

ARTICLE 40

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ARTICLE 40

TEXT OF ARTICLE 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

INTRODUCTORY NOTE

1. During the period under review, no decision was taken by the Security Council invoking Article 40.
2. Since there was no constitutional discussion bearing on the interpretation or application of Article 40 in the Security Council related to the adoption of a decision by the Council, this study consists only of a Summary of Practice.
3. In the Summary of Practice material has been included for its possible bearing on the last provision of Article 40, namely, that the Security Council shall duly take account of failure to comply with provisional measures decided by the Council.
4. The Summary also contains a few explicit references to Article 40 made in the Security Council during the consideration of various items on its agenda.
5. Also included in the Summary of Practice are a number of measures which were taken by the Security Council without reference to Article 40 but which might be considered to be of the nature of provisional measures to prevent aggravation of a situation.

SUMMARY OF PRACTICE

6. During the period under review, the Security Council adopted several resolutions which contained warnings that, in the event of failure to comply with the terms of these resolutions, the Security Council would consider further and more effective steps. These warnings, which might be considered as falling under Article 40 and in particular its last sentence, were couched in terms ranging from the specific wording of the last sentence of Article 40 in one instance¹ to more general declarations of intent by the Council to consider further measures in the event of failure to comply with its demand. They include the following instances: resolution 228 (1966) of 25 November 1966, in connexion with the Palestine question, and resolution 248 (1968) of 24 March 1968, resolution 262 (1968) of 31 December 1968, resolution 265 (1969) of 1 April 1969, and resolution 270 (1969) of 26 August 1969, in connexion with the situation in the Middle East, which, *inter alia*, warned that actions of military reprisal and other violations of cease-fire could not be tolerated and that the Security

Council would have to consider further and more effective steps as envisaged in the Charter to ensure against repetition of such acts;² resolution 256 (1968) of 16 August 1968, in connexion with the situation in the Middle East, which condemned military attacks launched in violation of the United Nations Charter and Security Council resolution 248 (1968) of 24 March 1968, and warned that, if such attacks were to be repeated, the Council would "duly take account of the failure to comply" with its resolution;³ resolutions 267 (1969) of 3 July 1969 and 271 (1969) of 15 September 1969, both in connexion with the situation in the Middle East, which, *inter alia*, determined that, in the event of a negative response or no response from a Member State to which the Council had addressed a call, the Council would convene without delay to consider what further action should be taken in the matter at hand;⁴ reso-

¹ See footnote 3 below.

² S C resolution 228 (1966), para. 3; S C resolution 248 (1968), para. 3; S C resolution 262 (1968), para. 3; S C resolution 265 (1969), para. 3; and S C resolution 270 (1969), para. 4.

³ S C resolution 256 (1968), para. 4. For explicit reference to Article 40 in connexion with this resolution, see para. 7 below.

⁴ S C resolution 267 (1969), para. 7; S C resolution 271 (1969), para. 6.

lution 246 (1968) of 14 March 1968, in connexion with the question of South West Africa, resolution 264 (1969) of 20 March 1969 and resolution 269 (1969) of 12 August 1969, in connexion with the situation in Namibia (formerly South West Africa), which, *inter alia*, decided that in the event of failure on the part of a Member State to comply with the provisions of these resolutions, the Security Council would meet immediately to determine necessary or effective steps or measures in accordance with the relevant provisions of the Charter;⁵ resolution 268 (1969) of 28 July 1969, in connexion with the complaint by Zambia, and resolution 273 (1969) of 9 December 1969, in connexion with the complaints by Senegal, in which the Security Council, *inter alia*, declared that in the event of failure on the part of a Member State to comply with the provisions of these resolutions, the Council would meet to consider further measures;⁶ and resolution 275 (1969) of 22 December 1969, in connexion with the complaint by Guinea, in which the Security Council solemnly warned a Member State that if certain acts were to be repeated in the future, the Council would have to give serious consideration to further steps to give effect to its decision.⁷

