

ARTICLE 40

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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, the Security Council did not adopt any decision invoking Article 40. In one instance, however, it recalled a resolution in which explicit reference was made to Article 40.
2. Since there was no constitutional discussion concerning the interpretation or application of Article 40 in the Security Council related to the adoption of a resolution by the Council which bears on the provisions of that Article, this study consists only of the Summary of Practice.
3. The Summary contains a reference to a draft resolution explicitly invoking Article 40 on which no action was taken by the Council.
4. It contains also a review of a brief discussion of constitutional significance connected with a request that the Security Council suspend as a provisional measure under Article 40 certain resolutions of a regional organization pending the receipt of an advisory opinion of the International Court of Justice on a number of questions related to those resolutions.
5. Furthermore, it contains a summary of constitutional discussion in the Security Council concerning the question whether the resolutions of the Security Council of 14 July 1960, 22 July 1960 and 9 August 1960 were or were not adopted under the provisions of Chapter VII of the Charter, including Article 40.

6. Also referred to is an appeal by the President of the Council which he made pursuant to a proposal by a representative under Article 40, and statements of the Secretary-General to the effect that the temporary administration by the United Nations of certain bases in the Congo had been undertaken under the same Article.

7. The discussion at the fifteenth session of the General Assembly on the item entitled "Supplementary estimates for the financial year 1960: United Nations activities in the Congo (ONUC) for the period of 14 July to 31 December 1960" is briefly reviewed in so far as it was relevant to the interpretation of Article 40.

8. In connexion with the complaint of Tunisia, with the complaint by the Government of Cyprus and with the India-Pakistan question, statements relating to resolutions explicitly or implicitly bearing on the provisions of Article 40 are summarized.

9. In addition, the Summary of Practice lists various types of measures taken by the Security Council without a reference to Article 40 which might be considered to be of the nature of provisional measures to prevent aggravation of a situation.

10. Explicit references to Article 40 made in the Security Council and the General Assembly during the consideration of various items are also included.

SUMMARY OF PRACTICE

11. By its resolution 171 (1962) of 9 April 1962 the Security Council recalled its resolutions 54 (1948) of 15 July 1948, which contained an explicit reference to Article 40, and 93 (1951)¹ of 18 May 1951. In resolution 54 (1948) the Security Council (1) had determined that the situation in Palestine constituted a threat to the peace within the meaning

¹ In resolution 93 (1951) the Security Council had recalled resolution 54 (1948); by resolution 171 (1962) the Council had also reaffirmed (oper. para. 2) its resolution 111 (1956) of 19 January 1956 which had recalled also resolution 54 (1948), and resolutions 93 (1951) of 18 May 1951, 101 (1953) of 24 November 1953 and resolution 106 (1955) of 29 March

of Article 39; (2) ordered the Governments and the authorities concerned, pursuant to Article 40, to desist from further military action and to that end to issue cease-fire orders to their military and paramilitary forces to take effect at a time to be determined by the Mediator, but in any event not later than three days from the date of the adoption of the

1955, all three of which had recalled (1st preamb. para.) resolution 54 (1948). For resolution 54 (1948), see also the *Repertory* under Article 40, paras. 12, 14 (a), 20, footnote 37, *Supplement No. 1* under Article 40, paras. 4, 5 (a), (d) and *Supplement No. 2* under Article 40, para. 6.

resolution; and (3) declared that the failure of the Governments of authorities concerned to comply with the preceding paragraph of the resolution would demonstrate the existence of a breach of the peace within the meaning of Article 39 requiring immediate consideration by the Security Council with a view to such further action under Chapter VII as might be decided upon by the Council.

12. Article 40 was explicitly referred to in a draft resolution² submitted by the United States in connexion with letters from the Permanent Representatives of the United States of America, Cuba and the USSR on the item entitled "Question relating to the situation in the Caribbean" at the 1022nd meeting of the Security Council on 23 October 1962, according to which the Security Council was to call, as a provisional measure under Article 40, for the immediate dismantling and withdrawal from Cuba of all missiles and other offensive weapons.

13. Article 40 was explicitly referred to, together with other Articles of the Charter, in a letter³ dated 8 March 1962 addressed to the President of the Security Council in which the representative of Cuba asked the Security Council to request the International Court of Justice to give an advisory opinion on seven specific questions contained in a draft resolution⁴ which was subsequently submitted. The letter related to the resolutions adopted at the Eighth Meeting of Consultation of Ministers for Foreign Affairs of the American States, held at Punta del Este, which allegedly constituted aggression against the sovereignty of Cuba and a threat to international peace and security. The Council was further requested to call, as a provisional measure under Article 40 of the Charter, for the suspension of the agreements adopted at the Meeting.

