

## ARTICLE 52

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## ARTICLE 52

### TEXT OF ARTICLE 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council.
4. This Article in no way impairs the application of Articles 34 and 35.

### INTRODUCTORY NOTE

1. Two resolutions adopted by the Security Council during the period under review and one draft resolution which failed to be adopted might be considered as falling implicitly within the scope of Article 52. There were also instances in which Article 52 was explicitly invoked in the proceedings of and communications to the Council, including as a basis for the submission of a question to the Council. That material is treated in the general survey below.
2. The issue of the cooperation between the United Nations and the Organization of Islamic Conference gave rise to a constitutional discussion in the General Assembly on the consistency of that organization and its activities with the provisions of the Charter of the United Nations. Moreover, in connection with various letters from the representative of Nicaragua, divergent views were expressed on the question of priority jurisdiction versus concurrent jurisdiction between regional organizations and the Security Council. The related constitutional discussion is treated in the analytical summary of practice.
3. Explicit references to Article 52 in a General Assembly resolution, as well as in debates in one of the Main Committees of the General Assembly, are outlined in the general survey.

### I. GENERAL SURVEY

4. In connection with the letter dated 5 May 1983 from the representative of Nicaragua, on 19 May 1983, the Security Council adopted resolution 530 (1983), by which it commended "the efforts of the Contadora Group" to find solutions to the problems of the region and urged "the pursuits of those efforts"; appealed urgently to the interested States "to cooperate fully with the Contadora Group, through a frank and constructive dialogue, so as to resolve their differences", and urged the Contadora Group "to spare no effort to find a solution to the problems of the region".<sup>1</sup>

5. In connection with the situation between Iran and Iraq, on 28 September 1980, the Security Council adopted resolution 479 (1980), by which it "[urged Iran and Iraq] to accept any appropriate offer of mediation or conciliation or to resort to regional agencies or arrangements or other peaceful means of their own choice that would facilitate the fulfilment of their obligations under the Charter".<sup>2</sup>

6. In connection with the letter dated 16 March 1983 from the representative of Chad,<sup>3</sup> the Security Council considered a draft resolution submitted by Chad<sup>4</sup>, by which the Council would have noted that the dispute between Chad and the Libyan Arab Jamahiriya was already before the Organization of African Union (OAU) and would have encouraged the parties to make full use of the machinery for peaceful settlement of disputes available within that regional organization.<sup>5</sup> The draft resolution was never put to the vote, and at the 2430<sup>th</sup> meeting, on 6 April 1983, the President of the Security Council made a related statement,<sup>6</sup> by which the Council noted that OAU was already seized of the matter and appealed to both parties to make fullest use of the mechanism available within that regional organization,

<sup>1</sup> S C resolution 530 (1983), paras. 2-4.

<sup>2</sup> S C resolution 479, para. 2.

<sup>3</sup> The item as included in the agenda was entitled "Letter dated 16 March 1983 from the Permanent Representative of Chad to the United Nations addressed to the President of the Security Council (S/15643)".

<sup>4</sup> S C (38), Suppl. for Jan.-March 1983, S/15672.

<sup>5</sup> Ibid., paras. 3 and 4.

<sup>6</sup> Ibid., Suppl. for April-June 1983, S/15688.

including the Good Offices Committee established by OAU.<sup>7</sup> The discussions on the draft resolution mentioned above did not give rise to constitutional arguments regarding the interpretation or application of Article 52.

7. During the period under review, the General Assembly adopted one resolution the annex to which employed language from Article 52. In the Manila Declaration on the Peaceful Settlement of International Disputes, the General Assembly stated that "States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their local disputes through such regional arrangements or agencies before referring them to the Security Council", adding that the provision did not "preclude States from bringing any dispute to the attention of the Security Council or of the General Assembly in accordance with the Charter of the United Nations."<sup>8</sup>

8. Occasionally, Article 52 was explicitly invoked in the Sixth Committee of the General Assembly during the debates on the reports of the Special Committee on the Charter of the United Nations and on the Strengthening the Role of the Organization.<sup>9</sup>

<sup>8</sup> G A resolution 37/10, annex, sect. I, para. 6.

