

ARTICLE 51

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TEXT OF ARTICLE 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

INTRODUCTORY NOTE

1. Article 51 has been invoked or mentioned on various occasions 1/ in the proceedings of the Security Council. An application or interpretation of the Article, however, was involved only in connexion with a decision calling upon Egypt to terminate restrictions on the passage of ships through the Suez Canal. The Security Council decision on the First Report of the Atomic Energy Commission to the Security Council, in which express reference to Article 51 had been made, is also relevant.
2. The General Survey contains information on those decisions as well as on General Assembly decisions which are relevant.

I. GENERAL SURVEY

3. On 1 September 1951, the Security Council adopted a resolution 2/ in connexion with the Palestine question, calling upon Egypt to terminate restrictions on the passage of

1/ For example, in connexion with the Palestine question, see footnote 19 below, and also: S C, 8th yr., 633rd mtg., para. 43.

S C, 8th yr., 636th mtg., para. 23.

S C, 8th yr., 658th mtg., paras. 33, 86 and 87.

In connexion with the India-Pakistan question:

S C, 3rd yr., No. 59, 284th mtg., p. 9.

S C, 3rd yr., No. 127, 382nd mtg., pp. 13, 16 and 18.

S C, 5th yr., 466th mtg., pp. 4, 5, 18 and 19.

S C, 6th yr., 536th mtg., para. 15.

See also "Cablegram dated 20 June 1954 from the Minister for External Relations of Guatemala addressed to the President of the Security Council" (S/3238), whereby the Government of Guatemala "officially notifies the Security Council, under Article 51... that the army of the Republic... in the exercise of the right of self-defence... will proceed immediately to repel by force of arms the aggressive foreign invasion...".

2/ S C, 6th yr., 558th mtg., para. 5, S/2298/Rev.1.

ships through the Suez Canal, and on 10 March 1947 it adopted a resolution 3/ on the First Report 4/ of the Atomic Energy Commission. The relevance of these resolutions to the interpretation of Article 51 is examined in the analytical summary of practice. 5/

4. With regard to the General Assembly, the following resolutions 6/ contain express or implicit reference to the provisions of Article 51:

(a) Resolution 377 (V): 7/ "Uniting for peace". In paragraph 8 of this resolution, the General Assembly recommended to the States Members of the United Nations that they maintain within their national armed forces elements that could promptly be made available for service as a United Nations unit or units "without prejudice to the use of such elements in exercise of the right of individual or collective self-defence recognized in Article 51 of the Charter". In paragraph 11 of the same resolution, the General Assembly established a Collective Measures Committee to study and make a report to the Security Council and the General Assembly on methods "which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defence and regional arrangements (Articles 51 and 52 of the Charter)". 8/

3/ S C, 2nd yr., No. 24, 117th mtg., S/296, pp. 487 and 488.

4/ AEC, Special Suppl., Report to the Security Council, 1946.

5/ The Security Council, in the resolution adopted at its 476th meeting on 7 July 1950 in connexion with the item "Complaint of aggression upon the Republic of Korea", although not referring to Article 51, used language which may have some bearing on it. The resolution welcomed the "prompt and vigorous support which governments and peoples of the United Nations have given to its resolutions of 25 and 27 June 1950 to assist the Republic of Korea in defending itself against armed attack..." (S/1588, same text as S/1587, see G A (V), Suppl. No. 2, pp. 25 and 26). In the report of the Military Staff Committee to the Security Council dated 30 April 1947 (S C, 2nd yr., Special Suppl. No. 1, chap. IV, p. 3), article 17, the text of which was accepted by certain delegations and not accepted by others, referred to the "case of self-defence (Article 51 of the Charter)". The positions of the delegations of the permanent members of the Security Council on this article are set out in annex A of the report (*ibid.*, pp. 14-16). Article 17 of the report was not discussed by the Security Council.

6/ In addition to the resolutions described in the text, see also in connexion with agenda item 72 of the fifth session: "Duties of States in the event of the outbreak of hostilities". The various draft resolutions and amendments, as well as the resolution as adopted (378 A (V)), contained references to the right of self-defence (G A (V), Annexes, a.i. 72).

