Speaking in explanation of joining the consensus the representative of the United States of America stated that he did so on the understanding that the language of the resolution fell under Chapter VI of the Charter and did not imply any Chapter VII determination. He emphasized the sensitivity of the United States to the limits of the Security Council’s jurisdiction imposed by Article 2, paragraph 7, of the Charter under which no organ of the United Nations was authorized to intervene in matters which were essentially within the domestic jurisdiction of any State, except where enforcement measures under Chapter VII were to be applied. He added that that resolution before the Council was not providing for enforcement measures.\footnote{1301}

The representative of the United Kingdom explained that his support for the resolution in no way indicated any diminution of the importance the United Kingdom attached to the strictest adherence to Article 2, paragraph 7, of the Charter and that Article 2, paragraph 7, was qualified by the parallel duty of the United Nations under Articles 55 and 56 of the Charter to concern itself with questions of human rights and fundamental freedoms.\footnote{1301}

At the end of the meeting the President noted that in accordance with the resolution adopted by the Council it remained seized of the matter.\footnote{1302}

On 3 August 1976, the Special Committee against Apartheid transmitted a special report\footnote{1303} entitled “The Soweto massacre and its aftermath”. The Special Committee recommended that the Security Council again consider the situation in South Africa in the light of the defiance by the South African régime of the relevant resolutions of the Council, in particular resolution 392 (1976), and the continued aggravation of the situation by massive repression. The Special Committee further recommended that the Security Council declare that the rapidly worsening situation in South Africa resulting from the policies of apartheid of the Pretoria régime was a grave threat to international peace and security, and that the Council take early action under Chapter VII of the Charter of the United Nations.

COMPLAINT BY THE PRIME MINISTER OF MAURITIUS, CURRENT CHAIRMAN OF THE OAU, OF THE “ACT OF AGGRESSION” BY ISRAEL AGAINST THE REPUBLIC OF UGANDA

Decision of 14 July 1976 (1943rd meeting): rejection of the two-Power draft resolution

By letter\footnote{1304} dated 6 July 1976 addressed to the President of the Security Council, the Assistant Executive Secretary of the Organization of African Unity (OAU) transmitted the text of a telegram by the Prime Minister of Mauritius, the current Chairman of the OAU. The telegram stated that on 4 July, the Assembly of Heads of State and Government of the OAU in Mauritius had received information concerning the invasion of Uganda by Israeli commandos and had decided to request the Security Council to meet urgently to consider that wanton act of aggression against a Member State of the United Nations.

By letter\footnote{1305} dated 6 July 1976 addressed to the President of the Security Council the representative of Mauritania, as Chairman of the African Group for the month of July, requested the President to convene a meeting of the Council as a matter of urgency to consider the contents of the telegram of 6 July from the Chairman of OAU.

By earlier letter\footnote{1306} dated 4 July 1976 addressed to the Secretary-General, the representative of Israel transmitted excerpts from a statement made by the Prime Minister of Israel with regard to an operation conducted by the Israeli Defence Forces at Entebbe international airport in Uganda. The Prime Minister stated that the decision to undertake the operation had been taken by the Government of Israel on its sole responsibility and described it as an achievement in the struggle against terrorism.

By another letter\footnote{1307} dated 5 July 1976 addressed to the President of the Security Council the representative of Uganda transmitted the text of a message dated 4 July from the President of the Republic of Uganda charging that the Israeli invasion had been well-planned with the full co-operation of some other countries, including Kenya and the Western Powers. Uganda requested that Israel be condemned in the strongest possible terms for its aggression.\footnote{1308}

At the 1939th meeting on 9 July 1976 the Council included the four letters in its agenda\footnote{1309} and considered the item from the 1939th to 1943rd meetings between 9 and 14 July 1976.

