

ARTICLE 53

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ARTICLE 53

TEXT OF ARTICLE 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

INTRODUCTORY NOTE

1. During the period under review, there was no instance of the utilization by the Security Council of any regional organization for enforcement action under its authority, nor was there any instance of constitutional discussion in the Council related to the adoption of a decision having a bearing on the interpretation or application of Article 53. Accordingly, this study consists only of a Summary of Practice.

2. The Summary of Practice includes material bearing on the "enemy state" provisions of Article 53.

3. It also contains some material bearing on the question of regional application of enforcement measures and on the definition of "aggression".

SUMMARY OF PRACTICE

4. Explicit references were made to Article 53 in proceedings of the General Assembly and in its committees in connexion with various items under consideration. The Article was cited either in terms of the question of the relevance of its "enemy state" provisions to the present-day situation or in the context of regional application of enforcement measures and the requirement of authorization of such action by the Security Council.

5. In the first instance, the observation was made repeatedly that provisions of Articles 53 and 107, which were based on the situation prevailing at the end of the Second World War, were outdated, discriminatory, and no longer served any useful purpose; they should, therefore, be deleted from the Charter. It was noted that the "enemy state" provisions of Article 53, for which there was no longer justification, were anachronistic in view of the development in the international situation since the Second World War, in particular the admission of the so-called "enemy states" to the United Nations as peace-loving States and the conclusion of peace treaties and other instruments among those concerned. It was further maintained that not only were these provisions obsolete and irrelevant but that they posed a latent threat in so far as they could conceivably be invoked in support of gross violations of international peace and security; they should, therefore, be eliminated, which would in no way detract from the value of the Charter.¹

¹ See, for example, in connexion with the general debate: G A (25), Plen., 1841st mtg.: Brazil, para. 6; 1842nd mtg.: Japan, para. 80; 1855th mtg.: Ecuador, para. 103. In connexion with celebration of the twenty-fifth anniversary of the United Nations: G A (25), Plen., 1874th mtg.: Malta, para. 81; 1875th mtg.: Jamaica, para. 46. In connexion with the general debate: G A (26), Plen., 2052nd mtg.: Colom-

6. The view was expressed, on the other hand, that the reference in the Charter to "enemy states" was in no sense an anachronism as it was a reminder of the circumstances in which the Organization had been established and that it should, therefore, be retained as a historical fact. That reference, it was further noted, had not prevented the development of the United Nations or the admission to membership of the two present German States, Italy and Japan, which should no longer be identified with those "enemy states".²

bia, para. 72; 2061st mtg.: Malta, para. 243. In connexion with the report of the *Ad Hoc* Committee on the Charter of the United Nations and with strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and promotion of the rules of international law in relations between States: G A (30), 6th Com., 1561st mtg.: Philippines as Rapporteur of the *Ad Hoc* Committee on the Charter of the United Nations, para. 17; 1564th mtg.: Sierra Leone, para. 41; 1569th mtg.: Sweden, para. 19; 1570th mtg.: Sudan, para. 5; 1571st mtg.: Japan, para. 16; 1572nd mtg.: New Zealand, para. 51; G A (32), 6th Com., 23rd mtg.: Brazil, para. 28; 29th mtg.: Kuwait, para. 18. In connexion with the conclusion of a world treaty on the non-use of force in international relations: G A (32), 6th Com., 65th mtg.: Mexico, para. 5; 67th mtg.: Spain, para. 113. In connexion with the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization: G A (33), 6th Com., 29th mtg.: Iran, para. 6.

² In connexion with two agenda items entitled respectively "Report of the *Ad Hoc* Committee on the Charter of the United Nations" and "Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States: reports of the Secretary-General", see: G A (30), 6th Com., 1568th mtg.: USSR, para. 25; in connexion with the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization: G A (31), 6th Com., 48th mtg.: Byelorussian SSR, para. 59.