7. Article 40 was explicitly referred to in the proceedings of the Security Council on a number of occasions during the period under review. In one instance a representative, referring to a provision of resolution 256 (1968),⁸ stated that the provision in question was taken from Article 40 and that the Council under that resolution considered the military attacks as endangering the maintenance of the peace, peace here understood clearly as international peace embodied in Chapter VII of the Charter.⁹

8. Another explicit and direct reference to Article 40 was made in the Security Council in the course of the consideration of the question of South West Africa when a representative stated that the Council must seek more concrete means of ensuring respect for the United Nations authority over South West Africa than it had in its earlier resolution 245 (1968), and called for measures such as those provided for in Article 40.¹⁰

9. Indirect references to Article 40 were made during the consideration of the Palestine question¹¹ and the situation in the Middle East,¹² when the provisions of Security Council resolution 54 (1948) of 15 July 1948, adopted specifically under Article 40,¹³ were referred to. In the latter instance, it was contended that the Israeli action "violated decisions of the Security Council", including resolution 54 (1948) which invoked Article 40 and therefore, according to the Charter, should have entailed the application against Israel of enforcement measures provided for in Chapter VII.

10. An indirect reference to Article 40 was also made by the Secretary-General in his report of 26 May 1967 to the Security Council on the situation in the Middle East¹⁴ when he recalled Security Council resolution 73 (1949) of 11 August 1949,¹⁵ which reaffirmed resolution 54 (1948).

11. During the period under review, various measures were taken by the Security Council, but without specific reference to Article 40, which might be considered to be of the nature of provisional measures to prevent aggravation of a situation. These measures may be categorized as follows: (a) appeals or calls for cessation of military activities or hostilities;¹⁶ (b) appeals or calls for a cease-fire, including reaffirmations of earlier cease-fire resolutions and warnings that cease-fire violations would not be tolerated;¹⁷ (c) an affirmation that the demand for a cease-fire included a prohibition of any forward military movements subsequent to the cease-fire and called for the prompt return to the cease-fire positions of any troops which might have moved forward subsequent to the cease-fire;¹⁸ (d) calls for the stationing or expanding of United Nations military observers to supervise the cease-fire;¹⁹ (e) calls to Member States to extend co-operation to military observers and other representatives of the United Nations, including the provision of headquarters and freedom of movement;²⁰ (f) calls to Member States to act with utmost restraint and moderation and to refrain from any act that might aggravate the situation;²¹ (g) calls to Member States to prevent,

¹⁴ S C, 22nd yr., Suppl. for April-June, pp. 120-124, S/7906.

¹⁵ In S C resolution 73 (1949) of 11 August 1949, the Security Council found that "the Armistice Agreements constitute an important step towards the establishment of permanent peace in Palestine" and affirmed "the order contained in its resolution 54 (1948) to the Governments and authorities concerned, pursuant to Article 40 of the Charter of the United Nations, to observe an unconditional cease-fire and, bearing in mind that the several Armistice Agreements include firm pledges against any further acts of hostility between the parties and also provide for their supervision by the parties themselves, relies upon the parties to ensure the continued application and observance of these Agreements."

¹⁶ S C resolution 233 (1967) of 6 June 1967, para. 1; resolution 234 (1967) of 7 June 1967, para. 1; resolution 235 (1967) of 9 June 1967, paras. 1 and 2; resolution 240 (1967) of 25 October 1967, para. 4; in connexion with the situation in the Middle East.

¹⁷ S C resolution 228 (1966) of 25 November 1966, para. 3, in connexion with the Palestine question; resolution 233 (1967) of 6 June 1967, para. 1; resolution 234 (1967) of 7 June 1967, para. 1; resolution 235 (1967) of 9 June 1967, para. 1; resolution 240 (1967) of 25 October 1967, para. 3; resolution 248 (1968) of 24 March 1968, para. 3; resolution 256 (1968) of 16 August 1968, paras. 1 and 4; statement by the President of the Security Council made at the 1448th meeting on 8 September 1968 (S C 23rd yr., 1448th mtg., para. 73); resolution 258 (1968) of 18 September 1968, para. 1; all in connexion with the situation in the Middle East.

