

**ARTICLE 43**

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## TEXT OF 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.

## INTRODUCTORY NOTE

1. During the period under review, no agreements were concluded between the Security Council and Member States to make available to the Security Council armed forces, assistance and facilities for the purpose of maintaining international peace and security. Neither were there any resolutions adopted by the Security Council or the General Assembly which contained an explicit reference to Article 43.

2. The General Survey outlines the views expressed by Member States on the scope of Article 43 and its relation to other Articles, and contains the opinion of the International Court of Justice on the bearing of Article 43 on the expenses of the United Nations operations in the Middle East (UNEF) and the Congo (ONUC).<sup>1</sup>

3. In the course of the consideration of certain items, Article 43 was invoked with other Articles of the Charter, particularly with Articles 11, 12, 24, 39, 40, 41, 42 and 48; studies of those Articles in this *Supplement* should, therefore, also be consulted.

4. This study does not contain an Analytical Summary since no relevant material for the period under review has been found.

<sup>1</sup> See para. 12 below.

## GENERAL SURVEY

5. The constitutional discussions of Article 43 were in most instances related to the manner in which Security Council or General Assembly resolutions had been implemented in regard to the United Nations operations in the Middle East and in the Congo, and the constitutional basis for the proposed methods of defraying expenses incurred in those operations. In other instances, discussions were related to the general review of the question of peace-keeping operations.

6. Since Article 43 during the period covered by this study has on occasion been mentioned together with Articles 44, 45, 46 and 47, the summary that follows in the next paragraphs of this study also incorporates views expressed on those Articles.

7. During the consideration of the United Nations operations in the Middle East and in the Congo at the fifteenth, sixteenth and eighteenth sessions,<sup>2</sup> as well as the agenda item "Obligations of Members, under the Charter of the United Nations, with regard to the financing of the United Nations Emergency Force and the Organization's operations in the Congo: advisory opinion of the International Court of Justice" at the seventeenth session<sup>3</sup> and the agenda item "Consideration of the financial situation of the Organization in the light of the report of the Working Group on the Examination of the Administrative and

<sup>2</sup> G A (XV), Annexes, a. i. 27 and 49/50; G A (XVI), Annexes, a. i. 26 and 55; G A (XVIII), Annexes, a. i. 19 and 59.

<sup>3</sup> G A (XVII), Annexes, a. i. 64.

Budgetary Procedures of the United Nations”<sup>4</sup> at the fourth special session, a number of Member States expressed the view that expenses incurred in the United Nations operations in the Middle East and the Congo were not “expenses of the Organization” under Article 17, but rather expenses the defraying of which should be based on Article 43. That Article, it was argued, provided that the manner of making available armed forces to the United Nations was to be decided by special agreement or agreements concluded between the Member States and the Security Council. It followed that such agreements would include the method of financing the use of such forces by the United Nations. In this connexion, it was also argued that the operations in the Congo had been conducted contrary to the provisions of Articles 43 and 48 since under those Articles only the Security Council had the power to conclude agreements with Member States in regard to the use of the armed forces made available to it and to determine which Member States were to participate in actions for the maintenance of international peace and security, such as those undertaken in the Congo. The participants in the Congo operations, it was pointed out, were chosen by the Secretary-General.

8. It was argued, on the other hand, that the apportioning of expenses related to the United Nations operations in the Middle East as well as in the Congo could not be based on Article 43, since those operations were not actions directed against a particular State or Government as envisaged in Article 42. The provisions of Article 43, it was further argued, had a bearing only on enforcement actions set out in Article 42. They could not be construed as being applicable to the lending of military assistance to a Government to enable it to maintain law and order and to secure the withdrawal of foreign forces, such as the assistance rendered by the United Nations to the Republic of the Congo. Furthermore, while dealing with the provision of forces for the maintenance of international peace and security, Article 43 did not refer to purely budgetary questions of financing such forces. It was also argued in this connexion that Article 43 which, since the inception of the United Nations had not been implemented owing to differences among the permanent members of the Security Council, was concerned with arrangements of a more or less permanent character for the maintenance of international peace and security and did not preclude the taking of such measures as were needed to preserve international peace and security. The Security Council resolution of 14 July 1960 on the Congo,<sup>5</sup> it was pointed out, called for such a measure.<sup>6</sup>

<sup>4</sup> G A (S-IV), Annexes, a. i. 7.