7. With regard to the definition of the expression "enemy states" in Article 53, the view was also expressed that the definition in Article 53 (2) should be changed to apply to any state which engaged in armed or economic aggression against another independent and sovereign State, in opposition to an act of self-determination or of exercise of sovereignty by the latter's people through its Government.³

8. The question of how the wording of Article 53 could be amended occasioned comments in the Sixth Committee during the consideration of the broader question of the need for Charter review. The observation was made that, while the Charter had been drafted with a view to bringing it up to date and eliminating and Chapter XVII, the possibility of future evolution had also been contemplated by virtue of Article 109. Accordingly, it should be re-examined and reappraised with a view to bringing it up-to-date and eliminating obsolete provisions, such as the references to "enemy state" in Article 53.⁴ It was stressed, on the one hand, that while the Charter had proved sufficiently flexible to adapt to new circumstances in some minor respects, there were certain changes which could not be made through interpretation, resolution or piecemeal amendments; changing the "enemy state" provisions of Article 53, for example, required a review of the Charter.⁵ The suggestion was made, on the other hand, that possibly the wording of Articles 53 and 107 could be amended without recourse to a general review or a conference. It was further suggested that it might be instructive to bear in mind as a useful model the process whereby the Charter had been amended with regard to the size of the Security Council and the size of the Economic and Social Council.⁶ In this connexion, the observation was made, however, that simple amendment of various provisions of the Charter, such as Articles 53, 107 and 109 would prove to be insufficient, as had been the case with the amendments adopted by the General Assembly in 1963, 1965 and 1971 in connexion with Articles 23, 27, 61 and 109, to align the Charter with present-day circumstances.⁷

9. Article 53 was also cited in support of the argument that the use of the expression "aggressive wars" in a draft resolution was not inappropriate since the word "aggression" appeared in the Charter, for example in Article 53, which made reference to "aggressive policy" and "further aggression".⁸

10. In the context of regional application of enforcement measures, Article 53 was cited in connexion with the following arguments: that the suggestion to utilize regional instruments for the resolution of conflicts in the particular region before the Security Council would be involved did not mean that the Council itself, as provided for in Article 53, might not make use of regional agreements if it should deem that to be more appropriate;⁹ that regional arrangements and agencies must be

consistent with the purposes and principles of the United Nations, and that enforcement action applied under or by such arrangements and agencies were subject to the provisions of Article 53;¹⁰ that the purpose of Article 53 was to associate regional bodies with enforcement action which the Security Council might take in order to resolve certain disputes;¹¹ that *détente* in no way excluded the legitimate role that traditional alliances and friendships must play in maintaining international security, in accordance with Articles 51, 52, 53 and 54 of the Charter;¹² that the principle of non-use of force was linked not only to the peaceful settlement of disputes but also to the machinery of collective security, including regional arrangements as set forth in Articles 52 and 53 of the Charter, without overlooking self-defence and other fundamental principles.¹³

11. It should also be noted that Article 53 was mentioned in the proceedings of the Sixth Committee at the twenty-fifth through twenty-ninth sessions of the General Assembly in connexion with the question of defining aggression,¹⁴ and in the Special Committee on the Question of Defining Aggression¹⁵ at its 1970-1974 sessions. A final decision was taken by the General Assembly regarding this question on 14 December 1974 when the Assembly, by its resolution 3314 (XXIX) approved the Definition of Aggression drafted by the Special Committee.¹⁶ The Definition consisted of eight articles, one of which, namely, Article 6, might be considered as relating directly to Article 53. That Article states that nothing in the Definition of Aggression shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

12. The question of whether cases in which the use of force was lawful should include cases deriving from the application of Article 53 was considered by the Special Committee in connexion with its deliberations on the three main proposals¹⁷ before it on the basis of which

¹⁰In connexion with consideration of measures for the maintenance and strengthening of international peace and security in Latin America: S C (28), 1697th mtg.: Chile, para. 94.

¹¹In connexion with consideration of the report of the Security Council: G A (28), Plen., 2205th mtg.: Tunisia, para. 151.

¹²In connexion with deepening and consolidation of international *détente* and prevention of the danger of nuclear war: G A (32), 1st Com., 53rd mtg.: France, p. 57.

¹³In connexion with the report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations: G A (33), 6th Com., 57th mtg.: France, para. 34.