In the course of its deliberations the Council invited the representatives of Cuba, the Federal Republic of Germany, Guinea, India, Israel, Kenya, Mauritania, Mauritius, Qatar, Somalia, Uganda, the United Republic of Cameroon and Yugoslavia at their request to take part in the discussions without the right to vote.\footnote{1310}

\footnotesize{\textit{1300} S/12128 ibid p. 7
\textit{1301} Ibid., paras. 289-292
\textit{1302} Ibid., paras. 293-307
\textit{1303} Ibid., para. 337.
\textit{1304} S/12126, OR, 31st yr., Suppl. for July-Sept. 1976, p. 6
\textit{1305} In a letter dated 7 July (S/12131, OR, 31st yr., Suppl. for July-Sept. 1976, p. 9) the representative of Kenya replied to the charges made by Uganda, denying that Kenya ever had been or ever would be used as a base for aggression against any other country. The Israeli aircraft had been permitted to land at Nairobi airport purely on humanitarian grounds and in accordance with international law. Kenya, therefore, could not be held responsible in any manner or form for collaborating with the forces hostile to Africa. In a subsequent letter dated 12 July (S/12140, OR, 31st yr., Suppl. for July-Sept. 1976, pp. 16, 17) the Minister for Foreign Affairs of Kenya stated that a very serious situation had arisen in the wake of the allegations by Ugandan authorities charging Kenya with collaboration in the Israeli raid at Entebbe airport. He charged that Uganda had recently built up its military forces along the border with Kenya, thus increasing tension and the danger of avoidable incidents in the area.
\textit{1306} Preceding the adoption of the agenda the representative of the USSR expressed the understanding that the words in inverted commas, “act of aggression”, were taken from the telegram from the Chairman of the OAU, the Prime Minister of Mauritius (S/12126, annex), which referred to “this unprecedented aggression against Uganda by Israel” (1939th mgs., para 4).
\textit{1310} For details, see chapter III}
At the 1939th meeting the Secretary-General stated that the case before the Council raised a number of complex issues because in this instance the response of one State to the results of an act of hijacking involved an action affecting another sovereign State. The world community was currently required to deal with unprecedented problems arising from acts of international terrorism, which raised many issues of a humanitarian, moral, legal and political character for which currently no commonly agreed rules or solutions existed. He hoped that the Council would find a way to point the world community in a constructive direction so that it might be spared a repetition of the human tragedies of the past and the type of conflict between States which was currently before the Council.1313

The representative of Uganda gave a detailed account of the events at Entebbe on 28 June 1976 and said that his country had never condoned international piracy and it was therefore not true, as Israel had alleged, that Uganda had collaborated with the hijackers. The Ugandan Government became involved in the affair accidentally and purely on humanitarian considerations. He called upon the Council unreservedly to condemn in the strongest possible terms Israel's aggression and demanded full compensation from Israel for the damage to life and property caused during the invasion.1312

The representative of Mauritania speaking on behalf of the Group of African States in the United Nations said that Israel violated the sovereignty and independence of a State Member of the United Nations and the OAU. That was aggression in the meaning of article 1 of the annex to resolution 3314 (XXIX). It was also clear that this act of aggression was incompatible with Article 2 of the United Nations Charter and particularly paragraph 4 of that Article.1313

The representative of Israel giving his account of events at Entebbe charged that President Amin of Uganda had never before collaborated with the hijackers. Uganda had participated in the hijack and escort them to safety. He reiterated that Israel accepted full and sole responsibility for the action and that no other Government was at any stage party to the planning or the execution of the operation. Uganda had violated the agreement on international law in failing to protect foreign nationals on its territory, and had violated the 1970 Convention on the Suppression of Unlawful Seizure of Aircraft, which had been ratified by both Israel and Uganda. He called on the Council to declare war on international terrorism, to outlaw it and eradicate it wherever it might be.1314

The representative of Kenya stated that the Council had gathered to discuss aggression committed against Uganda by Israel. Unfortunately, in lodging its complaint Uganda had deemed it fitting to drag Kenya into that affair. The Israeli aggression came as a complete surprise to Kenya, contrary to some baseless accusations that Kenya had had prior knowledge of it and had collaborated with Israel. Kenya had been duty-bound to allow the Israeli planes to land on purely humanitarian grounds and in accordance with international law. Kenya viewed with great concern the aggression committed by the Israelis against Uganda.1315