14. At the 992nd meeting of the Security Council on 14 March 1962, the representative of Cuba urged that the Council should decide to suspend the illegal agreements of Punta del Este together with any measures that might have been taken under those decisions, pending the receipt of an advisory opinion of the International Court of Justice, and that the regional organization should be notified to that effect.

15. In support of the Cuban proposal it was contended that the Security Council should undertake a number of supplementary actions and measures under Article 40 of the Charter which envisaged such provisional measures as might be taken by the Security Council to prevent an aggravation of the situation. Applying this to the request to the International Court of Justice for an advisory opinion on the important questions of international law the Council had a right and a duty to suspend the implementation of the Punta del Este decisions and of any decisions developing or supplementing them which might be taken, until such time as the Security Council had received and considered the advisory opinion of the Court. A provisional measure

of this kind not only was in conformity with the spirit and letter of Article 40 but was the only one possible in the prevailing conditions, when there was no unanimity among the members of the Council about the nature of the final decision, and the legal and political problems in the question before it. Such a provisional measure would be without prejudice to "the rights, claims, or position of the parties concerned", because it would not prejudge the nature of the final decision of the Security Council on the question submitted by Cuba but would prevent actions which could be irrevocable at a time when their legality was questioned by many States Members of the United Nations, including members of the Security Council.

16. It was maintained, on the other hand, that viewed in the context of the resolutions adopted at Punta del Este and the precedent of the Dominican case,⁵ the seven questions raised in the letter from the representative of Cuba should be dismissed for lack of substantiality; there was even less reason for the Council to consider the Cuban demand that provisional measures be adopted under Article 40, to suspend the implementation of the resolutions of Punta del Este. The view was also expressed that the questions which the Council was asked to put to the International Court of Justice were of an essentially political character. Thus, the action which Cuba had requested the Council to take on those resolutions was unwarranted and undesirable. Moreover, if the Security Council were to take the view that Article 40 of the Charter was applicable because the measures adopted at Punta del Este were illegal and threatened international peace and security, it would automatically reopen the debate on the substance of the question, while this aspect of the complaint by Cuba had been considered recently both by the General Assembly and the Security Council which had found the Cuban charges unjustified.⁶

17. Article 40 was referred to together with Articles 39, 41 and 42, in the Security Council by the Secretary-General during the course of the consideration of the situation in the Congo, in connexion with the question whether the resolutions of the Council of 14 July 1960, 22 July 1960 and 9 August 1960 were or were not adopted under the provisions of Chapter VII of the Charter.⁷

18. At the 884th meeting on 8 August 1960, the Secretary-General quoted Articles 25, 40, 41 and 49 of the Charter and stated that the Council's resolutions of 14 July and 22 July 1960 were not

⁵ See this *Supplement*, under Article 52, paras. 37—41, and Article 53, paras. 16—27.

⁶ For texts of relevant statements, see S C, 17th yr., 992nd mtg.: Cuba, para. 118; 993rd mtg.: USSR, paras. 65, 66, 68 and 69; United States, paras. 124 and 125; 995th mtg.: China, para. 27; France, paras. 55 and 56; United Kingdom, paras. 10 and 11; 997th mtg.: Venezuela, para. 30. At the 998th meeting of the Security Council on 23 March 1962, the Cuban draft resolution, after having been amended, was rejected by 7 votes to 2, with 1 abstention, one representative not participating in the voting (S C, 17th yr., 998th mtg., para. 158). No action was taken on the Cuban request.

⁷ See also this *Supplement*, under Article 39, para. 12; under Article 41, paras. 12—15; and under Article 42, paras. 4 (6).

² S C, 17th yr., 1022nd mtg., para. 80, S/5182; no action was taken on this draft resolution.

³ S C, 17th yr., Suppl. for Jan.—March, p. 88, S/5086.

⁴ *Ibid.*, p. 96, S/5095.

explicitly adopted under Chapter VII but on the basis of an initiative under Article 99. For that reason he had felt entitled to quote three Articles under Chapter VII. He stated further that in a perspective which might well be short rather than long, the problem facing the Congo was one of peace or war — and not only in the Congo.⁸

19. At the 915th meeting on 8/9 December 1960, the Secretary-General having stated that it was even doubtful if the Council ever had acted under Chapter VII, added: "The very most that could be said is that the Council's action may have been taken under Article 40 of the Charter...".⁹

20. At the 917th meeting on 10 December, one representative stated that it was the duty of the Security Council to give the Secretary-General a new mandate for the utilization of the United Nations Force in the Congo to carry out the principal tasks for which it had been sent. He stated further that article 39 of the Charter was clear as regards the duties of the Security Council whenever there existed a threat to peace or a breach of the peace. Article 40 further elaborated the duties of the Council "to prevent an aggravation of a situation likely to cause a breach of international peace and security".¹⁰

21. At the same meeting the Secretary-General, replying to the above-mentioned statement, said that Articles 39 and 40 of the Charter might be considered "as a background for action taken, although that is not quite clear legally".¹¹

