Permanent Neutrality and Collective Security: The Case of Switzerland and the United Nations Sanctions Against Southern Rhodesia

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Among the fundamental problems facing a collective security organization is, on the one hand, the determination of the extent to which its members — and perhaps even non-members — are required to participate in the coercive measures directed against the source of the threat to the peace, breach of the peace, or act of aggression, and on the other hand, the determination of the degree to which claims to non-participation are permissible from the point of view of minimum world public order.¹ In the traditional international system of the balance of power, when war was a legitimate attribute of sovereign nation-states not to be judged by third parties, nonparticipation in hostilities, usually formalized in the legal status of "neutrality," was an accepted institution of public international law. Following the breakdown of the balance of power system, the League of Nations and then the United Nations made the first attempts to base international relations on the principle of collective security under which unlawful use of force by one nation is to be met by the combined force of all other members of the community of nations.²

The emergence of a universal international organization with the primary objective of institutionalizing collective response to international violence, in combination with the outlawing of war as an

instrument of national policy by the Pact of Paris of 1928, has raised the question of the compatibility of the traditional institution of neutrality with the system of collective security. The issue is of particular relevance with regard to the status of the so called "permanent" or "perpetual" neutrality under which a state is obliged under international law not only not to resort to war except in self-defense, but also has certain peacetime duties, such as the duty of abstaining from any treaty obligations that might compromise its permanent neutrality. A good deal of scholarly effort has been expended in the examination of the compatibility of neutrality with the system of collective security. Although in purely abstract terms


4 The problem has been dealt with in international law treatises, commentaries on the League of Nations Covenant and the Charter of the United Nations, studies of neutrality generally, works examining the permanent neutrality of Switzerland and Austria, and in special studies devoted specifically to the relationship between neutrality and collective security. Among the last mentioned studies are: Lauterpacht, Neutrality and Collective Security, 2 POLITICA 133 (1936); Guggenheim, La sécurité collective et le problème de la neutralité, 2 SCHWEIZERISCHES JAHRBUCH FÜR INTERNATIONALES RECHT 9 (1945); Guggenheim, Das Sicherheitsystem der Vereinten Nationen und die schweizerische Neutralität, 13 NEUE SCHWEIZER RUNDschau (Zurich) 391, 492 (1945-46); Guggenheim, VÖLKERBUND, DUMBARTON OAKS UND DIE SCHWEIZERISCHE Neutralität (1945); Guggenheim, Die völkerrechtliche Zwangsvollstreckung und der Status der permanenten Neutralität, Neue Zürcher Zeitung, Apr. 9, 1967, Blatt 7 [hereinafter citations are to international edition]; Lalive, International Organization and Neutrality, 24 BRIT. Y.B. INT'L L. 72 (1947); Pape, Neutralität und kollektive Sicherheit (zugleich ein Beitrag zur Doktrin der qualiﬁzierten Neutralität) (1952) [Dr. Jur. dissertation, University of Hamburg, Germany]; Komarnicki, The Problem of Neutrality under the United Nations Charter, 38 TRANSACT. GROT. SOCY 77 (1953); Taubenfeld, International Actions and Neutrality, 47 AM. J. INT'L L. 377 (1953); Chaumont, Nations Unies et neutralité, in 89 HAGUE ACAD., RECUEIL DES COURS 1 (1956 1); Verdross, Neutrality within the Framework of the United Nations Organisation, in SYMBOLAE VERZIJL 410 (1958); Bräutigam, Die Neutralisation: Unter besonderer Berücksichtigung der Mitgliedschaft eines neutralisierten Staates in einem System kollektiver Sicherheit (1960) [mimeographed Dr. Jur. dissertation, University of Bonn, Germany]; Häug, Neutralität und Völkergermnschaft (1962); Fuchs, Die Stellung eines permanent neutralen Staates innerhalb des Völkerbunds und der Organisation der Vereinten Nationen, erläutert am Beispiel der Schweiz und Österreichs (1964) [mimeographed Dr. Jur. dissertation, University of Würzburg, Germany]; Van der Mensbrugghe, Neutraliteit en lidmaatschap van de Vereenigde Naties, 27 RECHTSKUNDIG WEEKBLAD (Antwerp) 1145 (1964). For the Soviet and other Eastern European views, see, e.g., Vigor, The Soviet Conception of Neutrality, 15 BULLETIN OF INST. FOR THE STUDY OF THE USSR, No. 11, at 3-18 (Nov. 1968); Durdenesvskii, Neutralitas v sisteme kollektivnoi bezopasnosti [Neutrality in the System of Collective Security], SOVETSKOE GOSUDARSTVO I PRAVO, No. 8, at 81 (1957); Hajdu, La neutralité dans le système des Nations Unies, 1 ACTA JURIDICA ACADEMIAE SCIENTIARUM HUNGARICAE (Budapest) (fasc. 1-2), 29 (1959); Penkov, Neutralitet i kolektivna sigurnost [Neutrality and Collective Security], 11 IZVESTIA NA INSTITUTA NA PRAVNI NAUKI (Sophia) 225 (1960); Piontek, Trwałość neutralnosci a system bezpieczenstwa zbiorowego ONZ [Permanent Neutrality and the U.N. System of Collective Security], 17 PANSTWO I PRAWO (Warsaw) 786 (1962). For a Yugoslav view, see PETKOVIC, NEUTRALNOST U POLITICKOM I PRAVnom POR-
neutrality is antithetical to collective security, nonparticipation in enforcement measures has proven permissible in practice under both the Covenant of the League of Nations and the Charter of the United Nations due to political reality and gaps in the instruments incorporating the collective security agreements. Under the United Nations, however, the discussion of the relationship between a permanently neutral state and collective security had to be largely academic for 20 years because no collective security measures under chapter VII of the Charter were ordered by the Security Council. Then on December 16, 1966, for the first time in the history of the United Nations, sanctions were imposed under article 41 of the Charter in an attempt to bring down the illegal rebel regime of Ian Smith in Southern Rhodesia. The Rhodesian case has offered a challenge to the collective security mechanism of the United Nations, and from this point of view it has been appraised in a number of scholarly studies. At the same time, however, the Security Council resolution on mandatory sanctions against Rhodesia has provided the first opportunity to test in practice ideas about the relationship between the United Nations collective security system and the status of permanent neutrality. The case of Switzerland is especially interesting since it is the country with the longest and unique record of neutrality and the model for the neutralization of neighboring Austria. Switzerland has not — unlike Austria and Laos — become a member of the United Nations because of concern about the apparent incompatibility of permanent neutrality with membership in an international organization requiring participation in collective economic, political, and military coercive measures against other


The purpose of this article is to examine, using the example of Switzerland, the relationship between permanent neutrality and collective security against the background of the mandatory enforcement measures ordered by the Security Council in the Rhodesian situation and to formulate certain general ideas concerning the compatibility of these two concepts and, in more general terms, the membership of permanently neutral states in the United Nations.

I. THE UNITED NATIONS MANDATORY SANCTIONS AGAINST RHODESIA

The background of the Rhodesian crisis, including the events leading to the unilateral declaration of independence (UDI) by the Ian Smith regime and the United Nations consideration of the Rhodesian question prior to the initiation of the mandatory sanctions, is beyond the scope of this inquiry. Suffice it to say that prior to December 16, 1966, the question had been considered by various organs of the United Nations, principally the General Assembly, the General Assembly's 24-member Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Security Council. For the purposes of the present examination it is relevant, however, to mention Security Council Resolution No. 216 of November 12, 1965, which, following the recommendation of the General Assembly, condemned the UDI and "[called] upon all states not to recognize this illegal racist

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7 See text accompanying notes 81-82 infra.
8 See Bindschedler, Das Problem der Beteiligung der Schweiz an Sanktionen der Vereinigten Nationen besonders im Falle Rhodesiens, 28 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 1 (1968). For a study of the Rhodesian sanctions from the point of view of the permanent neutrality of Austria, see Zemanek, Das Problem der Beteiligung des immerwährend neutralen Österreichs an Sanktionen der Vereinten Nationen, besonders im Falle Rhodesiens, 28 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 16 (1968).
9 For the text of the UDI (Nov. 11, 1965), see 5 INT'L LEGAL MATERIALS 230-31 (1966).
10 For a concise summary of the events, see Cefkin, supra note 6, at 649-61; McDougal & Reisman, supra note 6, at 1-3.
11 For a convenient summary of the consideration of the Rhodesian problem before the various organs of the United Nations in the final stages prior to December 16, 1966, and documentary reference, see Y.B. OF THE UNITED NATIONS 117-34 (1965), and id. at 94-117 (1966).
minority regime in Southern Rhodesia and to refrain from rendering any assistance to this illegal regime.\textsuperscript{14}

On November 20, 1965, the Security Council in Resolution 217 determined that the situation was extremely grave, that its continuance in time constituted a threat to international peace and security, and called, \textit{inter alia}, for voluntary economic and political sanctions against the illegal Rhodesian regime. As in Resolution No. 216, the call was addressed to "all states" irrespective of membership in the United Nations and without any regard to the permanent neutrality of Switzerland or Austria.\textsuperscript{15} The resolution called upon all states "not to recognize this illegal authority and not to entertain any diplomatic or other relations with this illegal authority," and

to refrain from any action which would assist and encourage the illegal regime and, in particular, to desist from providing it with arms, equipment and military material, and to do their utmost in order to break off economic relations with Southern Rhodesia, including an embargo on oil and petroleum products.\textsuperscript{16}

