

Chapter XI

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER

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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

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 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

Part I

CONSIDERATION OF THE PROVISIONS OF ARTICLES 39 THROUGH 42 OF THE CHARTER

NOTE

Security Council proceedings involving especially Articles 39 and 41, Articles 39 through 42 are considered together, rather than separately in this Supplement.

not taken any decisions explicitly under Article 39 of the Charter. It has, however, indicated in three instances that it reiterates its determination that the situation under consideration constituted a threat to international peace and security: in two of these cases the Council recalled a previous resolution² in which Article 39 had been invoked.

decision without recalling the particular resolution.³ In another case⁴ the Council implicitly referred to Article 39

with previous decisions on Southern Rhodesia, taken under Chapter VII of the Charter." On two other occasions, when the Council considered draft resolutions regarding the same agenda item⁵ these texts included a determination that the

the Council, both draft resolutions failed or adoption owing to the negative votes of permanent members.

In connexion with other agenda items the Council took decisions some provisions of which might be considered to constitute implicit references to the language of Article 39. These instances are briefly listed as follows:

¹ Resolutions 326 and 327 (1973) of 2 February 1973 and resolution 328 (1973) of 10 March 1973 in connexion with the complaint by Zambia. The adoption of none of these resolutions

² Resolution 232 (1966) of 16 December 1966 in connexion with the situation in Southern Rhodesia.

³ Resolution 328 (1973) did not recall resolution 232 (1966).

⁴ Resolution 311 (1972), 5 October 1972.

⁵ S/10606, OR, 27th yr., Suppl. for Jan.-March 1972, pp. 82-83, and S/10928, OR, 28th yr., Suppl. for April-June 1973, p. 36. No constitutional discussion regarding Article 39 took place.

⁶ S/10606.

Resolution 311 (1972), preambular paragraph 5:

Gravely concerned that the situation in South Africa seriously

Resolution 312 (1972), paragraph 3:

Again affirms that the situation resulting from the policies of

security in the African continent,

Resolution 352, preambular paragraph 5:

Gravely concerned about the situation which has led to a serious threat to international peace and security, ...

Resolution 360, preambular paragraph 3:

constituted a most serious threat to peace and security in the Eastern Mediterranean area,¹⁰

possibly referring implicitly to Article 39. Since the relevant proceedings do not permit definite classification of the situation, the relevant resolutions are identified and quoted in the following:

policy of Portugal in those Territories and from the continuing aggressions by Portuguese military forces against independent African States adjacent to those Territories seriously disturbs international peace and security in the African continent;¹¹

S/10839, paragraph 1:

Same as S/10834, paragraph 2;

S/10839, paragraph 3:

Affirms that the military and other forms of assistance that certain military allies of Portugal within the North Atlantic Treaty

¹⁰ In connexion with the question of race conflict in South Africa.

¹¹ In connexion with the situation in Territories under Portuguese Administration

¹⁰ In connexion with the situation in Cyprus.

¹¹ In connexion with the situation in Territories under Portuguese Administration, OR, 27th yr., Suppl. for Oct.-Dec. 1972, pp. 47-48.

Organization supply to the Government of Portugal permits it to pursue its policy of colonial domination and repression against the peoples of Angola, Guinea (Bissau) and Cape Verde, and Mozambique, thus endangering the peace and international security on the African continent;¹²

S/11346, preambular paragraph 4:

Gravely concerned about the situation which carries a serious threat to international peace and security,¹³

S/11346/Rev.1, preambular paragraph 4:

Gravely concerned about the situation which may lead to a serious threat to international peace and security,¹⁴

S/11391, preambular paragraph 1:

Having considered the development of events in Cyprus, which creates a serious threat to international peace and security,

On one occasion, a letter of submission requesting consideration of a question by the Council explicitly invoked Article 39 together with Articles 34 and 35.¹⁶

similar to that of Article 39.¹⁷

A few explicit references to Article 39 were made during

ences to the Article, usually in the form of an appeal to the Council to recognize a particular situation as a threat to international peace and security and to initiate the corresponding measures under the Charter.¹⁹

During the period under review, the Council took no question whether there have been any resolutions or decision proposals containing implicit references to that Article, cannot be simply answered in the affirmative because the action considered by the Council and the accompanying proceedings did not contain indications as to whether the Council as a whole was in any form acting in accordance with the provision of Article 40. Furthermore

has been no constitutional discussion regarding the demand relating to the question under consideration.