The representative of Qatar, speaking on behalf of the Arab Group of Members States, said that the implication of the Israeli action was that stronger countries could at any time land troops in smaller countries without a declaration of war and commit unpunished aggression. He called on the Security Council to condemn Israel in the strongest possible terms for its aggression against Uganda, and to show its disapproval of those Governments whose statements might be misunderstood as encouragement for that act of piracy, and to consider sanctions against the long-time violator of the United Nations Charter and of international law, including the suspension of its membership until it pledged to respect all provisions of the Charter and the resolutions of the various United Nations bodies.1316

The representative of France summarized the various stages of negotiations leading up to the Israeli military operation. He expressed regret that the Secretary-General was unable, because of the hijackers' opposition, to intervene in that matter and said it was clear that the Council was faced by a complex set of circumstances in which the events and the responsibilities were inextricably interwoven. It could not be denied that the tragic affair had been marked by violent and illegal acts. The initial action—the hijacking of a civilian aircraft and the taking of innocent hostages—was in particular an intolerable violation of international morality and of jus gentium which could not be justified by any cause and against which the international community had to adopt effective measures and resolve to implement them.1317

At the same meeting the representative of the United Republic of Cameroon called on the Security Council, which was responsible for international peace and security, to vigorously condemn the Israeli aggression against Uganda which constituted a flagrant violation of the norms of international law and flouted the spirit and letter of the United Nations Charter, Article 2, paragraph 4. It was the cornerstone of the Organization that there could be no justification for the use of force against the sovereignty, independence or territorial integrity of a State.1318

The representative of China held that the Security Council should adopt a resolution in support of the just demand of the African countries and the OAU summit conference, condemning Israeli Zionism for its aggressive atrocities against Uganda and enjoining the Israeli authorities to compensate Uganda for all its losses and to guarantee against the recurrence of similar incidents in the future.1319

1311 1939th mtg., paras. 12-18.
1312 Ibid., paras. 21-39.
1313 Ibid., paras. 43-53.
1314 Ibid., paras. 56-139.
1315 Ibid., paras. 148-160.
1316 Ibid., paras. 168-176.
1317 Ibid., paras. 180-204.
1318 Ibid., paras. 210-222.
1319 Ibid., paras. 224-226.
At the beginning of the 1940th meeting on 12 July 1976 the representative of the Libyan Arab Republic speaking on a point of order stated that he opposed the attempts to distract the Council from the agreed agenda by debating the hijacking and using it as a justification for the aggression against an African country.\footnote{1940th mtg., paras. 6-12, 20 and 21. At the 1942nd meeting, the representative of Mauritius raised a similar point and said that a draft resolution submitted by the United Kingdom and the United States was unacceptable, according to all norms of procedure and contrary to the issue which was before the Council (1942nd mtg., paras. 60-62). The President referred to his ruling made at the 1940th meeting (1942nd mtg., para. 63).}

The President said that any item had always been interpreted with some latitude, and it was the duty of each participant to stick to the item, but not with such a restrictive interpretation.\footnote{1940th mtg., paras. 22-23}

The representative of Guinea expressed the conviction that the Israeli operation had aims other than the liberation of the hostages. The attacks against the Ugandan aircraft and the destruction of the airport were not measures of reprisal against the hijackers, but rather against the sovereignty of the State of Uganda, a Member of the United Nations. He called on the Security Council to condemn Israel's act of aggression against Uganda; to require of Israel immediate reparation for the material damages inflicted by its aircraft in Uganda; and to take all necessary measures to prevent international law from degenerating to the point where it might endanger world peace and security.\footnote{Ibid., paras. 28-46.}

The representative of Guyana strongly condemned Israel for its aggression against Uganda and noted that unless Israel's action was condemned by the Council, an extremely dangerous precedent for international lawlessness would be created. For such a precedent would seriously threaten the security of small States and leave the integrity of their territory and their sovereignty exposed to the caprices of emboldened States willing to employ the methods of bandits. In justification of Israel's action it was being argued that the principle of sovereignty was subordinate to the principle of human freedom and that Israel had the right to violate the sovereignty of other States in order to secure the freedom of its own citizens. That was nothing but a modern-day version of gunboat diplomacy; acceptance of such principle would send the international community down a slippery path to a situation in which might and power would reign supreme.\footnote{Ibid., paras. 73-89}