Since Resolution 217 proved inadequate for the enforcement of the oil embargo, the Security Council in its Resolution No. 221 of April 9, 1966, determined for the first time that the situation constituted a threat to the peace and, \textit{inter alia}, authorized the United Kingdom to use force if necessary to prevent oil from reaching Beira (Portuguese Mozambique) from which it could reach its Rhodesian destination. The resolution called upon "all states" to ensure the diversion of any of their vessels reasonably believed to be carrying oil destined for Rhodesia which might be en route for Beira.\textsuperscript{17} As the Council's efforts and the measures taken by the United Kingdom failed to bring the rebellion to an end, the Security Council made the momentous decision on December 16, 1966, to impose selected mandatory economic sanctions upon Southern Rhodesia — that is, to apply the enforcement measures under article 41 of the Charter of the United Nations not involving the use of armed forces. Acting in accordance with article 39 of the Charter, the Security Council decided that the situation in Rhodesia constituted a threat to international peace and security and, in accordance with article 25 and 41, ordered all state members to prevent the importing


into their territories of selected Rhodesian raw materials and products, and to prevent sale or shipment by their nationals of arms, ammunition and other military material, aircraft and motor vehicles, and oil and oil products. All states were called upon "not to render financial or other economic aid to the illegal racist regime in Southern Rhodesia." States not members of the United Nations were specifically urged, "having regard to the principles stated in Article 2 of the United Nations Charter, . . . to act in accordance with the provisions of paragraph 2 of the present resolution," that is, the decision to impose selected economic sanctions. The Secretary General was asked to report no later than March 1, 1967, on the progress of the implementation of the resolution.\(^{18}\)

Although the selected mandatory sanctions resulted in severe cuts in Rhodesia's traditional exports and imports, the sanctions did not have a decisive negative effect upon her foreign trade and did not cause the collapse of the Rhodesian economy because of loopholes provided by South Africa and (to a lesser extent) by Portugal, the two countries which, in violation of article 25 of the United Nations Charter, have become Rhodesia's major trade partners.\(^{19}\) To


\(^{19}\)For Rhodesian foreign trade statistics, see the Reports of the Secretary General to the Security Council on the progress of the implementation of Resolution 232 (1966), containing replies of governments on the measures taken in accordance with the resolution; U.N. Doc. S/7781 (Feb. 21, 1967), and Adds. 1-5, especially Add. 5, June 15, 1968. See also Issues before the 23rd General Assembly, INT'L CONC., Sept. 1968/No. 569, at 70-77. For the Swiss trade with Rhodesia, see note 26 infra. For an assessment of the effects of the sanctions upon Rhodesian economy, see Bowman, Rhodesia since UDI, 12 AFRICA REPORT, Feb. 1967, at 5. For the methods used to circumvent the sanctions, see Sutcliffe, Rhodesian Trade since UDI, 23 WORLD TODAY 418 (1967). See also CURTIN & MURRAY, ECONOMIC SANCTIONS AND RHODESIA (1967); Curtin, Rhodesian Economic Development under Sanctions and the Long Haul, 67 AFRICAN AFFAIRS 100 (1968); McKinnell, Assessing the Economic Impact of Sanctions against Rhodesia, 67 AFRICAN AFFAIRS 227 (1968). For a Swiss assessment of the sanctions, see Rhodesiens Wirtschaft und die Sanktionen der UN — Begrenzte Auswirkungen, Neue Zürcher Zeitung, Aug. 30, 1968, at 17. For a theoretical analysis of the effects of the Rhodesian sanctions, see Galtung, On the Effects of International Economic Sanctions — With Examples from the Case of Rhodesia, 19 WORLD POL. 378 (1967). For a comparative content analysis of the decisions of the League of Nations to apply sanctions against Italy in 1935 and the decision of the British Government to apply sanctions against Rhodesia in 1965, see F. Hoffmann, The Function of Economic Sanctions: A
increase pressure upon the Smith regime, the Security Council, taking note of General Assembly’s Resolution 2262 (XXII) of November 3, 1967, adopted a unanimous resolution on May 29, 1968, imposing comprehensive mandatory sanctions upon Rhodesia under article 41 of the United Nations Charter. The Resolution reaffirmed the determination that the situation in Southern Rhodesia constituted a threat to international peace and security and, inter alia, ordered all member states to prevent the importing of all commodities and goods originating in Southern Rhodesia, any activities by their nationals or in their territories that could promote the exportation of Rhodesian commodities, shipment in vessels or aircraft or carriage by land transport facilities across their territories of any Rhodesian products, and the sale or supply of any commodities to any person in Rhodesia (except for supplies intended for medical, humanitarian, and educational purposes). The Council further ordered all members (1) to prohibit the flow of funds for investment or any other financial or economic resources to the Rhodesian regime and enterprises (except payments exclusively for pensions or strictly medical, humanitarian or educational purposes), (2) to ban the entry into their territories, save on exceptional humanitarian grounds, of persons travelling on a Southern Rhodesian passport, and to take all possible measures to prevent the entry into their territories of persons ordinarily resident in Southern Rhodesia who had furthered the illegal regime or any activities calculated to evade the enforcement measures ordered by the Security Council, and (3) to end all air line services with Rhodesia. In addition to these mandatory measures, the Council called upon the members of the United Nations and of the specialized agencies to take all possible measures to stop emigration to Rhodesia, and requested them "to take all possible further action under Article 41 of the Charter to deal with the situation in Southern Rhodesia, not excluding any of the measures provided in that Article." The

Comparative Analysis, 4 J. PEACE RESEARCH 140 (1967). For a general theoretical consideration of economic sanctions, see Wallensteen, Characteristics of Economic Sanctions, 5 J. PEACE RESEARCH 248 (1968).


22 The implementation of this call would result in complete interruption of all relations with Rhodesia, including rail, sea, air, postal, and other means of communication, and the severance of diplomatic relations if any should exist between a U.N. member and Rhodesia. So far no country has recognized the Smith regime. All nations had been called upon not to entertain any diplomatic or other relations (e.g. consular relations) with the Rhodesian regime in Resolution No. 217 (1965). Switzerland has con-
Council emphasized the need for the withdrawal of all consular and trade representations in Rhodesia. Following its previous resolutions, the Council urged, "having regard to the principles stated in Article 2 of the United Nations Charter, States not Members of the United Nations to act in accordance with the provisions of the present resolution." Members of the United Nations or of the Specialized Agencies were called to report to the Secretary General by August 1, 1968, on measures taken to implement the resolution.23 A committee was established to examine the reports and seek information on the implementation of the resolution.24

The wide sweep of the economic sanctions has forced the Rhodesian regime to look for further loopholes to sustain its foreign trade, but so far there has been no conclusive evidence that the Smith regime has been forced to accept a negotiated settlement with the British government or that the Rhodesian economy is nearing collapse.25

23 The Secretary General was requested to report to the Security Council on the progress of the implementation of the resolution not later than Sept. 1, 1968. On the Report of the Secretary General, see N.Y. Times, Sept. 6, 1968, at 9, col. 1. The report contains replies from 57 countries including nonmember states (South Korea and the German Federal Republic) and from several specialized agencies.


The Security Council Committee on Southern Rhodesia found in its Report of December 30, 1968, that the trade of that territory remained quite substantial in mid-1968 despite the Council’s resolutions of 1965 and 1966. Data for the second half of 1968 were not sufficient to analyse the effectiveness of the implementation of Resolution 253 (1968). The report indicated that, besides South Africa and Portugal, there were some other countries which continued to trade with Southern Rhodesia. 6 UN MONTHLY CHRONICLE, Feb. 1969, at 4. According to The Economist, in spite of the tightening of the sanctions regulations by a number of countries, there exist many loopholes allowing Rhodesia to circumvent the sanctions, particularly in the area of exports from that territory which are re-routed through South Africa, Mozambique and elsewhere under false labels of origin. See THE ECONOMIST INTELLIGENCE UNIT, QUARTERLY ECONOMIC REVIEWS: ECONOMIC REVIEW OF RHODESIA, ZAMBIA, MALAWI, No. 1, Feb. 1969, at 3-4.

