

ARTICLE 10

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TEXT OF ARTICLE 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

INTRODUCTORY NOTE

1. No express reference to Article 10 was made in the resolutions adopted by the General Assembly at its ninth and tenth sessions. In the debates of the General Assembly, Article 10 was frequently invoked together with other Articles of the Charter which define the powers and functions of the Assembly. In most cases, Article 10 was referred to as an additional basis for actions taken by the General Assembly under the more specific provisions of other Articles.

2. In the period under review, Article 10 was mentioned during the proceedings leading to the adoption by the General Assembly of certain resolutions which appear to bear more directly on Articles 11 and 14 (such as resolutions on the reports of the First and Ad Hoc Political Committees and resolutions of a political character adopted without reference to a committee) or which are clearly in application of other Articles (such as resolutions concerning the admission of new Members under Article 4 or the resolution concerning the proposal to call a General Conference of the Members of the United Nations for the purpose of reviewing the Charter under Article 109). Such resolutions are dealt with under the pertinent Articles in this Supplement. The remaining resolutions bearing upon Article 10 are listed in the annex to the present study along with the corresponding agenda items. No constitutional significance

should be attached to this classification which is merely a convenient means of presenting the material.

3. As during the period covered in the Repertory, Article 10 has often been cited in support of the competence of the General Assembly against objections based on Article 2 (7) that the competence of the Assembly to discuss and to make recommendations on a particular subject was limited. While arguments which appear to shed light on the constitutional questions related to Article 2 (7) are dealt with in the study of Article 2 (7), arguments bearing upon Article 10 are dealt with in the present study as indicated below.

4. In four instances, arguments based on Article 10 were advanced in reply to objections that the General Assembly was not competent by reason of the provisions of Article 2 (7). These arguments which bear upon the term "within the scope of the Charter" are summarized under section II, A of the Analytical Summary of Practice. There has been no discussion during the period under review in connexion with the question of the scope of recommendations of the General Assembly "relating to the powers and functions of any organs provided for in the present Charter" (section II, B).

I. GENERAL SURVEY

5. The annex to the present study lists agenda items considered by the General Assembly and the resolutions adopted in connexion therewith which, as explained in the Introductory Note, appear to have a bearing upon Article 10.

6. The practice of the General Assembly in addressing recommendations in its resolutions has been summarized in the following two paragraphs.

7. Recommendations have been addressed by the General Assembly as follows: to all States Members of the United Nations and of the specialized agencies; 1/ to all Governments; 2/ to all Governments and to individuals; 3/ to the Governments of Member and non-member States; 4/ to the Governments of Member States; 5/ to the Governments "of the area"; 6/ to the Governments concerned; 7/ to the Government of a specific Member State. 8/

8. The General Assembly has also addressed recommendations to the specialized agencies; 9/ to "the interested specialized agencies"; 10/ to "private organizations" 11/ and to "all concerned". 12/

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- 1/ Resolution 810 B (IX), para. 3.
 - 2/ Resolution 819 (IX), para. 1.
 - 3/ Resolution 916 (X), para. 7.
 - 4/ Resolutions 818 (IX), para. 9; 916 (X), para. 9.
 - 5/ Resolution 816 (IX), para. 2.
 - 6/ Resolution 818 (IX), para. 3; 916 (X), para. 3.
 - 7/ Resolution 912 II (X), para. 6.
 - 8/ Resolutions 820 (IX), paras. 4 and 5; 917 (X), paras. 3, 5 and 6.
 - 9/ Resolutions 912 I (X), para. 6; 913 (X), para. 5.
 - 10/ Resolution 810 B (IX), para. 7.
 - 11/ Resolution 916 (X), para. 6.
 - 12/ Resolution 913 (X), para. 4.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the application of the term "within the scope of the Charter" in deciding whether a particular matter may be discussed

9. The references to Article 10 were mainly in reply to objections made under Article 2 (7) to the competence of the General Assembly; these references were usually linked to Articles 1, 14, 55 and 56. In one case Articles 11 (2), 34 and 35 also were quoted in connexion with Article 10 to support the view that the item was within the competence of the General Assembly.