¹² In connexion with the same agenda item, *OR, 27th yr.*

¹³ In connexion with the situation in Cyprus, *OR, 29th yr., Suppl. for July-Sept. 1974*, pp. 28-29.

¹⁴ In connexion with the same agenda item, *ibid.*, p. 29.

¹⁵ S/10995, *OR, 28th yr., Suppl. for July-Sept. 1973*, p. 31, in connexion with the complaint by Cuba.

¹⁷ See the tabulation in part III of chapter X.

the Relationship between the United Nations and South Africa: 1800th meeting: Uganda; 1802nd meeting: Barbados; in connexion with the situation in Cyprus: 1810th meeting: Cyprus, and in connexion with the situation in Namibia: 1812th meeting: United Kingdom.

¹⁹ These statements occurred especially in connexion with the relationship between the United Nations and South Africa, the situation in Territories under Portuguese Administration, and the situation in Namibia, but also during the consideration of the situation in the Middle East; the complaint by Cuba; consideration of questions relating to Africa; the complaint by Senegal; the consideration of measures for the maintenance and strengthening of

Those decisions and statements which might contain implicit references to Article 40, are briefly summarized below.

The Council issued several urgent appeals for an immediate cease-fire following the outbreak of overt military hostilities in the Middle East and in Cyprus.²⁰ It called also for the observance of an arms embargo against South Africa together with some other measures designed to ease the dangerous situation in southern Africa²¹ and called upon Portugal to cease the colonial wars against the peoples of Angola, Mozambique and Guinea (Bissau) and to refrain from further impeding their liberation and independence.²²

During the consideration of the relationship between the United Nations and South Africa, two representatives invoked Article 40 explicitly, contending that the arms embargo against South Africa had been initiated in 1963 under that Article.²³

During the period under review, the Council has not taken any new decision explicitly under Article 41 of the Charter. It did, however, recall or reaffirm two previous

One resolution contained the phrase "acting in accordance with previous decisions of the Security Council on Southern Rhodesia, taken under Chapter VII of the Charter." In the case of another resolution²⁷ the Council reaffirmed a previous resolution that listed the full range of economic sanctions imposed by the Council. It contained at least implicit references to Article 41.

²⁰ Resolutions 338, 339 and 340 (1973) in connexion with the complaint by the Government of Cyprus regarding the situation in Cyprus.

Resolution 313 (1972) regarding a complaint by Lebanon against Israel might be interpreted as an implicit reference to Article 40, especially since the representatives of Yugoslavia and Lebanon called the Council decision an interim resolution and a

See resolution 311 (1972), especially paras. 4-6, in connexion with the question of race conflict in South Africa.

pp. 17-18, 311 regarding the situation in the Territories under Portuguese Administration.

²³ 1801st meeting: Madagascar; 1802nd meeting: Barbados, in connexion with the relationship between the United Nations and

Somalia; Madagascar; 1674th meeting: USSR; 1676th meeting: Yugoslavia; China; 1677th meeting: India, in connexion with the situation in Territories under Portuguese Administration. See also the reference to the 1644th meeting in note 20 above.

²⁴ Resolutions 232 (1966) and 277 (1970).

²⁵ Resolution 232 (1966) was recalled in resolution 314 (1972), 326, 327 and 333 (1973); resolution 277 (1970) was recalled in resolutions 314 and 318 (1972), and resolutions 326, 327, 328, 329 and 333 (1973).

²⁶ Resolution 314 (1972), preambular paragraph 5.

Those draft resolutions that failed of adoption,²⁹ referred to Article 41 only implicitly. In the case of two draft resolutions³⁰ which were revised and adopted, the revisions amounted to the deletion of two similar expressions invoking Chapter VII and urging the Council Committee established in pursuance of resolution 253 (1968) to report on the question of further action under that Chapter against Southern Rhodesia and of initiating such action against South Africa and Portugal.³¹

None of these decisions engendered a constitutional discussion concerning Article 41, but merely the re-statement of previously stated positions. The repeated demand by some Member States for an expansion of the sanctions against Southern Rhodesia by application of all the measures under Article 41 including a communications

usually in the form of remarks about sanctions and other mandatory measures, also occurred very frequently. These implicit references were made most often in connexion with southern African issues, but also quite frequently during the consideration of the situation in the Middle East and in Cyprus.