In its resolution adopted on November 7, 1968, the General Assembly, noting that the sanctions had not produced the desired results, condemned the governments of South Africa and Portugal and all other governments which rendered assistance to Southern Rhodesia and urged the Security Council to widen the scope of the sanctions by including all the measures laid down in article 41 of the Charter and to impose sanctions on the above mentioned countries. G.A. Res. 2383 (XXIII), A/RES/2383 (XXIII) (Nov. 8, 1968); 7 INT’L LEGAL MATERIALS 1402 (1968).
II. THE SWISS REACTION

The consideration of the Rhodesian situation by the United Nations has been followed with keen interest in Switzerland because the Swiss government and public opinion, recalling the awkward experience of the sanctions against Italy in 1935, realized that the Rhodesian crisis might eventually put to test, as it did, Switzerland's status of permanent neutrality and confront it with the task of reconciling the principles of neutrality with the spirit of international solidarity and participation in collective enforcement measures designed to suppress a threat to international peace and security. Also, Swiss reaction to the Rhodesian sanctions must be contemplated against the background of the "grand debate" on the question whether Switzerland should become a member of the United Nations. The culmination of this debate, which absorbed Swiss parliamentary bodies, news media, and all strata of Swiss society, coincided in time with the Rhodesian crisis. As noted below, the Rhodesian resolutions of the Security Council were not without effect upon Swiss attitude toward a possible membership in the United Nations. The following paragraphs will briefly present the Swiss response to the recommendations of the Security Council under its Resolutions 216 (1965) and 217 (1965) and to the call of the Council to join in imposing mandatory selective, and subsequently

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20 Switzerland does not have any major interest in trade relations with Rhodesia. The Swiss share in the Rhodesian exports amounts to about 1 percent, and the Swiss exports to Rhodesia make only 0.5 percent of total Rhodesian exports. See Statement of the Swiss Federal Council of Feb. 13, 1967, Neue Zürcher Zeitung, Feb. 15, 1967, Blatt 1. In 1965 the Swiss share of imports from Rhodesia amounted to $5,678,000 out of the Rhodesian total of $460,000,000 of exports. Swiss exports to Rhodesia totalled $1,641,000 out of $334,000,000 value of total Rhodesian imports. See Sixth Report of the Secretary General, U.N. Doc. S/7781/Add. 5 (June 13, 1968), and Table 1 in Issues Before the 23rd General Assembly, INT'L CONC., Sept. 1968/No. 569, at 74.


28 See text accompanying note 98 infra.
comprehensive, economic sanctions under Resolutions 221 (1966) and 253 (1968) respectively.

At the request of the government of the United Kingdom, and responding to the United Nations call for voluntary measures against Rhodesia, the Swiss Federal Council imposed restrictions upon imports from Southern Rhodesia, freezing them at the level of the current "normal trade" (courant normal). Under these restrictions imports became subjected to licenses obtainable only to the amount of the import figures of 1964 or 1965. In other words, Switzerland did not show readiness to break off economic relations with Rhodesia as recommended by the Security Council, but was willing to prevent the use of Switzerland as a channel for circumventing the sanctions implemented by other countries. In addition to import restrictions, Switzerland banned export of war materials to Southern Rhodesia and blocked the deposits of the Rhodesian Reserve Bank in the Swiss National Bank.

The decision of the Security Council of December 16, 1966, on mandatory selective economic sanctions was transmitted to the Swiss Federal Council in the note of the Secretary General of December 17, 1966, requesting the Swiss government to observe the decision. In order to emphasize that Switzerland was not legally bound by the Resolution of the Security Council, the Federal Council did not formally answer the Secretary General's note. On the other hand, in its public statement of February 13, 1967, without entering into the question of the legality of Resolution 232, the Federal Council

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32 The full text of the statement is reprinted in Neue Zürcher Zeitung, Feb. 15, 1967, Blatt 1. See also Bindschedler, supra note 8, at 14-15.

33 The Security Council's action in the Rhodesian case has occasioned some doubt and criticism in both the United States and Switzerland. See, e.g., Fenwick, supra note 6; Marshall, supra note 6. For Swiss doubts, see, e.g., Guggenheim, Die völkerrechtliche Zwangsvollstreckung und der Status der permanenten Neutralität, Neue Zürcher Zeitung, Apr. 9, 1967, Blatt 7 (expressing doubts on grounds of domestic jurisdic-
declared that "for reasons of principle, Switzerland as a neutral state cannot submit itself to mandatory sanctions of the United Nations," but that the Swiss government was nonetheless willing "to take care that the Swiss territory offers no possibilities for the Rhodesian trade to evade the sanction measures of the Security Council." Referring to its measures of December 1965,\textsuperscript{34} taken by Switzerland "in an autonomous way and without recognition of any legal duty,"\textsuperscript{35} the Swiss statement further noted that notwithstanding the negligible scope of the Swiss-Rhodesian trade the Federal Council had decided to restrict the import of commodities from Rhodesia to the average of the years 1964, 1965, and 1966.\textsuperscript{36} Concerning products subject to embargo, the Swiss statement pointed out that Switzerland had no oil of its own and as a result did not export oil or petroleum products to Rhodesia "either directly or indirectly," nor did it export motor vehicles or aircraft or their parts to Rhodesia. However, the ban on export of war materials and the blocking of the Rhodesian Bank deposits continued in force.

The position of Switzerland remained unchanged following the imposition of the comprehensive economic sanctions by the Security Council on May 29, 1968. In its "autonomous statement" of September 4, 1968, in reaction to the note of the Secretary General of June 7, 1968, the Federal Council again refused "for reasons of principle" to participate in the economic sanctions against Rhodesia or to undertake other voluntary measures requested by the Security Council. On the other hand, Switzerland was willing, without rec-

\textsuperscript{34} See text accompanying notes 29-30 supra.

\textsuperscript{35}This language follows the official interpretation of Swiss neutrality of November 24, 1954. See text accompanying note 59 infra and note 47 infra.

\textsuperscript{36}The rationale of this decision was that the average of those 3 years was lower than the import figures of 1964 or 1965, allowed under the Decree of December 17, 1965 (see note 29 supra), and that therefore the Rhodesian courant normal would be further reduced. The statistics show that the value of Swiss imports from Rhodesia fell from $5,678,000 in 1965 to $3,925,000 in 1967. On the other hand, since Switzerland did not impose any restrictions on exports to Rhodesia (except for arms embargo), the value of Swiss exports rose slightly from $1,641,000 in 1965 to $1,939,000 in 1967. See Sixth Report of the Secretary General, U.N. Doc. S/7781/Add. 5 (June 13, 1968); Issues Before the 23rd General Assembly, INT’L CONC., Sept. 1968/No. 569, Table 1, at 74.
ognizing any legal duty to this effect, to prevent the evasion of the United Nations enforcement measures in its territory.\textsuperscript{37}

In sum, it appears that Switzerland, acting through the constitutional guardian of her neutrality — the Federal Council\textsuperscript{38} — has formally rejected participation in the collective security measures of the United Nations on grounds of the incompatibility of such measures with her status of permanent neutrality. On the other hand, the decision to take the minimum course of refraining from giving aid to the offending party shows Switzerland’s recognition of the fact that even a permanently neutral nonmember country cannot, by adopting the posture of absolute impartiality, completely ignore the authoritative decision of the collective security organization taken in the interest of international peace and security.

III. \textbf{SWITZERLAND — A NONMEMBER STATE}

It remains now to examine the Swiss position in more detail, taking account of the characteristics of permanent neutrality under international law against the background of the collective security experience of the League of Nations and the United Nations. One preliminary point must be clarified in the particular case of Switzerland, namely whether the United Nations Charter is binding upon a nonmember state. This issue has been extensively discussed in the theory of international law within the context of the legal effects of treaties upon third parties (the validity of the maxim \textit{pacta tertiis nec nocent nec prosunt}), and specifically with regard to the meaning and scope of article 2, paragraph 6 of the Charter of the United Nations, which lays down that “the Organization shall en-

\textsuperscript{37} See Communique of the Federal Political Department [undated] (courtesy Swiss Embassy), Neue Zürcher Zeitung, Sept. 6, 1968, at 33. As an additional concession, Switzerland promised not to grant any export risk guarantees to firms exporting products to Rhodesia. \textit{See id.} For a reiteration of the Swiss position, see the reply of the Federal Council to interpellation in the National Council of December 17, 1968; Neue Zürcher Zeitung, Dec. 19, 1968, at 27. It is therefore misleading to say that Switzerland has voluntarily joined the U.N. sanctions against Rhodesia. For such incorrect view, see Braud, \textit{Recherches sur L’État tiers en droit international public}, 72 \textit{REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC} 17, at 95 n.173 (1968) (referring to Rousseau, \textit{Chronique des faits internationaux}, 71 \textit{REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC} 486 (1967)). There have been press reports of Swiss firms circumventing the sanctions, but such reports are not sufficiently documented. \textit{See, e.g.,} Raphael, \textit{UN at sea on Rhodesian Sanctions}, Manchester Guardian Weekly, Feb. 13, 1969, at 2. \textit{See also} THE ECONOMIST INTELLIGENCE UNIT, \textit{QUARTERLY ECONOMIC REVIEWS: ECONOMIC REVIEW OF RHODESIA, ZAMBIA, MALAWI}, No. 1, Feb. 1969, at 4.

\textsuperscript{38} Under article 102(9) of the Swiss Constitution (1874), the Federal Council is obliged to act as guardian of the external security, independence, and neutrality of Switzerland. The principle of permanent neutrality itself is not, however, formally anchored in the Swiss Constitution.
sure that states which are not members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security."