¹⁴G A (25), Annexes, a.i. 87, A/8171; G A (26), Annexes, a.i. 89, A/8525; G A (27), Annexes, a.i. 88, A/8929; G A (28), Annexes, a.i. 95, A/9411; G A (29), Annexes, a.i. 86, A/9890.

¹⁵G A (25), Suppl. No. 19 (A/8019); G A (26), Suppl. No. 19 (A/8419); G A (27), Suppl. No. 19 (A/8719); G A (28), Suppl. No. 19 (A/9019); G A (29), Suppl. No. 19 (A/9619).

¹⁶Text annexed to G A resolution 3314 (XXIX).

¹⁷The Special Committee had before it three draft proposals which had been submitted during the 1969 session, namely: the draft proposal of the USSR (A/AC.134/L.12); the thirteen-Power draft proposal [by Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay, Yugoslavia] (A/AC.134/L.16 and Add.1 and 2); and the six-Power draft proposal [by Australia, Canada, Italy, Japan, the United Kingdom and the United States] (A/AC.134/L.17 and Add.1 and 2) contained in G A (25), Supplement No. 19 (A/8019), annex I. Paragraph 6 of the USSR draft proposal provided *inter alia* that nothing in the draft definition should prevent the use of armed force in accordance with the Charter of the United Nations. Paragraph 4 of the thirteen-Power draft proposal stipulated that enforcement action or any use of armed force by regional arrangements or agencies may only be resorted to if there was a decision to that effect by the Security Council acting under Article 53 of the Charter. Paragraph III of the six-Power proposal stated that the use of force in the exercise of the inherent right of individual or collective self-defence, or pursuant to decisions of or authorization by competent United Nations organs or regional organizations consistent with the Charter of the United Nations, did not constitute aggression.

³G A (31), 6th Com., 49th mtg.: Guinea, para. 49.

⁴G A (25), 6th Com., 1238th mtg.: Philippines, para. 8; 1240th mtg.: Spain, para. 4 and Italy, para. 6; G A (26), 6th Com., 1377th mtg.: Ghana, para. 20 and Zambia, para. 39; G A (29), 6th Com., 1517th mtg.: Brazil, para. 10 and Ghana, para. 24; G A (31), 6th Com., 45th mtg.: Uganda, para. 8; 47th mtg.: Ghana, para. 42.

⁵G A (26), 6th Com., 1376th mtg.: Brazil, para. 25.

⁶G A (25), 6th Com., 1239th mtg.: Lebanon, para. 28; 1240th mtg.: United States, para. 16.

⁷G A (31), 6th Com., 46th mtg.: Peru, para. 5.

⁸In connexion with the item regarding respect for human rights in armed conflicts: G A (25), 3rd Com., 1798th mtg.: USSR, para. 24. For the text of the draft resolution in question, see: A/C.3/L.1798 contained in G A (25), Annexes, a.i. 47, A/8178, para. 27.

⁹In connexion with the general debate: G A (25), Plen., 1846th mtg.: Colombia, para. 53.

the consolidated text of the draft definition of aggression was arrived at. While there was general agreement that it was essential to include in the definition a reference to the legitimate uses of force in accordance with the Charter, there was a lack of agreement as to the substance and form of that reference.¹⁸ More specifically, there was a divergence of views on the question whether a regional organization which was entitled to exercise the right of collective self-defence was also entitled to take enforcement measures against one of its members without the authorization of the Security Council.¹⁹

13. It was maintained, on the one hand, that since Article 51 recognized the right of collective self-defence, it allowed regional organizations whose purpose was to establish a collective system of defence to use force in carrying out that objective. It was further pointed out that, while Article 53 made enforcement action by regional agencies contingent upon the authorization of the Security Council, it did not specify whether such authorization should be anterior or posterior, expressed or implied: therefore, it was arguable that in certain cases²⁰ that authorization might be posterior or implied.²¹

14. It was maintained, on the other hand, that the use of force under regional arrangements or by regional bodies would be legitimate only after a prior decision to that effect by the Security Council, acting under Arti-

cle 53 of the Charter.²² Any action inconsistent with Article 53 of the Charter, it was noted, would be illegal under Article 103.²³

