

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 positions 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, the Security Council took no decision explicitly under Article 40 of the Charter, nor was there constitutional discussion regarding the interpretation or application of the Article. Consequently, the present study consists only of a summary of practice.
2. The decisions that might be interpreted as containing implicit references to Article 40 are briefly reviewed in the summary of practice. Material bearing on the last provision of Article 40, namely, that “the Security Council shall duly take account of failure to comply with such provisional measures”, is also included.
3. The General Assembly took no decision relevant to Article 40.
4. The present study should be read in conjunction with the study on Article 36 of the Charter. No constitutional significance should, however, be attached to the reference to that Charter Article, which is made merely for the convenience of the reader.

SUMMARY OF PRACTICE

5. During the period under review, the Security Council took a number of decisions containing measures that might be considered to be of the nature of provisional measures to prevent the aggravation of a situation. In the present study, special attention is given to those decisions that, together with such provisional measures, also contained a prior determination of a threat to the peace, breach of the peace or act of aggression in accordance with Article 39 of the Charter. Other decisions containing recommendations of appropriate procedures or methods of adjustment, in the absence of the above determination, are dealt with in the study on Article 36.

6. Such provisional measures may be categorized as follows: (a) demands or calls for the withdrawal of armed forces;¹ (b) a demand for the cessation of hostilities;² (c) demands for the cessation of armed invasions, acts of aggression or other serious infractions;³ (d) a call to respect

the right of free navigation;⁴ (e) a call to refrain from action that could lead to further escalation and widening of a conflict;⁵ and (f) a call to all States to refrain from sending observers to elections declared as null and void.⁶

7. In 1979, the Council demanded that South Africa withdraw its armed forces from Angola⁷ and desist from the utilization of the Territory of Namibia to launch acts of aggression against Angola and other neighbouring African States.⁸ In connection with the complaint by Zambia, the Council called upon the United Kingdom of Great Britain and Northern Ireland to take prompt and effective measures to ensure that the regime in Southern Rhodesia desisted from committing repeated acts of aggression and provocation against Zambia.⁹

8. In 1980, the Council demanded that South Africa withdraw its military forces from Zambia and Angola, re-

¹ S C resolutions 454 (1979), para. 2; 475 (1980), para. 3; 545 (1983), para. 3; 546 (1984), para. 3: complaint by Angola against South Africa; 466 (1980), para. 2: complaint by Zambia against South Africa; 502 (1982), para. 2: in connection with the letter dated 1 April 1982 from the representative of the United Kingdom of Great Britain and Northern Ireland.

² S C resolution 502 (1982), para. 1: in connection with the letter dated 1 April 1982 from the representative of the United Kingdom.

³ S C resolutions 447 (1979), para. 3; 454 (1979), para. 2; 546 (1984), para. 3: complaint by Angola against South Africa; 552 (1984), para. 5: in connection with the letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

⁴ S C resolution 552 (1984), para. 1: in connection with the letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

⁵ S C resolution 552 (1984), para. 3: in connection with the letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

⁶ S C resolution 445 (1979), paras. 6 and 7: question concerning the situation in Southern Rhodesia.

⁷ S C resolution 454 (1979), para. 2: complaint by Angola against South Africa.

⁸ S C resolutions 447 (1979), para. 3; 454 (1979), para. 4: complaint by Angola against South Africa.

⁹ S C resolution 455 (1979), para. 4: complaint by Zambia.