## 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 of the Council, this study is limited to a Summary of Practice.

3. In the Summary of Practice are included a number of measures taken by the Security Council without reference to Article 40 but which might be considered to be in the nature of provisional measures to prevent the aggravation of a situation.

4. Material has also been included because of its possible bearing on the last provision of Article 40, that the Security Council shall duly take account of failure to comply with provisional measures decided by the Council.

5. The Summary also contains a few explicit references to Article 40 made in the Security Council and in the General Assembly during the consideration of various agenda items.

SUMMARY OF PRACTICE

6. During the period under review, the Security Council, in connexion with a number of items, adopted resolutions which contained what might be considered provisional measures, as mentioned in Article 40 of the Charter, to prevent the aggravation of a situation. These measures may be categorized as follows: (a) calls for the withdrawal of armed forces; (b) calls upon the parties to seek a solution through negotiations; (c) calls upon a party to rescind certain measures in occupied territory; (d) calls upon the parties to refrain from all actions that might create further tension or affect adversely the prospects for a peaceful solution; (e) calls upon a party to rescind certain measures in occupied territory; (f) calls upon the parties to seek a solution through negotiations; (g) calls on Member States to take all necessary measures to prevent the aggravation of a situation.

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1. S C resolutions 279 (1970); 280 (1970), 7th preamb. para., para. 2; 285 (1970); 425 (1978), para. 2; in connexion with the situation in the Middle East. S C resolution 289 (1970), para. 2; in connexion with the complaint by Guinea. S C resolutions 301 (1971), para. 8; 310 (1972), para. 7; 366 (1974), para. 4; in connexion with the situation in Namibia. S C resolution 328 (1973), para. 5; in connexion with the complaint by Zambia. S C resolutions 333 (1974), para. 4; 354 (1974), operative para.; in connexion with the situation in Cyprus. S C resolution 380 (1973), para. 2; in connexion with the situation concerning Western Sahara. S C resolutions 384 (1973), para. 2; 389 (1976), para. 2; in connexion with the situation in Timor. S C resolution 428 (1978), para. 2; in connexion with the complaint by Angola against South Africa.

2. S C resolutions 294 (1971), para. 1; 321 (1972), para. 3; in connexion with the complaint by Senegal. S C resolutions 313 (1972); 316 (1972), para. 1; 332 (1973); 337 (1973), para. 4; 347 (1974), para. 1; 425 (1978), para. 2; 436 (1978), para. 1; in connexion with the situation in the Middle East. S C resolution 326 (1973), para. 3; in connexion with the complaint by Zambia. S C (39), Suppl. for Jan.-March, 1974, S/11299, statement of the President representing the consensus of the members of the Council, para. 2; in connexion with the complaint by Iraq concerning incidents on its frontiers with Iran. S C resolution 392 (1976), para. 5, in connexion with the situation in South Africa. S C resolution 393 (1976), para. 3, in connexion with the complaint by Zambia against South Africa.

3. S C resolution 289 (1970), para. 1; in connexion with the complaint by Guinea. S C resolution 307 (1971), para. 1; in connexion with the situation in the India/Pakistan subcontinent. S C resolution 322 (1972), para. 2; in connexion with the situation in Territories under Portuguese administration. S C resolutions 338 (1973), para. 1; 339 (1973), para. 1; 340 (1973), para. 1; 436 (1978), para. 1; in connexion with the situation in the Middle East. S C resolutions 353 (1974), para. 2; 354 (1974), operative para.; 357 (1974), para. 2; 358 (1974), para. 2; 360 (1974), para. 2; in connexion with the situation in Cyprus. S C resolution 403 (1977), para. 4; in connexion with the complaint by Botswana against the illegal régime in Southern Rhodesia.

4. S C resolution 307 (1971), para. 2; in connexion with the situation in the India/Pakistan subcontinent. S C resolutions 367 (1975), paras. 1 and 8; 391 (1976), para. 3; 401 (1976), para. 3; 410 (1977), para. 3; 414 (1977), para. 2; 422 (1977), para. 3; in connexion with the situation in Cyprus. S C resolution 379 (1975), para. 1; in connexion with the situation concerning Western Sahara.

5. S C resolution 298 (1971), para. 4; in connexion with the situation in the Middle East. Statement of the President on behalf of the Council, dated 17 November 1976 (S C UNI, Suppl. for Oct.-Dec., 1976, S/12233, para. 4), in connexion with the situation in the occupied Arab territories.