22. At the 920th meeting on 13/14 December 1960, the Secretary-General said that in his own view, which he had expressed to the Council, the resolutions of the Security Council "may be considered as implicitly taken under Article 40 and, in that sense, as based on an implicit finding under Article 39" but what he would like to emphasize was that neither the Council nor the Assembly had ever endorsed this interpretation, much less put such endorsement in a resolution. What was even more certain was that the Council in no way directed that the United Nations Force should go beyond the legal basis of Article 40 and into the coercive action covered by Articles 41 and 42.¹²

23. At the same meeting, commenting on the statement of the Secretary-General, the same representative who had spoken on the constitutional question earlier¹³ expressed the view,¹⁴ in clarification of his previous position, that it had been unnecessary for the Council to have recourse to Articles 40 and 41 since the strength and the authority of the invitation by the Central Government of the Congo had been sufficient to make the action taken by the Security Council a lawful action and to

entitle the United Nations to send its forces to the Congo.¹⁵

24. Earlier, during the consideration of the situation in the Congo, at the 896th meeting¹⁵ of the Security Council on 9/10 September 1960, the representative of Tunisia, referring to a proposal¹⁶ for the adjournment of the meeting, pointed out that the Secretary-General in his third report, "and particularly the second addendum, dated 7 September 1960",¹⁷ had emphasised the gravity of the situation in the Congo. The representative expressed the hope that until such time as the Council had decided on what measures to take, in conformity with the spirit if not the letter of Article 40, no action would be taken in the Republic of the Congo, which might aggravate a situation which was already serious.¹⁸

25. At the 897th meeting on 10 September 1960, support was given to the statement of the representative of Tunisia by a number of representatives.¹⁹ After a suspension of the meeting, the representative of Tunisia proposed that the meeting be adjourned to 12 September 1960.²⁰ The President (Italy) having declared the proposal adopted²¹ in his statement²² interpreting the consensus of the Council, reiterated the appeal that "in conformity with the spirit if not the letter of Article 40 of the United Nations Charter, no action will be taken in the Republic of the Congo which might aggravate an already serious situation".

26. Article 40 was implicitly referred to by the Secretary-General in his statement and communications relating to the temporary administration of the Kamina and Kitona bases in the Republic of the Congo as a provisional measure under that Article 40.²³

27. In the course of the consideration by the Fifth Committee at the fifteenth session of the General Assembly of the item entitled "Supplementary estimates for the financial year 1960: United Nations activities in the Congo (ONUC) for the period of

¹⁵ The agenda of the meeting read:

"3. Letter dated 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381); fourth report of the Secretary-General on the implementation of Security Council's resolutions S/4387 of 14 July 1960, S/4405 of 22 July 1960 and S/4426 of 9 August 1960 (S/4482 and Add. 1); letter dated 8 September 1960 from the Permanent Representative of Yugoslavia to the United Nations, addressed to the President of the Security Council (S/4485)."

¹⁶ S C, 15th yr., 896th mtg.: United Kingdom, para. 155.

¹⁷ *Ibid.*, 896th mtg., paras. 83—111.

¹⁸ *Ibid.*, para. 160.

¹⁹ *Ibid.*, 897th mtg.: Argentina, para. 31; Ceylon, paras. 51 and 52; Ecuador, para. 24; United Kingdom, paras. 11 and 13; United States, para. 24.

²⁰ *Ibid.*, para. 79.

²¹ *Ibid.*, para. 82.

²² *Ibid.*, paras. 83—85.

²³ S C, 15th yr., 887th mtg., para. 31; S C, 15th yr., Suppl. for July—Sept., p. 126, S/4475; Suppl. for Oct.—Dec., p. 102, S/4599; S C, 16th yr., Suppl. for Jan.—March, p. 71, S/4651; Suppl. for April—June, p. 4, S/4779.

⁸ S C, 15th yr., 884th mtg., paras. 21—26.

⁹ *Ibid.*, 915th mtg., para. 157.

¹⁰ *Ibid.*, 917th mtg., paras. 34 and 38.

¹¹ *Ibid.*, para. 64.

¹² S C, 15th yr., 920th mtg., para. 75.

¹³ See para. 21 above.

¹⁴ S C, 15th yr., 920th mtg., para. 107.

14 July to 31 December 1960”²⁴ one representative pointed out that the Secretary-General had called²⁵ the Security Council’s attention to the provisions of Articles 40, 41, and 49 of the Charter by reason of the fact that he had taken the initiative in bringing the situation in the Congo before the Council as a threat to international peace and security under Article 99.

28. The Secretary-General later said²⁶ that he had stated on several occasions, without any objection being raised, that the resolutions of the Council could be considered as having been implicitly adopted under Article 40, but certainly not under Articles 41 and 42. Consequently, the mere fact that military contingents had been used to maintain law and order and to prevent civil war in the Congo did not mean that there had been any intention to apply either the letter or the spirit of Article 43 of the Charter.

