

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-defense 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-defense 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. During the period under review Article 51 has been invoked or mentioned on various occasions in the proceedings of the Security Council and the General Assembly. Questions concerning the application of the Article arose in the Security Council in connexion with the interpretation of the Armistice Agreements in the Palestine area, and in particular in connexion with the complaint by Israel against Egypt concerning enforcement by Egypt of restrictions on passage of ships trading with Israel through the Suez Canal. Article 51 was also discussed in connexion with the reports of the Secretary-General to the Security Council pursuant to the Council's resolution of 4 April 1956 on the Palestine question, and in the subsequent consideration of these items by the Council.

2. The General Survey and the Analytical Summary of Practice contain material on those parts of the above-mentioned proceedings and reports of the Security Council which are relevant.

3. Article 51 has also been discussed during the proceedings of the General Assembly in connexion with the consideration of the item "Question of defining aggression", both by the Special Committee established under General Assembly resolution 688 (VII) of 20 December 1952, and by the Sixth Committee at its 403rd to 420th meetings held between 14 October and 10 November 1954, during the ninth session of the General Assembly. 1/ Material relevant to these proceedings is included in the General Survey.

4. The General Survey also includes information relevant to other General Assembly proceedings in which express references to Article 51 have been made.

I. GENERAL SURVEY

5. The two cases in which Article 51 was referred to in the Security Council during the period under review concerned the interpretation of the Armistice Agreements in the Palestine area. The first such reference occurred at the 682nd to 688th meetings of the Security Council held between 14 October 1954 and 13 January 1955 during the discussion of the complaint by Israel against Egypt concerning enforcement by Egypt of restrictions on the passage of ships trading with Israel through the Suez Canal.

6. The second reference occurred in connexion with a resolution 2/ adopted on 4 April 1956 dealing with the Palestine question under the item "Status of compliance given to the General Armistice Agreements and the resolutions of the Security Council adopted during the past year". By this resolution the Council requested the Secretary-General to undertake as a matter of urgent concern a survey of the various aspects of enforcement of and compliance with the four General Armistice Agreements and the Council's resolutions under reference, and requested him further to report to the Council on the implementation given to the resolution in order to assist the Council in considering what further action might be required. Pursuant to this resolution the Secretary-General on 12 April 1956 transmitted a number of communications 3/ to the President of the Council; on 2 May he transmitted by cablegram a letter 4/ containing a preliminary report to the President of the Council, and on 9 May he transmitted his final report 5/ to the Security Council. The relevance of these communications and the subsequent discussions to the interpretation of Article 51 is examined in the Analytical Summary of Practice.

7. The relevance of Article 51 to the question of defining aggression was raised during the debates of the Special Committee on the Question of Defining Aggression which met between 24 August and 21 September 1953. In its report 6/ the Committee dealt with various aspects of the question of defining aggression including the threat of the use of force and the question whether in view of the text of Article 51 only armed attack could justify recourse to self-defence. The Special Committee's report, which failed to come to any conclusion, was included in the agenda of the ninth session of the General Assembly.

1/ See footnotes 7 and 8 below.

2/ S C, 11th yr., Suppl. for April, May and June 1956, p. 1, S/3575.

3/ Ibid., p. 15, S/3584.

4/ Ibid., p. 27, S/3594.

5/ Ibid., p. 30, S/3596.

6/ G A (IX), Suppl. No. 11, (A/2638).

8. The Sixth Committee examined 7/ this question on the basis of the report of the Special Committee and of the comments received from Governments concerning it. 8/ The Sixth Committee recommended to the General Assembly, and the latter adopted as resolution 895 (IX) 9/ a proposal to establish a Special Committee of nineteen Member States to submit to the General Assembly, at its eleventh session, a detailed report together with a draft definition of aggression. 10/

9. Article 51 has also been mentioned in the third report 11/ of the Collective Measures Committee to the Security Council and the General Assembly; in the General Assembly during the general debate, 12/ and during the discussion in the First Committee of the agenda items entitled "Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter: report of the Collective Measures Committee" and "Measures for the further relaxation of international tension and development of international co-operation". 13/

7/ For texts of relevant statements, see:
G A (IX), 6th Com., 403rd mtg.: Panama, para. 27; USSR, paras. 17 and 18;
405th mtg.: Czechoslovakia, paras. 32 and 33; Iran, paras. 3-10; 406th mtg.: Panama, para. 8; Poland, para. 39; 407th mtg.: Poland, para. 9; 408th mtg.: Panama, para. 46; Ukrainian SSR, paras. 41-45; Yugoslavia, paras. 17 and 18; 409th mtg.: Greece, para. 24; Paraguay, para. 41; 410th mtg.: Belgium, para. 14; Guatemala, para. 21; Netherlands, paras. 38-43; 411th mtg.: India, para. 26; 412th mtg.: Iraq, para. 19; Pakistan, para. 45; 413th mtg.: Norway, para. 29; 414th mtg.: New Zealand, para. 28; 415th mtg.: Mexico, paras. 39, 42 and 45; 416th mtg.: Iran, para. 32; 417th mtg.: Netherlands, paras. 11, 12 and 16; 418th mtg.: Czechoslovakia, para. 44; USSR, paras. 12 and 16.