10. The constitutional discussion bearing upon the term "within the scope of the Charter" took place in connexion with the following questions: (1) treatment of people of Indian origin in the Union of South Africa; 13/ (2) the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa; 14/ (3) application, under the auspices of the United Nations, of the principle of equal rights and self-determination of peoples in the case of the population of the Island of Cyprus; 15/ and (4) the question of Algeria. 16/ These discussions are summarized below. 17/

Treatment of people of Indian origin in the Union of South Africa

11. When the item "treatment of people of Indian origin in the Union of South Africa" was considered at the ninth session of the General Assembly, the provisions of Article 10 were invoked in reply to the objection based on Article 2 (7) that the Assembly was not competent to consider the question. Thus, it was maintained that in view of Article 1 (3) and (4) and Article 2 (3) of the Charter, the Assembly was fully competent under Article 10 to consider the question. Viewed as a dispute between States, the question came under the provision empowering the General Assembly to recommend measures for peaceful settlement; and viewed as a violation of human rights it also came under the Charter. It was held further that, if measures such as a request to the United Nations to express its opinion on a question or a request to put into practice the principles of the Charter were to be taken as an intervention in the domestic jurisdiction of a State, Articles 10, 11 and 13 could never have been included in the Charter. It was also pointed out that, inasmuch as the question of the treatment of people of Indian origin in the Union of South Africa had been the subject

13/ G A (IX), item 22; G A (X), item 20. For resolutions 816 (IX) and 919 (X) adopted by the General Assembly in connexion with this item, see in this Supplement under Article 14.

14/ G A (IX), item 23; G A (X), item 23. In connexion with this item, the General Assembly adopted resolutions 820 (IX) and 917 (X).

15/ G A (IX), item 62; by resolution 814 (IX), the General Assembly, considering that, for the time being, it did not appear appropriate to adopt a resolution on the question of Cyprus, decided not to consider the item further; G A (X), item 58 of the provisional agenda (see annexes, a.i. 8, p. 4, A/BUR/141); at its 521st meeting on 23 September 1955, the General Assembly adopted, by 28 votes to 22, with 10 abstentions, the recommendation of the General Committee not to include this item in its agenda (G A (X), Plen., 521st mtg., para. 167).

16/ G A (X), item 64; for resolution 909 (X) adopted by the General Assembly in connexion with this item, see under Article 11, annex II, C, 6.

17/ For treatment of these cases, see also in this Supplement under Articles 2 (7), 14 and 55.

of much discussion and numerous agreements between the parties concerned, it could not be alleged that the matter fell within domestic jurisdiction. 18/

12. During the consideration of the same question at the tenth session of the General Assembly, references to Article 10 were made in conjunction with Articles 1, 13, 55 and 56, and the arguments of those representatives who supported the competence of the General Assembly on this question are summarized below.

13. A Member State which by signing the Charter had subscribed to the aims set forth in the Preamble, in Article 55 and in several other Articles of the Charter to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion could hardly claim that an action by the United Nations to investigate racial discrimination in its territory, or to urge States to seek a solution to a dispute concerning racial discrimination through direct negotiations, constituted interference in its essentially domestic affairs and was contrary to Article 2 (7) of the Charter.

14. Moreover, under Article 56 the Member States had pledged themselves to take joint or separate action in co-operation with the United Nations for the achievement of the purposes set forth in Article 55. It followed that in view of the provisions of Articles 1, 10, 55 and 56 of the Charter, by which all Member States were bound, the matter at issue was clearly an international dispute because it involved a violation of international treaty obligations and was thus indisputably within the competence of the United Nations. 19/

The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa

15. In connexion with the consideration of "the question of race conflict in South Africa resulting from the policy of apartheid of the Government of the Union of South Africa", it was said at the ninth session of the General Assembly that Article 55 imposed on Member States the obligation to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race. The General Assembly was therefore entitled to look into any evasion of that obligation. Since the situation resulting from the apartheid policy pursued by the Government of the Union of South Africa came indisputably under the Charter, the Assembly was fully competent under Article 10 to study it. Articles 55 and 56 and Articles 1 (3) and 14 of the Charter left no doubt concerning the Assembly's competence. 20/

18/ For texts of relevant statements, see G A (IX), Ad Hoc Pol. Com., 10th mtg.: Brazil, para. 15; India, para. 25; 13th mtg.: Ecuador, paras. 36 and 39; Greece, para. 9; USSR, para. 33; 14th mtg.: France, paras. 37-39.