Article 42 of the Charter was not invoked in any decision of the Council. Participants in the Council proceedings did refer to the Article both explicitly³⁴ and implicitly³⁵ in debating the question whether the Council should decide to use force under Chapter VII of the Charter.

Kenya; USSR. In connexion with the situation in the Middle East:

Suppl. for Jan.-March 1972, pp. 82-83; S/10805, also recalling resolution 232 (1966), *ibid.*, *Suppl. for July-Sept. 1972*, pp. 108-110; S/10928, *OR*, 28th yr., *Suppl. for April-June 1973*, p. 36.

³⁰ S/10804, *OR*, 27th yr., *Suppl. for July-Sept. 1972*, p. 108,

³¹ In S/10804, para. 4, the words "including action under Chapter VII of the Charter" were deleted, and in S/10808, para. 6, the phrase "and the desirability of the application of Chapter VII of the United Nations Charter" was deleted.

³² For relevant statements see in connexion with the situation in

Tanzania; United Kingdom; 1689th meeting: Somalia; United States; 1693rd meeting: USSR.

³³ In connexion with the Consideration of questions relating to Africa: 1629th meeting: Chairman, Special Comm. of Twenty-Four;

with the Relationship between the United Nations and South Africa: 1801st meeting: Madagascar; 1802nd meeting: Barbados; 1804th meeting: Congo; 1806th meeting: Kenya; Peru.

³⁴ Article 42 was explicitly invoked in connexion with the situation in Yugoslavia, also in connexion with the complaint by Zambia. 1687th meeting: Ghana; 1694th meeting: Kenya; in connexion with

meeting: Cyprus; and in connexion with the Relationship between the United Nations and South Africa: 1800th meeting: Uganda; 1801st meeting: Madagascar; 1802nd meeting: Barbados; 1804th meeting: Congo; 1806th meeting: Kenya.

with the Consideration of questions relating to Africa: 1635th meeting: Mr. Mucshihange; Mr. Nzo; Mr. Telli; 1635th meeting: United States; also in connexion with the situation in Southern Rhodesia: 1664th meeting: Guinea; further in connexion with the situation in Namibia: 1679th meeting: Zambia.

Part II

CONSIDERATION OF THE PROVISIONS OF ARTICLES 43-47 OF THE CHARTER

NOTE

No questions arose in the Security Council during the period under review concerning the application and interpretation of Articles 43-47 of the Charter.

Part III

CONSIDERATION OF THE PROVISIONS OF ARTICLES 48-51 OF THE CHARTER

NOTE

Two resolutions adopted by the Security Council during the period under review contained provisions relating to

complaint by Zambia against acts of aggression by the illegal régime of Southern Rhodesia, the Council decided in

the first resolution³⁶ to dispatch a mission to assess the economic needs of Zambia arising from its full implementation of sanctions against the régime, and in the second resolution³⁷ to appeal to all States for immediate assistance

³⁶ Resolution 327 (1973). See case 1.

³⁷ Resolution 328 (1973). See case 1.

to Zambia and to request the Secretary-General as well as the United Nations and its specialized agencies to organize all forms of assistance to enable Zambia to continue its policy of economic independence from the Southern Rhodesian régime.

During the Council proceedings explicit references were made to Article 49³⁸, Article 40³⁹, Article 50⁴⁰ and

Case 1. *Complaint by Zambia*: In connexion with a draft resolution submitted by Guinea, Kenya, Sudan and Yugoslavia (S/10876), replaced by (S/10876/Rev.1), voted upon and adopted on 2 February 1973 as resolution 327 (1973), and a second draft resolution submitted by Guinea, India, Kenya, Sudan and Yugoslavia (S/10899), subsequently revised and sponsored in addition by Indonesia, Panama and Peru (S/10899/Rev.1), voted upon and adopted as resolution 329 (1973).

During the consideration of the complaint by Zambia a large number of speakers expressed their strong appreci-

Rhodesia, regardless of the severe hardships for its own economy, and unanimously considered its request for international aid in accordance with Articles 49 and 50 as fully justified under the Charter of the United Nations and the previous decisions of the Security Council. The only issue that caused some disagreement was whether the Council should appoint a mission or a team of experts to assess the needs of Zambia.⁴²

³⁸ In connexion with the complaint by Zambia: 1694th meeting: Kenya. In connexion with the relationship between the United Nations and South Africa: 1806th meeting: Kenya.