It is beyond the scope of this study to enter into the many details concerning the effects of treaties upon third parties. However, it can be said in general that the traditional international law rule, as set forth by the International Law Commission, is that a treaty cannot impose an obligation on a third state without its consent but that this does not preclude a rule set forth in a treaty from becoming binding upon a third state as a customary rule of law.\footnote{I.L.C. Draft Articles on the Law of Treaties, arts. 30, 31, 34; 21 U.N. GAOR, Supp. 9; U.N. Doc. A/6309/Rev. 1, pt. II, ch. II; 61 AM J. INT'L L. 255 (1967). The I.L.C.'s view is not universally accepted, however. \textit{See, e.g., Kelsen, Principles of International Law} 487 n.64 (Tucker ed. 1966); Higgins, \textit{The Development of International Law through the Political Organs of the United Nations} 317-318 (1963).}

The meaning of article 2, paragraph 6, however, has been a subject of much controversy. Commentators, for example Swiss publicists, as well as the Swiss government, believe that this provision creates no obligations for nonmembers and that therefore nonmember states cannot be legally required to participate in the enforcement measures under chapter VII of the Charter.\footnote{See, e.g., Lalive, \textit{supra} note 4, at 84-86; Bindschedler, \textit{supra} note 8, at 5-7; Goodrich & Hambro, \textit{Charter of the United Nations} 108-09 (2d rev. ed. 1949); Robert, \textit{Etude sur la neutralit"e suisse} 66 (1950); Katzarov, \textit{Die Stellung der Nichtmitglieder der Vereinten Nationen}, 3 ARCHIV DES VÖLKERRECHTS 1, 20-21 (1950-51); Komarnicki, \textit{The Place of Neutrality in the Modern System of International Law}, 80 HAGUE ACADEMY, RECUEIL DES COURS 395, 468 (1952 I); Chaumont, \textit{supra} note 4, at 44; Bindschedler, \textit{Die Neutralität im modernen Völkerrecht}, 17 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 1, 9 (1956); Bindschedler, \textit{La délimitation des compétences des Nations Unies}, 108 HAGUE ACADEMY, RECUEIL DES COURS 305, 403-07 (1963 I); 2 Dahm, Völkerrecht 181-85 (1961); Schwarzenberger, \textit{A Manual of International Law} 160-61, 279 (5th ed. 1967). \textit{See also} references in 11 Whitteman, \textit{Digest of International Law} 52-53 (1968).} This view seems to provide additional legal argument for the Swiss in their claim for nonparticipation in the measures against Rhodesia.\footnote{See \textit{Statement by Federal Councillor Spühler, Head of the Federal Political Department (foreign minister), at a press conference, Neue Zürcher Zeitung, Feb. 15, 1967, Blatt 1. \textit{See also} Statement of the Federal Council of Dec. 17, 1968, Neue Zürcher Zeitung, Dec. 19, 1968, at 27.} On the other hand, Kelsen represents those who believe that paragraph 6 of article 2 directly binds nonmember states and that a permanently neutral state cannot therefore, by invoking its status of permanent neutrality, refuse to give the United Nations active assistance in enforcement measures.\footnote{\textit{See Kelsen, The Law of the United Nations — A Critical Analysis of Its Fundamental Problems} 106-10 (1951). \textit{Cf.} the position of the Belgian...} The third group of commentators stresses the re-
requirement of functional effectiveness, according to which the members of the United Nations have the obligation to ensure that nonmembers act in accordance with the principles of the Charter "so far as may be necessary for the maintenance of international peace and security" and that the nonmembers may be at least prevented from aiding the specific state against which the United Nations is taking preventive measures, although they are not required affirmatively to engage in the collective measures. In the case of the Rhodesian sanctions, the principles of functional effectiveness and proportionality do not require the United Nations to ask more than abstention from assisting the target of enforcement because the negligible level of trade relations, which Switzerland is determined to continue, will not affect the outcome of the enforcement action.

IV. SWISS PERMANENT NEUTRALITY

It is clear that nonmembership in the United Nations alone could provide sufficient legal basis for Switzerland's refusal to participate in the mandatory sanctions against Rhodesia. However, it is not nonmembership but the permanent neutrality status that has provided the Swiss government's basic argument for the claim of nonparticipation. As the Head of the Federal Political Department put it, "politically, although not legally, Switzerland faces the same problems in the Rhodesian situation as a neutral state that is a member of the United Nations." It remains to be examined what kind of neutrality the Swiss were referring to in their statement of February 13, 1967, and whether the international law status of Swiss neutrality is incompatible with the enforcement measures against Rhodesia.

delegate at San Francisco, who felt that the organization could ignore claims for nonparticipation of nonmembers. See Lalive, supra note 4, at 85-86.


44 See notes 26 & 36 supra. As it appears from the statistics, the posture of another nonmember state, the German Federal Republic, might affect the sanctions against Rhodesia. See general collective security consideration with regard to that country in McDougal & Feliciano, supra note 1, at 444. For the position of the German Federal Republic on the Rhodesian sanctions, see Martens, Zur Frage der Bindung von Nichtmitgliedern an die Grundsätze der Satzung der Vereinten Nationen, 7 DER STAAT 431, 432 (1968).

What the Swiss government meant was, of course, neither the "neutralist" or "nonaligned" posture in international politics nor — since no state of war existed in the Rhodesian case — ordinary ("occasional") neutrality, in the meaning of the legal status of a state which does not participate in a particular war between other states, and which does not create any rights and duties in peacetime. Rather, the Swiss meant the "permanent" or "perpetual" neutrality, sometimes known as "neutralization," under which a state is obliged to remain neutral at all times and which imposes upon that state certain duties in time of peace as well. In a classical definition,

[a] neutralized State is a State whose independence and integrity are for all future time guaranteed by an international convention, under the condition that such State binds itself never to take up arms against any other State except for defence against attack, and never to enter into such international obligations as could indirectly involve it in war.

Permanent neutrality may be declared unilaterally, in which case it has no effect under international law, or it may be guaranteed by a

46 The term "permanent neutrality" (neutralité permanente) was used for the first time in the Treaty of Amiens (1802) with regard to the island of Malta. The term "perpetual neutrality" (neutralité perpetuelle, immerwährende Neutralität) appeared first in the Declaration of March 20, 1815. See note 49 infra. The term "neutralization" appeared for the first time in the Treaty of Paris (1856) with regard to the neutralization of the Black Sea, but eventually acquired the meaning of permanent neutrality of a state as well. See VEROSTA, DIE DAUERNDE NEUTRALITÄT — EIN GRUNDRISS 15, 18 (1967).

47 See the official Swiss conception of neutrality, Nov. 26, 1954, in VERWALTUNGSENTSCHENDE DER BUNDESBEHÖRDEN AUS DEM JAHR 1954, No. 24, at 9-13 (1954) [hereinafter citations are to a reprint in 14 SCHWEIZERISCHES JAHRBUCH FÜR INTERNATIONALES RECHT 195-99 (1957)]; also in VEROSTA, supra note 46, at 113-17.

48 1 OPPENHEIM, supra note 43, at 243. There is quite an extensive international law literature devoted to the specific topic of permanent neutrality. In addition to the studies of the Swiss and Austrian cases, the following works can be consulted: WICKER, NEUTRALIZATION (1911); Strupp, Neutralisation, Befriedung, Entmilitarisierung, in 2 HANDBUCH DES VÖLKERRECHTS (Stier, Somlo & Walz eds. 1933 II); Dollo, Essai sur neutralité permanente, 67 HAGUE ACADEMY, RECUEIL DES COURS 1 (1939 I). Among recent studies, see VEROSTA, supra note 46. For a political approach, see BLACK, FOLK, KNORR, & YOUNG, NEUTRALIZATION AND WORLD POLITICS (1968). For discussion in treatises of international law, see, e.g., 1 FAUCHILLE, TRAITÉ DE DROIT INTERNATIONAL PUBLIC 693-744 (1922 I); 1 HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 107-17 (1947); 1 OPPENHEIM, supra note 43, at 242-50; 2 GUGGENHEIM, TRAITÉ DE DROIT INTERNATIONAL PUBLIC 547-61 (1954); 1 DAHM, VÖLKERRECHT 173-78 (1961); 1 WHITEMAN, DIGEST OF INTERNATIONAL LAW 342-57 (1967); and the literature cited in these treaties. For the Soviet view, see, e.g., KLIMENKO, DEMILITARIZATSIA I NEUTRALIZATSIA V. MEZHDUNARODNOM PRAVE (1963). For a Rumanian view, see POPESCU, INSTIITUTIA NEUTRALIZARI IN DREPTUL INTERNATIONAL CONTEMPORAN, 20 JUSTITIA NOUA, No. 7, at 44-53 (1964).
treaty. The two types can be combined in one state as illustrated by the case of Switzerland.49

