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ARTICLE 42

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TEXT OF ARTICLE 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

INTRODUCTORY NOTE

1. During the period under review, the Security Council did not invoke Article 42 explicitly in any of its decisions. The Council did, however, adopt a number of resolutions which authorized Member States to undertake forcible measures, and which are therefore of potential relevance to the interpretation of Article 42. In addition, the Council referred to Article 42 in deliberations held throughout the period.

2. The Summary of Practice includes multiple resolutions in which the Security Council authorized States to take all measures necessary to enforce its demands relating to the restoration of international peace and security, and which are therefore of potential relevance to the interpretation of Article 42. References to Article 42 made in the deliberations of the Security Council, as well as in the General Assembly and its committees, are also included below.
3. Finally, the Summary of Practice describes relevant excerpts of the Secretary-General's 1992 report entitled *An Agenda for Peace: Preventive diplomacy, peacemaking and peacekeeping*, as well as a follow-up document entitled *Supplement to An Agenda for Peace: Position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations*.

SUMMARY OF PRACTICE

I. SECURITY COUNCIL

4. During the period under review, the Security Council took no decision that explicitly invoked Article 42 of the Charter. The implementation of Article 42 presupposes the conclusion of special agreements envisaged in Article 43 of the Charter, and there were no such agreements in place during the period under review.
5. Throughout the period under review, however, Article 42 was referred to explicitly in Council deliberations. For example, during the early stages of the period under review, though no Council decisions either explicitly or implicitly invoked Article 42, the Article was explicitly referred to in deliberations held in connection with several situations.¹ During those deliberations, some delegations suggested that non-pacific means may be necessary to maintain or restore international peace and security.²
6. Moreover, during the 1990s, the Council adopted numerous resolutions under Chapter VII that are of potential relevance to the interpretation of Article 42. In response to a number of situations which the Council determined to constitute threats to international peace and security, the Council invoked Chapter VII to adopt resolutions which authorized Member States to undertake forcible measures. Those resolutions that invoked Chapter VII to call upon Member States to use "all necessary measures" or "all necessary means" are of potential relevance to the interpretation of Article 42.

¹ See *Repertoire of the Practice of the Security Council, 1985-1988*, Chapter XI, and *1989-1992*, Chapter XI.

² See, for example, in connection with the complaint by Angola against South Africa, S/PV.2612: Nigeria, para. 48; S/PV. 2617: Ghana, para. 54; in connection with the situation in Namibia, S/PV.2629: Trinidad and Tobago, para. 38; and in connection with the question of South Africa, S/PV.2737: Kenya, p. 4.

A. Authorization of Necessary Measures

7. As stated previously, the Security Council did not explicitly invoke Article 42 in any of its decisions during the period under review.³ The Council did, however, adopt a number of resolutions by which it authorized States to take all necessary measures or means to restore international peace and security, and which are therefore of potential relevance to Article 42.⁴ By its resolutions, the Council authorized a range of forcible measures, including measures adopted to (1) maintain international peace and security, (2) implement decisions taken under Article 41 of the Charter, (3) facilitate the delivery of humanitarian assistance, and (4) establish and amend the mandate of peacekeeping operations.

1. Maintenance of international peace and security

8. In response to several situations during the period under review, the Council authorized military action necessary to maintain or restore international peace and security.⁵ Among other such measures, by resolution 678 (1990), the Council authorized Member States, in cooperation with the Government of Kuwait, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions, and to restore international peace and security, subject to Iraq's implementation of prior Council resolutions.⁶

2. Implementation of decisions taken under Article 41 of the Charter

9. During the same period, the Security Council authorized the military control of maritime navigation by Member States to ensure the strict implementation of decisions taken in accordance with Article 41.⁷ For example, resolution 665 (1990) called upon Member States, as a result of Iraq's failure to comply with resolutions 660 (1990), 661 (1990), 662 (1990) and 664 (1990), to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations, and to ensure strict

³ See *Repertoire of the Practice of the Security Council, 1989-1992*, Chapter XI, Part IV, p. 913, 1993-1995, Chapter XI, Part IV, p. 1121 and 1996-1999, Chapter XI, Part IV, p. 1147.

⁴ In connection with the situation in Iraq and Kuwait, see resolutions 665 (1990), para. 1, and 678 (1990), para. 2; in connection with the situation in Somalia, see resolution 794 (1992), paras. 10 and 16; and in connection with the situation in Bosnia and Herzegovina, see resolutions 770 (1992), para. 2, and 787 (1992), para. 12.

