

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. In the period under consideration reference was made to Article 51 of the Charter on various occasions in the proceedings of the Security Council and the General Assembly. Questions concerning the application or interpretation of the provisions of Article 51 arose on three occasions in the Security Council during the consideration of the following items: the complaint by Yemen against the United Kingdom, the complaint by the United States of an armed attack against its naval vessels in international waters and the Palestine question, in connexion with certain air strikes by Israel against Syria. The respective case histories are presented in the Analytical Summary of Practice.

2. The General Survey contains information relevant to proceedings in which references were made to Article 51, including those which might be considered incidental references.

3. Some of the material presented in this study might be deemed relevant also to Article 2, in particular to the studies appearing under Article 2 (4). In this connexion, it should be noted that the question of interpretation of the provisions of Article 51 in the light of the provisions of Article 2 (4) arose

both in the Sixth Committee¹ and in the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States² during the deliberations on the agenda item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", and more particularly during the discussion on the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. At the end of the period under review, there was neither an agreed formulation of this principle nor a final General Assembly decision on the agenda item under consideration.³

¹ G A (XVIII), Annexes, a. i. 71, A/5671, paras. 49–66; G A (XX), Annexes, a. i. 90 and 94, A/6165, paras. 22–37; G A (XXI), Annexes, a. i. 87, A/6547, paras. 35–44.

² G A (XX), Annexes, a. i. 90 and 94, A/5746, paras. 32–104; G A (XXI), Annexes, a. i. 87, A/6230, paras. 53–153.

³ See also this *Supplement* under Article 2 (4).

I. GENERAL SURVEY

4. During the period under review, Article 51 was referred to in the Security Council in connexion with the following questions: complaint by the USSR—RB-47 incident;⁴ complaint by Tunisia;⁵ admission of new Members: Kuwait;⁶ complaint by

Portugal—Goa;⁷ letter of 8 March 1962 from Cuba concerning certain decisions taken at Punta del Este;⁸ question of race conflict in South Africa;⁹ complaint by Yemen;¹⁰ complaint by the United States (the Gulf of Tonkin incident);¹¹ Cyprus

⁴ S C, 15th yr., 881st mtg.: United Kingdom, paras. 57 and 63; 883rd mtg.: Poland, para. 11.

⁵ S C, 16th yr., Suppl. for July–Sept., S/4861, p. 6; S/4862, p. 7; S/4894 and Add. 1, p. 34; S/4922, p. 73; S/4924, p. 86. See also S C, 16th yr., 961st mtg.: France, paras. 64, 83, 84 and 204; Tunisia, paras. 59, 184 and 185; USSR, para. 141; 963rd mtg.: United Arab Republic, para. 39; 964th mtg.: Tunisia, para. 27; USSR, para. 122.

⁶ S C, 16th yr., 985th mtg.: United Kingdom, para. 15.

⁷ S C, 16th yr., Suppl. for Oct.—Dec., S/5030.

⁸ S C, 17th yr., 995th mtg.: France, para. 59.

⁹ S C, 18th yr., Suppl. for July–Sept., p. 73, S/5386; S C, 18th yr., Suppl. for Oct.—Dec., p. 7, S/5438 and Add. 1 to 6. See also S C, 18th yr., 1056th mtg.: United Kingdom, para. 35; 1073rd mtg.: Tunisia, para. 71.

¹⁰ See paras. 18–20 below.

¹¹ See paras. 21–23 below.

question;¹² Palestine question;¹³ question of armed interference in the internal affairs of the Dominican Republic;¹⁴ complaints by Senegal of violations of its air space and territory;¹⁵ India-Pakistan question¹⁶ and the situation in Southern Rhodesia.¹⁷

5. In some instances,¹⁸ Article 51 was cited to remind the members of the Security Council that the right to individual and collective self-defence was recognized in that Article and was therefore fully consistent with the United Nations Charter. In other instances,¹⁹ actions by Member States claimed to have been taken in self-defence occasioned references to the use of force in the legitimate exercise of the right of self-defence as provided for in Article 51 of the Charter.

6. On one occasion,²⁰ attention was focused on the question whether the use of force by a Member State in response to armed intrusion into its air space and territory and for the purpose of expelling foreign armed forces from its soil, constituted an act of self-defence within the meaning of Article 51.²¹

7. On three occasions,²² discussion centred on the distinction between the right of self-defence under the provisions of Article 51 and the so-called right of retaliation or reprisals.