29. In the course of the subsequent discussion, it was observed that no one had questioned the fact that it was under Article 99 of the Charter that the Secretary-General had asked for the Security Council to be convened. Nor had the Council subsequently specified on which articles of the Charter the action had been based: some delegations had invoked Article 40, others, Article 43 or Article 99. On the other hand, one representative pointed out that the Secretary-General had stated that, in connexion with the operations in the Congo, the provisions of Article 40 had applied. The representative subsequently added that there was no provision in Article 40 for the use of force. Moreover, Articles 42 and 43 did not refer expressly to an action against a State or a Government. If, in the case of civil war, the Security Council used force in order to maintain international peace and security, it was still acting under Article 43.

30. Another representative maintained that although Article 40 did not provide for military action, the Secretary-General had argued that the United Nations action in the Congo had been taken under that Article and that Articles 42 and 43 related only to “sanctions” or enforcement measures. The provisions of Article 40 were, however, directly related to those of Article 43. Subsequently, the representative maintained that the United Nations operations in the Congo had been undertaken under Article 43. Even if the Secretary-General was right in saying that Article 43 was linked to Article 40, the operations in question none the less came under the responsibility of the Security Council.

31. It was maintained in this connexion that, while the conclusion of the Secretary-General might be valid in respect of operations carried out under Article 43, it did not apply to the expenses arising out of the United Nations operations in the Congo, which originated in the Security Council and, in the Secretary-General’s words, “could be considered as implicitly taken under Article 40”. In the view of the representative, however, Article 43 was the only Article of the Charter in which the United Nations

Conference on International Organization laid down methods for the use of armed forces in connexion with the application of Articles of Chapter VII of the Charter, which included Article 40.

32. One representative contended that Article 40 applied to the Security Council’s decision calling for the withdrawal of Belgian troops from the Congo. It was, however, difficult to agree with the Secretary-General that the decision of the Security Council to extend military assistance to the Republic of the Congo to help in the restoration of law and order could also be considered as implicitly taken under Article 40. It was better to admit that not every possible situation had been foreseen at the San Francisco Conference and that it was for the Members of the United Nations to fill the gaps in accordance with the spirit of the Charter.

33. The representative, referring further to the view that the provisions of Article 43 related not only to measures contemplated in Articles 41 and 42 but also those contemplated in Article 40, stated that Article 43 dealt with the means for carrying out measures decided by the Security Council and Articles 41 and 42 defined those measures. Article 40, on the other hand, provided only for interim measures. It mentioned “the parties concerned” twice but not Members of the United Nations. It could not, therefore, be maintained that Article 43 related to the measures referred to in Article 40. In practical terms, if it was maintained that it was under Article 40 that the Security Council had called upon Belgium to withdraw its troops from the Congo, that Article could not also be invoked in relation to the dispatch of contingents and to other measures aimed at the restoration of order in the Congo which was necessary for the maintenance of international peace and security. There was no provision of the Charter that would authorize measures to avert civil war and justify intervention in the Congo, but this fact had not prevented the General Assembly and the Security Council from taking decisions to that end. It was therefore pointless to search the Charter for a provision specifically applicable to the operations which had been undertaken.²⁷

34. With reference to resolution 164 (1961) of 22 July 1961 adopted in connexion with the complaint by Tunisia, in the course of the consideration by the Security Council the representative of Tunisia stated that the Council had made an interim decision under Article 40. France’s dereliction of duty as a Member of the United Nations and a permanent member of the Council could not be ignored by the Council which must duly take account of France’s failure to comply with Article 40 of the Charter and must act to enforce its decisions. The Security Council was bound by Article 40 to take account of this failure and must draw the necessary conclusions from

²⁴ G A (XV), Annexes, a. i. 49/50.

²⁵ See para. 18 above.

²⁶ See para 22 above.

²⁷ For text of relevant statements, see G A, (XV), 5th Com., 811th mtg.: Pakistan, para. 12; 839th mtg.: Secretary-General, para. 6; Bulgaria, para. 28; Tunisia, para. 23; 841st mtg.: USSR, para. 13; 842nd mtg.: Pakistan, paras. 36 and 38; USSR, para. 25; 843rd mtg.: Bulgaria, para. 16; 845th mtg.: Mexico, para. 7. G A (XV), a. i. 49/50, A/C.5/868 (statement by the representative of Mexico at the 845th mtg. of the 5th Com., paras. 5 and 9).

it, in accordance with the Charter and with precedents in similar cases. The representative outlined steps to be taken by the Council to ensure that the French armed forces returned to their original position and stated that this would in no way prejudice "the rights, claims or position of the parties concerned" as expressly provided for in Article 40. In a subsequent statement, the representative of Tunisia observed that the Security Council in its resolution should refer to Article 40 which provided that in making its decision the Council should take account of failure to comply with provisional measures. As no such statement was contained in draft resolution S/4905²⁸ before the Council, he suggested that, in accordance with Article 40, such a statement should be included in it.²⁹