7/ The constitutional discussion that took place in connexion with this resolution refers mainly to the powers and functions of the Security Council and of the General Assembly; for consideration thereof, see study on Article 11 in this Repertory, where the text of the resolution is also quoted.

8/ For texts of relevant statements made in the discussion in connexion with the adoption of this resolution, see G A (V), 1st Com., 356th mtg., para. 20; 358th mtg., para. 64; 360th mtg., para. 4; 361st mtg., para. 54; 362nd mtg., para. 46; 363rd mtg., para. 48; 364th mtg., para. 63; 366th mtg., para. 37; 367th mtg., paras. 15, 27 and 38.

In accordance with paragraph 11 of resolution 377 (V), the Collective Measures Committee requested information from Member States concerning elements within their national armed forces available for service as a United Nations unit or units. In the replies received by the Committee, some Members stated that their armed forces were needed for self-defence or that requirements of national defence did not permit the establishment of an additional force, or that they were bound by special obligations through collective self-defence arrangements (G A (VI), Suppl. No. 13, annex II).

(b) Resolution 494 (V): "Development of a 20-year programme for achieving peace through the United Nations". The resolution commended the Secretary-General on his "Memorandum 9/ of points for consideration in the development of a 20-year programme for achieving peace through the United Nations". The first sentence of paragraph 13 of the memorandum read:

"13. Measures for collective self-defence and regional remedies of other kinds are at best interim measures and cannot alone bring any reliable security from the prospect of war."

(c) Resolution 505 (VI): 10/ "Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter". In this resolution, after recommending further action by Member States to implement paragraph 8 of resolution 377 A (V), the General Assembly directed the Collective Measures Committee, in paragraph 9, to continue for another year its studies on methods which might be used to maintain and strengthen international peace and security "taking account of both regional and collective self-defence arrangements". 11/

5. Article 51 was also invoked in the debates in the First Committee of the General Assembly, in connexion with two draft resolutions concerning the North Atlantic Treaty. 12/ At the sixth session, in connexion with the agenda item "Measures to combat the threat of a new world war and to strengthen peace and friendship among the nations", the representative of the USSR submitted a draft resolution 13/ under which the General Assembly would declare participation in the "aggressive Atlantic bloc" incompatible with membership in the United Nations. At the seventh session, a similar draft resolution 14/ was submitted by the representative of Poland in connexion with the item "Measures to avert the threat of a new world war and measures to strengthen peace and friendship among nations".

6. On both these occasions, while the sponsors and supporters of the draft resolutions mentioned above claimed that the North Atlantic Treaty was not compatible with Article 51 and was contrary to the provisions of Articles 52 and 53 regarding regional arrangements, the States signatories to the Treaty, as well as a number of other representatives, argued that it was in conformity with the right of collective self-defence as set forth in Article 51. Some other representatives considered that the

9/ G A (V), Annexes, a.i. 60, A/1304, paras. 11-26.

10/ See footnote 7, above.

11/ For texts of relevant statements made in the discussion in connexion with the adoption of this resolution, see G A (VI), 1st Com., 476th mtg., paras. 20, 21 and 33; 479th mtg., paras. 6 and 30; 480th mtg., paras. 18, 38, 48 and 67; 481st mtg., paras. 6 and 13; 482nd mtg., paras. 8 and 40.

12/ The proceedings are also of some relevance to Articles 52 and 53 since, as indicated below, both Articles were frequently referred to in the debates.

13/ G A (VI), Annexes, a.i. 67, p. 2, A/C.1/698.

14/ G A (VII), Annexes, a.i. 72, p. 3, A/C.1/L.39.

Treaty was also consistent in nature with the arrangements contemplated in Article 52. 15/

7. The USSR draft resolution was rejected 16/ by the General Assembly. The draft resolution submitted by the representative of Poland was not put to the vote, that representative having stated 17/ his willingness not to press for a vote.