<sup>9</sup> G A (34), 6<sup>th</sup> Comm., 32 mtg.: Byelorussian SSR, para. 14; 33<sup>rd</sup> mtg.: Libyan Arab Jamahiriya, para. 70; 34<sup>th</sup> mtg.: USSR, para. 72; 36<sup>th</sup> mtg.: Syrian Arab Republic, para. 10; G A (35), 6<sup>th</sup> Comm., 29<sup>th</sup> mtg.: Spain, para. 28; 38<sup>th</sup> mtg.: Mexico para. 65.

<sup>7</sup> Ibid., para. 4.

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. Question of the scope of the provisions of Article 52(1)

9. During the period under review there was one instance in which a question was raised in the General Assembly with regard to the consistency of a regional organization or its activities with the provisions of the Charter.

#### IN THE GENERAL ASSEMBLY

#### *Resolution 35/36 of 14 November 1980, entitled "Cooperation between the United Nations and the Organization of the Islamic Conference"*

10. In introducing the draft resolution on the item, the sponsor stated that the Organization of the Islamic Conference (OIC) had undertaken numerous initiatives both within and outside the United Nations to serve the cause of international peace and security related to specific issues such as Palestine, Afghanistan and the conflict between Iran and Iraq, as well as to global questions such as disarmament and colonialism.<sup>10</sup> The draft resolution was supported by another representative, who interpreted the decision of OIC to seek cooperation with the United Nations "as an indication of its preparedness to accept the Charter of the United Nations." This cooperation would "assist OIC and its constituent member States in their striving for more progressive, tolerant and just societies and for a world order based on freedom, equality and brotherhood."<sup>11</sup>

11. Several representatives, however, objected to the adoption of the draft resolution. They argued that, while supporting the cooperation of the United Nations and such regional organizations as the Organization of African Unity, they "[did] not consider it proper for such relations to be entertained with organizations that are narrower in scope,

for example, religious organizations."<sup>12</sup> The United Nations "[was] a secular organization" with global concerns and it could not have "an identical outlook on all issues" with OIC.<sup>13</sup> Furthermore, that organization "[sought] to serve partisan political aims in ways involving, inter alia, the use of religious incitement for hostile purposes."<sup>14</sup> Another representative referred to "certain well-known unilateral decisions and directly hostile actions taken by OIC" against Afghanistan aimed at interference in that country's internal affairs.<sup>15</sup>

#### *Decision*

12. On 14 November 1980, at its 63<sup>rd</sup> plenary meeting, the General Assembly adopted resolution 35/36, in which it noted "that the Organization of Islamic Conference [had] reaffirmed its support for the Charter of the United Nations and the Universal Declaration of Human Rights" and showed its determination "to work towards finding solutions to the serious problems relating to international peace and security in accordance with its Charter and the Charter of the United Nations."<sup>16</sup>

### B. Question of the relationship between Article 52 (2) and (3) and Article 52 (4)

13. During the period under review, there were three instances in which a question was raised with regard to the competence of the Security Council to consider matters which were at the same time being considered by a regional organization.

<sup>12</sup> Ibid., Cuba, para. 97. See also Ethiopia, para. 106; Lao People's Democratic Republic, para. 114; Israel, para. 119.

<sup>13</sup> Ibid., Ethiopia, para. 106.

<sup>14</sup> Ibid., Israel, para. 119.

<sup>15</sup> Ibid., USSR, para. 81.

<sup>16</sup> G A resolution 35/36, preamb. para. 3 and para. 2.

<sup>10</sup> G A (35) plen. 63<sup>rd</sup> mtg.: Pakistan, paras. 65 and 67.

<sup>11</sup> Ibid., India, para. 96.

## 1. IN THE SECURITY COUNCIL

(a) *Resolution 530 (1983) of 19 May 1983 in connection with the complaint by Nicaragua*

14. In connection with the letter dated 5 May 1983 from the representative of Nicaragua,<sup>17</sup> the representative of Nicaragua stated that “the Council should give a mandate to the Secretary-General to contribute to the establishment of a dialogue between Nicaragua and Honduras and between Nicaragua and the United States, in coordination with the countries sponsoring the Contadora initiative”.<sup>18</sup> One representative, supported by others,<sup>19</sup> stated that “the Council must insist on exerting maximum efforts towards negotiated and peaceful solutions to the problems which are afflicting Central America. There [was] no viable alternative policy to this, and there can be none.”<sup>20</sup> The representative pointed out that his “Government would like to see United Nations efforts for peace in the region exercised through the Security Council and through the personal involvement of the Secretary-General”.<sup>21</sup>