<sup>5</sup> S C resolution 143 (1960).

<sup>6</sup> For texts of relevant statements, see G A (XV), 5th Com., 803rd mtg.: Australia, para. 10; USSR, paras. 8, 45 and 46; 805th mtg.: United Kingdom, para. 8; 807th mtg.: Czechoslovakia, para. 8; Union of South Africa, para. 12; 808th mtg.: Canada, para. 10; 811th mtg.: Australia, para. 22; Pakistan, paras. 5 and 6; 816th mtg.: Portugal, paras. 4 and 5; 817th mtg.: India, para. 3; Pakistan, para. 54; 822nd mtg.: USSR, para. 16; 825th mtg.: USSR, para. 5; 828th mtg.: Czechoslovakia, para. 14; 829th mtg.: Bulgaria, para. 21; USSR, para. 31; 830th mtg.: Poland, paras. 4 and 6; 831st mtg.: Ireland,

9. The Secretary-General, after observing that the United Nations operations in the Congo did not constitute sanctions or enforcement actions as contemplated by Articles 42 and 43, stated that they were essentially internal security measures involving assistance to the Government in the maintenance of law and order taken by the Security Council at the invitation of the Government concerned to counteract a threat to international peace. No representative had ever suggested, he pointed out, that agreements under Article 43 should be concluded for that purpose between the Security Council and Member States. He also noted that he had stated in the past, without any objection being raised, that the resolutions adopted by the Security Council on the Congo could be considered as having been implicitly adopted under Article 40, as they did not involve coercive action against a Government under Articles 41 and 42 and were carried out at the invitation of the Government concerned.<sup>7</sup> The mere fact that military contingents had been used to maintain law and order and to prevent civil war in the Congo did not mean that it had been intended to apply either the letter or the spirit of Article 43. Some representatives, agreeing with the Secretary-General that the operations were of the nature envisaged in Article 40, noted that the provisions of Article 43 had therefore no application to the case under consideration. Even if the Security Council had the power to take political decisions, it was contended, the General Assembly, acting through the Fifth Committee, had still to apportion the expenses