8/ G A (IX), annexes, a.i. 51, A/2639 and Corr.1 and Add.1.

9/ G A (IX), annexes, a.i. 51, p. 12.

10/ The Special Committee, at the conclusion of meetings held between 8 October and 9 November 1956, in the course of which it considered various proposals for a draft definition of aggression, decided in view of the "substantial difference of opinion" in the Committee, not to vote on any of the proposals but to transmit them to the General Assembly with its report. (See G A (XI), Suppl. No. 16 (A/3574).) At the 577th meeting on 15 November 1956 the General Assembly, on the recommendation of the General Committee (A/3350, para. 2), decided to postpone until the twelfth session consideration of the question and of the related items concerning a draft Code of Offences against the Peace and Security of Mankind, and concerning an International Criminal Jurisdiction.

11/ G A (IX), annexes, a.i. 19, A/2713-S/3283, para. 10.

12/ For text of relevant statement, see G A (IX), Plen., 482nd mtg., New Zealand, para. 13.

13/ For texts of relevant statements, see G A (IX), 1st Com., 704th mtg.: United Kingdom, para. 20; 705th mtg.: France, para. 21; Israel, para. 3; New Zealand, para. 30; 706th mtg.: Iraq, para. 2; G A (X), 1st Com., 804th mtg.: Turkey, para. 31; 808th mtg.: India, para. 57; 809th mtg.: India, paras. 12, 13 and 24; Pakistan, paras. 6 and 20; Turkey, para. 21.

II. ANALYTICAL SUMMARY OF PRACTICE

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

10. Neither the Security Council nor the General Assembly has taken a decision bearing especially on the provisions of Article 51 concerning the right of individual or collective self-defence. The discussions on the agenda item concerning "Complaint by Israel against Egypt concerning: (a) enforcement by Egypt of restrictions on the passage of ships trading with Israel through the Suez Canal" and the reports of the Secretary-General to the Security Council pursuant to the Council's resolution of 4 April 1956 on the Palestine question together with the relevant discussion in the Council are briefly reviewed below as they may be deemed to throw light on concrete aspects of the right of self-defence which were considered by the Council and the Secretary-General in connexion with the particular problems involved in the questions submitted to it.

1. Complaint by Israel against Egypt concerning restrictions imposed by Egypt on the passage through the Suez Canal of ships trading with Israel

11. By letter 14/ dated 4 October 1954 the Permanent Representative of Israel requested the President to call an early meeting of the Security Council in order that it might give further consideration to his Government's earlier complaint against Egypt contained in his letter 15/ of 28 September 1954 which read "Complaint by Israel against Egypt concerning: (a) enforcement by Egypt of restrictions on the passage of ships trading with Israel through the Suez Canal." The item was included in the agenda at the 682nd meeting on 14 October 1954. During the discussion the representative of Egypt stated that his Government's attitude was conditioned by the fact that a state of belligerence continued to exist between Egypt and Israel. Egypt maintained that it was not possible to ask it to waive its right to take interim measures and its right to self-defence by affording free passage through the Suez Canal to enemy vessels which might threaten the security of Egypt and of the Canal. 16/

12. During the debate the bearing on the complaint of the resolution of the Council of 1 September 1951 was discussed; in addition, the question was raised whether a party that had signed the Armistice Agreements could invoke the right of a belligerent.

13. Reference was made to a judgement of the Permanent Court of International Justice in which the Court had observed that under the regime of the Constantinople Convention belligerent men-of-war and ships carrying contraband had been permitted to pass freely through the Canal. The Court had added, however, that the right of self-defence was reserved to the riparian state "up to a certain point" without explaining what it meant by the expression. In the view of the representative who made this reference, the Court had only dealt with the Suez Canal in passing; he was of the opinion that the provisions of the Constantinople Convention itself made it clear that the aim of the Convention was to ensure in all circumstances the free passage of ships of war or of commerce of any nationality through the Canal both in war and in peace: the resolution of 1 September 1951 had constituted a restatement and reaffirmation of the relevant provisions of the Convention.

14/ S C, 9th yr., Suppl. for Oct., Nov. and Dec. 1954, p. 1, S/3300.

15/ S C, 9th yr., Suppl. for July, Aug. and Sept. 1954, p. 45, S/3296.

16/ For text of relevant statement, see S C, 9th yr., 685th mtg.: Egypt, paras. 100 and 145.