⁵ In connection with the situation in Kuwait and Iraq, see resolution 678 (1990); in connection with the situation in Bosnia and Herzegovina, see resolutions 816 (1993) and 836 (1993); and in connection with the situation in Somalia, see resolutions 814 (1993) and 837 (1993). For further discussion of Council deliberations on the use of forcible measures to maintain or restore international peace and security, see *Repertoire of the Practice of the Security Council, 1989-1992*, Chapter XI, Part IV.A, pp. 914-915 and 1993-1995, Chapter XI, Part IV.A, pp. 1121-1128.

⁶ See resolution 678 (1990), paras. 1 and 2.

⁷ In connection with the situation in Iraq and Kuwait, see resolution 665 (1990); in connection with the situation in Bosnia and Herzegovina, see resolution 787 (1992).

implementation of the provisions related to such shipping laid down in resolution 661.⁸

3. Delivery of humanitarian assistance

10. On a number of occasions, the Council authorized all necessary measures, including the use of force, to facilitate the delivery of humanitarian assistance.⁹ On one occasion, the magnitude of the humanitarian crisis in Somalia prompted the Council to authorize the Unified Task Force, a multinational coalition, to use “all measures necessary” to establish a secure environment for humanitarian relief operations in Somalia.¹⁰ On another occasion, by resolution 1080 (1996), and acting under Chapter VII, the Council established a temporary multinational force in the Great Lakes Region and authorized it to use “all necessary means” to facilitate humanitarian assistance.¹¹

4. Peacekeeping Operations

11. The Security Council’s resolutions related to certain peacekeeping operations are also of potential relevance to Article 42. As discussed in the *Repertoire of the Practice of the Security Council*, the establishment of the United Nations Iraq-Kuwait Observation Mission by resolution 687 (1991) might be relevant to the interpretation of Article 42 to the extent it obligated Iraq and Kuwait to have an international military force on their respective territories.¹² In addition, by resolution 776 (1992), the Council amended the mandate of the United Nations Protection Force in Bosnia and Herzegovina to include the use of “all measures necessary”.¹³

5. Concerns raised in Council deliberations

12. During the period under review, concerns were raised on a number of occasions regarding the Security Council’s authorization of the use of force pursuant to Chapter VII.¹⁴ A few Member States raised concerns about the Security Council’s alleged failure to provide States with guidance as to the extent of their mandate,¹⁵ and concerns were also raised regarding the propriety and sufficiency of Council action.

⁸ Resolution 665 (1990), para. 1.

⁹ In connection with the situation in Bosnia and Herzegovina, see resolutions 770 (1992) and 816 (1993); in connection with the situation in Somalia, see resolution 794 (1992). For a comprehensive discussion of the Council’s enforcement action for humanitarian purposes, see *Repertoire of the Practice of the Security Council, 1989-1992*, Chapter XI, Part IV.C, pp. 916-917 and *1993-1995*, Chapter XI, Part IV.C, pp. 1129 - 1132.

¹⁰ Resolution 794 (1992), para. 2.

¹¹ See resolution 1080 (1996), para. 5.

¹² *Repertoire of the Practice of the Security Council, 1989-1992*, Chapter XI, Part IV.D, pp. 917 - 918.

¹³ For additional discussion, see *ibid.* pp. 918-919.

¹⁴ For example, see S/PV.3106, pp. 50-51, for China’s objections to the authorization of the use of force in connection with the situation in Bosnia and Herzegovina.

¹⁵ For State objections to Council authorizations in connection with the situation in Iraq and Kuwait, see S/PV.2938 (1990), pp. 8-11, 12-16, 22-25, 37 and 71; S/PV.2963 (1990), pp. 33 and 76; and S/PV.2977 (1991) (Part I), p. 222.

13. For example, by resolution 940 (1994), the Council authorized Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership.¹⁶ The same resolution called for the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti.¹⁷ The Council's enforcement action was controversial among several Member States. Several States argued that the situation in Haiti did not pose a threat to international peace and security, and, therefore, did not warrant the use of force or a military intervention.¹⁸
14. Some Member States also raised concerns that the Council had not taken sufficient action under Article 42 in response to the situation in Bosnia and Herzegovina.¹⁹ For example, the delegation of the Islamic Republic of Iran stated that the Council had the clear obligation to invoke Article 42 and take collective measures to restore Bosnia's sovereignty, independence and territorial integrity, and suggested that the Council should have also explicitly recognized the right to collective self-defence.²⁰ Also, the representative of the United Arab Emirates suggested that the Council take firmer measures against Serbia in accordance with Article 42.²¹
15. During the period under consideration, the Security Council also engaged in constitutional discussion regarding the use of force in the context of United Nations peacekeeping operations that is of potential relevance to Article 42.²²