para. 6; 832nd mtg.: Australia, para. 8; Hungary, para. 1; Iraq, paras. 25-27; 833rd mtg.: Netherlands, para. 25; Romania, para. 18; 834th mtg.: Norway, para. 10; 836th mtg.: USSR, para. 26; 837th mtg.: Mexico, para. 9 (as reproduced in G A (XV), Annexes, a. i. 49/50, A/C.5/L. 862, para. 47); 838th mtg.: Bulgaria, para. 14; 839th mtg.: Australia, para. 11; Secretary-General, para. 6; 841st mtg.: USSR, paras. 11 and 19; 842nd mtg.: Pakistan, paras. 32, 34, 35 and 38; Sweden, para. 20; USSR, para. 25; United Kingdom, para. 6; 843rd mtg.: Bulgaria, paras. 16 and 18; 845th mtg.: Mexico, para. 1 (as reproduced in G A (XV), Annexes, a. i. 49/50, A/C.5/868, paras. 9-12); Plen., 937rd mtg.: USSR, para. 21; 980th mtg.: United Kingdom, para. 138; 995th mtg.: USSR, para. 236. See also G A (XV), Annexes, a.i. 49/50, A/C.5/860, paras. 5 and 6; A/C.5/868, para. 9. G A (XVI): 5th Com., 902nd mtg.: USSR, para. 26; Plen., 1086th mtg.: USSR, paras. 102-104 and 155. G A (XVII), 5th Com., 961st mtg.: Denmark, para. 13; USSR, paras. 33, 34 and 36; 964th mtg.: Argentina, para. 25; 965th mtg.: Czechoslovakia, para. 19; Romania, paras. 4-6; 966th mtg.: Trinidad and Tobago, para. 36; 967th mtg.: Australia, para. 31; 968th mtg.: Albania, para. 41; Byelorussian SSR, para. 1; 969th mtg.: Ghana, para. 21; 971st mtg.: Iraq, paras. 5 and 6; 972nd mtg.: Bulgaria, para. 29. See also G A (XVII), Annexes, a.i. 64, A/C.5/957, para. 1; G A (S-IV), 5th Com., 985th mtg.: Mexico, para. 26; 987th mtg.: Romania, para. 18; 989th mtg.: Cuba, para. 29; Hungary, paras. 6 and 7; 990th mtg.: Czechoslovakia, para. 12; 992nd mtg.: Bulgaria, para. 3; 993rd mtg.: Federation of Malaya, para. 10; 994th mtg.: Byelorussian SSR, para. 7; 995th mtg.: Pakistan, para. 37; 997th mtg.: Poland, para. 6; 1002nd mtg.: Pakistan, para. 34; Plen., 1205th mtg.: USSR, para. 57. See also G A (S-IV), Annexes, a.i. 7, A/AC.113/5, para. 14; A/AC.113/15, paras. 12 and 23. G A (XVIII), 5th Com., 1009th mtg.: USSR, para. 4; 1010th mtg.: Cuba, para. 35; Ukrainian SSR, para. 26; 1052nd mtg.: USSR, para. 34; 1056th mtg.: Czechoslovakia, para. 38; 1057th mtg.: Cuba, para. 23; Plen., 1247th mtg.: Bulgaria, para. 52. See also G A (XVIII), Annexes a.i. 19, A/5680, para. 14.

<sup>7</sup> For the statement by the Secretary-General relating to Articles 41 and 42, see this *Supplement* under those Articles.

involved; Article 43 did not empower the Security Council to decide on financial arrangements.

10. It was argued in reply that Article 40 did not contain provisions for the use of force, that Articles 42 and 43 did not refer expressly to action against a State or Government and that if, in the case of a civil war the Security Council used force in order to maintain peace and security, it was still acting under Article 43. Moreover, it was contended, in the event that the Secretary-General should consider that Article 43 was not applicable, there was still Article 106 which stipulated that if Article 43 had not been applied, the permanent members of the Security Council should take decisions as the occasion arose. Reference was also made in this connexion to Articles 44, 46 and 47 in support of the argument that the Security Council in taking decisions relating to the maintenance of international peace and security was to be assisted by the Military Staff Committee, the functions of which were defined in those Articles.

11. In the course of the consideration of the item "Comprehensive review of the whole question of peace-keeping operations in all their aspects: (a) Report of the Special Committee on Peace-keeping Operations; (b) The authorization and financing of future peace-keeping operations", at the twentieth session<sup>8</sup> reference was frequently made to Article 43 with regard to the basis of future peace-keeping operations, and also in connexion with statements of some Member States which had expressed willingness to make available armed forces to the United Nations through agreements envisaged in Article 43. The constitutional discussions that ensued were not, however, related specifically to the scope or application of that Article.<sup>9</sup>

12. The advisory opinion on Article 17 (2) of the Charter rendered by the International Court of Justice in July 1962 also included views on the scope of Article 43, which had been invoked before the Court as one principal Article to support the view that expenses of the United Nations on the operations in the Middle East and the Congo were not expenses within the meaning of Article 17 (2). The Court expressed the following opinion in this connexion:<sup>10</sup>

"It has further been argued before the Court that Article 43 of the Charter constitutes a particular rule, a *lex specialis*, which derogates from the general rule in Article 17, whenever an expenditure for the maintenance of international peace and security is involved. Article 43 provides that Members shall negotiate agreements with the Security Council on its initiative, stipulating what 'armed forces, assistance and facilities, including

<sup>8</sup> G A (XX), Annexes, a. i. 101.