15. Another representative, however, insisted that should the peacemaking efforts of the Contadora Group prove fruitless, the matter was to be further pursued in OAS.<sup>22</sup> He proposed that the Council recommend that Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica begin “the keenly desired dialogue that [would] cover regional problems as a whole and lead to serious, responsible agreements that [could] provide a solution to the grave problems of Central America”. Other representatives argued that it was artificial to link the endeavours of the Contadora Group with the activities of the United Nations, since such a link would result in failure of the efforts of the Contadora Group.<sup>23</sup>

*Decision*

16. At its 2437<sup>th</sup> meeting, on 19 May 1983, the Security Council adopted resolution 530 (1983), by which it commended the efforts of the Contadora Group and urged the interested States to cooperate fully with it.<sup>24</sup>

<sup>17</sup> The item as included in the agenda was entitled “Letter dated 5 May 1983 from the representative of Nicaragua on the Security Council addressed to the President of the Security Council”.

<sup>18</sup> S C (38) 2431<sup>st</sup> mtg., para. 37.

<sup>19</sup> *Ibid.*, 2432<sup>nd</sup> mtg.: Algeria, paras. 50-51; Grenada, para. 69; Mexico para. 22; Seychelles para. 43; 2433<sup>rd</sup> mtg.: Cuba, para. 109; Syrian Arab Republic, para. 34; 2435<sup>th</sup> mtg.: Lao People’s Democratic Republic, para. 80; Viet Nam, para. 163; 2436<sup>th</sup> mtg.: Congo, para. 30; United Kingdom of Great Britain and Northern Ireland, para. 54.

<sup>20</sup> *Ibid.*, Zimbabwe, para. 31.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, 2431<sup>st</sup> mtg.: Honduras, paras. 93-94.

<sup>23</sup> *Ibid.*, 2435<sup>th</sup> mtg.: El Salvador, paras. 93-96. See also 2433<sup>rd</sup> mtg.: Guatemala, para. 141; 2434<sup>th</sup> mtg.: Panama, para. 50; 2435<sup>th</sup> mtg.: Colombia, para. 40; Costa Rica paras. 62-63; El Salvador, paras. 93-96; 2436 mtg.: China, paras. 60-61; 2437<sup>th</sup> mtg.: Yugoslavia, paras. 15-18.

<sup>24</sup> See para. 4 above.

(b) *Draft resolution in connection with the complaint by Nicaragua*

17. In connection with the letter dated 19 March 1982 from the Permanent Representative of Nicaragua,<sup>25</sup> one representative asserted that “one [could] not ignore the existence of the regional organization [OAS], since the States of the region, concerned in the dispute before the Council, [were] members of OAS and [could] therefore apply Article 52, paragraph 2, of the Charter of the United Nations”. The Council’s competence to deal with the problem could not be denied, but his delegation believed that “it would have been fitting, from a legal standpoint, to take the matter to the regional organization first.”<sup>26</sup> Another representative stated that “the parties must say whether their dispute [had] already been the object of settlement efforts within OAS. If that [was] the case, the Council must take the necessary steps to bring the parties to apply the provisions of Article 33. If that [was] not the case, it [would] be up to the Council, in accordance with Article 52, paragraph 3, to encourage examination of the situation by OAS.”<sup>27</sup> Yet another representative held that efforts to resolve the issue first should be made through bilateral talks between the two States concerned or, if necessary, through discussions among the countries in the region or in such regional organizations as OAS.<sup>28</sup>

18. One representative, however, opposed any interpretation of Article 52 of the Charter that would limit the “sovereign right” of a Member State to bring a dispute to the attention of the Security Council, on which the Charter had conferred the “supreme authority” in connection with the maintenance of peace and security.<sup>29</sup> The view was also expressed that the obligation under Article 52 was in no way incompatible with the power, vested in all States under the Charter, to bring before the Security Council or the General Assembly any dispute or situation likely to endanger the maintenance of international peace and security. The pre-emptive intervention of the regional system was “neither exclusive nor definite”, but constituted merely “a procedure aimed at introducing order into the proceedings.”<sup>30</sup> Several representatives, citing Article 52 (4) of the Charter, stated that States had the right to have recourse to the Secu-

<sup>25</sup> The item as included in the agenda was entitled “Letter dated 19 March 1982 from the Permanent Representative of Nicaragua to the United Nations addressed to the President of the Security Council (S/14913)”.

