

## ARTICLE 12

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### TEXT OF ARTICLE 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

## INTRODUCTORY NOTE

1. The scope and effect of the restriction laid down in the first clause of Article 12 (1) was the subject of discussion at the 755th meeting of the Security Council on 5 November 1956 and at the first emergency special session of the General Assembly. In both instances the context in which the discussion occurred was the exercise by the General Assembly of its functions under resolution 377 A (V), following the calling of an emergency special session of the General Assembly by the Security Council.

## I. GENERAL SURVEY

Article 12 (1)

2. During the period covered by this Supplement, the disputes or situations discussed below, in paragraphs 3 to 10, were considered by both the Security Council and the General Assembly; by the latter in an emergency special session convoked by the former. In all these cases the Council continued to be seized of the matters despite its convocation of an emergency special session of the General Assembly.

3. The Security Council considered the item, "The Palestine question: steps for the immediate cessation of the military action of Israel in Egypt", at its 748th to 750th meetings, held on 30 October 1956. A related item, "Letter dated 30 October 1956 from the representative of Egypt addressed to the President of the Security Council" 1/ was considered by the Security Council at its 750th and 751st meetings, held on 30 and 31 October 1956. At its 751st meeting, the Council adopted 2/ the following resolution:

"The Security Council,

"Considering that a grave situation has been created by action undertaken against Egypt,

"Taking into account that the lack of unanimity of its permanent members at the 749th and 750th meetings of the Security Council has prevented it from exercising its primary responsibility for the maintenance of international peace and security, [3/]

"Decides to call an emergency special session of the General Assembly, as provided in General Assembly resolution 377 A (V) of 3 November 1950, in order to make appropriate recommendations." 4/

4. The General Assembly dealt with the question at its first emergency special session, under the heading, "Question considered by the Security Council at its 749th and 750th meetings"; 5/ and at its eleventh session, under the heading, "Question

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1/ For text of letter, see S C, 11th yr., Suppl. for Oct.-Dec., p. 111, S/3712.

2/ S C, 11th yr., 751st mtg., para. 147.

3/ For discussion bearing on the question of the inability of the Security Council to discharge its responsibility for the maintenance of international peace and security in connexion with this and the following items, see this Supplement, under Articles 11 and 24.

4/ S C, 11th yr., Suppl. for Oct.-Dec., p. 116, S/3721.

5/ G A (ES-I), agenda item 5.

considered by the first emergency special session of the General Assembly from 1 to 10 November 1956". 6/

5. The item, "The situation in Hungary", was considered by the Security Council at its 746th and 752nd to 754th meetings, between 28 October and 4 November 1956. At its 754th meeting, the Council adopted 7/ the following resolution:

"The Security Council,

"Considering that a grave situation has been created by the use of Soviet military forces to suppress the efforts of the Hungarian people to reassert their rights,

"Taking into account that because of the lack of unanimity among its permanent members the Security Council has been unable to exercise its primary responsibility for the maintenance of international peace and security,

"Decides to call an emergency special session of the General Assembly, as provided in General Assembly resolution 377 A (V) of 3 November 1950, in order to make appropriate recommendations concerning the situation in Hungary." 8/

6. The General Assembly dealt with the question under the following headings: "The situation in Hungary", 9/ at its second emergency special session; "Question considered by the second emergency special session of the General Assembly from 4 to 10 November 1956", 10/ at its eleventh session; "The question of Hungary", at its twelfth session; and "The situation in Hungary", 11/ at its thirteenth session.

7. The Security Council considered the item, "Letter dated 22 May 1958 from the representative of Lebanon addressed to the President of the Security Council concerning: 'Complaint by Lebanon in respect of a situation arising from the intervention of the United Arab Republic in the internal affairs of Lebanon, the continuance of which is likely to endanger the maintenance of international peace and security'" 12/ at the 818th, 822nd to 825th and 827th to 838th meetings, held between 27 May and 7 August 1958.

8. The Security Council considered the item, "Letter dated 17 July 1958 from the representative of Jordan addressed to the President of the Security Council concerning, 'Complaint of the Hashemite Kingdom of Jordan of interference in its domestic affairs by the United Arab Republic'", 13/ beginning with the 831st meeting, simultaneously with the complaint by Lebanon.