35. In connexion with the item entitled "Consideration of the grave situation in Tunisia prevailing from 19 July 1961", taken up at the third special session of the General Assembly, the representative of Tunisia stated that the Security Council's interim resolution 164 (1961) of 22 July 1961 had been adopted on the basis of Article 40. While Tunisia had immediately applied its provisions, France, thirty days after its adoption, had refused to withdraw, first, the forces that were stationed in Bizerta before 19 July to the position they occupied on that date and, secondly, all French forces which had entered Tunisian territory after 19 July. The representative further stated at a later meeting that Tunisia, conscious of its obligations deriving from Article 25 of the Charter, had fully complied with the interim resolution. France, however, despite its obligations under Article 25, had failed to withdraw its armed forces to their original position. It was also stated that the interim resolution of the Security Council which was based on Article 40, was binding on both sides. The situation had been rendered even more dangerous by the refusal of France to comply with the resolution, although its provisions were without prejudice to the rights, claims or position of both sides.³⁰

36. In the discussion preceding the adoption of resolution 219 (1965) of 17 December 1965 at the 1270th meeting of the Security Council in connexion with the complaint by the Government of Cyprus, the Secretary-General stated that he regarded United Nations peace-keeping efforts in Cyprus as emergency actions which ought to have terminal dates within reasonable time spans.³¹ In connexion with this statement, one representative said that the term "emergency operations" meant that they were measures and operations adopted by the United Nations through its competent organs to maintain

²⁸ S C, 16th yr., Suppl. for July—Sept., p. 48; 965th mtg., para. 32.

²⁹ For text of relevant statements, see S C, 16th yr., 964th mtg.: Tunisia, paras. 9, 57, 71, 76 and 77; 966th mtg.: Tunisia, paras. 24 and 25.

³⁰ For text of relevant statements, see G A (S-III), Plen., 996th mtg.: Tunisia, paras. 66—68; 999th mtg.: Iraq, para. 26; 1004th mtg.: Tunisia, para. 45.

³¹ S C, 20th yr., 1270th mtg., para. 3.

world peace when it was threatened by exceptional circumstances at any given moment.³²

37. In the course of the discussion in connexion with the India-Pakistan question at the 1239th meeting of the Security Council on 17 September 1965, which led to the adoption of resolution 211 (1965) of 20 September 1965, the Secretary-General, reporting on his efforts for the implementation of the resolutions calling for cessation of hostilities, stated that he had so far not succeeded in securing the effective compliance of both sides. He suggested that the Security Council might do what it had done once before, and successfully, in another dangerous situation: "It could order the two Governments concerned, pursuant to Article 40 of the Charter of the United Nations, to desist from further hostile military action and to this end to issue cease-fire orders to their military forces. The Council might also declare that failure of the Governments concerned to comply with this order would demonstrate the existence of a breach of the peace within the meaning of Article 39 of the Charter".

38. In the ensuing discussion, the representative of India stated that the suggestion of the Secretary-General to apply provisional measures under Article 40 would put the Governments of India and Pakistan "on the same footing" and asked the Council to determine under Article 39 the existence of an act of aggression on the part of Pakistan. The representative of Pakistan noted that if such action as suggested by the Secretary-General, were taken by the Council, it would be the first time in the history of the Kashmir dispute that the Council would be contemplating action under Chapter VII. Hitherto, all actions had been taken under Chapter VI. A departure from past practice would be a momentous decision and its implications would have to be carefully weighed before the Council proceeded further in this matter. One representative stated that the Security Council, as the Secretary-General proposed in his second report³³ on his mission to India and Pakistan should, on the basis of Article 40, decide on a specific moment in the nearest future at which hostilities should cease. It could offer its assistance for ensuring the observance of the cease-fire. In taking that step for a short-range solution, however, the Council should not lose sight of its long-range objective which was to eliminate the underlying political conflict. While the Council could not impose a specific solution of that conflict, it could put in motion a process to that end. Another representative contended that the application of Articles 39 and 40 as suggested by the Secretary-General to enforce the cease-fire might be quite unnecessary. It appeared to be a logical step to take, however, in order not only to uphold the authority of the Council but also to put an effective stop to a war which, though as yet local in nature, might well escalate to such an extent as to endanger international peace and security.³⁴ Resolution 211 (1965) itself contained no reference to Article 40.

³² *Ibid.*, Bolivia, para. 119.

³³ S C, 20th yr., Suppl. for July—Sept., p. 308, S/6686, para. 9 (a); same text as S C, 20th yr., 1239th mtg., para. 20.