B. Authorizations with the Consent of the Territorial State

16. On multiple occasions later in the period under review, the Council authorized enforcement action under Chapter VII with the consent of the territorial State. For example, in 1995, in connection with the situation in Bosnia and Herzegovina, the Council recognised that the concerned State had consented to a multinational force on its territory, and authorized the use of "necessary" action to defend the force from attack or the threat of attack.²³ The Council also authorized forcible measures with the consent of the territorial state to ensure the security and freedom of movement of peacekeeping personnel²⁴; to restore peace and security²⁵; to facilitate

¹⁶ In connection with the question concerning Haiti, see resolution 940 (1994), para. 4.

¹⁷ *Ibid.*

¹⁸ See S/PV.3413: Mexico, p. 4, Uruguay, p. 7. For further discussion of State objections to the authorization of the use of force in Security Council resolution 940 (1994), see the *Repertoire of the Practice of the Security Council, 1993-1995*, Chapter XI, Part IV. B, pp. 1128 - 1129.

¹⁹ S/PV. 3367: Tunisia, pp. 9-10; S/PV. 3370: Islamic Republic of Iran, p. 12; and S/PV. 3202: United Arab Emirates, p. 12.

²⁰ S/PV. 3370, p. 12.

²¹ A/49/PV. 18, p. 25.

²² An overview of the Council's constitutional discussion relating to Article 42 during the period under review can be found in the *Repertoire of the Practice of the Security Council, 1996-1999*, Chapter XI, Part IV.B, pp. 1148-1153.

²³ In connection with the situation in Bosnia and Herzegovina, see resolution 1031 (1995).

²⁴ In connection with the situation in Sierra Leone, see resolution 1270 (1999), para. 14; in connection with the situation in the Central African Republic, see resolution 1125 (1997), para. 3; in connection

humanitarian assistance²⁶; and to protect the civilian population, including refugees.²⁷

II. GENERAL ASSEMBLY

A. Resolutions

17. During the period under review, the General Assembly adopted several resolutions in connection with the situation in Bosnia and Herzegovina that are of potential relevance to Article 42.²⁸ In the event that Serbian and Montenegrin forces failed to comply with the relevant Security Council resolutions, the General Assembly urged the Security Council to authorize Member States, acting under Chapter VII of the Charter, and in cooperation with the Government of Bosnia and Herzegovina, to use all necessary means to uphold and restore the sovereignty, political independence, territorial integrity and unity of the Republic of Bosnia and Herzegovina.²⁹

B. Discussion related to Article 42 in the General Assembly and its Committees

18. During the same period, the aforementioned Security Council practice in connection with the situation in the former Yugoslavia also elicited discussion in the General Assembly that is of potential relevance to the interpretation of Article 42. For example, on one occasion, the representative of Brazil commented that the Implementation Force's authorization to use force in the former Yugoslavia brought into existence a curious blend of coercion and consent of the parties that did not stem either from the logic of traditional peacekeeping or from a strict reading of Charter provisions, and suggested that whether or not this was a paradigm that could be applied again was a matter requiring detailed analysis.³⁰
19. During the same period, discussion which took place in the Sixth Committee of the General Assembly may also be relevant to Article 42. Upon examination of the Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the

with the situation in Albania, see resolution 1101 (1997), paras. 2 and 4; and in connection with the situation in Kosovo, see resolution 1244 (1999), paras. 5 and 9.

²⁵ In connection with the situation in East Timor, see resolution 1264 (1999), paras. 3 and 5.

²⁶ In connection with the situation in East Timor, see *ibid.* para. 3; in connection with the situation in Albania, see resolution 1101 (1997), para. 5; in connection with the situation in Kosovo, see resolution 1244 (1999), para. 9.

²⁷ In connection with the situation in Kosovo, see resolution 1244, para. 9. For a more detailed overview of Security Council practice during the period in question, see the *Repertoire of the Practice of the Security Council, 1993-1995*, Chapter XI, Part IV.A, pp. 1121 - 1128 and *1996-1999*, Chapter XI, Part IV.A, pp. 1147-48.

²⁸ G A (46), resolution 242; G A (47), resolution 121; G A (48), resolution 88, and G A (49), resolution 10.

²⁹ G A (47), resolution 121, para. 7(a).

³⁰ A/51/PV.66: Brazil, p. 10.