8. In one instance,²³ a constitutional question arose regarding the bearing of the provisions of Article 51 on (a) measures decided upon by the Security Council in connexion with a situation resulting from the policies of a Member State deemed to be inconsistent with the principles contained in the Charter and contrary to the obligations of that State as a Member of the United Nations, and (b) the obligations of Member States to comply with and carry out the decisions of the Security Council.²⁴

¹² S C, 19th yr., 1095th mtg.: United Kingdom, para. 40; 1097th mtg.: Cyprus, para. 139; 1098th mtg.: United Kingdom, paras. 65, 66 and 68; Cyprus, para. 98; 1151st mtg.: Cyprus, para. 17. See also para. 10 below.

¹³ See paras. 24–28 below.

¹⁴ S C, 20th yr., 1196th mtg.: Cuba, para. 167; 1203rd mtg.: Cuba, para. 80; 1221st mtg.: Jordan, para. 22.

¹⁵ S C, 20th yr., 1206th mtg.: Ivory Coast, paras. 60 and 61; Portugal, para. 38.

¹⁶ S C, 20th yr., 1238th mtg.: India, paras. 57–59, Pakistan, para. 34; 1239th mtg.: India, paras. 32, 34, 58 and 92.

¹⁷ S C, 20th yr., 1265th mtg.: Ivory Coast, paras. 18–44.

¹⁸ See footnotes 1 and 2 above and paras. 18–20 below.

¹⁹ See footnotes 2 and 9 above and paras. 18–20 below.

²⁰ See footnote 5 above.

²¹ In the course of the discussion, it was maintained that the presence of foreign armed forces in the territory of a State against its will and attacks, launched from outside the territory of that State by troops trying to force an entrance into that country, constituted acts of aggression which justified the exercise by the State concerned of its right of self-defence under Article 51. It was further maintained that, in such a case, the expulsion of foreign armed forces would be an act of self-defence within the meaning of Article 51 of the Charter. For texts of relevant statements, see S C, 16th yr., 961st mtg.: Tunisia, paras. 55, 56, 59 and 183–185; 964th mtg.: Tunisia, paras. 7–9 and 90–101; USSR, para. 122.

²² See paras. 16–28 below.

²³ See footnote 9 above.

²⁴ In connexion with Security Council resolution 181 (1963), the Government of the Republic of South Africa, in its reply

That question, however, was not taken up by the Council.

9. In two instances, reference was made to Article 51 in connexion with measures taken individually or collectively by Member States of the United Nations under regional arrangements for collective self-defence.²⁵

10. In another instance,²⁶ the question was raised whether or not the right of intervention, reserved for guarantor powers under an international treaty of guarantee with the sole aim of re-establishing the state of affairs created by that treaty in the event of a breach of its provisions, was permissible under the Charter of the United Nations. On the one hand, it was maintained that the obligation of Member States under Article 2 (4) of the Charter concerning the prohibition of the threat or use of force in international relations, was absolute and could not be neutralized by any provision in any international treaty. The only exceptions to the prohibition of the use of force were provided by the Charter in Articles 42 and 51 in connexion with collective measures decided upon by the Security Council and individual or collective self-defence, respectively. Neither of those two Articles would have any relevance to any provision in any international treaty of guarantee under which a breach would permit the use of force. On the other hand, it was emphasized that whether or not the use of force was permissible under the existing rules of international law, in particular, under the United Nations Charter, had to depend always on the circumstances in which, and the purposes for which it was used. It was undeniable that the Charter itself contemplated the lawful use of force in certain circumstances, for example, under Article 51. The legal effect of the provisions of an international treaty of guarantee reserving the right of intervention to guarantor powers, as in the case of other legal provisions, would depend on the facts and circumstances of the situation in which they were invoked and action taken under

to the Secretary-General's letter of 19 August 1963 (S/5438) requesting information regarding the steps taken by the Government of the Republic of South Africa for carrying out the provisions of that resolution, stated, *inter alia*, that the aforementioned resolution, calling among other things for a complete arms embargo on South Africa, was in essence "a denial of the spirit of Article 51 of the Charter" and therefore did not have "any binding effect on the Republic of South Africa or any other Member State" (S C, 18th yr., Suppl. for Oct. – Dec., S/5438 and Add. 1–6, II, p. 9). Commenting on the South African position, one representative observed:

"Such a claim seems to us to be contradictory to the very wording of that resolution, for the last paragraph of the preamble records the Council's conviction that 'the situation in South Africa is seriously disturbing international peace and security.' In our opinion it would be difficult to deny that, although it is not mentioned in the Charter, a disturbance of the peace is one step further than a threat to the peace and falls logically between a threat and a breach of the peace. The measures decided upon by the Security Council in the resolution of 7 August are unquestionably binding on Member States in accordance with Article 25 of the Charter."

