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REPORT OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED IN
PURSUANCE OF RESOLUTION 253 (1968) CONCERNING THE QUESTION
OF SOUTHERN RHODESIA IN IMPLEMENTATION OF PARAGRAPHS 3,
12, AND 8 OF SECURITY COUNCIL RESOLUTIONS 409 (1977),
411 (1977) AND 445 (1979), RESPECTIVELY

1. On 27 May 1977, the Security Council, having considered the Committee's second special report (S/12296) on the expansion of sanctions against Southern Rhodesia, adopted resolution 409 (1977), paragraph 3 of which reads as follows:

"The Security Council,

...

"Decides to meet not later than 11 November 1977 to consider the application of further measures under Article 41 of the Charter, and meanwhile requests the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia to examine, in addition to its other functions, the application of further measures under Article 41 and to report to the Security Council thereon as soon as possible."

2. On 30 June 1977, the Security Council, after considering the complaint by Mozambique, adopted resolution 411 (1977), paragraph 12 of which reads as follows:

"The Security Council,

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"Calls upon all States to implement strictly Security Council resolutions on sanctions and requests the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia to examine as a matter of priority further effective measures to tighten the scope of sanctions in accordance with Article 41 of the Charter and urgently submit its appropriate recommendations to the Council."

3. On 18 November 1977, the Committee submitted an interim report (S/12450) in implementation of paragraphs 3 and 12 of Security Council resolutions 409 (1977) and 411 (1977), respectively. To that report the Committee appended a number of

proposals submitted by various delegations, from which, for lack of sufficient time necessary to examine them in detail, it had been unable to make any specific recommendations to the Council.

4. Also on 8 March 1979, the Security Council, after considering the question with regard to the situation in Southern Rhodesia, adopted resolution 445 (1979), paragraph 8 of which reads as follows:

"The Security Council,

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"8. Requests the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia to meet immediately to consider measures for strengthening and widening the sanctions against Southern Rhodesia and to submit its proposals not later than 23 March 1979.

5. By a letter dated 23 March 1979 addressed to the President of the Security Council by the Chairman of the Committee (S/13191) the Committee submitted another interim report in implementation of paragraph 8 of Security Council resolution 445 (1979). That report contained a specific recommendation on the question of any potential unilateral repeal of the Security Council mandatory sanctions against the illegal régime in Southern Rhodesia; namely, that the Security Council should remind States of their obligation to comply strictly with the decisions of the Council in accordance with Article 25 of the Charter. It also listed a range of areas available to it at the time from which the Committee hoped to extract other specific proposals for submission to the Council in the present substantive report.

6. The present report represents the Committee's comprehensive effort to implement the relevant paragraphs of all three Security Council resolutions, 409 (1977), 411 (1977) and 445 (1979). Since the submission of the later interim report the Committee has held 15 meetings, in the course of which it has had an opportunity to consider not only the proposals and general items previously intimated to the Council, but also some additional ones received by the Committee since then. The present report was adopted at the 341st meeting on 3 May 1979.

7. In the course of its deliberations the Committee noted that the present system of sanctions against the illegal régime in Southern Rhodesia covers a wide range of measures, which could topple that régime, were they implemented scrupulously, or at all, by certain of the Member States. The Committee reviewed the scope of the existing sanctions and noted that the present sanctions deal with: non-recognition of the illegal régime (resolutions 277 (1970), para. 2; 288 (1970), para. 5; 328 (1973), para. 7); non-recognition, official or otherwise, of any act performed by officials and institutions of the illegal régime (resolution 277 (1970), para. 3); non-recognition of any internal settlement under the auspices of the illegal régime (resolution 423 (1978), operative para. 2); interruption of economic relations with Southern Rhodesia -