9. At the 838th meeting, the Council adopted 14/ the following resolution:

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6/ G A (XI), agenda item 66.

7/ S C, 11th yr., 754th mtg., para. 75.

8/ S C, 11th yr., Suppl. for Oct.-Dec., p. 127, S/3733.

9/ G A (ES-II), agenda item 5.

10/ G A (XI), agenda item 67.

11/ G A (XII), agenda item 63, and G A (XIII), agenda item 69.

12/ For text of letter, see S C, 13th yr., Suppl. for April-June, p. 33, S/4007.

13/ For text of letter, see S C, 13th yr., Suppl. for July-Sept., p. 37, S/4053.

14/ S C, 13th yr., 838th mtg., para. 225.

"The Security Council,

"Having considered items 2 and 3 on its agenda as contained in document S/Agenda/838,

"Taking into account that the lack of unanimity of its permanent members at the 854th and 837th meetings of the Security Council has prevented it from exercising its primary responsibility for the maintenance of international peace and security,

"Decides to call an emergency special session of the General Assembly." 15/

10. The two items were dealt with at the third emergency special session of the General Assembly under the heading, "Questions considered by the Security Council at its 838th meeting on 7 August 1958". 16/

Article 12 (2)

11. Acting under Article 12 (2), the Secretary-General continued to notify 17/ the President of the General Assembly, with the consent of the Security Council, of "matters relative to the maintenance of international peace and security which are being dealt with by the Security Council". The General Assembly took note 18/ of these notifications, which were based upon the "Summary Statement by the Secretary-General on matters of which the Security Council is seized and on the stage reached in their consideration", circulated each week in accordance with rule 11 of the provisional rules of procedure of the Security Council. 19/ The items in the notifications were the same as those in the current Summary Statement, except for the exclusion of items not considered "matters relative to the maintenance of international peace and security".

12. The matters dealt with by the Security Council were divided into two categories in the notifications: 20/ (a) matters "which are being dealt with by the Security Council, and which have been discussed during the period since" the previous notification; 21/ and (b) matters of which the Security Council "remains seized" but which it had not discussed during that period. The Secretary-General obtained the consent of the Security Council to the draft notifications by circulating copies.

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15/ S C, 13th yr., Suppl. for July-Sept., p. 126, S/4083.

16/ G A (ES-III), agenda item 5.

17/ G A (XI), Annexes, vol. I, a.i. 7, A/3348; G A (XII), Annexes, a.i. 7, A/3667; G A (XIII), Annexes, a.i. 7, A/3919.

18/ G A (XI), Plen., 577th mtg., para. 1; G A (XII), Plen., 682nd mtg., para. 37; G A (XIII), Plen., 752nd mtg., para. 9.

19/ Rule 11 reads as follows: "The Secretary-General shall communicate each week to the representatives on the Security Council a summary statement of matters of which the Security Council is seized and of the stage reached in their consideration" (United Nations publication, Sales No.: 52.I.18).

20/ G A (XI), Annexes, vol. I, a.i. 7, A/3348; G A (XII), Annexes, a.i. 7, A/3667; G A (XIII), Annexes, a.i. 7, A/3919.

21/ The notification to the General Assembly before its thirteenth session referred to matters "which have been discussed [by the Security Council] during the period since" the last notification (G A (XIII), Annexes, a.i. 7, A/3919).

13. In the notification 22/ issued before the convening of the thirteenth session of the General Assembly, the following two agenda items were listed as among the matters discussed by the Security Council during the period since the previous notification: (a) "Letter dated 22 May 1958 from the representative of Lebanon addressed to the President of the Security Council concerning: 'Complaint by Lebanon in respect of a situation arising from the intervention of the United Arab Republic in the internal affairs of Lebanon, the continuance of which is likely to endanger the maintenance of international peace and security'"; and (b) "Letter dated 17 July 1958 from the representative of Jordan addressed to the President of the Security Council concerning: 'Complaint by the Hashemite Kingdom of Jordan of interference in its domestic affairs by the United Arab Republic'". The notification stated that the Security Council had decided at the 838th meeting, on 7 August 1958, to call an emergency special session of the General Assembly in connexion with these two questions.