39. 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 could be categorized as follows: (a) appeals or calls for cessation of military activities or hostilities,³⁵ (b) appeals or calls for a cease-fire³⁶ among them a request for transformation of the suspension of hostilities into a permanent cease-fire³⁷ and for supervision of a cease-fire by the head of a United Nations subsidiary organ;³⁸ (c) appeals, sometimes urgent, that measures be taken for the withdrawal of military or paramilitary or other personnel from certain territories or to certain positions;³⁹ (d) authorization or the Secretary-General to take action for apprehension, detention and or deportation of such personnel from a Member State;⁴⁰ (e) a call for taking measures to prevent the

³⁴ For text of relevant statements, see S C, 20th yr., 1239th mtg.: Secretary-General, paras. 16–20; India, paras. 105–107; 1240th mtg.: Pakistan, para. 65; 1241st mtg.: China, para. 107; Netherlands, para. 79. In its resolution 211 (1965) adopted at the 1242nd meeting on 20 September 1965 (S C, 20th yr., 1242nd mtg., para. 69; Resolutions and Decisions of the Security Council, 1965, pp. 14–15) demanding that the cease-fire took effect on a specified date no reference was made to Articles 39 and 40 of the Charter. See also this *Supplement*, under Article 39, para. 13.

³⁵ Appeal by the President of the Security Council made at the 1143rd meeting on 9 August 1964 (1143rd mtg., paras. 13 and 14) and resolution 193 (1964) of 9 August 1964, oper., para. 1, in connexion with the question of Cyprus; resolutions 210 (1965) of 6 September 1965 oper. para. 1, and 215 (1965) of 5 November 1965, oper. para. 2; in connexion with the India–Pakistan question.

³⁶ Resolution 164 (1961) of 22 July 1961, oper. para. 1, in connexion with the complaint by Tunisia; resolution 161 A (1961) of 21 February 1961, oper. para. 1, in connexion with the situation in the Congo; appeal by the President of the Security Council made at the 1143rd meeting on 9 August 1964; resolutions 193 (1964) of 9 August 1964, oper. para. 2 and 194 (1964) of 25 September 1964, oper. para. 1; all in connexion with the complaint by the Government of Cyprus; resolution 199 (1964) of 30 December 1964, oper. para. 2, in connexion with the situation in the Democratic Republic of the Congo; resolution 203 (1965) of 14 May 1965, oper. para. 1 and statement by the President of the Security Council at the 1233rd meeting on 26 July 1965 (S C, 20th yr., Resolutions and Decisions of the Security Council, 1965, pp. 11 and 12), in connexion with the situation in the Dominican Republic; resolutions 209 (1965) of 4 September 1965, oper. para. 1, 211 (1965) of 20 September 1965, oper. paras. 1 and 2, 214 (1965) of 27 September 1965, oper. para. 1, 215 (1965) of 5 November 1965, oper. para. 1, all in connexion with the India–Pakistan question.

³⁷ Resolution 205 (1965) of 22 May 1965, oper. para. 1, in connexion with the situation in the Dominican Republic.

³⁸ Resolution 209 (1965) of 4 September 1965, oper. para. 3, in connexion with the India–Pakistan question; statement by the President of the Security Council made at the 1143rd meeting on 11 August 1964 (Resolutions and Decisions of the Security Council, p. 7), in connexion with the Cyprus question.

³⁹ Resolutions 143 (1960) of 14 July 1960, oper. para. 1; 145 (1960) of 22 July 1960, oper. paras. 1, 3, 146 (1960) of 9 August 1960, oper. para. 2; 161 (1961) of 21 February 1961, oper. para. 2, all in connexion with the situation in the Congo; resolution 164 (1961) of 22 July 1961, oper. para. 1, in connexion with the complaint by Tunisia; resolutions 209 (1965) of 4 September 1965, oper. para. 2; 210 (1965) of 6 September 1965, oper. para. 1; 211 (1965) of 20 September 1965, oper. para. 1; 214 (1965) of 27 September 1965, oper. para. 2; all in connexion with the India–Pakistan question.

⁴⁰ Resolution 169 (1961) of 24 November 1961, oper. para. 4, in connexion with the situation in the Congo.