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i.e. prevention of importing of any goods from Southern Rhodesia or of Southern Rhodesian origin, including chrome ore; repeal of legislation permitting importation of minerals and other products from Southern Rhodesia; prevention of exporting of any goods to Southern Rhodesia; measures against providing any facilities for transport of goods to and from Southern Rhodesia; measures against conducting and facilitating any transaction or trade that may enable Southern Rhodesia to obtain from or send to any country any goods and services; measures against providing economic or financial aid to the illegal régime; calling for enactment of national legislation to provide for the imposition of severe penalties on persons natural or juridical that evade or commit breach of sanctions, and also enactment of legislation to forbid insurance companies from covering airflights, individuals and cargo thereon, and marine cargo thereon, and marine cargo into and out of Southern Rhodesia. (See resolutions 232 (1966), paras. 2, 5; 253 (1968), paras. 3, 4; 277 (1970), para. 3; 314 (1972), paras. 3 and 4; and 333 (1973), paras. 3, 4, 6 and 7.); interruption of any existing means of transport to and from Southern Rhodesia (resolutions 253 (1968), para. 6; 277 (1970), para. 9 (b)); severance of all diplomatic, consular, trade, military and other relations between Member States and the illegal régime and termination of any representation that Member States may have maintained in Southern Rhodesia (resolutions 253 (1968), para. 10; 277 (1970), para. 9 (a)); prevention of emigration to Southern Rhodesia (resolution 253 (1968), para. 8); prevention of entry into territories of Member States of persons travelling on Southern Rhodesian passports or persons ordinarily resident in Southern Rhodesia whom Member States have reason to believe to have furthered or encouraged the unlawful activities of the illegal régime /resolution 253 (1968), para. 5 (a), (b)/; and refusal of any request for, and suspension from, membership in any international and regional organization of the illegal régime /resolution 277 (1970), paras. 12 and 13/; appropriate measures by Member States to ensure that their nationals and persons in their territories do not insure: (a) any commodities or products exported from Southern Rhodesia after the date of the present resolution in contravention of Security Council resolution 253 (1968) which they know or have reasonable cause to believe to have been so exported; (b) any commodities or products which they know or have reasonable cause to believe to be destined or intended for importation into Southern Rhodesia after the date of the present resolution in contravention of resolution 253 (1968); (c) commodities, products or other property in Southern Rhodesia of any commercial, industrial or public utility undertaking in Southern Rhodesia, in contravention of resolution 253 (1968); (resolution 388 (1976), para. 1); prevention by Member States of their nationals and persons in their Territories from granting to any commercial, industrial or public utility undertaking in Southern Rhodesia the right to use any trade name or from entering into any franchising agreement involving the use of any trade name, trade mark or registered design in connexion with the sale or distribution of any products, commodities or services or services of such an undertaking (resolution 388 (1976), para. 2); and prohibition by Member States of the use or transfer of any funds in their territories by the illegal régime in Southern Rhodesia, including any office or agent thereof, or by other persons

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or bodies within Southern Rhodesia, for the purposes of any office or agency of the illegal régime that is established within their territories other than an office or agency so established exclusively for pensions purposes (resolution 409 (1977), para. 1).

8. Three delegations expressed the view that not all the sanctions listed in paragraph 7 above were mandatory. Two delegations felt that the Committee was not entitled to pronounce itself on what sanctions established by the Security Council are mandatory or not. All the other members of the Committee were of the view that all those sanctions were mandatory.

9. In view of the fact that the existing sanctions against the illegal régime have not had the desired effect, the Committee feels that what is now needed is a new set of measures and new appeals by the Security Council aimed at ensuring more effective implementation of the present sanctions, closing the existing loop-holes and expanding the present range of sanctions under Chapter VII of the Charter. To that end, the Committee submits hereunder a number of general and specific recommendations which have achieved consensus, and a certain number of recommendations which express the very firm opinion of the majority of the members but on which it was not possible to achieve consensus.

10. The Committee took note of paragraph 6 of Security Council resolution 445 (1979) and Security Council resolution 448 (1979) in which the Council declared that any elections held under the auspices of the illegal régime and the results thereof are null and void and that no recognition should be accorded either by the United Nations or any Member States to any representative or organ established by that process. Similarly, the majority of the Committee maintains the view that any form of recognition of the process of elections under the auspices of the illegal régime and the results thereof would seriously undermine the effective implementation of sanctions against the illegal régime, and that this question is within the terms of reference of the Committee.

General recommendations

11. Bearing in mind the inevitable inference that the illegal régime in Southern Rhodesia has survived the full effect of the sanctions through the failure of certain States to implement those sanctions scrupulously, if at all, either deliberately, negligently or unwittingly, the Committee wishes to make the following general recommendations, namely, that the Security Council should:

- (i) Demand from the States which do not comply with the sanctions against Southern Rhodesia, to submit to the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, information on the legislative, administrative and other measures taken by them to prevent violations of the existing sanctions;

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- (ii) Decide that all States which thus far have not done so should take effective enforcement actions to ensure strict compliance by all associations, bodies corporate and individuals under their jurisdiction with the sanctions imposed by the Security Council.