14. The following agenda items were listed among the matters which had not been discussed by the Security Council during the period since the previous notification, but of which the Council remained seized: (a) "The situation in Hungary"; and (b) "Letter dated 30 October 1956 from the representative of Egypt addressed to the President of the Security Council".

15. By a letter dated 25 November 1958, 23/ the Secretary-General, acting under the mandate contained in General Assembly resolution 1237 (ES-III) 24/ of 21 August 1958, informed the President of the General Assembly, that, in response to the request of 16 November 1958 of the Government of Lebanon, the Security Council at its 840th meeting, on 25 November 1958, had decided to delete from the list of matters of which the Council was seized the complaint submitted on 22 May 1958 by the Government of Lebanon. In the same letter, in the light of that decision and in accordance with the provisions of Article 12 (2), the Secretary-General transmitted a notification to the General Assembly that, on 25 November 1958, the Council had ceased to deal with the matter.

## II. ANALYTICAL SUMMARY OF PRACTICE

**\*\* A.** The question of the scope of the term "recommendation" as used in Article 12 (1)

**B.** The question of the meaning of the phrase "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter", and its effect upon the powers of the General Assembly

16. The bearing of Article 12 (1) on the competence of the Security Council to exercise its functions in respect of a situation with which the General Assembly had

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22/ G A (XIII), Annexes, a.i. 7, A/3919.

23/ A/4008 (mimeographed).

24/ In section II of resolution 1237 (ES-III), the General Assembly requested the Secretary-General "to make forthwith, in consultation with the Governments concerned and in accordance with the Charter, and having in mind section I of this resolution, such practical arrangements as would adequately help in upholding the purposes and principles of the Charter in relation to Lebanon and Jordan in the present circumstances, and thereby facilitate the early withdrawal of the foreign troops from the two countries".

been dealing in emergency special session convoked by the Security Council under resolution 377 A (V) was the subject of discussion at the 755th meeting of the Security Council on 5 November 1956. It was maintained, on the one hand, that should the Council concern itself with the matter, as had been proposed, the General Assembly would be prevented from continuing the peace-making process it had initiated. It was contended, on the other hand, that the fact that the General Assembly was dealing with a question did not relieve the Security Council of the obligation to act under Chapter VII of the Charter. 25/

17. In the course of the first emergency special session of the General Assembly, called by the Security Council to make recommendations on the question considered by the Council at its 749th and 750th meetings, the issue arose whether the powers of the General Assembly were limited to the specific question on which the Security Council, because of the lack of unanimity of its permanent members, had been unable to exercise its primary responsibility for the maintenance of international peace and security. 26/

*1. Decision of 5 November 1956 in connexion with a proposal to include in the agenda of the Security Council the question: "Non-compliance by the United Kingdom, France and Israel with the decision of the emergency special session of the General Assembly of the United Nations of 2 November 1956 and immediate steps to halt the aggression of the aforesaid States against Egypt"*

18. In a cablegram from the Minister for Foreign Affairs of the Union of Soviet Socialist Republics, dated 5 November 1956 27/ and addressed to the President of the Security Council, the Government of the Soviet Union called for an immediate meeting of the Security Council to discuss the following question:

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

19. The cablegram contained a draft resolution under which the Security Council would take action in accordance with Article 42 of the Charter. The cablegram was placed on the provisional agenda of the 755th meeting of the Security Council, held on 5 November 1956.

#### Decision

20. At the 755th meeting of the Security Council, on 5 November 1956, the provisional agenda was rejected. 28/ There were 3 votes in favour and 4 against, with 4 abstentions.

21. In the course of the explanations 29/ of vote which followed, it was contended that the Security Council was not competent to consider this question, since it was

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25/ See below, paras. 18-23.

26/ See below, paras. 24-33.

27/ S C, 11th yr., Suppl. for Oct.-Dec., p. 128, S/3736.

28/ S C, 11th yr., 755th mtg., para. 27.