entry or return of such personnel to a Member State;⁴¹ (f) a call for the withdrawal of mercenaries from a Member State;⁴² (g) a declaration that the entry of a United Nations force into a certain territory was necessary for the implementation of its resolution;⁴³ (h) calls to prevent or stop certain actions or occurrences, to prevent a civil war in a Member State,⁴⁴ to stop secessionist activities in that State,⁴⁵ to prevent violation of sovereignty and territorial integrity of another State,⁴⁶ to prevent the sale and supply of arms and military equipment and materials for the manufacture and maintenance of arms and ammunition to be used in territories under the administration of a Member State,⁴⁷ cease forthwith the sale of arms, ammunition of all types and military equipment to a Member State and the shipment of materials for the manufacture and maintenance of arms and ammunition in that State,⁴⁸ to stop violence and bloodshed in a Member State⁴⁹ to stop bombing and use of military force against a Member State, (whose Government in turn was asked to order its forces to stop firing immediately) and to stop all flights over the territory of that Member State in violation of its sovereignty;⁵⁰ a decision to send three members of the Council to places of incidents in two Member States in order to consider such measures as might prevent their occurrence;⁵¹ (j) a request to the Government of an administering Power to take all action to prevent a unilateral declaration of independence by a minority government in a Non-Self-Governing Territory;⁵² (k) a call upon the Government of the administering Power to quell the rebellion in that territory,⁵³ and to eliminate the authority of

⁴¹ *Ibid.*, oper. para. 5.

⁴² Resolution 199 (1964) of 30 December 1964, oper. para. 3, in connexion with the question concerning the Democratic Republic of the Congo.

⁴³ Resolution 146 (1960) of 9 August 1960, oper. para. 3, in connexion with the Congo question.

⁴⁴ Resolution 161 A (1961) of 21 February 1961, oper. para. 1, in connexion with the Congo.

⁴⁵ Resolution 169 (1961) of 24 November 1961, oper. paras. 1, 3 and 8, in connexion with the situation in the Republic of the Congo.

⁴⁶ Resolutions 178 (1963) of 24 April 1963, oper. para. 2 and 204 (1965) of 19 May 1965, oper. para. 3, in connexion with the complaint by Senegal.

⁴⁷ Resolutions 180 (1963) of 31 July 1963, oper. para. 6, and 218 (1965) of 23 November 1965, oper. para. 6, in connexion with the situation in Territories in Africa under Portuguese administration.

⁴⁸ Resolutions 181 (1963) of 7 August 1963, oper. para. 3, 182 (1963) of 4 December 1963, oper. para. 5, and 191 (1964) of 18 June 1964, oper. para. 12, in connexion with the question relating to the policies of *apartheid* of the Government of the Republic of South Africa.

⁴⁹ Resolution 186 (1964) of 4 March 1964, oper. para. 2, in connexion with the complaint of the Government of Cyprus.

⁵⁰ Statements by the President of the Security Council at the 1143rd meeting on 11 August 1964 (S C, 19th yr., Resolutions and Decisions of the Security Council pp. 6 and 7, resolution 193 (1964) of 9 August 1964, oper. para. 1), in connexion with the Cyprus question.

⁵¹ Resolution 189 (1964) of 4 June 1964 oper. para. 5, in connexion with the complaint by Cambodia.

⁵² Resolution 202 (1965) of 6 May 1965, oper. para. 4, in connexion with the situation in Southern Rhodesia.

⁵³ Resolution 217 (1965) of 20 November 1965, oper. para. 4, in connexion with the situation in Southern Rhodesia.

the usurpers and to bring the minority régime to an end;⁵⁴ (l) calls to avoid a certain action or to refrain from such an action, to refrain from any action which might tend to impede the restoration of law and order in a Member State and the exercise by its Government of its authority and also from any action which might undermine the territorial integrity and the political independence of that State,⁵⁵ to refrain from the supply of arms, equipment or other material which could be used for warlike purposes and to deny transportation for such facilities except in accordance with the decision, policies and purposes of the United Nations,⁵⁶ to refrain from giving support to activities against the United Nations,⁵⁷ to refrain from any action which might impede the policies and purposes of the United Nations in a Member State and which was contrary to its decisions and the general purposes of the Charter,⁵⁸ to refrain from any action which might increase the tension between two Member States,⁵⁹ to refrain from a violation of a resolution of the Security Council in the future,⁶⁰ to refrain from any action which would increase tension in an area,⁶¹ to refrain from offering the Government of a Member State any assistance which would enable it to continue its repression of the peoples of the Territories under its administration,⁶² to refrain from any action or threat of action likely to worsen the situation in a Member State or endanger international peace,⁶³ to refrain from any action that might exacerbate the situation or contribute to the broadening of hostilities,⁶⁴ to avoid any action likely to worsen the situation,⁶⁵ not to accept a unilateral declaration of independence by the minority Government of a Non-Self-Governing Territory,⁶⁶ not to transfer to it "as at present governed" any of the powers and attributes of sovereignty,⁶⁷ not to

⁵⁴ *Ibid.*, oper. para. 5.

⁵⁵ Resolution 145 (1960) of 22 July 1960, oper. para. 2, in connexion with the situation in the Congo.

⁵⁶ Resolution 169 (1961) of 24 November 1961, oper. para. 6, in connexion with the Congo.

⁵⁷ *Ibid.*, oper. para. 7.

⁵⁸ *Ibid.*, oper. para. 11.

⁵⁹ Resolution 144 (1960) of 19 July 1960, oper. para. 3, in connexion with the complaint by Cuba.