49 As an official political principle, Swiss neutrality is usually traced to the year 1674 when the Diet of the Swiss Confederation declared that the Confederates should take a neutral position (Neutralstand) in the war between France and the Netherlands which had just broken out. BONJOUR, SWISS NEUTRALITY — ITS HISTORY AND MEANING 11 (Hottinger trans. 1946) (This is an abridged English version of the first edition of the German original of Bonjour’s work.). The principle of the neutrality of Switzerland had evolved gradually in the course of centuries as a result of a number of circumstances, both internal and external: the desire to end the policy of territorial expansion following the defeat at Marignano (1516); preoccupation with the religious schism which paralyzed the Confederation, making the Swiss realize that neutrality was the only safeguard against the breakdown of the Confederate system; the tradition of neutrality by treaty in case of war; the geographical factor; and the development of the European balance of power system in which the Swiss neutrality played a useful role as a device in the management of power in the contemporary Europe. BONJOUR, supra at 11-18. The two basic works on the history of Swiss neutrality are 1-2 SCHWEIZER, GESCHICHTE DER SCHWEIZERISCHEN NEUTRALITÄT, (1893-1895), and the more recent, 1-3 BONJOUR, GESCHICHTE DER SCHWEIZERISCHEN NEUTRALITÄT — DREI JAHRHUNDERTE EIDGENÖSSISCHER AUSSENPOLITIK (1946-1967). See also ROBERT, ETUDE SUR LA NEUTRALITÉ SUISSE (1950); VERGOTTI, LA NEUTRALITÉ DE LA SUISSE — SON ÉVOLUTION HISTORIQUE ET SES ASPECTS DANS LES RELATIONS INTERNATIONALES DE LA PREMIÈRE MOITIÉ DU XXÈ SIÈCLE (1954); Sherman, The Neutrality of Switzerland, 12 AM. J. INT’L L. 241, 462, 780 (1918). See also BELIN, LA SUISSE ET LES NATIONS UNIES 15-37 (1956); HOFER, NEUTRALITY AS THE PRINCIPLE OF SWISS FOREIGN POLICY 7-14 (Hottinger trans. 1957); CODDING, THE FEDERAL GOVERNMENT OF SWITZERLAND 152-158 (1961); VEROSTA, supra note 46, at 35-44. For the general history of permanent neutrality, see Graham, Neutralization as a Movement in International Law, 21 AM. J. INT’L L. 79 (1927).

The disruption of the European balance by the French Revolution and the Napoleonic Wars brought a temporary end to Swiss neutrality. The Congress of Vienna, however, formally recognized the permanent neutrality of Switzerland as part of the restoration of the balance of power in Europe, laying down the foundations for its present-day “neutralized” status. See BONJOUR, supra at 54-63. See also Sherman, The Permanent Neutrality Treaties, 24 YALE L. J. 217, 222-33 (1915).

At the request of the Swiss representatives, the eight Congress powers (Austria, France, Great Britain, Portugal, Prussia, Russia, Spain, and Sweden) issued a declaration on March 20, 1815, to the effect that the “perpetual neutrality” of Switzerland should be recognized and guaranteed by the participating governments as soon as the Swiss Diet gave its consent. Declaration of March 20, 1815, Preamble, 2 MARTENS NOUVEAU RECUEIL 157; 2 B.F.S.P. 142. See also Sherman, supra at 224. The Diet gave its formal approval on May 27, 1815. Act of Accession, May 27, 1815, 2 MARTENS NOUVEAU RECUEIL 173; 1 HERTSLET, MAP OF EUROPE BY TREATY 170 (1875). See also Sherman, supra at 226. Subsequently, article 84 of the Final Act of the Congress of Vienna of June 9, 1815, confirmed the arrangements. The Act of the Congress of Vienna, June 9, 1815, art. 84; 2 MARTENS NOUVEAU RECUEIL 379, 419; 1 HERTSLET, supra at 259-60. Following the final defeat of Napoleon, Austria, France, Great Britain, Prussia, and Russia signed the Act of Paris of November 20, 1815, declaring their “formal and authentic acknowledgment of the perpetual neutrality of Switzerland” and their guarantee of the integrity and inviolability of Swiss territory. Act of November 20, 1815, 2 MARTENS NOUVEAU RECUEIL 740; 3 B.F.S.P. 359; the French text is also reproduced in BONJOUR, supra at 154-55; 3 AM. J. INT’L L. SUPP. 106 (1909). See also LITTELL, THE NEUTRALIZATION OF STATES 33-34 (1928). By virtue of the Act of Paris, Swiss neutrality which until 1815 had been based on the unilateral policy of the Swiss Confederation, obtained a formal treaty recognition and became an integral element of European international law.

The treaty recognition of Swiss permanent neutrality was renewed and broadened
Switzerland has been able successfully to preserve its neutrality ever since 1815. The status of Switzerland as a permanently neutral state has become such a firmly established institution of public international law that, as found by the International Law Commission in its comment to article 34 (rules in a treaty becoming binding through international usage) of the Draft Articles on the Law of Treaties, the agreements for the neutralization of Switzerland, originally concluded by a limited number of states, had formulated a rule which afterwards came to be generally accepted by other states and became binding upon other states by way of custom.

Is this institution, as a product of the balance of power system, compatible with the present-day collective security arrangements of the international organization? In particular, would Swiss participation in sanctions against Rhodesia conflict with the duties of a permanently neutral state? To answer these questions, the content of the peacetime obligations of Switzerland as a neutralized country must be explored. According to the official Swiss interpretation,

by article 435 of the Versailles Peace Treaty of June 28, 1919, which recognized that the guarantees stipulated in 1815 constituted "international obligations for the maintenance of peace." Treaty of Peace between the Allied and Associated Powers and Germany, art. 435; 13 AM. J. INT'L L. SUPP. 151 (1919). Although Switzerland was not a party to the Treaty of Versailles, the renewal of the guarantees was part of Swiss diplomatic bargain with France under which Switzerland agreed to renegotiate its rights concerning the neutralization of the French Upper Savoy and Gex, established in 1815, in return for the renewal of the recognition of Swiss permanent neutrality and its compatibility with the Covenant of the League of Nations. Cf. text accompanying note 71 infra. The extent of Switzerland's acceptance of article 435 was determined by the Swiss Note annexed to the article. Since similar provisions were included in three other peace treaties of the First World War, the number of nations expressly recognizing and guaranteeing Swiss permanent neutrality was substantially increased. Treaty of Saint Germain, art. 375; 14 AM. J. INT'L L. SUPP. 176-77 (1920); Treaty of Trianon, art. 358, 3 MALLOY 3539, 3691; Treaty of Neuilly, art. 291; 14 AM. J. INT'L L. SUPP. 185, 302 (1920). See also VEROSTA, supra note 46, at 42. The United States has never formally recognized the permanent neutrality of Switzerland. On the United States attitude toward neutralization, see BLACK, FALK, KNORR & YOUNG, supra note 48, at 47-50.

In addition, the Declaration of London of the League of Nations, of February 13, 1920, which considered the problem of Swiss membership in the League expressly recognized that the "permanent neutrality of Switzerland and the guarantee of the inviolability of her territory as incorporated in the Law of Nations was justified by the interests of general peace and as such were compatible with the Covenant." LEAGUE OF NATIONS OFF. J. 57, 58 (1920). Cf. text accompanying note 71 infra.

For a brief discussion of reasons for this success, see BLACK, FALK, KNORR & YOUNG, supra note 48, at 38-41.

See the official Swiss conception of neutrality, supra note 47. This conception is apparently authored by Bindschedler, Chief Legal Adviser to the Federal Political Department. Cf. identical formulation of the Swiss conception in Bindschedler, Die Neutralität im modernen Völkerrecht, 17 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENT-
a permanently neutral state has three principal obligations in time of peace:\textsuperscript{53} (1) to abstain from starting a war, except in self-defense;\textsuperscript{54} (2) to defend its neutrality; and (3) it must "do everything not to get involved in a war and abstain from anything that might involve it in a war, that is, it must generally avoid to take sides in conflicts between third states. It is obliged to follow the policy of neutrality."\textsuperscript{55} In the Swiss interpretation, the third set of duties, the so-called "secondary duties" or "anticipatory effects" (\textit{Vorwirkungen}) of permanent neutrality\textsuperscript{56} are of political, military, and economic nature. Political neutrality means that Switzerland must avoid foreign policies that might involve it in hostilities. In particular, it must not enter into treaties that oblige it to wage war (for example, alliances, treaties of guarantee, and collective security agreements). This limitation must, like the others, be interpreted narrowly; it is restricted to foreign policy commitments proper and does not include humanitarian, or other non-political actions. A permanently neutral state is under no obligation to follow the so-called "moral" neutrality. Individuals are not subject to obligations following from the status of permanent neutrality; as a result, neutrality does not call for any limitations on the freedom of the press. Concerning participation in international conferences and organizations, the Swiss conception distinguishes between those of predominantly political and those of predominantly economic, technical, or cultural nature. Participation in the former may be considered at best only if they show certain universality and include the principal representatives of the political groupings, in particular, both parties to a possible conflict. Here too, Switzerland must avoid taking sides.\textsuperscript{57} A neutral state has the right to offer its good offices

\textsuperscript{53} In addition, in time of war a permanently neutral state is bound by the duties of ordinary neutrality according to the law of neutrality.

\textsuperscript{54} This obligation implies that permanent neutrality must be armed neutrality. \textit{See Kurz, Bewaffnete Neutralität — Die militärische Bedeutung der dauernden schweizerischen Neutralität} (1967).

\textsuperscript{55} Official Swiss conception of neutrality, \textit{supra} note 47, at 196.

\textsuperscript{56} The term \textit{Vorwirkungen} was coined by Strupp. \textit{See} Fuchs, \textit{supra} note 4, at 14 n.3. For a discussion of the anticipatory effects, see \textit{id.} at 14-17. \textit{See also} Wengler, \textit{The Meaning of Neutrality in Peacetime}, 10 McGill L.J. 369 (1964).