19/ For texts of relevant statements, see G A (X), Gen. Com., 102nd mtg.: India, para. 8; New Zealand, para. 10; United States, para. 9; Ad Hoc Pol. Com., 33rd mtg.: USSR, para. 15; 34th mtg.: Argentina, para. 29; Ecuador, para. 3; El Salvador, para. 19; Pakistan, para. 5; Philippines, para. 31; Poland, para. 14. Plen., 530th mtg.: India, paras. 237, 242-244 and 249.

20/ For texts of relevant statements, see G A (IX), Ad Hoc Pol. Com., 45th mtg.: Burma, para. 3; Mexico, para. 25; 47th mtg.: Iran, para. 9.

16. This agenda item was again considered during the tenth session of the General Assembly. The policy of apartheid, it was said, was contrary to the purposes and principles of the Charter, since racial discrimination was not a matter essentially within the domestic jurisdiction of States. It was also contended that by acceding to the Charter, Member States had assumed responsibilities for human rights. Consequently, the General Assembly had every right to ask a Member State that practised racial discrimination to reconsider its policy according to the principles of the Charter. On the other hand, the General Assembly had no authority to recommend to that State that it take specific action which lay entirely within the discretion of the State. The General Assembly could only point the road; it could not lay down directives. It was also argued that the Charter, being a treaty, was binding on its signatories; it was the foundation on which the international community was to be organized; it established a number of obligations and required that certain rights should be respected. The General Assembly had previously adopted various resolutions, including resolution 272 (III) concerning Bulgaria and Hungary, and resolution 294 (IV) concerning Romania as well, relating to the observance of human rights and fundamental freedoms. Its previous decisions showed that in the present instance, which also involved such rights, the General Assembly was empowered to deal with the matter and to make recommendations. Article 2 set out the principles of the United Nations; paragraph 7, the domestic jurisdiction clause, constituted a reservation, to be read, however, in conjunction with paragraph 2 which required all Members to fulfil their obligations in good faith.

17. The fulfilment of its obligations by a Member State came within the scope of Article 14, and therefore the Charter. Consequently, under Article 10 the General Assembly was competent to discuss the question and to make recommendations. The powers of the General Assembly were stated in Article 10 and no other body was competent to decide the issue. 21/

Application, under the auspices of the United Nations, of the principle
of equal rights and self-determination of peoples in the case of the
population of the Island of Cyprus

18. During the consideration of this item at the ninth session of the General Assembly, the question arose whether a particular matter was "within the scope of the Charter" and the competence of the Assembly. It was contended that under Article 10 the Assembly might also consider any question relating to the purposes and principles as set out in Chapter I. Further, the question came under Article 10 not only because it fell essentially within the scope of the Charter but also because it related to the functions and powers of the General Assembly, which was, therefore, entitled to discuss it as well as to recommend specific courses of action, and its provisions could not be interpreted in isolation. The Charter was an indivisible

21/ For texts of relevant statements, see G A (X), Gen. Com., 102nd mtg.: India, para. 8; New Zealand, para. 10; United States, para. 9; Ad Hoc Pol. Com., 5th mtg.: Sweden, para. 2; United Kingdom, para. 25; 6th mtg.: Liberia, paras. 9 and 10; 7th mtg.: Costa Rica, para. 8; Ecuador, paras. 25 and 26; Egypt, para. 5; Iraq, paras. 9 and 10; Mexico, para. 18; 8th mtg.: Afghanistan, paras. 28 and 32; China, para. 51; Cuba, para. 22; Guatemala, para. 2; New Zealand, para. 48; 9th mtg.: Pakistan, paras. 2-4; 10th mtg.: Chile, para. 25; Panama, para. 9; Uruguay, para. 17; 11th mtg.: Bolivia, para. 41; Poland, paras. 17 and 18; 12th mtg.: India, paras. 27 and 30; Lebanon, para. 21; Plen., 551st mtg.: India, para. 24.

