

## **Chapter XI**

### **CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER**

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## INTRODUCTORY NOTE

Chapter XI does not constitute a review of the action of the Security Council under Chapter VII of the Charter. In principle it presents the instances in the proceedings of the Council in which proposals placed before the Council have evoked discussion regarding the application of Chapter VII.<sup>1</sup>

### **Chapter VII of the Charter: Action with respect to threats to the peace, breaches of the peace, and acts of aggression**

#### *Article 39*

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measure shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

#### *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.

#### *Article 41*

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

#### *Article 42*

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

#### *Article 43*

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

<sup>1</sup> For observations on the method adopted in the compilation of this chapter see: *Repertoire of the Practice of the Security Council 1946-1951*, Introductory Note to Chapter VIII. II. Arrangements of Chapters X-XII, p. 296.

*Article 44*

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

*Article 45*

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

*Article 46*

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

*Article 47*

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

*Article 48*

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

*Article 49*

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

*Article 50*

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

## 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.

## Part I

## CONSIDERATION OF THE PROVISIONS OF ARTICLES 39-40 OF THE CHARTER

## NOTE

During the period under review, there has been no discussion in the Security Council of Article 39 in connexion with any question. In connexion with the Palestine question, there was on one occasion discussion concerning the bearing of Article 40 on a proposal before the Council.

The corresponding chapter of the previous volume of the *Repertoire* contained a number of case histories derived from the proceedings on the Palestine question and bearing upon discussion of Articles 39-40 in connexion with provisional measures proposed in or adopted by the Council. In the period under review, the Council has again been concerned with calls upon the parties to cease fighting and to comply with their obligations under the General Armistice Agreements. It has on occasion taken decisions condemning particular actions as violations of the previous resolutions invoking Article 40, or as breaches of the Armistice Agreements concluded pursuant to directives issued by it under Article 40, and of the obligations of the parties under the Charter. In none of these proceedings, however, has the Council engaged in discussion of Articles 39 and 40. As a guide to the steps taken by the Council in these respects, reference should be made to the Analytical Table of Measures in chapter VIII as well as to part II of that chapter setting forth the chain of proceedings in connexion with the Council's consideration of the Palestine question.

During the period under review, the only explicit invocation of Article 39 in the submission of a question to the Security Council was that in the cablegram from the Minister for External Affairs of Guatemala requesting the President of the Security Council urgently to convene a meeting in order that the Council might take the measures necessary to prevent the disruption of peace and international security and also to put a stop to the aggression in progress against Guatemala. The tabulation in part III of chapter X lists instances of the submission of other questions in which language derived from Article 39 was employed.<sup>2</sup>

<sup>2</sup> See chapter X, p. 143.

CASE 1.<sup>3</sup> THE PALESTINE QUESTION: In connexion with the Syrian complaint<sup>4</sup> against Israel concerning the work on the West bank of the River Jordan in the Demilitarized Zone; adoption of a draft resolution noting the statement of the representative of Israel

[Note: Complaint having been made of the refusal of the Government of Israel to comply<sup>5</sup> with a request from the Chief of Staff of the Truce Supervision Organization in respect of certain work in the Demilitarized Zone alleged to be in violation of the Syrian-Israel General Armistice Agreement, question arose whether a decision of the Council taking note of a statement by the representative of Israel regarding an undertaking by his Government to suspend the works in question was to be regarded as resting on Article 40 of the Charter.]

At the 629th meeting on 27 October 1953, following the inclusion of the Syrian complaint in the agenda, the representative of Pakistan stated that before the Council heard the parties and considered the matter on the merits, it might be a wise precaution to endorse the request of the Chairman of the Mixed Armistice Commission and to request Israel to suspend the work accordingly. He submitted a draft resolution to that effect.<sup>6</sup>

In reply to a query from the representative of the United Kingdom concerning the Article of the Charter on which this proposal was based, the representative of Pakistan declared that

"... in view of the fact that hostilities were brought to a close on the basis of an agreement, a breach of which is alleged and has, *prima facie*, so far as the documents submitted to the Security Council indicate, taken place, Article 40 of the Charter is clearly applicable..."