12. There was no agreement to include a further general recommendation by which the Security Council would decide that all States which thus far have not done so discontinue any action which might confer a semblance of legitimacy on the illegal régime, inter alia, by forbidding the operation and activities of companies of the Southern Rhodesian régime or any other activities, which contravene the aims and purposes of the sanctions.

Specific recommendations

Application of the sanctions against Southern Rhodesia to the full extent of Article 41 of the Charter

13. Some delegations deemed it necessary to recommend that the Security Council apply against the illegal, racist régime the full scope of the measures provided for in Article 41 of the United Nations Charter, including such sanctions that would prohibit all States to enter into transactions whatsoever to maintain rail, sea, air, postal, telegraphic, radio and other means of communication with Southern Rhodesia as well as cultural and other relations. However, there was no agreement in the Committee to make any specific recommendation on this item.

Airline companies maintaining air links with Southern Rhodesia

14. It was not possible to achieve consensus on specific recommendations on this item, but a majority of the Committee supported the recommendation that the Security Council should call upon all States to take appropriate measures to:

- (i) deny landing rights or overflying facilities to aircraft of any airline companies operating to or from Southern Rhodesia, or on behalf of the illegal régime in Southern Rhodesia;
- (ii) recommend to all airline companies constituted in their territories that are members of the International Air Transport Agreement (IATA) to effect the expulsion from that organization of any member airline companies that continue to maintain interline agreements with any airline company constituted in Southern Rhodesia.

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Information or other representational offices of the illegal régime abroad

15. The Committee noted with dismay that, in spite of the provisions of paragraphs 9 (b) and 1 of Security Council resolutions 277 (1970) and 409 (1977) respectively, representational offices of the illegal régime in Southern Rhodesia continue to operate in the territories of certain Member States. Therefore, the Committee recommends that the Security Council should:

- (i) Restate, as a matter of principle, that the permission by any Member State of the operation in its territory of information or other representational offices of the illegal régime in Southern Rhodesia, is contrary to the mandatory sanctions established by the Council against that régime;
- (ii) Call upon all States to prohibit the establishment in their territories of information or other representational offices of the illegal régime, or to effect the closure forthwith of any such offices still operating in their territories, except offices or agencies of the illegal régime established abroad exclusively for pension purposes, as permitted under the provisions of paragraph 1 of Security Council resolution 409 (1977).

Mercenaries serving with the armed forces of the illegal régime

16. The Committee recalled that the general question of mercenaries had previously been treated by the Security Council in its resolutions 239 (1967) 1/ and 405 (1977), 1/ which provided a suitable basis for a specific recommendation with regard to the question of potential mercenaries for, or those serving with the armed forces of the illegal régime. The Committee also recalled the definition of "mercenary" incorporated in article 47 of Protocol I to the Geneva Conventions of 1949. 1/ A majority of the Committee further took note of the definition of "mercenary" adopted by the Assembly of Heads of State and Governments of the Organization of African Unity in Libreville, Gabon, in 1977 and quoted in the Declaration of Cotonou as a result of the International Conference on Mercenaries held in Cotonou, Benin, from 9 to 16 January 1978. 1/

17. Consequently, the Committee recommends that the Security Council should call upon all States to adopt such legal and administrative measures as are necessary to ensure that no individuals or group of individuals operate within their territories for the purpose of recruiting, arming or sending mercenaries to fight in aid or on behalf of the forces of the illegal régime of Southern Rhodesia, or for training persons for the purpose of taking up employment as mercenaries with the illegal régime. Such measures should include prohibition of advertisements in the information or other media operating from their territories for such purposes. States should also take measures they deem appropriate against persons under their jurisdiction, thus recruited, who may henceforth be proven to have served as mercenaries with the illegal régime.

1/ Relevant extracts from the resolutions, Protocol I to the Geneva Conventions and the Declaration of Cotonou are reproduced in the annex to the present report.

Extension of sanctions to South Africa 2/

18. The Committee noted that persistent and active support for Southern Rhodesia by South Africa remains the main obstacle to the effective implementation of sanctions against the illegal régime. South Africa is the life-line of Southern Rhodesia through actions originating in its territory, from the territory of Southern Rhodesia or from third countries. South Africa has also persistently refused to co-operate with the United Nations in the observance and implementation of sanctions against Southern Rhodesia. Moreover, the Security Council has on several occasions condemned that Government for such and other negative policies 3/ and has expressed its deep concern and conviction that sanctions cannot succeed unless, inter alia, measures are taken against States which violate them. 4/

19. Accordingly, the Committee strongly recommends that the Security Council should consider measures against South Africa, in order to strengthen sanctions against Southern Rhodesia.

