

## ARTICLE 2 (6)

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## TEXT OF ARTICLE 2 (6)

The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

## INTRODUCTORY NOTE

1. The general structure of this study follows that of Article 2 (6) in *Repertory Supplement No. 2*.

## I. GENERAL SURVEY

2. During the period under review, no decisions referring explicitly to this Article were taken by any organ of the United Nations. In connexion with a complaint by Cambodia, the Security Council adopted resolution 189 (1964) bearing upon Article 2 (6) since it was directed to a non-member State. Article 2 (6) was also referred to in discussions in the General Assembly relating to Korea, Tibet, Oman, Viet-Nam, the principles of international

law concerning friendly relations, the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty, and the cessation of co-operation by Indonesia with the United Nations. Several resolutions were also adopted which may be said to bear upon Article 2 (6) inasmuch as the recommendations therein were addressed to "all States".

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. Decisions taken by the Organization affecting non-member States with respect to the maintenance of international peace and security

#### 1. RECOMMENDATIONS TO, OR IN RESPECT OF, SPECIFIC NON-MEMBER STATES

*Decision of the Security Council of 4 June 1964 in connexion with the complaint by Cambodia*

3. By a letter<sup>1</sup> dated 13 May 1964 the permanent representative of Cambodia to the United Nations transmitted to the President of the Security Council a complaint by his Government that repeated acts of aggression against the territory and the civilian population of Cambodia had been committed by the armed forces of the United States and South Viet-Nam, and requested that a meeting of the Security Council be called.

4. On 19 May 1964 the Security Council decided<sup>2</sup> to put the matter on the agenda. At the same meeting the Council decided<sup>3</sup> to invite the representatives of Cambodia and the Republic of Viet-Nam to participate, without vote, in the discussion of the item on the agenda.

5. During the discussion it was stated that South Viet-Nam, although not a Member of the United

Nations, was none the less bound to conform with Article 2 (4) of the Charter of the United Nations; and that it was a duty of the United Nations, under Article 2 (6) of the Charter, to compel South Viet-Nam to respect the principles of the Charter. It was also pointed out that States which are not Members of the United Nations are not thereby relieved of the responsibility for conducting their affairs in line with the principles of the Charter.

6. The representative of the Republic of Viet-Nam denied that his Government had committed aggression against Cambodia; pointed out that his Government had expressed its regrets each time elements of the armed forces of the Republic of Viet-Nam had inadvertently entered Cambodian territory, and had offered to compensate the victims after such incidents; and reaffirmed his Government's adherence to the principles of the United Nations Charter and its readiness to co-operate fully and sincerely with the Security Council.<sup>4</sup>

7. A draft resolution,<sup>5</sup> submitted by Morocco on 3 June 1964 and co-sponsored by the Ivory Coast, was adopted<sup>6</sup> unanimously by the Security Council

<sup>4</sup> For texts of relevant statements, see S C, 19th yr., 1118th mtg.: Cambodia, para. 24; 1119th mtg.: United States, para. 70; Republic of Viet-Nam, paras. 25-29.

<sup>5</sup> S C, 19th yr., Suppl. for April-June p. 190, S/5741; same text as resolution 189 (1964).

<sup>6</sup> S C, 19th yr., 1126th mtg., para. 49. The report of the Security Council Mission may be found in S C, 19th yr.,

<sup>1</sup> S C, 19th yr., Suppl. for April-June, p. 130, S/5697.

<sup>2</sup> S C, 19th yr., 1118th mtg., preceding para. 1.

<sup>3</sup> *Ibid.*, paras. 1 and 13.

on 4 June 1964 as its resolution 189 (1964). It read as follows:

"*The Security Council,*

"...

"1. *Deplores* the incidents caused by the penetration of units of the Army of the Republic of Viet-Nam into Cambodian territory;

2. *Requests* that just and fair compensation should be offered to the Royal Government of Cambodia;

3. *Invites* those responsible to take all appropriate measures to prevent any further violation of the Cambodian frontier;

4. *Requests* all States and authorities, and in particular the members of the Geneva Conference, to recognize and respect Cambodia's neutrality and territorial integrity;

5. *Decides* to send three of its members to the two countries and to the places where the most recent incidents have occurred, in order to consider such measures as may prevent any recurrence of such incidents; they will report to the Security Council within forty-five days."