(S C, 18th yr., 1073rd mtg.: Tunisia, para. 71).

²⁵ See footnotes 8 and 14 above.

²⁶ See footnote 12 above. See also this *Supplement*, under Article 2 (4), paras. 144–169.

such a provision would not necessarily be contrary to the United Nations Charter.

11. In the period covered by this *Supplement*, Article 51 was also mentioned in the proceedings of the General Assembly and its committees with reference to the following items: the complaint by Tunisia;²⁷ the complaint of 18 October 1960 by Cuba;²⁸ international co-operation in the peaceful uses of outer space;²⁹ the inadmissibility of intervention in the domestic affairs of States;³⁰ the question of Oman;³¹ the review of the United Nations peace-keeping operations.³²

12. In two instances,³³ it was observed that, for the Member State concerned, the alternative to the exercise of the right of self-defence under Article 51 was recourse, without prejudice to that right, to the United Nations for all the means of redress available to it under the United Nations Charter. In a third instance,³⁴ it was noted that Member States of the

²⁷ G A (S-III), Plen., 996th mtg.: Tunisia, paras. 71, 72 and 78; 997th mtg.: Ceylon, para. 77; 999th mtg.: Iraq, paras. 24 and 25; 1003rd mtg.: Byelorussian SSR, para. 11; Yemen, para. 46.

²⁸ G A (XV), 1st Com., 1149th mtg.: Cuba, para. 5; G A (XVI), 1st Com. 1233rd mtg.: USSR, paras. 13-15; 1237th mtg.: Indonesia, para. 23; 1239th mtg.: Hungary, para. 14.

²⁹ G A (XVII), 1st Com., 1296th mtg.: Brazil, para. 7.

³⁰ G A (XX), 1st Com., 1397th mtg.: Mexico, paras. 20-21.

³¹ G A (XV), Spec. Pol. Com., 255th mtg.: Saudi Arabia, para. 11; 256th mtg.: United Arab Republic, para. 27; 258th mtg.: Lebanon, para. 19; G A (XVI), Spec. Pol. Com., 301st mtg.: United Kingdom, para. 24; 305th mtg.: France, para. 3; India, para. 8.

³² G A (XX), Spec. Pol. Com., 465th mtg.: United States, para. 6; 482nd mtg.: China, para. 14.

³³ G A (XV), 1st Com., 1149th mtg.: Cuba, para. 5; G A (S-III), 996th mtg.: Tunisia, para. 78. See also footnotes 27 and 28 above.

³⁴ G A (XX), Spec. Pol. Com., 465th mtg.: United States, para. 6.

United Nations had agreed to refrain from the use of force save in self-defence and had accepted the restraints thus imposed on them only on the assumption that the United Nations could act successfully when peace and security were threatened.

13. In another instance involving the question of international co-operation for the peaceful uses of outer space, it was noted that, given the lack of any provision in the United Nations Charter prohibiting the use of outer space for military purposes and nuclear tests and given the right of self-defence confirmed by the Charter, it was possible to invoke Article 51 to justify the use of outer space for military purposes.³⁵

14. On one occasion,³⁶ it was pointed out that the prohibition of the use of force was a categorical and unconditional obligation and that any unilateral use of force by a State or group of States was therefore clearly condemned, except in the case of individual or collective self-defence. But even that exception, under Article 51, was permissible only in response to armed attack; threats, violations of international treaties and so forth were not cases in which the right of self-defence could be invoked.

15. On another occasion in which military assistance had been provided under the terms of a collective security arrangement in order to put down an internal rebellion alleged to have been instigated from abroad, it was maintained that the principle of collective security recognized by Article 51 of the Charter should be applied, not to internal security, but to external acts of aggression only.³⁷

³⁵ See footnote 29 above.

³⁶ See footnote 30 above.

³⁷ G A (XVI), Spec. Pol. Com., 305th mtg.: India, para. 8. See also footnote 31 above.

II. ANALYTICAL SUMMARY OF PRACTICE

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

16. During the period under review neither the Security Council nor the General Assembly took a decision bearing expressly on the provisions of Article 51 concerning the right of individual or collective self-defence.