<sup>9</sup> For texts of relevant statements, see G A (XX), Spec. Pol. Com., 461st mtg.: Nepal, para. 26; 463rd mtg.: Colombia, para. 33; 466th mtg.: Czechoslovakia, para. 31; India, para. 14; 468th mtg.: Guatemala, para. 18; Venezuela, para. 13; 482rd mtg.: Ukrainian SSR, paras. 31 and 35; 483rd mtg.: Cuba, para. 64; 484th mtg.: Bulgaria, para. 7; 487th mtg.: Colombia, para. 34.

<sup>10</sup> Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962: ICJ, *Reports* 962, pp. 165-167. See also this *Supplement* under Article 17.

rights of passage, necessary for the purpose of maintaining international peace and security', the Member State will make available to the Security Council on its call. According to paragraph 2 of the Article:

'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.'

"The argument is that such agreements were intended to include specifications concerning the allocation of costs of such enforcement actions as might be taken by direction of the Security Council, and that it is only the Security Council which has the authority to arrange for meeting such costs.

"With reference to this argument, the Court will state at the outset that, for reasons fully expounded later in this opinion, the operations known as UNEF and ONUC were not *enforcement* actions within the compass of Chapter VII of the Charter and that therefore Article 43 could not have any applicability to the cases with which the Court is here concerned. However, even if Article 43 were applicable, the Court could not accept this interpretation of its text for the following reasons.

"There is nothing in the text of Article 43 which would limit the discretion of the Security Council in negotiating such agreements. It cannot be assumed that in every such agreement the Security Council would insist, or that any Member State would be bound to agree, that such State would bear the entire cost of the 'assistance' which it would make available including, for example, transport of forces to the point of operation, complete logistical maintenance in the field, supplies, arms and ammunition, etc. If, during negotiations under the terms of Article 43, a Member State would be entitled (as it would be) to insist, and the Security Council would be entitled (as it would be) to agree, that some part of the expense should be borne by the Organization, then such expense would form part of the expenses of the Organization and would fall to be apportioned by the General Assembly under Article 17. It is difficult to see how it could have been contemplated that all potential expenses could be envisaged in such agreements concluded perhaps long in advance. Indeed, the difficulty or impossibility of anticipating the entire financial impact of enforcement measures on Member States is brought out by the terms of Article 50 which provides that a 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 [preventive or enforcement] measures, shall have the right to consult the Security Council with regard to a solution of those problems'. Presumably in such a case the Security Council might determine that the overburdened State was entitled to some financial assistance; such financial assistance, if afforded by the Organization, as it might be, would clearly constitute part of the 'expenses of the Organization'. The economic problems could not have been covered in advance by a negotiated agreement

since they would be unknown until after the event and in the case of non-Member States, which are also included in Article 50, no agreement at all would have been negotiated under Article 43.

“Moreover, an argument which insists that all measures taken for the maintenance of international peace and security must be financed through agreements concluded under Article 43, would seem to exclude the possibility that the Security Council might act under some other Article of the Charter. The Court cannot accept so limited a view of the powers of the Security Council under the Charter. It cannot be said that the Charter has left the Security Council impotent in the face of an emergency situation when agreements under Article 43 have not been concluded.”

13. Article 43, as well as Articles 44, 45, 46 and 47, has also been invoked in the Security Council,<sup>11</sup> and in some communications, including those expressing the readiness of Member States to place armed forces at the disposal of the Security Council.<sup>12</sup> The reference to those Articles in these instances has, however, occasioned no constitutional discussion.

<sup>11</sup> In connexion with the report of the Secretary-General on developments relating to Yemen, see S C, 18th yr., 1039th mtg.: USSR, para. 20; in connexion with the situation in Southern Rhodesia, see S C, 20th yr., 1258th mtg.: Mali, para. 52; 1259th mtg.: Ivory Coast, para. 69; and S C, 21st yr., 1281st mtg.: Uruguay, para. 35; 1285th mtg.: Argentina, para. 17.

<sup>12</sup> See G A (XIX), Annexes, No. 21, A/5721, A/5821 and A/5839.