## 2. RECOMMENDATIONS TO NON-MEMBER STATES IN GENERAL

### \*\*a. *Recommendations involving the Principles of the Charter in general*

#### b. *Recommendations involving specific Principles of the Charter*

8. During the period under review the question of Korea was again discussed by the First Committee of the General Assembly and five resolutions<sup>7</sup> on the Korean question were adopted by the General Assembly, in which the Assembly recalled that the United Nations, under its Charter, was fully and rightfully empowered to take collective action to repel aggression and to restore peace and security; reaffirmed the objectives of the United Nations in Korea; called on the communist authorities concerned (or the North Korean authorities) to accept these objectives; and requested the United Nations Commission for the Unification and Rehabilitation of Korea (UNCURK) to continue its work in accordance with the relevant resolutions of the General Assembly.

9. During the debate on the Korean question in the First Committee, when it was proposed that the Democratic People's Republic of Korea be invited to participate in this debate, a proposal was made that such an invitation be conditioned on an unequivocal acceptance by it of the competence and authority of the United Nations to take action on the Korean question. It support of this proposal one representative maintained that the United Nations, when dealing with a Power that existed *de facto*, as was the case with the North Korean régime, should

apply the principles of the Charter. He added that the conduct of such entities must always be governed by principles of law, and that respect for the provisions of the Charter and for its resolutions was a basic principle of the United Nations. He pointed out that it had been said that Article 2 (6) of the Charter extended the jurisdiction of the United Nations to entities which were not Members for the purpose of maintaining international peace and security. According to him, that was even more true of a State or political entity which had had relations with the United Nations, even though in doing so it had rebelled against the Organization; if such an entity wished to maintain relations with the United Nations, it had to express its willingness to comply with the Charter and to accept the competence and authority of the United Nations.<sup>8</sup>

10. In resolution 1353 (XIV), relating to the question of Tibet, the General Assembly, after expressing its grave concern at reports to the effect that the fundamental human rights and freedoms of the people of Tibet had been forcibly denied them, affirmed its belief that respect for the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights was essential for the evolution of a peaceful world order based on the rule of law.

11. During the discussion of this item, it was argued that in case of a flagrant and continuing violation of human rights, the prolongation of which might endanger peace in the area, the United Nations, in accordance with Article 2 (6), was fully entitled to take up the matter and to make its voice heard. The fact that the Peoples' Republic of China was not represented in the United Nations did not constitute justifiable ground for the Assembly to turn a blind eye to what had taken place. When a flagrant violation of human rights had occurred, it was the duty of the Assembly to speak out in defence of the principles of the Charter, irrespective of whether the Government responsible for such a violation was a Member of the United Nations or bound by the principles of the Charter.

12. On the other hand, it was noted by other representatives that the United Nations could not deal with the matter in the absence of representatives of the People's Republic of China. In excluding China from active participation in its process of mediation and conciliation, the United Nations also placed that country beyond the purview of its benign influence and control.<sup>9</sup>

13. During the discussion of the question of Oman in the General Assembly in 1961, one representative argued that it was not clear what Article of the Charter would authorize the Assembly to call for the withdrawal of foreign forces and to address a recommendation to parties of which at least one, the Sultanate of Muscat, was not a Member State.

Suppl. for July–Sept., p. 101, S/5832. Previously, a fact-finding mission was sent to South Viet-Nam in connexion with a complaint that human rights had been violated there; for a report of that mission, see G A (XVIII), Annexes, a.i. 77, A/5630.

<sup>7</sup> G A resolutions 1455 (XIV), 1740 (XVI), 1855 (XVII), 1964 (XVIII) and 2132 (XX).

<sup>8</sup> G A (XV), 1st Com., 1146th mtg.: Peru, para. 6.