17. On three occasions, however, the question of the bearing of Article 51 on the items under consideration occasioned some constitutional discussion in the Security Council. In each of the three instances, action by a Member State, claimed to have been taken in self-defence, gave rise to questions concerning the application of Article 51 and the rights and obligations of Member States under that Article. In all three instances, the distinction between the right of self-defence as provided for in Article 51 and acts of retaliation or reprisals was the subject of consideration. In the third instance, the discussion centred more specifically on the question whether resort to military action by a Member State and claimed by it to constitute "an emergency defence

measure" could be considered as an exercise of the right of self-defence within the meaning of Article 51 of the Charter.

1. COMPLAINT BY YEMEN

18. At the 1111th meeting, on 9 April 1964, the Security Council adopted³⁸ as its resolution 188 (1964) a draft resolution submitted by the representative of Morocco³⁹ on behalf of the delegations of the Ivory Coast and Morocco under which the Security Council, *inter alia*, condemned reprisals as incompatible with the purposes and principles of the United Nations, and deplored British military action of 28 March 1964, as well as all attacks and incidents which had occurred in the area.

19. In the course of the constitutional discussion preceding the adoption of that draft resolution, the

³⁸ S C, 19th yr., 1111th mtg., para. 24.

³⁹ S C, 19th yr., 1110th mtg., para. 39.

representative of Yemen requested the Security Council, *inter alia*, to condemn the British action against the Yemeni Arab Republic and to demand that the British Government refrain from all acts of intervention, provocation or aggression against that State. The representative of the United Kingdom contended that his Government was bound to exercise the right of defence in the case of attacks on a territory for whose defence the United Kingdom was by treaty responsible. He emphasized that the British counter-attack was a defensive measure which had been proportionate and confined to the necessities of the case; it had no parallel with acts of retaliation or reprisals, which had as an essential element the purposes of vengeance or retribution. He noted that there was, in existing law, a clear distinction to be drawn between two forms of self-help. One, which was of a retributive or punitive nature, was termed "retaliation" or "reprisals"; the other, which was expressly contemplated and authorized by the Charter, was self-defence against armed attack. It was clear that the use of armed force to repel or prevent an attack — that is, legitimate action of a defensive nature — could sometimes take the form of a counter-attack.

20. During the debate, the defensive nature ascribed to the British military action was contested and attention was called to the disparity between the acts alleged to have been committed by the Yemeni Government and the counter-action taken by the Government of the United Kingdom. It was maintained that the British counter-attack constituted an act of retaliation which could not be justified under the principle of self-defence. The distinction between the concept of reprisals and the concept of self-defence, as advanced by the representative of the United Kingdom, was disputed by some of the representatives in the Council on the grounds that self-defence excluded the right of counter-attack. The argument was also advanced that self-defence under the provisions of Article 51 could not be exercised unless an armed attack occurred against a Member of the United Nations. In the case under consideration, it was argued, the action taken by the United Kingdom, even if it were justified, would not fall within the purview of Article 51 of the Charter because the so-called Federation of South Arabia was not a Member of the United Nations. The Council was called upon to condemn the recourse to retaliatory action, as well as the incident under consideration, as contrary to the purposes of, and inconsistent with, the obligations of Member States under the Charter. In that connexion, it was noted that there were different types of reprisals and that political and economic measures of retaliation were not necessarily incompatible with the principles of the Charter; it was armed attacks across national frontiers, that is to say, reprisals involving the use of force, that were expressly prohibited under the provisions of the Charter.⁴⁰

⁴⁰ For texts of relevant statements see S C, 19th yr., 1106th mtg.: Iraq, paras. 64 and 66–69; United Arab Republic, para. 111; United Kingdom, paras. 34, 35, 51 and 57; Yemen, paras. 12, 23, 26, 27, 32 (a) and (f); 1107th mtg.: Iraq, paras. 13–16, 19–22 and 41; 1108th mtg.: Ivory Coast, paras. 50 and 54; Morocco, paras. 26 and 42; 1109th mtg.: Iraq, para. 58; Morocco, para. 99; Syria, paras. 75–77 and 79;

2. COMPLAINT BY THE UNITED STATES (THE GULF OF TONKIN INCIDENT)

21. At the 1140th meeting, on 5 August 1964, during the consideration of the United States complaint of attacks by the Democratic Republic of Viet-Nam on United States naval vessels in international waters, the representative of the United States noted that those vessels had taken no belligerent action of any kind until they were subjected to an armed attack and that the action they took in self-defence was the right of all nations and was fully within the provisions of the Charter of the United Nations. He emphasized that the United States counter-attack, that is to say, certain aerial strikes directed only against the weapons and facilities against which the United States had to defend itself, had been "a limited and measured response fitted precisely to the attack that produced it."