15. The opinion was expressed also that a distinction should be made between authorization of the use of force and the taking of enforcement measures. It was argued that regional agencies could authorize the use of force in so far as the use involved was compatible with Article 2 (4) of the Charter, for example, in collective self-defence as a reaction against armed aggression; prior authorization of the Security Council was required, however, in order for the regional agreements to apply enforcement action whose purpose was to maintain international peace and security.²⁴

16. Furthermore, the observation was made that, while Article 53 authorized the Security Council to utilize regional arrangements or agencies for enforcement action, it did not indicate whether such enforcement action included the use of armed force.²⁵ It was pointed out that enforcement action did not necessarily involve the use of armed force; it consisted basically of the application of sanctions, which might be diplomatic, economic and financial or military in nature.²⁶

¹⁸See, for example, G A (25), 6th Com., 1203rd mtg.: Iran, para. 45; G A (29), Supplement No. 19 (A/9619), annex I, p. 24; United States; G A (29), 6th Com., 1474th mtg.: Chile, para. 18; 1482nd mtg.: Costa Rica, para. 30.

¹⁹See footnote 15 above.

²⁰Reference was made to the inter-American system wherein, according to the provisions of Chapter V of the Charter of the Organization of American States and the provisions of the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947, the Organ of Consultation, consisting of the Meeting of Consultation of Ministers of Foreign Affairs, could decide to characterize an act as aggression and agree on whatever measures, including the use of armed force, it considered appropriate to restore the peace of the continent.

²¹G A (25), Supplement No. 19 (A/8019), para. 78; G A (26), Supplement No. 19 (A/8419), para. 42; G A (26), Annexes, a.i. 89; A/8525, para. 37; G A (27), Supplement No. 19 (A/8719), Appendix A, p. 16: Legal uses of force, Alternative 2; G A (29), Supplement No. 19 (A/9619), Annex I, p. 28: Colombia; G A (29), 6th Com., 1480th mtg.: United States, para. 72.

²²G A (25), Supplement No. 19 (A/8019), paras. 44, 79; G A (25), Annexes, a.i. 87, A/8171, para. 33; G A (25), 6th Com., 1202nd mtg.: Iraq, para. 18; 1206th mtg.: Afghanistan, para. 51; Cuba, para. 69; Czechoslovakia, para. 62; USSR, para. 7; 1208th mtg.: Austria, para. 56; 1209th mtg.: Ecuador, para. 39; Yugoslavia, para. 16; G A (26), Supplement No. 19 (A/8419), para. 42; G A (26), Annexes, a.i. 89, A/8525, para. 37; G A (26), 6th Com., 1270th mtg.: Byelorussian SSR, para. 43; 1271st mtg.: Iraq, para. 22, 1273rd mtg.: Cuba, para. 33; Czechoslovakia, para. 44; G A (27), Supplement No. 19 (A/8719), appendix A, p. 16: Legal Uses of Force, Alternative 1 and Appendix B, pp. 20-21, USSR proposals regarding legal uses of force; G A (27), Annexes, a.i. 88, A/8929, para. 32; G A (27), 6th Com., 1349th mtg.: Cuba, para. 30; Romania, para. 50; 1352nd mtg.: Afghanistan, para. 21; Ecuador, para. 11; G A (28), Annexes, a.i. 95, A/9411, para. 31, 33; G A (28), 6th Com., 1441st mtg.: Cuba, para. 29, G A (29), 6th Com., 1479th mtg.: Cuba, para. 43; G A (29), Supplement No. 19 (A/9619), annex I: Romania; p. 18; Yugoslavia, p. 26.

²³G A (25), 6th Com., 1209th mtg.: Ecuador, para. 39; G A (26), 6th Com., 1273rd mtg.: Cuba, para. 33.

²⁴G A (26), Annexes, a.i. 89, A/8525, para. 37.

²⁵G A (25), Supplement No. 19, A/8019, para. 80.

²⁶G A (25), Annexes, a.i. 87, A/8171, para. 33; G A (25), 6th Com., 1206th mtg.: Afghanistan, para. 51.