³⁹ In connexion with the complaint by Zambia: 1687th meeting: Ghana; Yugoslavia; 1688th meeting: Kenya; 1689th meeting: Somalia; Austria; 1690th meeting: Sudan. In connexion with the relationship between the United Nations and South Africa: 1806th meeting: Kenya.

⁴⁰ In connexion with the complaint by Zambia: 1687th meeting: Ghana; Yugoslavia; 1688th meeting: Kenya; 1689th meeting: Austria; 1690th meeting: Sudan; 1693rd meeting: Guinea; 1694th meeting: United Kingdom.

⁴¹ In connexion with the situation in the Middle East: 1644th meeting: Panama; President (Peru); 1725th meeting: Israel; President (USSR); 1733rd meeting: Israel; 1739th meeting: Peru; 1745th meeting: USSR; 1767th meeting: Israel; 1768th meeting: President (Iraq); 1769th meeting: Costa Rica. In connexion with the complaint by Cuba: 1742nd meeting: Chile. Although none of the decisions had any bearing on Article 51, the principle of self-defence was discussed in the discussions concerning the Middle East led to noteworthy arguments relating to the interpretation of the principle of self-defence. During the 1644th meeting Argentina pointed out that the permissibility of acts of "self-defence" must be established in terms of need and proportionality, a standard which Israel's reprisals against Lebanon did not fulfil. At the 1650th meeting France also emphasized the criterion of proportionality for legitimate self-defence, whereas Belgium stressed that self-defence could not be invoked continually, but only for a single case of aggression at a time. Panama (1709th meeting) held that a punitive action could not be called self-defence under Article 51. At the 1768th meeting the President (Iraq) quoted Lauterpacht according to whom the legality of acts of "self-defence" was to be determined by an organ like the Security Council or an international judicial body.

⁴² For relevant statements see 1687th meeting: Ghana; Tanzania; Morocco; Yugoslavia; 1688th meeting: Chile; Kenya; 1689th meeting: Somalia; Austria; 1690th meeting: Sudan. In connexion with the relationship between the United Nations and South Africa: 1806th meeting: Kenya.

At the 1690th meeting two draft resolutions (S/10875⁴³ and S/10876⁴⁴) sponsored by Guinea, Kenya, Sudan and Yugoslavia, were introduced. At the 1691st meeting, they were replaced by revised drafts (S/10875/Rev.1 and S/10876/Rev.1) which were sponsored in addition by India and Indonesia and adopted by the Council as resolutions 326 and 327 (1973). Whereas

complaint by Zambia, resolution 327 (1973) addressed the issue of economic assistance to Zambia. Resolution 327 (1973) provided *inter alia* as follows:

The Security Council,

1. *Commends* the Government of Zambia for its decision to

Rhodesia in compliance with the decisions of the Security Council;

2. *Takes cognizance* of the special economic hardships confronting Zambia as a result of its decision to carry out the decisions of the Security Council;

members of the Security Council, referred to in paragraph 9 of

experts, to assess the needs of Zambia, in maintaining alternative systems of road, rail, air and sea communications for the normal flow of traffic;

4. *Further requests* the neighbouring States to accord the Special Mission every co-operation in the discharge of its task;

5. *Requests* the Special Mission to report to the Security Council not later than 1 March 1973.

Under the mandate of resolution 326 (1973) the Security Council Special Mission, consisting of

its report including the report of the team of United Nations experts designated in accordance with resolution 327 (1973),⁴⁵ on 5 March 1973 to the Council. The report clearly demonstrated the economic needs of Zambia and contained detailed proposals for international assistance.

During the following Council meetings devoted to the complaint by Zambia, Guinea, India, Kenya, Sudan and Yugoslavia submitted another two draft resolutions (S/10898 and S/10899)⁴⁶ of which the latter dealt with the aspect of economic assistance. Both drafts were revised with Indonesia, Panama and Peru as additional sponsors, and at the 1694th meeting adopted as resolutions 328 and

FOLLOWS:

meeting: Guyana; Sudan; 1691st meeting: USSR; 1692nd meeting: Indonesia; Zambia; 1693rd meeting: Guinea; Kenya; 1694th meeting: India; United Kingdom.

⁴³ S/10875, *OR*, 28th yr., *Suppl. for Jan.-March 1973*, pp. 40-41, subsequently revised and adopted as resolution 326 (1973).