Organization, and with regard to the Special Committee's consideration of the question of the maintenance of international peace and security, some delegations suggested that the General Assembly consider concretizing and systematizing the provisions of Chapter VII of the Charter and the use of military force organized under the auspices of the United Nations.³¹ Another delegation welcomed the Security Council's invocation of Chapter VII, but indicated that emphasis should be placed on preventive diplomacy and that enforcement actions under Chapter VII should be measures of last resort.³²

20. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization referred to Article 42 on multiple occasions during the period under review. For example, as mentioned previously, Article 42 was explicitly referred to as part of the examination by the Special Committee on the Charter of proposals on the question of the maintenance of international peace and security.³³ In addition, the consideration by the Special Committee on the Charter of informal working papers relating to the basic principles and criteria for the work of United Nations peacekeeping missions is also of potential relevance to Article 42.³⁴ Though envisaged as an elaboration of the legal framework for peacekeeping operations under Chapter VI, the proposal and working paper, as well its subsequent consideration in the Special Committee, raised questions regarding the lawfulness of the Security Council's use-of-force authorizations grounded in Chapter VII. Some delegations were of the view that the proposal was a timely initiative aimed at providing a consolidated legal framework necessary for the effective functioning of peacekeeping operations.³⁵ Others were concerned that the working paper confused activities under Chapters VI and VII of the Charter.³⁶
21. Reference to Article 42, together with Article 41, was also made in the course of deliberations of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations.³⁷ Article 42 was referred to in the context of the Special

³¹ A/C.6/46/SR.11: Cuba, para. 21; A/C.6/48/SR.8: Greece, para. 84.

³² A/C.6/46/SR.11: Bulgaria, para. 29.

³³ See, for example, A/41/33, p. 23, working paper submitted by Czechoslovakia, the German Democratic Republic, and Poland entitled "Role of States Members of the United Nations and of the United Nations Organization in the maintenance of international peace and security including, *inter alia*, the prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute" (A/AC.182/L.48).

³⁴ For the text of the informal working paper introduced by the Russian Federation at the 1996 session of the Committee, as well as relevant associated discussion, see A/51/33, paras. 128-137, and A/52/33, paras. 39-57. For an informal working paper on the topic entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of the United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1), and a working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.90/Add.2 and Corr.1), which were introduced, respectively, at the 1997 and 1998 sessions of the Committee by the Russian Federation, as well as relevant discussions associated with those working papers, see A/52/33, para. 58; A/53/33, paras. 73-83; and A/54/33, paras. 70-82.

³⁵ A/54/33, para. 75.

³⁶ A/53/33, para. 78.

³⁷ See A/41/41, para. 49.

Committee's consideration of the role of the United Nations and the obligations and responsibilities of United Nations organs. It was suggested that the Special Committee should reflect on ways of encouraging implementation by the Security Council of the provisions of Chapter VII, including Articles 41 and 42.³⁸

III. SECRETARIAT

22. During the period under review, the Secretary-General issued a report entitled *An Agenda for Peace: Preventive diplomacy, peacemaking and peacekeeping* ("An Agenda for Peace")³⁹, which explicitly referred to Article 42. In the report, the Secretary-General stated that the Security Council had not yet made use of the coercive measures envisaged by Article 42. In the situation between Iraq and Kuwait, the Council chose to authorize Member States to take measures on its behalf.⁴⁰ Though reaffirming that, under Article 42, the Security Council has the authority to take military action to maintain or restore international peace and security, *An Agenda for Peace* indicated that such action depends on the conclusion of the special agreements envisaged in Article 43 of the Charter. As discussed further in the *Repertory, Supplements No. 7-9*, under Articles 43 to 47, the end of the Cold War prompted the Secretary-General in *An Agenda for Peace* to recommend that the Security Council initiate negotiations with Member States in accordance with Article 43.
23. Later in the period under review, the Secretary-General issued a follow-up to *An Agenda for Peace* entitled *Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations* ("Supplement to An Agenda for Peace").⁴¹ The Secretary-General's analysis therein of recent Security Council authorizations in Bosnia and Herzegovina and Somalia is of potential relevance to the interpretation of Article 42. Those authorizations were characterised in the *Supplement to An Agenda for Peace* as a new kind of United Nations operation, where the use of force is authorized under Chapter VII of the Charter, yet the operation is without a mandate to stop the aggressor (if one can be identified) or impose a cessation of hostilities, and there is often no agreement between warring parties upon which a peacekeeping mandate can be based.⁴²

³⁸ Ibid.

³⁹ S/24111 and A/47/277.

⁴⁰ Ibid. paras. 42-44.

⁴¹ A/50/60.

⁴² Ibid., para. 19.