The representative of the United Kingdom said it would seem incredible if the Council were to address itself to what had happened at Entebbe without at the same time considering what should be done about hijacking. What was needed was first to render the existing international action against hijacking, which had already been taken, as effective as possible and to ensure the maximum compliance with it by all members of the international community. Second, the Council should consider whether there was any further action which the international community could take to supplement those measures so as to prevent further acts of hijacking and to punish those responsible. He introduced a draft resolution sponsored by the United Kingdom and the United States,\footnote{1940th mtg., paras. 92-109} the operative paragraphs of which would have the Security Council (1) condemn hijacking and all other acts which threatened the lives of passengers and crews and the safety of international civil aviation and call upon all States to take every necessary measure to prevent and punish all such terrorist acts; (2) deplore the tragic loss of human life which resulted from the hijacking of the French aircraft; (3) reaffirm the need to respect the sovereignty and territorial integrity of all States in accordance with the Charter of the United Nations and international law; and (4) enjoin the international community to give the highest priority to the consideration of further means of assuring the safety and reliability of international civil aviation.

He added that the debate in the Council involved questions that affected all its members. On the one hand there was the principle of territorial integrity; on the other hand, there was the equally valid consideration that States existed for the protection of their people, and they had the right, and perhaps the duty, to exercise that right.\footnote{1940th mtg., paras. 113-124.}

At the same meeting the representative of Sweden noted that the Israeli action involved an infringement of the national sovereignty and territorial integrity of Uganda. There were strong reactions against this action, which had cost the lives of many Ugandan citizens and had led to heavy material damage. At the same time there had been pressures to which the Israeli Government and people had been subjected faced with that unprecedented act of international piracy. Furthermore, when the decision to act had been taken, the Israeli Government had been in possession of evidence which, it had felt, had strongly suggested that the Government which had the responsibility for the protection of the hostages had not done everything in its power to fulfil that duty. The problem with which the Council was faced was thus multi-faceted. His Government, while unable to reconcile the Israeli action with the strict rules of the Charter, did not find it possible to join in a condemnation in that case.\footnote{1941st mtg., paras. 50-61}

At the 1941st meeting on 12 July 1976 the representative of the Federal Republic of Germany requested the preparation of a convention on international measures against the taking of hostages which would ensure in particular that those perpetrating such acts were either extradited or prosecuted in the country where they were apprehended.\footnote{Ibid., paras. 12138, OR, 31st yr., Supp. I July-Sept. 1976, p. 15}

The representative of the United States emphasized that Israel's action in rescuing the hostages necessarily involved a temporary breach of the territorial integrity of Uganda. Normally, such a breach would be impermissible under the United Nations Charter. However, there was a well-established right to use limited force
for the protection of one's own nationals from an imminent threat of injury or death in a situation where the State in whose territory they were located was either unwilling or unable to protect them. The right following from the right of self-defence was limited to such use of force as was necessary and appropriate to protect threatened nationals from injury. The requirements of that right to protect nationals were clearly met in the Entebbe case.

The Israeli military action had been limited to the sole objective of extricating the passengers and crew and had been terminated when that objective had been accomplished. The assessment of the legality of Israeli actions depended heavily on the unusual circumstances of that specific case. In particular, the evidence was strong that, given the attitude of the Ugandan authorities, cooperation with or reliance on them in rescuing the passengers and crew had been impracticable.128

The representative of the United Republic of Tanzania said that the Israeli action had resulted in the loss of human life, which could have been avoided had the normal process of negotiations been left to take its course. In that context, the Israeli action could be said to have constituted not only a violation of the sovereignty of Uganda, but indeed an act of aggression against a Member State of the United Nations. He then introduced a draft resolution129 sponsored by Benin, the Libyan Arab Republic and the United Republic of Tanzania, the operative paragraphs of which would have had the Security Council (1) condemn Israel's flagrant violation of Uganda's sovereignty and territorial integrity; (2) demand that the Government of Israel meet the just claims of the Government of Uganda for full compensation for the damage and destruction inflicted on Uganda; and (3) request the Secretary-General to follow the implementation of the resolution.