29/ For texts of relevant statements, see S C, 11th yr., 755th mtg.: Belgium, para. 53; China, para. 56; Cuba, para. 47; Peru, paras. 57 and 58; USSR, paras. 66, 70 and 71; United States, para. 29.

pending before the General Assembly. It was also asserted that the resolutions on the Egyptian question that had been adopted by the emergency special session of the General Assembly had been taken in pursuance of a resolution adopted by the Security Council. By dealing with the matter as requested, the Security Council would paralyse the General Assembly, for the Charter clearly sought to prevent the confusion and possible conflict which would arise if these two bodies were to take up the same question at the same time.

22. In the same vein it was said that one of the bases of the United Nations was the avoidance of overlapping competence or double jurisdiction. Just as the General Assembly could not consider a question of which the Security Council was seized, so the Security Council obviously could not logically consider a question which was pending before the General Assembly, particularly one referred to it by virtue of a procedural resolution adopted by the Council itself. Nothing, not even the Charter, much less the specific provisions of General Assembly resolution 377 (V), authorized the Council at that stage to declare itself competent in the matter and so provoke an unwarranted, and in every respect undesirable, suspension of the action initiated by the General Assembly.

23. The representative of the Soviet Union stated that his Government had submitted its proposal only when it had become clear that the moral pressure of the General Assembly had had no effect on the aggressor countries. There was no conflict of jurisdiction between the General Assembly and the Security Council. The fact that the General Assembly was taking action on a question did not relieve the Security Council of the obligation to act if the circumstances demanded it. This conclusion was fortified by the fact that, as set forth explicitly in Article 11 of the Charter, the General Assembly could not act under Chapter VII. The instant case, which raised the question of making use of the armed forces of other Members of the United Nations, involved "action" in connexion with a threat to peace, such as was envisaged by Article 42. He concluded that any objections based on the Charter were therefore unfounded.

*2. Decision of 10 November 1956 in connexion with the item:  
"Question considered by the Security Council at its  
749th and 750th meetings on 30 October 1956"*

24. At its first emergency special session, the General Assembly considered the item: "Question considered by the Security Council at its 749th and 750th meetings on 30 October 1956". 30/

25. At the 563rd plenary meeting, on 3 November 1956, the representative of the United States submitted two draft resolutions. By the first draft resolution, 31/ the General Assembly, holding it necessary, in order to secure a just and lasting peace, to remove the underlying causes of tension in the area and to achieve a final settlement between the parties to the general armistice agreements (operative paragraph 1); was to establish a committee of five Member States (a) to prepare recommendations regarding a settlement of the major problems outstanding between the Arab States and Israel, with a view to establishing conditions of permanent peace and stability in the area; and (b) to submit its recommendations to the parties concerned and to the General Assembly or the Security Council, and to submit reports to the General Assembly on the status of its assigned task (operative paragraph 3); the

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30/ G A (ES-I), agenda item 5.

31/ G A (ES-I), Annexes, a.i. 5, p. 6, A/3272.

Secretary-General was to be requested to continue his good offices with the parties, in co-operation with the committee (operative paragraph 4 ); and the parties directly concerned were to be urged to lend all possible assistance in caring for and assuring the safety of the Arab refugees under the continuing care of the United Nations Relief and Works Agency for Palestine Refugees in the Near East; Members of the United Nations were to consider and furnish what additional assistance might be required (operative paragraph 7).

26. By the second draft resolution, 32/ the General Assembly was to establish a committee of three Member States to assume responsibility for (a) measures for the immediate reopening of the Suez Canal as a secure international water-way; (b) preparation of a plan for the operation and maintenance of the Suez Canal and freedom of passage through it in accordance with the Convention of 1888, and with the six requirements unanimously agreed upon by the Security Council, with the concurrence of Egypt, on 13 October 1956; 33/ and (c) the adoption and execution of such a plan (operative paragraph 1). The committee was to report to the General Assembly and to the Security Council as appropriate, and was to be invited to make recommendations to promote a just and permanent settlement of the Suez Canal question, consistent with the Purposes and Principles of the Charter (operative paragraph 2).

