

ARTICLE 39

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ARTICLE 39

TEXT OF ARTICLE 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

INTRODUCTORY NOTE

1. The Summary of Practice below contains a reference to a decision of the Security Council, which, although it did not explicitly refer to Article 39, recalled an earlier resolution¹ invoking Article 39, and called for measures under Chapter VII of the Charter.

2. In one instance, a letter submitting a question for the consideration of the Council explicitly referred to Article 39 as a basis of the submission.

¹ Resolution 232 (1966) of 16 December 1966. See *Repertory, Supplement No. 3*, vol. II, under Article 39, paras 17-28, 40 and 113-117.

3. The Summary of Practice also records incidental references to Article 39 made in the course of the proceedings of the Security Council and of the General Assembly.

4. During the period under review, the General Assembly adopted a number of resolutions despite objections that the proposed actions were within the exclusive competence of the Security Council under Article 39. These resolutions as well as relevant statements are cited in the Summary of Practice.

SUMMARY OF PRACTICE

5. In connexion with the question concerning the situation in Southern Rhodesia, the Security Council adopted resolution 253 (1968) on 29 May 1968. This resolution, although it did not itself invoke Article 39, recalled and reaffirmed a number of previous resolutions on this question including resolution 232 (1966) of 16 December 1966, which contained an explicit reference to Article 39. Resolution 253 (1968) further reaffirmed the Council's "determination that the present situation in Southern Rhodesia constitutes a threat to international peace and security",² and invoked Chapter VII³ as well as Article 41⁴ of the Charter in calling for a wide range of measures to deal with the situation. However, the adoption of this resolution was not preceded by a constitutional discussion.

6. In connexion with the same question, a draft resolution⁵ was submitted by Algeria, Nepal, Pakistan, Senegal and Zambia, which also recalled, *inter alia*, resolutions 232 (1966) and 253 (1968), reaffirmed the determination that the situation in Southern Rhodesia constituted a threat to international peace and security, and called for further measures under Chapter VII of the Charter. At the Security Council's 1481st meeting on 24 June 1969, the draft resolution was put to the vote and received 8 votes in favour to none against, with 7 abstentions. Having failed to obtain the necessary number of affirmative votes, the resolution was not adopted.⁶

² S C resolution 253 (1968), 9th preamb. para.

³ *Ibid.*, 10th preamb. para.

⁴ *Ibid.*, para. 9.

⁵ S C, 24th yr., Suppl. for April-June, p. 338, S/9270/Rev. 1.

⁶ S C, 24th yr., 1481st mtg., para. 78.

7. In connexion with the situation in the Middle East, a draft resolution submitted by the United Arab Republic, which characterized certain actions taken by Israel as "threatening international peace and security in the area",⁷ was not brought to a vote.

8. In connexion with a complaint by Haiti, the representative of that country explicitly invoked Article 39 in a letter dated 20 May 1968⁸ informing the Secretary-General of a situation, as well as in a subsequent letter dated 21 May 1968⁹ requesting a meeting of the Security Council to consider the situation. In another letter of submission, dated 6 June 1969, from the representatives of sixty Member States in connexion with the question concerning the situation in Southern Rhodesia,¹⁰ an explicit reference to Chap-

⁷ S C, 22nd yr., 1345th mtg., para. 89, S/7919, 5th preamb. para.

⁸ S C, 23rd yr., Suppl. for April-June, pp. 167 and 168, S/8592. The letter referred to bombing incidents by unidentified aircraft in Port-au-Prince and in another Haitian town on 20 May 1968 as "a threat to peace" and expressed confidence that, "in pursuance of the provisions of Articles 99 and 39 of the Charter", the Secretary-General would bring this situation to the attention of the Security Council.

⁹ *Ibid.*, pp. 168 and 169, S/8593. This letter referred to the above incidents as "armed aggression" and "threat to the peace, a situation covered by Article 39". It further stated that a radio broadcast organized by a group of Haitian exiles in New York has done much to create "the threat to peace which now exists in Haiti" and requested that the Security Council be convened so that "appropriate measures can be taken in accordance with Article 39 of the Charter". However, at the 1427th meeting of the Security Council on 27 May 1968, which considered this situation, the representative of Haiti described it as "a situation which may lead to international friction" and invoked Articles 34 and 35. See S C, 23rd yr., 1427th mtg., para. 5.