\textsuperscript{57} Official Swiss conception of neutrality, \textit{supra} note 47, at 196-97. This essential part of the Swiss conception is misinterpreted in \textit{Black, Falk, Knorr & Young, supra} note 48, at 23. There, the phrase "participation in a conference or organization with universal membership is particularly questionable" is an incorrect translation from German and tells the reader just the opposite of what the Swiss statement means. The translation conveys the idea that participation in an organization of limited membership
and mediation even during hostilities. Military neutrality implies that a permanently neutral state cannot conclude any military agreements with other states. Economic neutrality means that it must not enter into a customs or economic union since such union might entail, for a weaker neutralized partner, political dependence upon an economically stronger state and might possibly involve the neutralized state in a conflict. As pointed out in the Swiss statement, all the duties of a neutral state must, as limitations of sovereignty, be narrowly interpreted and if Switzerland should do more than was required by the obligations of neutrality, her actions should not be regarded as fulfillment of legal duty, but as actions prompted by political considerations and designed to strengthen the confidence of the belligerents in the maintenance of neutrality.

It must be emphasized that in the official Swiss interpretation the implementation of the “secondary” duties implied in the policy of permanent neutrality is within the discretion of the permanently neutral state. Depending upon the circumstances of the particular case, it may find that participation in an international undertaking is or is not compatible with its permanent neutrality. Exercising this discretionary power, the Swiss government arrived at the conclusion that in a broader perspective of the case, participation in the economic sanctions against Rhodesia would conflict with the third set of the obligations of a permanently neutral state: to avoid policies that might involve it in a war and not to take sides in conflicts between states. This decision was purely political since there is no doubt that Switzerland could have joined in the sanctions without thereby violating any rule of international law or her obligations as a neutralized country. Rhodesia is not a “state” and has not been recognized as a state by the United Nations or by any nation.

would be less questionable than participation in a universal organization. The meaning of the Swiss statement is, of course, that permanent neutrality would be less exposed to risks of involvement in conflicts and charges of partiality if membership were not limited but as universal as possible, including antagonistic groupings. Hence it would be particularly questionable if Switzerland joined a political conference or organization which would not include representatives of rival political groupings. Thus, for example, in 1954 in its reply to the Soviet invitation to participate in an international conference on European security, the Swiss Federal Council emphasized that Switzerland could consider the possibility of participating only if all the European countries took part in the conference. See Bindschedler, supra note 52, at 5 n.3.

In this respect the question of the relationship of Switzerland to the European Economic Community has prompted national debate equalled in its animation only to the debate on Switzerland and the United Nations.

Official Swiss conception of neutrality, supra note 47, at 199.

Under international law, a secession results in the creation of a new state only after the lawful sovereign (in this case the United Kingdom) has given up all attempts
Neither have the Rhodesian rebels been granted the status of insurgency or belligerency since no military action has so far been taken by the United Kingdom to put down the rebellion. Since Rhodesia is legally nothing more than a rebel territory under the sovereignty of the United Kingdom, it could not, of course, charge Switzerland with the violation of its obligations under the permanent neutrality status which apply only in the relations with third states. Protests by other states, such as South Africa or Portugal, do not appear realistic. Thus the application of the sanctioning measures, not only with the consent but also at the request of the lawful sovereign of Rhodesia could in no way be qualified as conflicting with Swiss permanent neutrality. On the contrary, one could reason that absolute impartiality, allowing for the evasion via Switzerland of the sanctions against the rebel territory, could be regarded as at least an unfriendly act toward the United Kingdom.  

From the legal point of view the Rhodesian situation does not call for the fulfillment by Switzerland of the "secondary obligations" of a permanently neutral state. It was for the above discussed reasons that the Austrian government complied with the resolutions of the Security Council to implement the sanctions, subject to reservations mentioned in the next paragraph.

If the application of the economic sanctions would not, in the Rhodesian case, conflict with any rule of international law or permanent neutrality, why then did Switzerland not fully comply with the decision of the Security Council? The answer lies in the phrase "for reasons of principle," used in the Swiss statement of February 13, 1967, which stated Switzerland's position in the Rhodesian case. Switzerland, and Austria as well, do not want to set a dangerous precedent that would embarrass their position as permanently neutral states in any future eventuality when economic sanctions might be applied not against a rebel territory but a recognized state and a member of the United Nations, such as South Africa or Portugal. In this sense the Rhodesian case is relevant only as a test of a principle; and for Switzerland, still haunted by the failure of

to recover the territory. See Zemanek, supra note 8, quoting, inter alia, VERDROSS, VÖLKERRECHT 248 (5th ed. 1964). See also McDougal & Reisman, supra note 6, at 17.

On the other hand, some argue that should the Rhodesian rebels eventually win a possible civil conflict as insurgents, a neutral country (Switzerland) might be charged by them with the violation of its permanent neutrality by supporting the British government. See Bindschedler, supra note 8, at 9.

See text accompanying notes 31-37 supra.
differential neutrality under the League of Nations,\textsuperscript{68} "a position of principle [that is, integral neutrality] must be given priority over other considerations.\textsuperscript{64} Departure from this principle could create a "credibility gap" in the eyes of other states, each one of which, at least in theory, could become a target of the collective security system. As already mentioned, Switzerland is not alone in its concern. Austria, a neutralized member of the United Nations, complied with the order of the Security Council but in its reply made a general reservation concerning its neutrality. It was stated in that reply that the Austrian decision to implement the sanctions was valid only "in this particular case and under the given circumstances" and was taken without any prejudice to the question of principle whether Austria as a permanently neutral State Member of the United Nations is automatically bound by decisions of the Security Council — a question which in the opinion of the Federal Government of Austria can only be decided in each single case on the basis of the specific situation and with due regard to the obligations which result on the one hand from the membership of Austria in the United Nations and on the other hand from its permanent neutrality, which had previously been notified to all States of the United Nations.\textsuperscript{65}

A question might be raised why the Security Council, by using its discretionary power under article 48, paragraph 1,\textsuperscript{66} did not relieve the neutralized countries from the participation in the sanctions against Rhodesia.\textsuperscript{67} The fact that the target of the current coercive measures is not a state may be one consideration; but the primary reason for the all-inclusive call of the Security Council

\textsuperscript{68} See text accompanying notes 70-79 infra.


\textsuperscript{66} This paragraph reads:
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.

\textsuperscript{67} Among the commentators on the neutralization of Austria the prevalent opinion is that should the Security Council decide upon coercive measures under chapter VII of the Charter, it would have to exempt the neutralized states from the participation in sanctions conflicting with their permanent neutrality. See, e.g., Verdross, Austria's Permanent Neutrality and the United Nations Organization, 50 AM. J. INT'L L. 61, 66-67 (1956); Kunz, Austria's Permanent Neutrality, 50 AM. J. INT'L L. 418, 424 (1956); Zemanek, Neutral Austria in the United Nations, 15 INT'L ORG. 408, 412 (1961).
seems to be the fact that it was not the intention of the framers of the Charter to exempt neutral states from the collective security duties.\textsuperscript{68} The decision of the Security Council to include all states in the community action was taken — like the decision of Switzerland not to participate — for reasons of principle. The Security Council decided to uphold the idea of collective security which, after more than 20 years, was finally given a chance to be implemented against a threat to international peace. Switzerland was concerned about asserting its own permanent neutrality approach to international security. In the particular case of Rhodesia, the conflict between these two principles could be settled by a compromise. Despite Switzerland's concern for integral neutrality, that country could not and did not adopt a posture of absolute impartiality. Such posture might, in practice, be tantamount to taking sides with Rhodesia since complete Swiss indifference could easily transform Switzerland into a "reloading station"\textsuperscript{69} for the evasion of sanctions.

The restrictive measures taken by Switzerland with regard to Rhodesia show that even a neutral nonmember country cannot completely ignore collective security measures adopted by a universal organization with the concurrence of the great powers and endorsed by the world opinion. Although the Swiss measures seem to represent a departure from integral neutrality, the Swiss government makes it a point to emphasize that they were applied not within the framework of the policy of neutrality or in compliance with the United Nations call, but as an expression of an autonomous discretionary policy of a neutral state. The United Nations, on its part, has also shown a spirit of compromise in the clash of collective security against permanent neutrality. Although the Security Council did not exempt Switzerland from the participation in the sanctions, no negative reaction followed the Swiss refusal. The acquiescence of the collective security organization in the Swiss position can be attributed to four basic factors: (1) the nonmembership argument cannot be entirely discarded; (2) Swiss permanent neutrality, as a time-honored institution of international law, must be taken into account; (3) Switzerland did fulfill the minimum obligation of refraining from giving assistance to Rhodesia; and (4) Switzerland's trade relations with the rebel territory cannot significantly affect the outcome of the enforcement measures.

\textsuperscript{68} See text accompanying note 82 infra.