II. ANALYTICAL SUMMARY OF PRACTICE

The question of the scope of the right of self-defence under Article 51

8. Neither the Security Council nor the General Assembly has taken a decision which could be construed as a general definition of the scope of the provisions of Article 51 concerning the right of individual or collective self-defence. The two decisions of the Security Council which, together with the relevant proceedings, are briefly reviewed below, may be deemed, however, to throw light on concrete aspects of the right of self-defence which were considered by the Council in connexion with the particular problems involved in the questions submitted to it. The first of these resolutions related to the Palestine question, and the other to the first report submitted to the Council by the Atomic Energy Commission.

1. Decision of 1 September 1951 in connexion with the Palestine question

9. During the consideration of the item "Restrictions imposed by Egypt on the passage of ships through the Suez Canal" 18/ submitted by Israel on 11 July 1951, the representative of Egypt invoked Article 51 in justification of its restrictions imposed on the passage through the Suez Canal of goods destined for Israel. Other representatives maintained that, under the terms of Article 51, application of the right of self-defence was restricted to cases of armed attack and was limited in time until the Security Council had taken action under the Charter. It was also urged that under the existing circumstances, the action of Egypt did not correspond to the conditions set forth in Article 51.

15/ For texts of relevant statements, see G A (VI), 1st Com., 487th mtg., para 17; 488th mtg., paras. 9 and 25; 489th mtg., paras. 6 and 30; 490th mtg., paras. 12, 27, 51 and 82; 491st mtg., paras. 1, 7, 8, and 48; 492nd mtg., paras. 14 and 36. G A (VII), 1st Com., 596th mtg., paras. 7 and 29; 597th mtg., paras. 4 and 40; 598th mtg., para. 9; 599th mtg., paras. 3, 10, 20, 21 and 32; 600th mtg., paras. 30 and 31; 601st mtg., para. 42; 602nd mtg., paras. 20, 35 and 48; 603rd mtg., para. 53.

Reference was also made to the North Atlantic Treaty and to Article 51 during the consideration of the item "Measures to avert the threat of a new world war and to reduce tension in international relations" in connexion with a USSR draft resolution recommending the elimination of military bases in the territories of other States. For texts of relevant statements, see G A (VIII), 1st Com., 671st mtg., para. 4; 673rd mtg., paras. 12 and 37; 674th mtg., paras. 50 and 51, 675th mtg., paras. 13 and 29; 676th mtg., paras. 5, 56 and 66.

16/ G A (VI), Plen., 363rd mtg., para. 140.

17/ G A (VII), 1st Com., 603rd mtg., para. 12.

18/ S C, 6th yr., Suppl. for July, Aug. and Sept., pp. 9 and 10, S/2241.

10. At the 552nd meeting on 16 August 1951, the representatives of France, the United Kingdom and the United States submitted a joint draft resolution which provided that the Security Council "further finds that the practice [that of "interfering with the passage" through the Suez Canal of goods destined for Israel] cannot in the prevailing circumstances be justified on the ground that it is necessary for self-defence". 19/

Decision

At the 558th meeting of the Council on 1 September 1951, the joint draft resolution was adopted by 8 votes to none, with 3 abstentions. The relevant paragraphs of the resolution 20/ read as follows:

"The Security Council,

"1. Recalling that in its resolution of 11 August 1949 (S/1376) relating to the conclusion of Armistice Agreements between Israel and the neighbouring Arab States it drew attention to the pledges in these Agreements 'against any further acts of hostility between the Parties',

.....

"5. Considering that since the armistice régime, which has been in existence for nearly two and a half years, is of a permanent character, neither party can reasonably assert that it is actively a belligerent or requires to exercise the right of visit, search, and seizure for any legitimate purpose of self-defence,

.....

"7. Finds . . . that such practice [that of "interfering with the passage" through the Suez Canal of goods destined for Israel] is an abuse of the exercise of the right of visit, search and seizure;

"8. Further finds that that practice cannot in the prevailing circumstances be justified on the ground that it is necessary for self-defence;

.....

"10. Calls upon Egypt to terminate the restrictions on the passage of international commercial shipping and goods through the Suez Canal wherever bound and to cease all interference with such shipping beyond that essential to the safety of shipping in the Canal itself and to the observance of the international conventions in force."