¹⁰ S C, 24th yr., Suppl. for April-June, p. 187, S/9237 and Add. 1 and 2.

ter VII of the Charter was made which might also be considered an implicit reference to Article 39.

9. Incidental references to Article 39 were made in the Security Council in the course of the consideration of the Palestine question¹¹ and of the situation in the Middle East.¹²

10. Indirect references to Article 39 were further made in the consideration of the Palestine question¹³ and of the situation in the Middle East¹⁴ when references were made to resolution 54 (1948)¹⁵ of 15 July 1948 in which the Security Council had determined that the situation in Palestine constituted a threat to the peace within the meaning of Article 39.

11. Incidental references to Article 39 were also made in the General Assembly at its fifth emergency special session during the consideration of the situation in the Middle East.¹⁶

12. The General Assembly also took a number of decisions to which objections were raised during the related proceedings to the effect that they fell within the scope of Article 39 and therefore would either violate the exclusive

competence of the Security Council or prejudice actions by the Council.¹⁷ The following General Assembly resolutions may be considered as examples of such decisions: 2151 (XXI) of 17 November 1966, 2262 (XXII) of 3 November 1967, 2383 (XXIII) of 7 November 1968 and 2508 (XXIV) of 21 November 1969 dealing with the "Question of Southern Rhodesia";¹⁸ 2184 (XXI) of 12 December 1966, 2270 (XXII) of 17 November 1967, 2395 (XXIII) of 29 November 1968 and 2507 (XXIV) of 21 November 1969 on the "Question of Territories under Portuguese administration";¹⁹ 2202 A (XXI) of 16 December 1966, 2307 (XXII) of 13 December 1967, 2396 (XXIII) of 2 December 1968 and 2506 B (XXIV) of 21 November 1969 on "The policies of *apartheid* of the Government of the Republic of South Africa";²⁰ 2325 (XXII) of 16 December 1967 and 2372 (XXII) of 12 June 1968 on the "Question of South West Africa";²¹ 2326 (XXII) of 16 December 1967 and 2548 (XXIV) of 11 December 1969 on the "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples";²² 2498 (XXIV) of 31 October 1969 and 2517 (XXIV) of 1 December 1969 on the "Question of Namibia".²³

¹¹ S C, 21st yr., 1324th mtg., Jordan, para. 31.

¹² S C, 22nd yr., 1360th mtg., Pakistan, para. 63.

¹³ S C, 21st yr., 1320th mtg., United States, para. 93.

¹⁴ S C, 22nd yr., 1343rd mtg., United Arab Republic, para. 84.

¹⁵ S C, 3rd yr., *Resolutions and Decisions of the Security Council, 1948*, pp. 22 and 23. See also in *Repertory Supplement, No. 3*, vol. II, under Article 40, footnote 1 referring to the above resolution and to its treatment in the *Repertory and Supplements*.

¹⁶ G A (ES-V), Plen., 1539th mtg.: Ecuador, para. 12, 1541st mtg.: Cyprus, para. 71.

¹⁷ For related material see in this *Supplement*, Article 11, part II A.

¹⁸ For statements in connexion with these resolutions that only the Security Council is competent to determine that a situation constituted a threat to the peace, a breach of the peace or an act of aggression and to make recommendations or decide what measures should be taken, see G A (XXI), 4th Com., 1629th mtg.: Japan, para. 46; 1630th mtg.: Denmark, para. 30; Finland, para. 47; Italy, para. 38; Norway, para. 58; Sweden, para. 64; 1631st mtg.: Ireland, para. 20; Venezuela, para. 42; 1632nd mtg.: Austria, para. 21; Belgium, para. 69; Colombia, para. 74; G A (XXI), Plen., 1468th mtg.: Netherlands, paras. 38, 43 and 44; New Zealand, para. 48; G A (XXII), 4th Com., 1704th mtg.: Brazil, para. 17; Canada, para. 15; Honduras, para. 39; Ireland, para. 44; Uruguay, para. 33; Venezuela, para. 26; G A (XXIII), Plen., 1710th mtg.: Colombia, para. 42; Paraguay, para. 45; G A (XXIV), 4th Com., 1841st mtg.: Argentina, para. 71; Brazil, para. 55; Greece, para. 44; Ireland, para. 58; Norway, para. 46; Spain, para. 73; Uruguay, para. 45.