\textsuperscript{69} In this context the term "reloading" or "re-routing station" (\textit{Umschlagplatz}) has been repeatedly used by Swiss government spokesmen.
NEUTRALITY AND COLLECTIVE SECURITY

V. THE EXPERIMENT IN DIFFERENTIAL NEUTRALITY: SWITZERLAND AND THE LEAGUE OF NATIONS' COLLECTIVE SECURITY SYSTEM

The Swiss posture in the Rhodesian issue can be placed in a much clearer perspective if an account is made of the Swiss experiences during the League of Nations' sanctions against Italy in 1935-1936. A brief historical look at the early days of the League, when the problem of Swiss membership in the first collective security organization arose, is necessary in order to understand the implications of the Italo-Ethiopian case for the Rhodesian sanctions.

In 1919 for the first time in the history of its neutrality, Switzerland faced the question of how to reconcile permanent neutrality with membership in an organization requiring its members to apply economic sanctions against other states and to permit the passage of foreign troops through the members' territories. Since this requirement is incompatible with the obligations of a permanently neutral state, the Council of the League of Nations in its Declaration of London of February 13, 1920, affirmed the compatibility of the unique case of Swiss neutrality with the Covenant of the League as justified in the interest of general peace, and excused Switzerland from participation in military sanctions, the preparation of military enterprises upon its territory, and the grant of free passage to foreign troops, while maintaining the obligation to participate in economic and financial sanctions under article 16, paragraph 1 of the Covenant. Thus Switzerland's entry into the League of Nations resulted in the restriction of its permanent neutrality by the creation of the status of "differential" or "qualified" neutrality. The rationale of this concept was that the military aspects of the sanctions could be separated from the economic ones and that the equality of treatment and impartiality would apply to the military matters.

70 See note 49 supra, for a brief outline of the history of Swiss neutrality.

71 LEAGUE OF NATIONS OFF. J. 57, 58 (1920). See also note 49 supra. For the official Swiss position on membership in the League of Nations, see the Message of the Federal Council, Aug. 4, 1919, [1919 IV] BUNDESBLATT 541; Memorandum of the Federal Council to the Members of the Council of the League, Jan. 13, 1920, [1920 I] BUNDESBLATT 354. For a convenient summary of the entry negotiations, see Zahler, Switzerland and the League of Nations; A Chapter in Diplomatic History, 30 AM. POL. SC. REV. 753 (1936). See also Bonjour, Offler & Potter, A Short History of Switzerland 357-59 (1952); 1 Walters, A History of the League of Nations 92-93 (1952). On May 17, 1920, a referendum was held in which the Swiss men decided by a narrow margin to join the League of Nations. See Brooks, Swiss Referendum on the League of Nations, 14 AM. POL. SC. REV. 479 (1920).

72 Following this doctrine and invoking the Declaration of London of February 13, 1920, Switzerland refused free passage to the international policing force of 1,500 troops.
but not to the economic ones. That the doctrine of differential neutrality was a fallacy and a mistake was discovered by Switzerland 15 years later when her neutrality had to face its first severe trial in the Italo-Ethiopian conflict on the occasion of the League’s sanctions against Italy.\textsuperscript{78}

By 1935 the process of the disintegration of the collective security system had started. It became obvious to the Swiss that the decision to adopt the differential neutrality had been a mistake and that they had either to enter the collective security system without reservations and thereby abandon neutrality altogether or not to participate in any collective security measures and return to integral neutrality. In the case of the Italian sanctions, the additional problem for Switzerland was the conflict between international solidarity and traditionally friendly relations with the target of the sanctions, Italy, whose attitude towards Switzerland could weigh heavily upon Switzerland’s economy and security. (Fortunately for Switzerland, this element does not play a role in the present Rhodesian situation.) Balancing the interests involved, the Swiss government decided to repudiate its Covenant obligations rather than risk involvement in a conflict under the circumstances where no sufficient protection could be expected from the collective security mechanism. As the Swiss delegate to the Assembly of the League put it, while invoking the Resolution Concerning the Economic Weapons of 1921:\textsuperscript{74}

\begin{quote}
The limits of our obligation are set by our neutrality, which is not only a fundamental principle of our foreign policy, but a condition of our existence. We are not of the opinion that we are pledged to participate in sanctions which, by their nature and effects, might expose our neutrality to a real danger \ldots \textsuperscript{75}
\end{quote}

As a result, Switzerland only partially fulfilled its obligations under the Covenant. It joined the embargo on the export of war material; but, claiming to be bound by the obligations of the ordinary neutrality under articles 7 and 9 of the 1907 Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in organized by Marshall Foch to supervise the plebiscite in the disputed Polish-Lithuanian Vilna area. See \textit{BONJOUR, supra note 49, at 115.}

\textsuperscript{73} See the account in 2 \textit{WALTERS, supra note 71, ch. 53. For a recent examination of Swiss neutrality and the League of Nations sanctions, see \textit{GLASL, DIE NEUTRALITÄT DER SCHWEIZ IM SANKTIONSSYSTEM DES VÖLKERBUNDES} (1967). \textit{See also 2 OPPENHEIM, supra note 43, at 646-47, and the literature cited there.}

\textsuperscript{74} League of Nations, Doc. A.14 (1927 V). The Resolution watered down the collective security system of articles 10 and 16 of the Covenant by allowing each state to decide when it would apply the economic sanctions.

\textsuperscript{75} Statement of Motta, Oct. 10, 1935, \textit{cited in HOFER, supra note 49, at 17.}
Case of War on Land,\textsuperscript{70} she applied the embargo equally to the aggressor and the victim of aggression and refused to ban imports from Italy, but stabilized the trade with that country at the level of 1934 (the doctrine of courant normal).\textsuperscript{77} The other two sanctioning measures (prohibition of loans and credits and ban on the export of selected raw materials needed for the Italian war effort) were complied with.\textsuperscript{78}

Following the general breakdown of the sanctions, the next logical step for Switzerland was to request formally from the Council of the League a release from the obligation to participate in the economic sanctions in general. This request was granted by the Council on May 14, 1938,\textsuperscript{79} and thus after 18 years of collective security, Switzerland returned to its traditional integral neutrality in the hope that permanent neutrality rather than collective security or the compromise device of differential neutrality would better protect its integrity in the oncoming conflict. Switzerland managed to preserve its neutrality in World War II owing to a number of reasons among which its integral neutrality status played a prominent role. The desire to continue this status, strengthened by the memories of the failure of differential neutrality under the League of Nations, has been a major factor accounting for Switzerland's Rhodesian decision in 1967.\textsuperscript{80}

\section*{VI. Switzerland and the United Nations}

When a new organization of collective security was established in 1945, Switzerland again faced problems similar to those that had confronted it following the First World War. The question of joining the United Nations was studied by a number of governmental committees and became a subject of the first round of the national "grand debate" on this issue. Details concerning the events and circumstances which eventually led to the decision not to apply for admission to the United Nations are beyond the scope of this

\textsuperscript{70} 36 Stat. 2310 (1910), T.S. No. 540.
\textsuperscript{77} See text accompanying note 29 supra.
\textsuperscript{78} See Fuchs, supra note 4, at 85-89; Belin, supra note 49, at 53.
The primary consideration for the decision was the apparent incompatibility of permanent neutrality with the system of collective security of the new organization and the belief that membership with exemption from participation in the enforcement measures under chapter VII of the Charter was not possible in view of the generally hostile attitude toward neutrality, whether occasional or permanent, displayed at the drafting of the Charter. On the other hand, Switzerland decided that the application of article 94, paragraph 2, of the Charter, concerning the execution of judgments of the International Court of Justice, did not conflict with the obligations of permanent neutrality and became a party to the Statute of the Court in 1947. In accordance with its conception of

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81 The records of the committees studying the question of Swiss membership have not been published by the Swiss government. Only succinct summaries are included in the Report of the Federal Council to the Federal Assembly on its activities in 1945. For a most detailed account of the issue of Swiss membership in the United Nations in the years 1944-1947, see EHN, DIE SCHWEIZ UND DIE VEREINTEN NATIONEN VON 1944-1947 (1967). See also BELIN, supra note 49 at 71-82; CODDING, supra note 49, at 162.

82 The question of neutrality was discussed at San Francisco by Committee I/1 in connection with the crucial collective security obligation in article 2, paragraph 5 of the Charter which reads:

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

The French delegate proposed an amendment which would have expressly denied to any member the right to be relieved from the provisions of this paragraph on the ground of neutrality by which, as he explained, permanent neutrality was meant. In the discussion in Subcommittee I/1/A it was understood that permanent neutrality was incompatible with the principles of article 2, paragraphs 5-6 of the Charter (cf. text accompanying notes 40-44 supra) without it being necessary to mention it expressly. Doc. 739, I/1/A/19(a), 6 U.N.C.I.O. DOCS. 722 (1945); Doc. 944, I 1/34 (I), at 14-15, 459-60. See also Kelsen, supra note 42, at 94; GOODRICH & HAMBO, supra note 40, at 108; Lalive, supra note 4, at 77-78; 11 WHITEMAN, supra note 40, at 146-47. As noted by Lalive (supra) in the view of its author the French amendment related only to the status of permanent neutrality whereas the text would seem to cover occasional neutrality as well. The position of the French delegate was understandable since the Charter leaves a number of possibilities for the occasional neutrality, the discussion of which is beyond the scope of this study. For a recent comment on this question, see Fenwick, Is Neutrality Still a Term of Present Law?, 63 AM. J. INT'L L. 100 (1969).