¹⁸ S C resolution 236 (1967) of 11 June 1967, paras. 3 and 4, in connexion with the situation in the Middle East.

¹⁹ Statement by the President of the Security Council made at the 1366th mtg. on 9 July 1967; statement by the President of the Security Council circulated on 8 December 1967 (S/8289) (S C, 22nd yr., Resolutions and Decisions of the Security Council, 1967, pp. 6 and 7; and 9, respectively), in connexion with the situation in the Middle East.

²⁰ Decision of the Security Council at its 1353rd mtg. on 9 June 1967; resolution 236 (1967) of 11 June 1967, para. 5; resolution 240 (1967) of 25 October 1967, para. 4 (S C, 22nd yr., Resolutions and Decisions of the Security Council, 1967, pp. 4 and 7), in connexion with the situation in the Middle East.

²¹ S C resolution 231 (1966) of 15 December 1966, para. 2; resolution 238 (1967) of 19 June 1967, para. 2; statement by the President of the Security Council at the 1383rd meeting on 24 November 1967 (S C, 22nd yr., 1383rd mtg., para. 151); resolution 244 (1967) of 22 December 1967, para. 4; resolution 247 (1968) of 18 March 1968, para. 2; resolution 254 (1968) of 18 June 1968, para. 2; resolution 261 (1968) of 10 December

⁵ S C resolution 246 (1968), para. 5; S C resolution 264 (1969), para. 8; and S C resolution 269 (1969), para. 6.

⁶ S C resolution 268 (1969), para. 5; S C resolution 273 (1969), para. 3.

⁷ S C resolution 275 (1969), para. 5.

⁸ See footnote 3 above.

⁹ S C 23rd yr., 1440th mtg.: Jordan, paras. 133 and 134.

¹⁰ S C, 23rd yr., 1392nd mtg.: Algeria, para. 72.

¹¹ S C, 21st yr., 1320th mtg.: United States, para. 93.

¹² S C, 22nd yr., 1343rd mtg.: United Arab Republic, para. 84.

¹³ S C, resolution 54 (1948). See also *Repertory, Supplement No. 3*, under Article 40, footnote 1.

stop or reverse certain actions or occurrences; not to allow their territories or nationals to be used for the recruitment, training and transit of mercenaries;²² and to rescind all legislative and administrative measures and actions which tended to change the legal status of an occupied city;²³ (h)

1968, para. 2; resolution 266 (1969) of 10 June 1969, para. 2; resolution 274 (1969) of 11 December 1969, para. 2; all in connexion with the Cyprus question.

²² S C resolution 226 (1966) of 14 October 1966, para. 1; resolution 239 (1967) of 10 July 1967, para. 3, resolution 241 (1967) of 15 November 1967, paras. 3 and 4; in connexion with the question concerning the Democratic Republic of the Congo.

²³ S C resolution 252 (1968) of 21 May 1968, para. 3; resolution 267 (1969) of 3 July 1969, para. 5; resolution 271 (1969) of 15 September 1969, paras. 1 and 3; in connexion with the situation in the Middle East

calls to Member States to desist or refrain from interfering in the domestic affairs of a Member State;²⁴ or from violating the sovereignty and territorial integrity of a Member State;²⁵ or from holding a military parade in an occupied city.²⁶

²⁴ S C resolution 226 (1966) of 14 October 1966, paras. 1 and 2; resolution 239 (1967) of 10 July 1967, para. 3; in connexion with the question concerning the Democratic Republic of the Congo

²⁵ S C resolution 268 (1969) of 28 July 1969, para. 2; in connexion with the complaint by Zambia; resolution 273 (1969) of 9 December 1969, para. 2; in connexion with the complaints by Senegal; resolution 275 (1969) of 22 December 1969, para. 2; in connexion with the complaint by Guinea

²⁶ S C resolution 250 (1968) of 27 April 1968, para. 1; in connexion with the situation in the Middle East