6. S C resolution 322 (1972), para. 3; in connexion with the situation in Territories under Portuguese administration. S C resolution 357 (1974), para. 2; in connexion with the situation in Cyprus. S C resolution 393 (1976), para. 3; in connexion with the complaint by Greece against Turkey.

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co-operate with the United Nations; 1 (h) calls on certain Member States to take a number of specific measures. 4

7. A number of Security Council resolutions contained warnings that, in the event of failure to comply with the terms of these resolutions, the Security Council would meet again and consider further steps. These warnings, which may be considered as falling under the last provision of Article 40, were expressed in various ways. Frequently the Council warned that it would consider taking adequate and effective measures if its call was not heeded; 9 in two instances the Council announced that Chapter VII measures would have to be considered. 10 Sometimes, the resolution indicated that the Council would meet again to consider other steps 11 or the Council simply stated its intention to meet again if its decision was not implemented. 12

8. None of the above resolutions of the Security Council gave rise to a constitutional discussion regarding Article 40. But in a few instances there were indications by various delegations that the measure called for in the Council resolution was to be perceived as a provisional measure under that Article. Statements to that effect were made when the Security Council adopted resolutions 279 (1970), 285 (1970), 14 and 313 (1972), 15 in connexion with the situation in the Middle East.

9. In one instance, Article 40, together with Articles 39 and 41 to 46, was explicitly invoked in a draft resolution 16 in connexion with the consideration by the Security Council of the question of South Africa. The draft resolution was not put to the vote. Subsequently the draft was resubmitted in revised form 17 and put to the vote; it received 10 votes in favour and 5 against and was not adopted, owing to the negative votes of three permanent members of the Council. 18 No constitutional discussion took place regarding the draft resolution or its invocation of Chapter VII and Article 40.

10. There were a few other occasions when Article 40 was explicitly referred to. During the consideration of the relationship between the United Nations and South Africa, two representatives cited Article 40 explicitly, contending that the arms embargo against South Africa had been initiated in 1963 under that Article. 19 Article 40 was also invoked in the Security Council in connexion with the situation in the India/Pakistan subcontinent 20 and with the Middle East problem including the Palestinian question. 21 In addition, Article 40 was incidentally referred to in the General Assembly plenary, 22 in the First Committee, 23 and in the Sixth Committee. 24

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13 For the texts of relevant statements in connexion with S C resolution 279 (1970), see: S C (25), 1537th mtg.: Spain, paras. 44 and 45, 83-86, 115 and 116; Syria, paras. 133; Zambia, para. 49; 1538th mtg.: Syria, paras. 120 and 121; 1540th mtg.: Poland, para. 13; 1541st mtg.: Colombia, paras. 7-9. Colombia and Syria referred explicitly to Article 40.

14 For the texts of relevant statements in connexion with S C resolution 285 (1970), see: S C (25), 1551st mtg.: President (Sierra Leone), para. 109; Spain, paras. 59-64.

15 For the texts of relevant statements in connexion with S C resolution 313 (1972), see: S C (27), 1644th mtg.: Lebanon, para. 259; Yugoslavia, para. 248.

16 S C (32), Suppl. for Jan.-March, 1977, S/12310, para. 5. The draft resolution was submitted by Benin, Libyan Arab Republic and Mauritius. The President called attention to the draft resolution before the Council at the 1998th meeting on 30 March 1977. The paragraph in question read as follows:

5. Decides that, in case of non-compliance with paragraph 3 of the present resolution, the Security Council shall consider appropriate action under all the provisions of the Charter, including Articles 39 and 40.

17 S C (32), Suppl. for Oct.-Dec., 1977, S/12310/Add. 1. Para. 5 was unchanged.

18 For the vote, see S C (32), 2045th mtg., held on 31 October 1977, para. 51. Senegal invoked Article 40 in quoting the draft resolution (2039th mtg., para. 36).

19 S C (29), 1801st mtg.: Madagascar, para. 21; 1802nd mtg.: Barbados, paras. 103 and 104.

20 S C (26), 1606th mtg.: USSR, para. 263; 1614th mtg.: Tunisia, para. 93.

21 S C (31), 1876th mtg.: India, para. 80.

22 G A (25), Plen., 1932nd mtg.: India, para. 132, in connexion with a.i. 32: Consideration of measures for the strengthening of international security.


24 G A (28), 6th Com., 1441st mtg.: Byelorussian SSR, para. 6, in connexion with a.i. 95: Report of the Special Committee on the Question of Defining Aggression.