83 Article 94, paragraph 2 reads:

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

permanent neutrality, Switzerland has also joined a number of specialized agencies of the United Nations and participates in the work of other nonpolitical bodies of the Organization. It is interesting to note, however, that Switzerland accepted membership in the International Atomic Energy Agency on the express reservation that it would not be bound by any decision of the Security Council in the area of atomic energy that might impinge upon its status of permanent neutrality. A reservation of permanent neutrality was also made by Switzerland upon its accession to the Intergovernmental Maritime Consultative Organization. Since 1946 Switzerland has been maintaining a permanent observer at the United Nations Headquarters in New York and since 1966 at the European Headquarters in Geneva. The fact that the latter is located in Switzerland is not considered to conflict with the obligations of permanent neutrality. Switzerland has made significant contributions to the United Nations peace-keeping operations which are regarded in harmony with the impartial role a neutral country should play in world affairs.

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85 See text accompanying notes 52-59 supra.
86 A list of the principal agencies and bodies in which Switzerland participates is found in Schweiz und UNO: Unsere Mitarbeit in den Organen und in den Spezialorganisationen der Weltorganisation (Feb. 1968) [mimeographed press release of the Swiss Federal Political Department]. For the latest report on Swiss cooperation in the specialized agencies and other United Nations bodies, see BERICHT DES BUNDES RAT'S AN DIE BUNDESVERSAMMLUNG ÜBER SEINE GESCHÄFTSFÜHRUNG IM JAHRE 1967 at 43-44 (Apr. 3, 1968). See also Zwicky, Switzerland's Participation in International Organizations: A Summary, 18 SWISS REV. WORLD AFFAIRS, NO. 2, at 18-20 (May 1968); PERRIN, LA NEUTRALITÉ PERMANENTE DA LA SUISSE ET LES ORGANISATIONS INTERNATIONALES 58-60 (1964).
88 On the observers' status, see Mower, Observer Countries: Quasi Members of the United Nations, 20 INT'L ORG. 266 (1966).
89 Switzerland is still a member of the U.N. Armistice Commission in Korea. See BERICHT DES BUNDES RAT'S AN DIE BUNDESVERSAMMLUNG ÜBER SEINE GESCHÄFTSFÜHRUNG IM JAHRE 1967, at 23 (Apr. 3, 1968). Among the Swiss contributions to peacekeeping operations are the following: In 1956 Switzerland, at its own expense of 1.6 million SF, transported U.N. contingents from Italy to Egypt. At the time of the U.N. operation in the Congo, it provided aircraft for the transport of food and of a small number of troops, at the cost of 1.8 million SF. Other expenses incurred by Switzerland in the Congo (civilian specialists) amounted to 4.1 million SF. In addition, Switzerland maintains a hospital in the Congo at the cost of 1.1 million SF per year. In 1961 it made a loan to the U.N. at the amount of 8.2 million SF. Other Swiss contributions to the U.N. peacekeeping include participation in the cost of the Cyprus operation, providing aircraft and some personnel for the truce supervision teams in Palestine, and assistance rendered the U.N. observers in Saigon in 1963. For details see Schweizerische Mitwirkung an friedenserhaltenden Aktionen der UNO [mimeographed press release of the Federal Political Department March 1968] (courtesy Swiss Consulate in Cleveland, Ohio).
The disrepute in which neutrality was held at San Francisco was reflected in the doctrine of international law in the early post-war years: the opinion prevailed that neutrality was incompatible with the Charter, the view that only corroborated the Swiss decision not to join the United Nations. There were, however, dissenting voices, among them some Swiss commentators, who pointed, in part, to the possibilities afforded by article 48, paragraph 1, of the Charter under which Switzerland could be exempted from the enforcement measures by the Security Council. Further developments showed clearly that neutrality was possible for other reasons as well. As a result of the breakdown in unity of the great powers and the application of the veto in the Security Council, the collective security system, as envisaged in 1945, failed to work. As a corollary of this development, "the curve . . . of permissible nonparticipation rose," showing that neutrality remained in the contemporary world politics and under the Charter even if the United Nations worked normally. The best evidence of the reevaluation of neutrality was the recognition of the neutralization of Austria by the great powers and a unanimous admission of that country into the United Nations without any formal discussion whether the status of the permanent neutrality of Austria, modeled on the Swiss example, was compatible with membership in the United Nations, but also without any formal recognition of Austria's neutrality.

The failure of the collective security system based on coercive and legally binding measures and the trend towards alternative methods of voluntary "peacekeeping" and "preventive diplomacy" has again raised in Switzerland the old question of a possible membership in the United Nations. A national debate ensued in which the possibility of making Swiss military contingents available

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90 See note 66 supra. See also Lalive, supra note 4, at 83.
91 The discussion of this problem by far exceeds the scope of this study. For a review of the situations in which claims to neutrality in the case of an international conflict might be permissible under the Charter, see 11 WHITEMAN, supra note 40, at 139-60. See also Fenwick, supra note 82.
92 MCDougal & Feliciana, supra note 1, at 128-29.
93 Among the many studies on Austria's membership in the United Nations, see STRASSER, ÖSTERREICH IN DEN VEREINTEN NATIONEN — EINE BESANDBAFAHME VON ZEHN JAHREN MITGLIEDSCHAFT (1967). See also Kunz, supra note 67; Verdross, supra note 67; Verdross, La neutralité dans le cadre de l'ONU, particulièrement celle de la Republique d'Autriche, 61 REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC 177 (1957); Verdross, Die immerwährende Neutralität der Republik Österreich (1966); Zemanek, supra note 67.
94 See CLAUDE, supra note 2, ch. 14.
95 See note 27 supra.
to the United Nations was also envisioned. A special government commission was established to study the perspectives and possibilities of joining the United Nations while maintaining the permanent neutrality.

In the midst of all this debate calling for a "more active foreign policy" and at the time when the United Nations appeared to have departed enough from the system of collective security to make it possible for Switzerland to consider membership in the Organization, the Rhodesian decision of the Security Council had a sobering effect upon the Swiss speculations. The decision showed that there were areas, outside of the spheres of influence of the great powers, where the coercive measures of chapter VII of the Charter could be applied. An editorial in Neue Zürcher Zeitung reflected the new mood in Switzerland best:

Unexpectedly, the U.N. has resorted to those possibilities of its Charter that make the neutrals rack their brains and put them on the spot; unexpectedly, the "pays réel," the landscape of realities, is changing into "pays légal" which some observers regarded as only abstract constructions. This transformation will hardly make things easier for us.

CONCLUSIONS

As a result of the Security Council decision imposing mandatory economic sanctions upon the rebel regime of Southern Rhodesia, Switzerland's permanent neutrality was exposed to a difficult test. It confronted that neutralized nonmember state with the dilemma of how to reconcile the principle, which for centuries had been the fundamental tenet of Swiss foreign policy, with a collective security action of the United Nations' Security Council which called upon all states to participate in the enforcement measures. Owing to the unique circumstances of the Rhodesian case, Switzerland has been able to find a compromise solution to its dilemma which satis-

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96 See, e.g., Statement of the Head of the Federal Political Department in the National Council, June 6, 1966, and his address at the University of Lausanne, Oct. 21, 1966. See also the statement of the former Head of the Political Department, Wahlen; Neue Zürcher Zeitung, Feb. 9, 1967, Blatt 5.


Public opinion polls conducted in 1967 indicated diminished interest in the question of joining the United Nations. Even in Geneva a majority of people interrogated were against joining. N.Y. Times, Sept. 16, 1967, at 14, col. 5.
fied both the obligations of a permanently neutral country and the expectations of the international community in the era of collective security. In order not to set a precedent for any future cases, Switzerland refused "for reasons of principle" to comply with the sanctions decision and thus upheld its permanent neutrality status. On the other hand, realizing that it could not remain totally impartial in defiance of the Organization and the united front of the great powers and world public opinion, it adopted, independently and in the exercise of free discretion, certain restrictive measures against Rhodesia which satisfied the minimum requirement of refraining from giving assistance to the target of the collective security measures. The United Nations has tacitly accepted the Swiss response recognizing thereby the validity of the Swiss posture under international law.

The solution presented does not mean that permanent neutrality and collective security can always be reconciled. On the contrary, permanent neutrality and collective security as it is conceived in the Charter of the United Nations are, in principle, incompatible because the "secondary" obligations of a permanently neutral State to observe political neutrality in peacetime conflict with membership in an organization imposing upon its members the duty to participate in coercive measures against other states and possibly place them in other situations which could be interpreted as taking sides in political conflicts, and because the obligations of a neutralized state under the Charter prevail over the obligations of that state under the neutralization treaty. A permanently neutral state, such as Switzerland, could become a member of the United Nations and not jeopardize its status if the Security Council acting under article 48, paragraph 1, and possibly the General Assembly, would grant it full exemption from affirmative participation in the enforcement measures under chapter VII of the Charter. The permanently neutral country would, however, be obliged to refrain from giving assistance to the aggressor to the extent compatible with its neutralized status. A more permanent solution would be to anchor the above mentioned principles in the Charter by an amendment under article 108.

The exemption of neutralized states from participation in coercive measures could be far outweighed by the positive and constructive role that they could play as representatives of the United Nations in the peace-keeping operations of the Organization.