<sup>9</sup> G A (XIV), Gen. Com., 124th mtg.: Ireland, para. 8; Plen., 826th mtg.: Indonesia, paras. 44 and 52; Romania, para. 115; 831st mtg.: Ireland, para. 35; Malaya, para. 15; 834th mtg., Venezuela, para. 146.

He thought that Article 2 (6) seemed insufficient for that purpose.<sup>10</sup>

14. During a debate in the Security Council in February 1966 concerning consideration of the question of Viet-Nam by the Security Council, one representative observed that under Article 2 (6) of the Charter the Organization was to ensure that States not Members of the United Nations respected the principles of the Charter regarding the maintenance of international peace. Consequently, it did not matter that most of the countries involved were not Members of the United Nations. On the other hand, several representatives argued that all parties to the conflict, with one exception, were not represented in the United Nations, and even if they were invited they would not be able to participate in the discussion on an equal footing; consequently, they expressed opposition to any discussion of the question in the United Nations. One other representative quoted a statement by the Secretary-General to the effect that the greatest impediment to United Nations involvement was that some of the parties involved were not Members of the United Nations. It was noted in reply that the Security Council had never permitted itself to be prevented from dealing with a problem by the refusal of a State, whether Member or non-member, to participate in its deliberations.<sup>11</sup>

15. During the discussion in the General Assembly of the item relating to the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty, one representative, after a reference to the problem of Viet-Nam, noted that, though some of the States concerned were not represented in the United Nations, the jurisdiction of the Security Council, or even of the Assembly, was not ruled out under Article 2 (6) of the Charter.<sup>12</sup>

16. During a discussion of the 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" in the Sixth Committee of the General Assembly in 1963, one representative stated that the phrase "in their international relations" in Article 2 (4) implied that a State could not use force against another State, regardless of whether it was a Member of the United Nations or not. Another representative considered Article 2 (4) as an essential rule of *jus cogens*, and expressed the view that Article 2 (6) subjected non-member States to the discipline of the Charter. In Article 2 (6) the Charter showed the tendency to be the law not only of the United Nations but also of the whole international community. This provision in Article 2 (6) was revolutionary from the point of view of existing international law. As it represented the real interests of mankind, the representative did not doubt that it would become an irrevocable part of the new international law. After noting that the obligation

as stated in Article 2 (4) to refrain from the threat or use of force against "any State" provided protection also for non-members, a representative raised the question whether non-member States were not only the beneficiaries of, but also were bound by Article 2 (4). He considered that they were so bound because of the principle of reciprocity; because the principles of Article 2 (4) had achieved status in general international law; because of Article 2 (6); and because the international interest in the maintenance of peace and security clearly required that they be so bound.<sup>13</sup>

17. By a letter dated 20 January 1965, the Minister for Foreign Affairs of Indonesia informed the Secretary-General of the United Nations that his Government "has taken the decision to withdraw from the United Nations", but he assured the Secretary-General that Indonesia would continue to uphold "the lofty principles of international co-operation as enshrined in the United Nations Charter".<sup>14</sup> In that connexion a letter dated 8 March 1965 from the representative of the United Kingdom<sup>15</sup> declared that a State which had expressed its intention to withdraw from the United Nations nevertheless remained bound to observe the fundamental principles embodied in Article 2 of the Charter, relative to the maintenance of international peace and security, which were declaratory of general international law binding upon all States. In a *note verbale* on the same subject, dated 13 May 1965,<sup>16</sup> Italy stated that it was to be assumed that the United Nations would retain its full authority under Article 2 (6), and consequently under Chapter VII of the Charter. It also noted that the principles of the United Nations Charter now form part of customary international law and of general international law and that no State which withdrew from the Organization could evade some fundamental obligations laid down in the Charter. On 19 September 1966, the Indonesian Government notified the Secretary-General that it had decided "to resume full co-operation with the United Nations".<sup>17</sup> The President of the General Assembly announced on 28 September 1966 that the Government of Indonesia considered that its absence from the United Nations was based not upon a withdrawal from the United Nations but upon a cessation of co-operation, and noted that it was the will of the membership that Indonesia should resume full participation in the activities of the United Nations.<sup>18</sup>

18. During the period under review, many resolutions were adopted by the General Assembly which were addressed to "all States" and not merely to States Members of the United Nations.<sup>19</sup> They

<sup>10</sup> G A (XVIII), 6th Com., 805th mtg.: Ceylon, para. 21; 806th mtg.: Mexico, para. 12; 808th mtg.: United States, para. 20.