instrument. It was designed to regulate the activities of the United Nations in pursuance of the purposes stated in Article 1 and, therefore, it was neither logical nor possible to interpret the various provisions out of context, and in particular without taking into account the provisions of Article 10. Article 2 (7) could have no meaning unless it was linked with Article 10, which was the keystone of the General Assembly's jurisdiction. The Charter established the jurisdiction of the General Assembly on an extremely wide basis. The proceedings of the San Francisco Conference clearly showed that the authors of the Charter had had no intention of giving Article 2 (7) the paramount importance attached to it by those who would like the Assembly to confine itself to the adoption of general and merely declaratory recommendations on issues likely to have repercussions for their own territories or their own nationals. To attach more importance to Article 2 (7) than to Article 10 would be tantamount to restricting the most important and representative organ of the United Nations to a secondary role and to prohibiting it from considering cases affecting the purposes and principles of the Charter in matters so fundamental as the right of peoples to self-determination. 22/

19. During the debate on the inclusion of the same item in the agenda of the General Assembly at its tenth session, it was again contended that the question under consideration was within the scope of the Charter and that since on many occasions the General Assembly stated that the rights of peoples to self-determination formed the keystone of the whole structure of human rights, the Cyprus question which raised the principle of freedom and the implementation of the right of a people to self-determination was unquestionably within the competence of the General Assembly. The United Nations could not refrain from hearing, analysing and discussing subjects which were brought before it in accordance with the purposes laid down in the Charter concerning respect for the principle of self-determination of peoples.

20. One representative contended that, for Cyprus, as for any other Non-Self-Governing Territory, the administering power was required to fulfil the obligations laid down in Article 73 b of the Charter. In view of the political aspirations of the people of Cyprus, and of subsequent developments on the Island, it could be affirmed that Article 73 b was relevant to the issue which was the fulfilment of an obligation under the Charter. The competence of the General Assembly, therefore, could not be denied. The question further involved the observance of Article 1 (2) which enjoined "respect for the principle of equal rights and self-determination of peoples".

21. The same representative contended further that there could no longer be any foundation for the claim that the Cyprus question was a domestic affair, since it had been discussed at the ninth session of the General Assembly and the London Conference in which three sovereign Member States had taken part. By taking the initiative for, and participating in, a tripartite conference, the United Kingdom Government had itself acknowledged the international nature of the Cyprus question. However, the Cyprus question also had all the characteristics of an international dispute as had been clearly shown by the differences at the London Conference where its participants had failed to reach agreement on the question. In accordance with the spirit and letter of Chapter VI of the Charter, particularly Article 35, the question had been

22/ For texts of relevant statements see G A (IX), Gen. Com., 93rd mtg.: France, para. 30; Greece, paras. 7 and 8, 10, 39-43; Plen., 477th mtg.: Greece, para. 170; 514th mtg.: El Salvador, para. 266; Greece, para. 286; Turkey, para. 258; United Kingdom, para. 270; 1st Com., 750th mtg.: Greece, para. 26.

brought to the attention of the General Assembly after the procedure laid down in Article 33 (1) had been followed without result. The General Assembly would be failing in its obligations if it refused to consider a question relating to the performance of international obligations which according to Article 34 of the Charter "might lead to international friction or give rise to a dispute".

22. Another representative stated that it followed from Articles 34 and 35 (1) that any Member State was entitled to propose the inclusion of an item in the agenda of the General Assembly, and if the proposed item related to an international dispute or a situation which might lead to international friction or give rise to a dispute, the General Assembly should approve its inclusion. 23/

The question of Algeria

23. The inclusion of the question of Algeria in the agenda was discussed during the tenth session of the General Assembly and it was objected that in view of Article 2 (7) the General Assembly was not competent to consider this question.

24. Against this objection it was argued that in the light of the provisions of Articles 14 and 55, the General Assembly was competent to deal with the question under Articles 10, 11 (2), 34 and 35.

25. It was maintained that the obligation on the part of a State to respect the human rights and fundamental freedoms of all persons under its jurisdiction had become a duty under international law in accordance with the Charter. Further, the United Nations was a centre for harmonizing actions of nations for the attainment of common ends, which included the promotion of and respect for human rights and the fundamental freedoms for all, without distinction as to race, sex, language and religion. In the question of Algeria, the restitution of human rights as well as the right of self-determination of peoples were involved. Therefore, the General Assembly was the proper forum in which the international problem of Algeria should be considered since it could not at all be regarded as a matter within the sphere of domestic jurisdiction. It was the duty of the General Assembly not only to assist the people of Algeria in securing their rights but to assist France in finding a just solution of this question in accordance with the purposes and principles of the Charter.