¹⁹ For statements similar to those in footnote 18 in connexion with these resolutions on the "Question of Territories under Portuguese administration," see: G A (XXI), 4th Com., 1654th mtg.: Chile, para. 23; China, para. 16; Guatemala, para. 34; Ireland, para. 37; Japan, para. 11; South Africa, para. 45; 1655th mtg.: Australia, para. 8; Italy, para. 11; United States, para. 17; Uruguay, para. 14; Venezuela, para. 19; G A (XXI), Plen., 1490th mtg.: Venezuela, paras. 49, 51; G A (XXII), 4th Com., 1717th mtg.: Argentina, para. 29; Brazil, para. 56; Canada, para. 34; Ireland, para. 59; South Africa, para. 39; United States, para. 20; G

A (XXIII), 4th Com., 1793rd mtg.: Ecuador, para. 37; France, para. 38; United Kingdom, para. 20; United States, para. 32; G A (XXIII), Plen., 1731st mtg.: Malawi, para. 23; G A (XXIV), 4th Com., 1848th mtg.: Norway, paras. 11-15.

²⁰ For statements similar to those in footnote 18 in connexion with these resolutions on "The policies of *apartheid* of the Government of the Republic of South Africa," see: G A (XXI), Spec. Pol. Com., 542nd mtg.: Italy, para. 27; Mexico, para. 39; United States, para. 36; Uruguay, para. 40; G A (XXI), Plen., 1496th mtg.: Netherlands, para. 163; G A (XXII), Spec. Pol. Com., 569th mtg.: Italy, para. 64; Sweden, para. 67; United Kingdom, para. 56; G A (XXII), Plen., 1629th mtg.: Sweden, paras. 37 and 38; G A (XXIII), Spec. Pol. Com., 615th mtg.: China, para. 92; Greece, paras. 84 and 85; Italy, para. 88; Mexico, para. 56; Spain, para. 49; United Kingdom, para. 114; United States, para. 5; Uruguay, para. 147; G A (XXIV), Spec. Pol. Com., 663rd mtg.: China, para. 8; United Kingdom, para. 21; United States, para. 11; 664th mtg.: Argentina, para. 37; Denmark, para. 26; Finland, para. 19; Italy, para. 29; Madagascar, para. 13; Norway, para. 23; Sweden, para. 20.

²¹ For statements similar to those in footnote 18 above in connexion with these resolutions on the "Question of South West Africa," see: G A (XXII), Plen., 1636th mtg.: Mexico, paras. 15-21; G A (XXII), Plen., 1671st mtg.: Ireland, para. 29; Japan, para. 87; Netherlands, para. 21; Sweden, para. 101.

²² For statements similar to those as in footnote 18 above in connexion with these resolutions on the "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples," see: G A (XXII), Plen., 1636th mtg.: Chile, paras. 39-45; G A (XXIV), Plen., 1829th mtg.: Argentina, para. 129; Greece, para. 210; Turkey, paras. 229 and 230.

²³ For statements similar to those as in footnote 18 above in connexion with these resolutions on the Question of Namibia," see: G A (XXIV), 4th Com., 1836th mtg.: Ireland, para. 22; Uruguay, para. 31; G A (XXIV), 4th Com., 1855th mtg.: Greece, paras. 31 and 32; Ireland, para. 46; Japan, para. 45; Spain, para. 43; Sweden, paras. 18-22; Turkey, para. 15; United Kingdom, para. 48; United States, para. 34 and 35; Uruguay, para. 47; Venezuela, paras. 1-8.