19/ For texts of relevant statements, see S C, 6th yr.,

549th mtg.: Egypt, para. 78.

550th mtg.: Egypt, paras. 33 and 34; United Kingdom, paras. 93 and 94.

551st mtg.: Israel, para. 36.

552nd mtg.: Brazil, para. 58; United Kingdom, paras. 7 and 10.

553rd mtg.: Ecuador, para. 122; Egypt, para. 60; Netherlands, para. 15.

20/ S C, 6th yr., 558th mtg., para. 5, S/2298/Rev.1.

2. Decision of 10 March 1947 in connexion with the First Report of the Atomic Energy Commission

11. The question whether a serious violation of a treaty or convention on atomic energy matters might give rise to the application of the right of self-defence under Article 51 arose during the proceedings of the Atomic Energy Commission, established by General Assembly resolution 1 (I) of 24 January 1946.

12. In the first report 21/ submitted to the Security Council by the Atomic Energy Commission on 31 December 1946, a United States memorandum 22/ dealing with the relation between the atomic development authority and the organs of the United Nations was included as an annex. In that memorandum it was stated:

"Interpreting its provisions [Article 51 of the Charter] with respect to atomic energy matters, it is clear that if atomic weapons were employed as part of an 'armed attack', the rights reserved by the nations to themselves under Article 51 would be applicable. It is equally clear that an 'armed attack' is now something entirely different from what it was prior to the discovery of atomic weapons. It would therefore seem to be both important and appropriate under present conditions that the treaty define 'armed attack' in a manner appropriate to atomic weapons and include in the definition not simply the actual dropping of an atomic bomb, but also certain steps in themselves preliminary to such action."

13. During the discussion of the United States memorandum in the Commission, one member stated that the proposition contained in the memorandum entirely changed the meaning of Article 51 and that it was probably not intended to effect this change through amendment, but by international agreement. 23/

14. In its report to the Security Council the Commission made the following recommendations: 24/

"2. ... an international system of control and inspection should be established, and its scope and functions defined, by a treaty or convention in which all nations, Members of the United Nations, should be entitled to participate on fair and equitable terms...

"3. The treaty or convention should include, among others, provisions for:

.....

"(e) Specifying the means and methods of determining violations of its terms, setting forth such violations as shall constitute international crimes, and establishing the nature of the measures of enforcement and punishment to be imposed upon persons and upon nations guilty of violating the terms of the treaty or convention.

.....

21/ The report was adopted by the Atomic Energy Commission by 10 votes to none, with 2 abstentions (AEC, No. 10, 10th mtg., p. 164).

22/ AEC, Special Suppl., 1946, pp. 109 and 110.

23/ For text of relevant statements, see AEC, Special Suppl., 1946, annex 5, Com. 2, 2nd mtg., USSR, pp. 117 and 118.

24/ AEC, Special Suppl., 1946, part III, pp. 17-19.

"4. In consideration of the problem of violation of the terms of the treaty or convention, it should also be borne in mind that a violation might be of so grave a character as to give rise to the inherent right of self-defence recognized in Article 51 of the Charter of the United Nations."

15. At the 112th meeting of the Security Council on 25 February 1947, the representative of the United States submitted a draft resolution 25/ calling on the Council, inter alia, to take note of the report of the Commission.

Decision

At the 117th meeting of the Security Council on 10 March 1947, the United States draft resolution in amended form was adopted unanimously. The relevant paragraphs of the resolution 26/ read as follows:

"The Security Council, having received and considered the First Report of the Atomic Energy Commission dated 31 December 1946, together with the letter of transmittal of the same date,

"Recognizes that any agreement expressed by the members of the Council to the separate portions of the report is preliminary since final acceptance of any part by any nation is conditioned upon its acceptance of all parts of the control plan in its final form;"

25/ S C, 2nd yr., No. 19, 112th mtg., pp. 400 and 401.

26/ S C, 2nd yr., No. 24, 117th mtg., pp. 487 and 488.

Chapter VIII

REGIONAL ARRANGEMENTS