26. It was further contended that this question involved the maintenance of peace and security in Algeria, and therefore the preservation of international peace. The situation in Algeria had become one which might lead to international friction within the meaning of the Charter and it could develop into a threat to the peace. It was, therefore, the duty of the General Assembly to take up the matter in order to bring about, in accordance with the principles of the Charter, a peaceful settlement with a view to the interests of all concerned and the legitimate rights of the Algerian people. It was also stated that if the situation prevailing in Algeria were to continue and if the French Government refused to seek a satisfactory arrangement of this question, the friendly relations between France and the countries which asked for

23/ For texts of relevant statements, see G A (X), Gen. Com., 102nd mtg.: Poland, para. 47; USSR, para. 40; Plen., 521st mtg.: Bolivia, para. 183; Ecuador, paras. 161, 162, 164; Greece, paras. 13, 16, 17, 138; Guatemala, paras. 168-173; India, paras. 128 and 129; Iraq, paras. 135 and 137; Peru, paras. 186-188; Poland, paras. 109-114; Thailand, paras. 102, 104; Turkey, paras. 65 and 94; USSR, para. 125; United States, paras. 121-123.

the inclusion of the item on the agenda would be impaired. It, therefore, followed that by refusing to include the item on its agenda, the General Assembly would be refusing to exercise the functions and powers which it had under the Charter. 24/

**** B. The question of the scope of recommendations of the General Assembly "relating to the powers and functions of any organs provided for in the present Charter"**

ANNEX

Tabulation of some agenda items bearing upon Article 10 a/

<u>Title of the item</u>	<u>Assembly session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East	(IX)	18	818 (IX)
The question of race conflict in South Africa resulting from the policies of <u>apartheid</u> of the Government of the Union of South Africa: report of the United Nations Commission on the Racial Situation in the Union of South Africa	(IX)	23	820 (IX)
The question of West Irian (West New Guinea)	(IX)	61	No resolution was adopted
International co-operation in developing the peaceful uses of atomic energy: report of the United States of America	(IX)	67	810 (IX)
Prohibition of propaganda in favour of a new war	(IX)	69	819 (IX)
Complaint of violation of the freedom of navigation in the area of the China seas	(IX)	71	821 (IX)
Question of the representation of China in the General Assembly <u>b/</u>	(IX)		903 (IX)

24/ For texts of relevant statements see G A (X), Gen. Com., 103rd mtg.: Egypt, para. 11; India, para. 53; Iraq, para. 26; Thailand, para. 43; Plen., 525th mtg.: Egypt, paras. 2-13; Iraq, paras. 96 and 97; Pakistan, paras. 62 and 65; Saudi Arabia, paras. 131, 141, 153; Syria, paras. 25, 31 and 32; 529th mtg.: Indonesia, paras. 111, 115, 123; Lebanon, paras. 169; 174-177; Thailand, paras. 134 and 135; 530th mtg.: Afghanistan, paras. 84-86; India, paras. 115, 128, 139, 140, 153; Liberia, para. 106; USSR, paras. 3 and 4; Yemen, paras. 25 and 26; 548th mtg.: Egypt, para. 55, India, paras. 142 and 143; Lebanon, para. 69; Mexico, para. 88; Syria, para. 17.

<u>Title of the item</u>	<u>Assembly session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Peaceful uses of atomic energy: (a) International Conference on the Peaceful Uses of Atomic Energy: report of the Secretary-General; (b) Progress in developing international co-operation for the peaceful uses of atomic energy: reports of Governments	(X)	18	912 (X)
Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East	(X)	22	916 (X)
The question of race conflict in South Africa resulting from the policies of <u>apartheid</u> of the Government of the Union of South Africa: report of the United Nations Commission on the Racial Situation in the Union of South Africa	(X)	23	917 (X)
Effects of atomic radiation: (a) Co-ordination of information relating to the effects of atomic radiation upon human health and safety; (b) Dissemination of information on the effects of atomic radiation and on the effects of experimental explosions of thermonuclear bombs	(X)	59	913 (X)
The question of West Irian (West New Guinea)	(X)	65	915 (X)
Question of the representation of China in the United Nations <u>b/</u>	(X)		990 (X)

a/ This tabulation includes only agenda items which were referred by the General Assembly to its First or Ad Hoc Political Committees and agenda items of political character which were considered directly by the General Assembly.

b/ This question was considered by the General Assembly but was not recorded in the list of agenda items.