<sup>3</sup> For texts of relevant statements see: 629th meeting: Pakistan, paras. 5, 40; United Kingdom, para. 17; 631st meeting: France, paras. 36, 50, 63; Greece, paras. 47, 64; Israel\*, paras. 4, 53; USSR, paras. 59-60.

<sup>4</sup> S/3108/Rev.1, *O.R.*, 8th year, *Suppl. for Oct.-Dec. 1953*, pp. 5-6.

<sup>5</sup> S/3122, *O.R.*, 8th year, *Suppl. for Oct.-Dec. 1953*, pp. 23-36.

<sup>6</sup> S/3125, *O.R.*, 8th year, *Suppl. for Oct.-Dec. 1953*, pp. 36-37.

When the Council resumed consideration of the question at the 631st meeting, the representative of Israel\* stated that he was

“... empowered to state that the Government of Israel is willing to arrange such a temporary suspension in the demilitarized zone for the purpose of facilitating the Security Council’s consideration of this question.”

The representative of France observed that the statement by the representative of Israel appeared to have rendered pointless the draft resolution submitted by the representative of Pakistan, and proposed to take note of the undertaking given by the Israel delegation in the following draft resolution.<sup>7</sup>

*“The Security Council,*

*“Having taken note of the report of the Chief of Staff of the Truce Supervision Organization dated 23 October 1953 (S/3122),*

*“Desirous of facilitating the consideration of the question, and without prejudice to its merits,*

*“Deeming it desirable to that end that the works should be suspended pending the examination of the question by the Security Council,*

*“Takes note with satisfaction of the statement made by the Israel representative at the 631st meeting regarding the undertaking given by his Government to suspend the works in question during the examination of the question;*

*“Requests the Chief of Staff of the Truce Supervision Organization to supervise the implementation of this undertaking.”*

The representative of Greece wondered whether it would not be better to mention the wording of Article 40 of the Charter in the second paragraph as follows:

*“Desirous of facilitating the consideration of the question, without however prejudicing the rights, claims or position of the parties concerned.”<sup>8</sup>*

<sup>7</sup> 631st meeting: para. 36.

<sup>8</sup> 631st meeting: para. 47.

The representative of France agreed with the suggestion made by the representative of Greece and thought it would be most useful to include in the draft resolution the terms used in Article 40.

The representative of Israel stated that, although his delegation had no objection to the words concerning “the rights, claims or position of the parties”, as suggested by the representative of Greece, he assumed it was not the intention of the representative of Greece to suggest that Article 40 of the Charter in itself was juridically applicable to the position which the Council was discussing.

The representative of the USSR stated that, since in the draft resolution submitted by the representative of France the Security Council made no recommendation whatsoever, it seemed to him “that from both a legal and a logical standpoint a reference to Article 40 is not only unnecessary, but even impossible”. Article 40 in fact stated that “the Security Council may ‘call upon the parties concerned’ to comply with provisional measures. But although the Security Council may ‘call upon’ the parties”, this was not what the French representative proposed. In his draft resolution, “he did not propose to ‘call upon’ Israel to take any action, but to take note of the undertaking given by the Israel Government”. The USSR representative therefore thought “that a reference to Article 40 would not be legally justified”.

The representative of France said that he wished to reassure the representative of the USSR that the text which he had prepared made no reference to Article 40 of the Charter. The fact that the text contained some of the words used in Article 40 should in no way be taken to mean that the draft resolution would be adopted in application of that Article.

The representative of Greece declared that he did not intend to have any reference to Article 40 inserted in his proposal.

The draft resolution, submitted by the representative of France, as amended, was put to the vote and adopted unanimously.<sup>9</sup>

<sup>9</sup> 631st meeting: para. 76.

## Part II

### \*\*CONSIDERATION OF THE PROVISIONS OF ARTICLE 41 OF THE CHARTER

## Part III

### \*\*CONSIDERATION OF THE PROVISIONS OF ARTICLES 42-47 OF THE CHARTER

## Part IV

### \*\*CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER<sup>10</sup>

<sup>10</sup> For references to Article 51 in its bearing on Article 25, see Chapter XII, Case 3.