He added that contrary to the normal procedures of the Council, in which due process of consultations took place, a draft resolution had already been introduced by the United Kingdom.130 Being faced with that situation the African members of the Council were unable to consult the other members in advance before presenting the text before the Council.131

The representative of the USSR said that the wanton Israeli attack came fully within the definition of aggression adopted by the United Nations General Assembly. He urged the Security Council to condemn in the most vigorous manner the Israeli aggression against the sovereignty and territorial integrity of Uganda and to extend a serious warning to Israel that such acts would not go unpunished in future.132

At the 1942nd meeting on 13 July 1976 the representative of Panama said that it was obvious that the violation of the sovereignty and territorial integrity of Uganda by the Israeli military operation had constituted a use of force not authorized by the United Nations Charter, which only admitted of enforcement actions by the United Nations or legitimate individual or collective self-defence against armed attack. Israel had not been a victim of an armed attack by Uganda and therefore its action had not been legitimate. The Israeli military action was not a characteristic instance of the right of a State to protect its nationals, as that right was envisaged in the Charter, through peaceful means for the settlement of disputes, but rather constituted an act of armed intervention as frequently resorted to by powerful countries against the weakest countries.133

The representative of India, emphasizing that the Israeli attack was clearly a violation of Uganda's sovereignty and territorial integrity, noted that the Security Council should have taken up the question of the hijacking immediately after it occurred so that appropriate international measures might have been considered for dealing with it, and for preventing future hijackings. It would be tragic to ignore the Israeli attack and to concentrate only on anti-hijacking measures. If the Security Council was to maintain international peace and security in terms of its responsibilities under the Charter, it should pronounce itself also on the Israeli attack. If it did not do so, it might well set in train a chain reaction whose repercussions might be even more tragic and far-reaching.134

At the 1943rd meeting on 14 July 1976 the representative of the Libyan Arab Republic referred to the American involvement in the incident by quoting an article in the Washington Post which said the State Department had ruled that Israel had used three C-130 American transport planes in Uganda for "legitimate self-defense" permitted under the Foreign Military Sales Act. The newspaper called it an unusual application of self-defence terminology, because the raid took place 2,500 miles from Israeli territory.135

The representative of France suggested that if there was a violation of the sovereignty of Uganda its purpose was not to infringe the territorial integrity or the independence of that country but exclusively to save endangered human lives. In this connection he invoked article 2 of the annex to General Assembly resolution 3314 (XXIX), adopted on 14 December 1974,136 which deals with what was prima facie an act of aggression and said that it was permissible to judge it "in the light of other relevant circumstances".137

118 Ibid. paras. 74-86
120 At the same meeting the representative of the Libyan Arab Republic expressed his deep concern and disappointment that the representatives of the United Kingdom and the United States had departed from established practice and the normal procedures of the Council and introduced a draft resolution (S/12138) without any appropriate consultations (1941st mtg. paras 179-193)
121 1941st mtg. paras 100-120
122 Ibid. paras. 149-171
123 1942nd mtg. paras. 10-23.
124 Ibid. paras. 138-149
125 1943rd mtg. paras. 6-37
126 "Definition of aggression. The full text of article 2 reads as follows:
"The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity."
127 1943rd mtg. paras. 41-52
The representative of Italy said that during the debate the African delegations had upheld the unconditional inviolability of the sovereignty and territorial integrity of a Member State, strongly rejecting any attempt to weaken or tone down the condemnation of the Israeli raid. On the other hand, Israel and other delegations had strongly upheld the right or the duty of a Government to use appropriate means, including limited and localized use of force, to protect the lives of its endangered nationals in the territory of another State when the latter had proven unable to ensure such protection. There seemed to be little ground for agreement on this point, also because the Council was essentially a political body and not an appropriate forum to settle such a delicate question. The problem, however, could not be ignored and at least might be referred to the International Law Commission in order to lay the groundwork for the adoption of a universally accepted doctrine on the matter and avoid a repetition of the differences which had emerged in the debate.1338