<sup>26</sup> S C (37) 2343<sup>rd</sup> mtg.: Chile, paras. 45-47. See also *ibid.*, 2335<sup>th</sup> mtg. United States, paras. 144-146; 2336<sup>th</sup> mtg.: Honduras, paras. 17-20; 2339<sup>th</sup> mtg.: Togo, paras. 64-66; 2343<sup>rd</sup> mtg.: Chile, paras. 45-47; 2347<sup>th</sup> mtg.: United States, para. 15; Costa Rica, para. 70; Zaire, paras. 154-156.

<sup>27</sup> *Ibid.*, 2339<sup>th</sup> mtg.: Togo, paras. 64-66.

<sup>28</sup> *Ibid.*, 2342<sup>nd</sup> mtg.: Japan, para. 60.

<sup>29</sup> *Ibid.*, 2337<sup>th</sup> mtg.: Cuba, paras. 30-32. See also Mexico, paras. 59-62.

<sup>30</sup> *Ibid.*, 2347<sup>th</sup> mtg.: Costa Rica, paras. 69-73.

rity Council when there were reasons justifying such action. The legal protection of the United Nations system and the regional system of OAS were meant to complement rather than to replace or exclude each other.<sup>31</sup>

#### Decision

19. At its 2347<sup>th</sup> meeting, on 2 April 1982, the Security Council voted upon a draft resolution by which it would have appealed “to all parties to have recourse to dialogue and negotiation and [called] on all Member States to lend their support to the search for a peaceful solution to the problems of Central America and the Caribbean.”<sup>32</sup> The draft was not adopted owing to the negative vote of a permanent member.

#### 2. IN THE INTERNATIONAL COURT OF JUSTICE

##### *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (1984)*

20. In the proceedings of the *Military and Paramilitary Activities* case, the United States claimed that the application of Nicaragua to the Court was inadmissible on the grounds that under Article 52 of the Charter there was a commitment of responsibility for the maintenance of international peace and security to regional agencies and arrangements.<sup>33</sup> The United States contended that the Contadora process was a “regional arrangement” within the meaning of Article 52 (2) of the Charter and that under that

<sup>31</sup> Ibid., 2337<sup>th</sup> mtg. Cuba para. 3; Mexico, paras. 59-62; 2339<sup>th</sup> mtg.: Togo paras. 64-68; 2343<sup>rd</sup> mtg.: Chile, paras. 47-54; Madagascar, paras. 83-85; 2347<sup>th</sup> mtg.: Costa Rica, paras. 70-78.

<sup>32</sup> Ibid., Suppl. for April-June 1982, S/14941, para. 4.

<sup>33</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392, paras. 89 and 102.*

Article Nicaragua was obliged “to make every effort to achieve a solution to the security problems of Central America through the Contadora process”. It added that the exhaustion of such a regional process was a precondition for the reference of a dispute to the Security Council and such limitation must apply with even greater force with respect to the Court, which had no specific responsibility under the Charter for dealing with such matters.<sup>34</sup>

21. Nicaragua, on the other hand, argued that the support given by the international community to the Contadora process did not constitute an obstacle for the Court’s jurisdiction. The Charter of the United Nations did not require the exhaustion of prior regional negotiations.<sup>35</sup>

22. The Court held that the existence of active negotiations between the parties to the dispute should not prevent the Security Council and the Court from exercising their separate functions under the Charter and the Statute of the Court.<sup>36</sup> The Court did not consider the Contadora process a “regional arrangement” for the purpose of Chapter VIII. The Court held that there was no requirement of prior exhaustion of a regional negotiating process as a precondition to seizing the Court nor was the Contadora process an obstacle to the examination by the Court of the Nicaraguan application. The Court was therefore unable to declare the application inadmissible, as requested by the United States.<sup>37</sup>

<sup>34</sup> Ibid., para. 102.

<sup>35</sup> Ibid., paras. 103 and 104.

<sup>36</sup> Ibid., para. 106. The Court cited the *Aegean Sea Continental Shelf* case, where the Court had held that the fact that negotiations were being actively pursued during the current proceedings was not, legally, an obstacle to the exercise by the Court of its judicial function (*I.C.J. Reports 1978, p. 12, para. 29*).

<sup>37</sup> Ibid., paras. 107 and 108.