14. Another representative referring to the plea of self-defence made by Egypt, and the assertion that this was covered by Article 51 of the Charter, contended that action in self-defence should in any case be taken with the knowledge of the United Nations and without prejudice to its authority. In his view the right of self-defence created a preliminary and provisional situation, pending final action by the United Nations to complete and ratify it. The concepts of belligerence, of the use of force, and of legitimate individual or collective self-defence were not applicable if the United Nations machinery was fully in operation. They were even less applicable — save provisionally and exceptionally — where a conflict had already given rise to United Nations intervention and where hostilities had been terminated as a result of a general armistice concluded under United Nations auspices. It therefore followed that while Egypt could take certain steps to protect the security of the Canal in accordance with Article X of the Constantinople Convention concerning the defence of its territorial integrity and in accordance with Article 51 of the Charter, it could do so only while taking duly into account the spirit of the Constantinople Convention and the recommendations made in the Security Council resolutions.

15. At the end of the discussions the President in summing up the debate stated that it was evident that most representatives regarded the resolution of 1 September 1951 as having continuing validity and effect and that they had considered the present case in this context and that of the Constantinople Convention. 17/

2. Reports of the Secretary-General to the Security Council pursuant to the Council's resolution of 4 April 1956 on the Palestine question

16. By aides-mémoires 18/ and letters 19/ dated 11 and 29 April and 1 and 2 May 1956 exchanged with the Secretary-General, the Governments of Israel, Egypt, Jordan, Lebanon and Syria while reaffirming their unconditional acceptance of the cease-fire clause of the Egyptian-Israeli, Jordan-Israel, Lebanon-Israel and Syrian-Israeli General Armistice Agreements, reserved the right of self-defence as stipulated in the Charter. In his letters 20/ to the President of the Council and to the Foreign Minister of Syria, the Secretary-General noted the reservation of Syria and stated that "that reservation in no way detracts from the unconditional undertaking to comply with the provisions of article III, paragraph 2, of the General Armistice Agreement. The term 'self-defence' should therefore be interpreted in conformity with the stipulations of the said paragraph and with the Charter of the United Nations". A similar interpretation was contained in his aides-mémoires, 21/ dated 10 and 11 April 1956 and in his letters 22/ dated 1, 2 and 3 May 1956 to the Prime Ministers of Egypt, Israel and Jordan, and the Foreign Minister of Lebanon.

17. In his report to the Security Council the Secretary-General stated that he had had to accept the commitments of the parties under the reserve of self-defence which "according to Article 51 of the Charter is an 'inherent right'". Such a reserve, however, was necessarily of an indeterminate nature. Its meaning in a concrete situation could be determined only by the Security Council as established in the

17/ For texts of relevant statements, see S C, 9th yr., 687th mtg.: Brazil, para. 76; France, para. 57; 688th mtg.: President (New Zealand), paras. 98 and 99; Belgium paras. 2-9; Peru, paras. 20-30.

18/ S C, 11th yr., Suppl. for April, May and June, 1956, p. 15, S/3584 (IV and VI).

19/ Ibid., p. 30, S/3596, annex 1, A; annex 2, A; annex 3, A; annex 4, A.

20/ Ibid., annex 3, C.

21/ Ibid., p. 15, S/3584 (V and VI).

22/ Ibid., p. 30, S/3596, annex 1, B; annex 2, D; annex 4, B.

Charter. The limit set to the effect of the cease-fire assurances by the reserve of self-defence should in his view be so understood as not to bring the reserve into conflict with the substance of the cease-fire assurances themselves. In his reply to the Governments, he had thus taken the stand that the reserve could not derogate from the obligations assumed under the cease-fire clause of the Armistice Agreements. While this qualification in his view might give rise to questions which it would be difficult to answer in hypothetical cases, he felt that his interpretation made it clear that the reserve for self-defence would not permit acts of retaliation which repeatedly had been condemned by the Security Council. 23/

18. During the discussion of the report in the Security Council several representatives and non-members of the Council participating in the debate made reference to the interpretation given by the Secretary-General of Article 51 in connexion with the provisions of the Armistice Agreements. One representative stated that under the Charter the right of self-defence was exercised within the jurisdiction of the Council; it did not alter or restrict the Council's jurisdiction and the Council remained free, in due course, to pass resolutions concerning such exercise of the right of self-defence. After quoting the interpretation of the Secretary-General the same representative explained that generally speaking the Council intervened under the Articles relating to threats of the peace and breaches of the peace whenever the question of the exercise of the right of self-defence arose. 24/

19. For the decision of the Council see the study of Article 36 in this Supplement.

23/ Ibid., p. 30, S/3596, paras. 44-46.

24/ For texts of relevant statements, see S C, 11th yr.,
723rd mtg., provisional record: Australia, p. 36; Belgium, pp. 31 and 32;
Peru, p. 48.
725th mtg., provisional record: Israel, pp. 22 and 23; Jordan, p. 40; Lebanon,
p. 54; Syria, p. 6.
726th mtg., provisional record: Peru, pp. 22 and 23.

Chapter VIII

REGIONAL ARRANGEMENTS