The representative of Cuba questioned whether Uganda had resorted to the threat or use of force against Israel or threatened its territorial integrity or independence. The reply was negative. Uganda had been trying to find a solution to the fate of passengers who had been taken by force to its territory 1339

Speaking before the vote the representative of the United Republic of Tanzania said that, in view of the confrontation in the Council and in view of the fact that there seemed to be a determination to ignore completely, or at least to gloss over, Africa's legitimate complaint, the sponsors of the three-Power draft resolution had agreed not to press for a vote.1340

The representatives of Pakistan,1341 Guyana,1342 Benin1343 and the USSR1344 declared that the two-Power draft resolution dealt with a subject-matter—the problem of hijacking—which was not on the agenda of the Security Council. They would therefore not participate in the vote on that draft.

At the same meeting the two-Power draft resolution was put to vote and received 6 votes in favour, none against with 2 abstentions. Seven members did not participate in the vote. The draft resolution was not adopted, having failed to obtain the required majority of votes.1345

Speaking in explanation of vote, the representative of Japan said that although Japan had supported the two-Power draft resolution, it wished to state that the Israeli military action, prima facie, constituted a violation of the sovereignty of Uganda which Japan very much deplored. The draft would have been much better if it had taken note of that point.1346

The representative of the United Republic of Tanzania said that in taking the position of not participating in the vote his delegation had felt it would not have been proper either to abstain or to vote against the draft resolution as, by doing so, it would have been expressing its position on the merits of that draft resolution. He added that neither time nor circumstances permitted his delegation to do so.1347

COMPLAINT BY ZAMBIA AGAINST SOUTH AFRICA


By letter1348 dated 19 July 1976 addressed to the President of the Security Council, the representative of Zambia requested an urgent meeting of the Council to consider racist South Africa's repeated acts of aggression against Zambia, the latest of which took place on 11 July 1976 at Sialola village in the Western Province. As a result of that attack, 24 people had been killed and 45 seriously injured. The letter stated that this and thirteen other wanton acts of aggression by racist South Africa, which had taken place that year alone, constituted a flagrant violation of Zambia's territorial integrity and a threat to international peace and security in the region.

In a letter1349 dated 27 July 1976 addressed to the President of the Security Council the representative of Zaire stated that the President and people of Zaire firmly supported the Zambian complaint against South Africa.

At the 1944th meeting on 27 July 1976 the Security Council adopted1350 the agenda and considered the question at the 1944th to 1948th meetings between 27 and 30 July 1976.

In the course of its deliberations the Council invited the representatives of Botswana, Cuba, Egypt, Ethiopia, Guinea, Liberia, Madagascar, Mauritania, Mauritius, Mozambique, Qatar, Sierra Leone, South Africa, Uganda, Yugoslavia, Zaire and Zambia, at their request, to participate, without vote, in the discussions of the item.1351

The Council also extended invitations as requested under rule 39 of the provisional rules of procedure to the Acting President and two members of the United Nations Council for Namibia, to a representative of the Special Committee against Apartheid and to Mr. O. T. Emvula of the South West Africa People's Organization of Namibia (SWAPO).1352

At the 1944th meeting, on 27 July 1976, the representative of Zambia stated that it was not the first time that the acts of aggression perpetrated against Zambia by South Africa and other racist regimes of southern Africa were brought to the attention of the Security Council and that the existence of these régimes consti-

1338 1943rd mtg., paras 55-67
1339 ibid., paras 80-90
1340 ibid., paras 144-148
1341 ibid., paras 151-155
1342 ibid., paras 150-158
1343 ibid., para. 159
1344 ibid., paras 160 and 161
1345 ibid., para. 162
1346 ibid., para. 178

1347 Ibid., paras 187-189
1350 1944th mtg., following para 4
1351 For details, see chapter III