27. In introducing the two draft resolutions, the representative of the United States declared 34/ that the General Assembly must not lose sight of the problems and conditions which had given rise to the situation in the Middle East. With the two draft resolutions, the General Assembly might begin to lay the foundation for constructive action which must follow the cessation of hostilities. The first draft resolution proposed a new approach to the settlement of major problems outstanding between the Arab States and Israel, with a view to establishing permanent peace and stability in that part of the world. The second draft resolution offered a means of finding a solution to the Suez Canal question. The representative of the United States urged the General Assembly to make a start towards a solution of these two issues threatening world peace.

28. In the discussion 35/ which followed, one representative stated that he had serious misgivings concerning the two draft resolutions from a procedural point of view, since the Security Council was actually seized of the Suez Canal question. Egypt, France and the United Kingdom had been in the process of negotiating on the basis of six agreed-upon principles when hostilities broke out. The hostilities, however, did not remove the question from the Security Council, where it was still pending. It was obvious from the relevant provisions of the Charter that the General Assembly could not consider a question of which the Security Council was actually seized. The enabling authority for calling the first emergency special session of the General Assembly was section A of General Assembly resolution 377 A (V), which provided for a meeting of the General Assembly when it appeared that the Security Council, for lack of unanimity, had failed to exercise and discharge its responsibility for maintaining international peace and security. The Suez Canal question, when it had first been raised in the Security Council, undoubtedly had not fallen within the purview of resolution 377 A (V). There had been no change in the

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32/ G A (ES-I), Annexes, a.i. 5, p. 6, A/3273.

33/ S C, 11th yr., Suppl. for Oct.-Dec., p. 47, S/3675.

34/ G A (ES-I), Plen., 563rd mtg., paras. 22-25 and 33.

35/ For texts of relevant statements concerning these proposals, see G A (ES-I), Plen., 563rd mtg.: Costa Rica, para. 204; Philippines, paras. 58-64; USSR, para. 193.



status, nor in the progress, of the negotiations between the parties in the Security Council since the Council had actually been seized of the issue. For these reasons, to the extent that the United States draft resolution sought a final and conclusive settlement of the Suez Canal question, it was doubtful whether the emergency special session of the General Assembly could validly deal with it, in view of the actual hostilities in progress.

29. The speaker stated that his remarks applied with equal force to the second United States draft resolution, which referred to the Palestine question. There were many profound and intricate problems of outstanding character involved in the Palestine question, which year after year it had been the task of the United Nations to consider. Since the current session had been convoked only in order to meet the emergency arising from hostilities as a result of the penetration of Egyptian territory by Israel forces and the military action of France and the United Kingdom, the proposal that it should consider the long-standing Palestine problem with a view to its ultimate and final settlement was also open to serious question. He thought that the emergency special session of the General Assembly should confine itself to the issue on the agenda.

30. Another representative said that the question which called for discussion and immediate action was the refusal by three States to comply with the General Assembly resolution of 2 November 1956, 36/ "designed to end the aggression". The general Palestine question could be considered in the course of the eleventh session of the General Assembly.

31. Another representative added that the first emergency special session of the General Assembly had been convened for the purpose of dealing with the specific question considered by the Security Council at its 749th and 750th meetings, and not another question which, though relating to the same region, lay somewhat outside the terms of reference of the emergency special session.

32. At the 572nd plenary meeting, which closed the first emergency special session, the United States submitted 37/ a draft resolution to bring about early consideration, at a regular session of the General Assembly, of the draft resolutions it had introduced earlier. The representative of the United States observed that his delegation had refrained from pressing for action on the earlier draft resolutions in order that action taken at the special session should not be hampered.

#### Decision

33. At the 572nd plenary meeting, on 10 November 1956, the General Assembly, by 66 votes to none, with 2 abstentions, adopted 38/ resolution 1003 (ES-I). 39/ The relevant provision reads:

"The General Assembly,

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"2. Refers to its eleventh regular session, for consideration, the records of the meetings and the documents of its first emergency special session."

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36/ G A resolution 997 (ES-I).

37/ G A (ES-I), Plen., 572nd mtg., paras. 2 and 3.

38/ Ibid., para. 74.

39/ G A (ES-I), Annexes, a.1. 5, p. 34.