⁶⁰ Resolution 171 (1962) of 9 April 1962, oper. para. 3, in connexion with the Palestine question.

⁶¹ Resolution 179 (1963) of 11 June 1963, oper. para. 2, in connexion with the reports of the Secretary-General concerning Yemen.

⁶² Resolutions 180 (1963) of 31 July 1963, oper. para. 6, and 218 (1965) of 23 November 1965, oper. para. 6, in connexion with the Territories in Africa under Portuguese administration.

⁶³ Resolutions 186 (1964) of 4 March 1964, oper. para. 1 and 187 (1964) of 13 March 1964, oper. para. 1, in connexion with the complaint by the Government of Cyprus.

⁶⁴ Resolution 193 (1964) of 9 August 1964, oper. para. 4, in connexion with the complaint by the Government of Cyprus.

⁶⁵ Resolution 207 (1965) of 10 August 1965, oper. para. 2, in connexion with the complaint by the Government of Cyprus.

⁶⁶ Resolution 202 (1965) of 6 May 1965, oper. para. 3, in connexion with the situation in Southern Rhodesia.

⁶⁷ *Ibid.*, para. 5.

recognize the illegal minority régime in that Territory,⁶⁸ to refrain from rendering any assistance to this régime,⁶⁹ not to entertain any diplomatic or other relations with it,⁷⁰ to desist from providing this illegal régime with arms, equipment and military material,⁷¹ to refrain from any action which might aggravate the situation in an area;⁷² (m) calls and requests that efforts be made to achieve objectives⁷³ of the Security Council, to comply with a decision of an armistice commission,⁷⁴ to take all steps for reactivating such a commission and to make full use of its machinery;⁷⁵ (n) calls for co-operation with the United Nations⁷⁶ or its subsidiary organs,⁷⁷ among them a request to the Secretary-General to strengthen a subsidiary organ⁷⁸ and a call on the Governments of two Member States to assist the head of such an organ in the implementation of measures recommended by him and to co-operate with him in eliminating any violations of an armistice agreement.⁷⁹

40. Explicit references to Article 40 were made, *inter alia*, in the Security Council during the consideration of the following items: the situation in Angola,⁸⁰ the situation in territories in Africa under Portuguese administration,⁸¹ the question of race conflict in South Africa,⁸² and the situation in the Dominican Republic,⁸³ and in the General Assembly in connexion with the situation in Angola⁸⁴ and with the item entitled "The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty".⁸⁵

⁶⁸ Resolutions 216 (1965) of 12 November 1965, para. 2, and 217 (1965) of 20 November 1965, oper. para. 6, in connexion with the situation in Southern Rhodesia.

⁶⁹ Resolutions 216 (1965), oper. para. 2, and 217 (1965) oper. para. 8.

⁷⁰ Resolution 217 (1965) of 20 November 1965, oper. para. 6.

⁷¹ *Ibid.*, para. 8.

⁷² Resolution 211 (1965) of 20 September 1965, oper. para. 3, in connexion with the India-Pakistan question.

⁷³ Resolutions 220 (1966) of 16 March 1966, oper. para. 2, and 222 (1966) of 16 June 1966, oper. para. 2, in connexion with the Cyprus question.

⁷⁴ Resolution 162 (1961) of 11 April 1961, oper. paras. 1 and 2, in connexion with the Palestine question.

⁷⁵ Resolution 171 (1962) of 9 April 1962, oper. para. 7, in connexion with the Palestine question.

⁷⁶ *Ibid.*, oper. paras. 4 and 6, in connexion with the Palestine question.

⁷⁷ Resolutions 209 (1965) of 20 September 1965, oper. para. 3 and 215 (1965) of 5 November 1965, oper. para. 2, in connexion with the India-Pakistan question.

⁷⁸ Resolution 210 (1965) of 6 September 1965, oper. para. 2, in connexion with the India-Pakistan Question.

⁷⁹ Resolution 193 (1964) of 9 August 1964, oper. para. 3, statement by the President of the Security Council of 11 August 1964 (S C, 19th yr., Resolutions and Decisions of the Security Council, 1964, p. 7), 201 (1965) of 19 March 1965, oper. para. 3, 206 (1965) of 15 June 1965, oper. para. 3, in connexion with the Cyprus question.

⁸⁰ S C, 16th yr., 954th mtg.: Mali, para. 77.

⁸¹ S C, 18th yr., 1047th mtg.: Ghana, para. 37.

⁸² S C, 19th yr., 1132nd mtg.: Ivory Coast, para. 19.

⁸³ S C, 20th yr., 1198th mtg.: Cuba, para. 68.

⁸⁴ G A (XVI), Plen., 1102nd mtg.: Senegal, para. 69.

⁸⁵ G A (XX), 1st Com., 1397th mtg.: Peru, para. 14.