20. A majority of the Committee supported a further recommendation that the Security Council extend to South Africa the full scope of the sanctions provided for in Chapter VII of the Charter, including a mandatory embargo on the supply of petroleum and petroleum products. However, it was not possible to achieve consensus on that recommendation.

Sports activities concerning Southern Rhodesia

21. It was not possible to achieve consensus on a specific recommendation on this item, but a majority of the Committee supported the recommendation that the Security Council should formally prohibit in mandatory form participation by nationals of Member States in sports events of a nationally representative nature, for teams or individuals, involving Southern Rhodesia by calling upon all States to prohibit their nationals from travelling to Southern Rhodesia, and not to admit into their territories any persons ordinarily resident in Southern Rhodesia, for the purpose of participating in such sports activities.

Supply of military equipment to Southern Rhodesia

22. The Committee observed that violations of the existing arms embargo to Southern Rhodesia appear to begin with legally-sanctioned transfers which are then redirected, somewhere between the supplier and the alleged legal recipient. This redirection appears to be effected by private arms brokers or middlemen of diverse nationality, operating from diverse nations who are able to evade government restrictions through forged documents, clandestine shipments, etc. Therefore, the Committee recommends that the Security Council should call on all States:

2/ Some delegations entered the reservation that this question was not within the mandate of the Committee.

3/ See for instance Security Council resolution 277 (1970), para. 6, 320 (1972), sixth preambular paragraph and 333 (1973), fourth preambular paragraph.

4/ Security Council resolution 326 (1973), sixth preambular paragraph.

(a) To observe strictly the arms embargo against Southern Rhodesia, understanding that their responsibilities in this regard might well extend beyond satisfying themselves as to the legality of formal government-to-government, government-to-company or company-to-government arms transfers;

(b) To review their existing legal, customs, investigative and police measures, both those taken nationally and those taken in co-operation with other nations, taking note of recent violations, with the aim of effectively stopping the illegal trade in arms to Southern Rhodesia through private arms brokers.

More specifically, the Committee recommends that the Security Council should call upon all States:

(c) To urge strongly suppliers of arms, military equipment and ammunition under their jurisdiction to include in contracts a clause forbidding re-exportation to Southern Rhodesia, noting that such re-exportation is in violation of law and regulation and that violators would be subject to penalties arising under such laws and regulations;

(d) To enact and enforce legislation against suppliers under their jurisdiction who might be found to be exporting or re-exporting arms, military equipment and ammunition for resale to Southern Rhodesia;

(e) To include in intergovernmental contracts, bilateral or multilateral, a clause prohibiting re-exportation to Southern Rhodesia, violation of which should bring into force effective enforcement measures against the offending party. Such measures might include, among others:

- (i) Cessation of spare-parts supply;
- (ii) Cessation of outstanding supply of arms, military equipment and ammunition;
- (iii) Non-conclusion of further contracts for the supply of arms, military equipment and ammunition;

(f) The Committee is of the view that strict penalties should be imposed on shippers who have been proved to have evaded or violated sanctions against the illegal régime in Southern Rhodesia, since this could further deter such illegal shipments to Southern Rhodesia. Such penalties may include non-insurance of freight and freight services to such shippers. In this connexion, the Committee recommends to the Security Council to urge all States to review their laws and regulations regarding sanctions violations by any person or firm under their jurisdiction, particularly those dealing with insurance, to ensure that the penalties for such violations are commensurate with their seriousness.

Furthermore, the Committee recommends that the Security Council should:

(g) Authorize the Committee to maintain close co-operation with the Security Council Committee established under resolution 421 (1977) concerning the question

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of South Africa, noting that the effectiveness of that Committee will greatly enhance the control and elimination of South Africa as a market for resupplying and/or re-exporting of arms, military equipment and ammunition to Southern Rhodesia.

Supply of oil and oil products to Southern Rhodesia

23. The Committee has always pointed out the importance of oil and oil products to the economic and social activity of the illegal régime, a point that was recognized by the Security Council as early as 1966 (resolutions 221 (1966), paras. 2-4 and 232 (1966), para. 2 (f)). Continued supplies of those products to the illegal régime over the years has therefore greatly undermined the effectiveness of the sanctions against the régime. In this connexion the Committee wishes to draw the attention of the Security Council to the letter of its Chairman published in document S/12894, transmitting to the Council for its own consideration the case of violation of sanctions against Southern Rhodesia in the field of oil and oil products by certain international oil companies.