22. In the course of the debate, it was noted that the action taken by the United States was fully consistent with Article 51 of the Charter since "preventive action" directed to prevent the recurrence of attacks was an "essential right" which was embraced by any definition of the principle of self-defence. It was pointed out, on the other hand, that the incident under consideration exceeded the scope of Article 51 of the Charter. Attention was drawn to the fact that the alleged Viet-Nameese attack had been immediately followed by an equally alleged act of self-defence by the United States and that further United States military action could not be considered as an act of legitimate self-defence; at the most, it could be qualified as an act of reprisal. In that connexion, reference was made to Security Council resolution 188 (1964)⁴¹ which condemned reprisals "as incompatible with the purposes and principles of the United Nations". Reference was made also to the difference between the right of self-defence and the right of retaliation and it was noted that recognition of the right of self-defence in Article 51 of the Charter *ipso jure* precluded the right of retaliation.⁴²

23. The consideration of that question was subsequently adjourned and the item remained on the agenda as one of the matters of which the Security Council was seized.

3. THE PALESTINE QUESTION⁴³

24. At the 1162nd meeting, on 16 November 1964, in connexion with certain air strikes directed

United Kingdom, paras. 15, 25–27, 30 and 31; 1110th mtg.: Czechoslovakia, paras. 17–33; Morocco, para. 39; 1111th mtg.: China, para. 12. See also this *Supplement* under Article 2 (4), paras. 170–177.

⁴¹ See para. 18 above.

⁴² For the texts of relevant statements, see: S C, 19th yr., 1140th mtg.: United Kingdom, para. 78; United States, paras. 33–42 and 44–46; 1141st mtg.: Czechoslovakia, paras. 30 and 31; USSR, paras. 82–84; United States, paras. 51 and 52.

⁴³ During the period under review, in two other instances involving the Palestine question, the attention of the Security Council was directed, *inter alia*, to the question whether the Israel action under consideration could be considered as an act of self-defence. These were in connexion with the decisions of 9 April 1962 and 3 August 1966. In both instances it was noted that armed action which had the character of reprisals

by Israel against Syria, the representative of Israel maintained that the action under consideration constituted a defensive measure which the Israel Government had taken in discharge of its obligation to defend the State against attack.

25. At the 1164th meeting, on 27 November 1964, the representative of Syria disputed the Israel contention and held that although self-defence and self-preservation remained the sole prerogatives of States, the decision to resort to them and the manner in which the decision was applied should be open to investigation. He further maintained that the Israel plea of self-defence was an abuse of right.

26. In the course of the discussion, it was pointed out that the Israel air action could not be justified by the principle of self-defence as no attack against the territory of Israel had taken place. The use of the

or retaliation could not be considered a legitimate exercise of the right of self-defence. See S C, 17th yr., 1003rd mtg.: Romania, para. 57; United Kingdom, paras. 31 and 32; 1005th mtg.: United States, paras. 26, 27 and 29; S C, 21st yr., 1291st mtg.: United Kingdom, para. 24; 1292nd mtg.: Argentina, para. 94; Bulgaria, paras. 27 and 28; Mali, para. 5; 1293rd mtg.: Netherlands, paras. 8 and 9; Uruguay, para. 47; 1294th mtg.: President (Uganda), para. 5. For the respective case studies, see this *Supplement* under Article 2 (4), paras. 110–129.

term “reprisal” in the context of the incident under consideration was rejected by the representative of Israel as inappropriate.⁴⁴

27. At the 1169th meeting, on 8 December 1964, a draft resolution⁴⁵ was submitted to the Security Council under which it would, *inter alia*, condemn the air action undertaken by Israel as being both incompatible with the obligations binding upon the parties under the terms of the General Armistice Agreement and contrary to the Charter of the United Nations and express “the most severe condemnation with regard to this action, which is of such nature as to endanger peace in that area.”

28. At the 1179th meeting, on 17 December 1964, the draft resolution was put to the vote and was not adopted. There were 3 votes in favour, none against with 8 abstentions.⁴⁶

⁴⁴ For the texts of relevant statements, see S C, 19th yr., 1162nd mtg.: Morocco, para. 92; Israel, para. 59 and 101; 1164th mtg.: Syria, paras. 117 and 120; 1166th mtg.: Czechoslovakia, para. 20.

⁴⁵ S C, 19th yr., 1169th mtg.: Morocco, para. 11. See also: S C, 19th yr., Suppl. for Oct.–Dec., S/6085/Rev. 1.

⁴⁶ S C, 19th yr., 1179th mtg., para. 28.

Chapter VIII
REGIONAL ARRANGEMENTS