government, not having been able to protect itself against this threat, had had "to have recourse to Article 51 of the Charter and to request the assistance of friendly countries". At that time, Lebanon also had

³⁸ S/4050/Rev.1.

³⁹ 834th meeting (PV): p. 46.

⁴⁰ S/4055.

requested the assistance of the United Nations. The Government of Lebanon, which had had recourse to "the implementation of Article 51", would "not be prepared to abandon the application of Article 51 nor to deprive ourselves of this aid", unless the action taken by the United Nations was adequate to achieve the two goals stated in the Japanese revised draft resolution, i.e., the cessation of the infiltration of armed men and the sending of arms through the Lebanese frontiers as well

as the maintenance of the territorial integrity and political independence of Lebanon.

At the 837th meeting on 22 July 1958, the Japanese revised draft resolution⁴¹ was not adopted. There were 10 votes in favour and 1 against (the negative vote being that of a permanent member).⁴²

⁴¹ S/4055/Rev.1.

⁴² 837th meeting (PV) : pp. 7-10.