24. In view of the foregoing the Committee recommends that the Security Council should call upon all States strictly to observe existing sanctions regarding the supply of oil and oil products to Southern Rhodesia, and, in this connexion, to review their sanctions legislation and enforcement measures regarding their corporate entities that may be involved, directly or indirectly, in the sale or export of oil and oil products to Southern Rhodesia with a view to stopping completely the illegal traffic in such supplies.

25. The majority of the Committee further supported the recommendation that the Security Council should call upon the United Kingdom, the United States, France, and other relevant Governments, to obtain from the South African Government within three months, verifiable guarantees for transmittal to the Security Council that no oil or oil products would be exported from South Africa to Southern Rhodesia. In the event of failure to secure such guarantees from the South African Government, it is recommended that the Security Council should impose in mandatory form an embargo on the supply of crude oil and petroleum to South Africa itself.

26. It was also proposed to recommend that the Security Council decide that all States which thus far have not done so should take all effective measures against international companies and agencies which supply petroleum and petroleum products to the illegal régime in Southern Rhodesia. However, there was no agreement in the Committee to make a specific recommendation on the item in those terms.

Foreign companies operating in Southern Rhodesia

27. The Committee recommends that the Security Council should call upon all States to demand of companies constituted in their territories which have subsidiaries in Southern Rhodesia to terminate any existing linkage with them, which is in violation of sanctions.

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ANNEX

1. Paragraphs 2 and 3 of Security Council resolution 239 (1967) adopted in connexion with the question concerning the Democratic Republic of the Congo:*

"The Security Council,

...

"2. Condemns any State which persists in permitting or tolerating the recruitment of mercenaries, and the provision of facilities to them, with the objective of overthrowing the Governments of States Members of the United Nations;

"3. Calls upon Governments to ensure that their territory and other territories under their control, as well as their nationals, are not used for the planning of subversion, and the recruitment, training and transit of mercenaries designed to overthrow the Government of the Democratic Republic of the Congo; ..."

2. Paragraphs 3, 4, 5 and 6 of Security Council resolution 405 (1977) adopted in connexion with the complaint by Benin:

"The Security Council,

...

3. Reaffirms its resolution 239 (1967) which, inter alia, condemns any State which persists in permitting or tolerating the recruitment of mercenaries and the provision of facilities to them, with the objective of overthrowing the Governments of States Members of the United Nations;

4. Calls upon all States to exercise the utmost vigilance against the danger posed by international mercenaries and to ensure that their territory and other territories under their control, as well as their nationals, are not used for the planning of subversion and recruitment, training and transit of mercenaries designed to overthrow the Government of any Member States of the United Nations;

5. Further calls upon all States to consider taking necessary measures to prohibit, under their respective domestic laws, the recruitment, training and transit of mercenaries on their territory and other territories under their control;

6. Condemns all forms of external interference in the internal affairs of Member States, including the use of international mercenaries to destabilize States and/or to violate the territorial integrity, sovereignty and independence of States; ..."

* Now known as Zaire.

3. Paragraph 2 from article 47 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of internal armed conflicts (Protocol I) (A/33/144, annex I) adopted on 8 June 1977 by the Diplomatic Conference on Reaffirmation and Development of Humanitarian Law Applicable in Armed Conflict:

"2. A mercenary is any person who:

(a) is specially recruited locally or abroad in order to fight in an armed conflict;

(b) does, in fact, take a direct part in the hostilities;

(c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

(d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

(e) is not a member of the armed forces of a Party to the conflict; and

(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces."

4. Extract from the Declaration of Cotonou adopted by the International Conference on Mercenaries held at Cotonou, Benin, from 9 to 16 January 1978 (S/12557).

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"The use of mercenaries thus appears to be a crime, in accordance with the Convention adopted by the Assembly of Heads of State and Government of OAU at Libreville in 1977:

Any individual, group or association, any representative of a State or any State itself which, with a view to using armed violence to oppose a process of self-determination or to attack the territorial integrity of another State, commits one of the following acts shall be regarded as having committed the crime of being involved in the activities of mercenaries:

(a) Sheltering, organizing, financing, supplying, equipping, training, promoting, supporting or employing in any manner whatsoever armed forces composed wholly or in part of persons who are not nationals of the country in which they are to operate for personal material or other gain;

/...

(b) Enrolling, enlisting or attempting to enlist in the above-mentioned forces;

(c) Permitting the development in territories under its sovereignty or in any other place under its control of the activities mentioned in subparagraph (a) or granting facilities for the transit, transport or any other operation of the above-mentioned forces. ..."