⁴⁴ S/10876, slightly revised and adopted without substantive change as resolution 327 (1973).

⁴⁵ S/10896/Rev.1, Report of the Security Council Special Mission established under resolution 326 (1973), *OR*, 28th yr., *Special Supplement No. 2*.

⁴⁶ S/10898, *OR*, 28th yr., *Suppl. for Jan.-March 1973*, pp. 54-55, revised (S/10898/Rev.1) and adopted as resolution 328 (1973); S/10899, *ibid.*, p. 55, revised (S/10899/Rev.1) and adopted

The Security Council

1. Commends the Government of Zambia for deciding to abandon the use of the southern route for its trade until the

... as well as the specialized agencies in connection with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational Scientific and Cultural Organization, the World Health Organization, the International Civil Aviation Organization, the

indicated in the report of the Special Mission and the annexes thereto;

Governmental Maritime Consultative Organization, to assist Zambia in the fields identified in the report of the Special Mission and the annexes thereto;

3. Appeals to all States for immediate technical, financial and material assistance to Zambia in accordance with resolutions 253 (1968) and 277 (1970) and the recommendations of the Special Mission, so that Zambia can maintain its normal flow of traffic and

5. Requests the Secretary-General in collaboration with the appropriate organizations of the United Nations system, to organize with immediate effect all forms of financial and technical assistance

4. Requests the United Nations and the organizations and programmes concerned, in particular the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization and the United Nations Development Pro-

6. Requests the Economic and Social Council to consider periodically the question of economic assistance to Zambia as envisaged in the present resolution.

Part IV

CONSIDERATION OF THE PROVISIONS OF CHAPTER VII OF THE CHARTER IN GENERAL

NOTE

During the period under review, no issue arose which Chapter VII of the Charter in general. One decision taken by the Security Council contained an explicit reference to Chapter VII, but did not evoke any constitutional dis- texts which were adopted by the Council; again the consideration of the following agenda items: the consider-

the situation in Namibia,⁵² the complaint by Senegal,⁵³ the situation in Territories under Portuguese administration⁵⁴, the complaint by Zambia⁵⁵, the consideration of national peace and security in Latin America, the situation in Cyprus,⁵⁷ and the relationship between the United Nations and South Africa.⁵⁸ Beyond these explicit ations without however giving rise to a constitutional

Resolution 314 (1972) in relationship with the situation in Southern Rhodesia: its fifth preambular paragraph reads as follows: "Acting in accordance with previous decisions of the Security

⁵¹ 1643rd meeting: Lebanon; USSR; Saudia Arabia; 1644th meeting: Somalia; 1648th meeting: Lebanon; 1720th meeting: Algeria; 1723rd meeting: President (USSR); 1734th meeting: Israel;

S/10804, OR, 27th yr., Suppl. for July-Sept. 1972, p. 106.

⁵² 1656th meeting: Somalia; 1657th meeting: Guinea; 1670th

of action, "including action under Chapter VII of the Charter, to was adopted as resolution 320 (1972). S/10898, OR, 28th yr., Suppl. for Jan.-March 1973, pp. 54-55: para. 6 was to urge the same committee to expedite its report under resolution 320 (1972) regarding the widening of sanctions "and the desirability of the application of Chapter VII of the United Nations Charter..." S/10898/Rev.1 was adopted as resolution 328 (1973) in connexion with the complaint by Zambia.

Sudan; 1811th meeting: President, Council for Namibia; Upper 1668th meeting: Iran.

⁴⁹ 1628th meeting: Egypt; President, Council for Namibia; 1630th meeting: Yugoslavia; 1631st meeting: USSR; Ghana; 1633rd meeting: Mr. Mueshihange; Mr. Telli; 1634th meeting: Mr. Carr; 1636th meeting: Somalia.

⁵⁴ 1673rd meeting: Tanzania; Somalia; 1674th meeting: Sudan; 1677th meeting: France.

⁵⁵ 1687th meeting: Zambia; Tanzania; 1688th meeting: Chile; 1689th meeting: Somalia.

⁵⁶ 1703rd meeting: Chairman, Special Committee on Apartheid.

⁵⁷ 1728th meeting: Chad; 1793rd meeting: Secretary-General; Cyprus.

⁵⁸ 1796th meeting: Tunisia; 1797th meeting: Mauritius; 1800th