<sup>11</sup> A/5857 (mimeographed).

<sup>12</sup> A/5910 (mimeographed).

<sup>13</sup> A/5914 (mimeographed).

<sup>14</sup> S C, 21st yr., Suppl. for July—Sept., p. 127, S/7498.

<sup>15</sup> G A (XXI), Plen., 1420th mtg., paras. 1—9.

<sup>16</sup> See, for example, G A resolutions 1510 (XV), 1514 (XV), 1598 (XV), 1649 (XVI), 1665 (XVI), 1884 (XVIII), 1910 (XVIII), 1956 (XVIII), 2017 (XX), 2022 (XX), 2027 (XX),

<sup>10</sup> G A (XVI), Spec. Pol. Com., 305th mtg.: Mexico, para. 20.

<sup>11</sup> S C, 21st yr., 1271st mtg.: France, para. 54; Mali, para. 64; 1272nd mtg.: Bulgaria, para. 22; Netherlands, paras. 64 and 65; United States, paras. 88 and 89. See also G A (XX), 1st Com., 1397th mtg., para. 14.

<sup>12</sup> G A (XX), 1st Com., 1397th mtg.: Peru, para. 14.

dealt with a variety of subjects, including peace and security, disarmament, nuclear tests and nuclear weapons, non-intervention, human rights, South Africa, South West Africa, Southern Rhodesia, Portugal and Cyprus.

19. Several resolutions of the Security Council were also addressed to "all States". They related to the Congo, the Territories under Portuguese administration, the policies of *apartheid* of the Government of the Republic of South Africa, Cambodia, Cyprus, the India-Pakistan question and Southern Rhodesia.<sup>20</sup>

2028 (XX), 2033 (XX), 2054 (XX), 2074 (XX), 2077 (XX), 2107 (XX), and 2131 (XX).

<sup>20</sup> See, for example, S C resolutions 145 (1960), 161 (1961), 169 (1961), 180 (1963), 181 (1963), 182 (1963), 189 (1964), 190 (1964), 191 (1964), 193 (1964), 199 (1964), 211 (1965), 216 (1965), 217 (1965), 218 (1965) and 221 (1966). For a reply of the Federal Republic of Germany reporting compliance with S C resolution 182 (1963) relating to South Africa, see A/AC.115/L.143, p. 20 (mimeographed). Two notes from the same

20. It may be noted that United Nations action in relation to the Republic of the Congo in 1960<sup>21</sup> was taken before it became a Member of the United Nations, but there was no discussion of Article 2 (6) in that case.<sup>22</sup>

Government of 28 January and 18 May 1966, reported compliance with S C resolution 217 (1965) relating to Southern Rhodesia. (S C, 21st yr., Suppl. for Jan.—March, p. 192, S/7181; Suppl. for April—June, p. 25, S/7181/Add.1).

<sup>21</sup> For a discussion of that case, see this *Supplement*, under Articles 2 (4), 29 and 40.

<sup>22</sup> It may be noted, however, that in his letter of 4 August 1960 to Mr. Tshombe the Secretary-General drew attention to Articles 25 and 49 of the Charter and their applicability not only to Governments but also "to subordinate territorial non-governmental authorities of Member States". He added that the same obligations must be regarded as applicable to nations which, like the Congo, have been recommended for admission to the United Nations, and to the subordinate territorial organs of such nations. Resistance by them to a Security Council decision would be subject to sanctions laid down in the Charter. (S C, 15th yr., Suppl. for July—Sept., p. 48, S/4417, para. 6.)

## **Chapter II**

### **MEMBERSHIP**

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