

ARTICLE 106

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TEXT OF ARTICLE 106 ^{1/}

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

INTRODUCTORY NOTE

1. The application of Article 106 has been formally proposed in organs of the United Nations on two occasions. Several proposals recommending the invocation or implementation of the Article were submitted to the General Assembly during its fifth session in connexion with the item "United action for peace". A similar proposal was submitted to the Security Council in 1948 in connexion with the Palestine question. The proposals and the action taken with regard to them are briefly described in the General Survey.

2. The discussion held in the General Assembly gave rise to the question of the relation between Article 106 and Article 43. The relevant proceedings are examined in the Analytical Summary of Practice.

I. GENERAL SURVEY

3. The following proposals referring to Article 106 were submitted to the General Assembly, at the fifth session, during the consideration of the item "United action for peace": ^{2/}

(a) A draft resolution ^{3/} submitted by the USSR at the 358th meeting of the First Committee recommending that, before armed forces were placed at the disposal of the

^{1/} Paragraph 5 of the Declaration of the Foreign Ministers of United States, United Kingdom and USSR and the Chinese Ambassador to Moscow, signed at Moscow on 30 October 1943, read as follows:

"That for the purpose of maintaining international peace and security pending the reestablishment of law and order and the inauguration of a system of general security, they will consult with one another and as occasion requires with other members of the United Nations with a view to joint action on behalf of the community of nations."

^{2/} G A resolution 377 (V) adopted on this item is entitled "Uniting for peace".

^{3/} G A (V), 1st Com., vol. I, 369th mtg., p. 164, para. 75, A/C.1/580. See para. 8 below.

Security Council under appropriate agreements concluded in accordance with Article 43, the permanent members of the Council should take steps to ensure the necessary implementation of Article 106;

(b) An amendment 4/ submitted by the USSR at the 362nd meeting of the First Committee invoking Article 106 in place of the second part of the fifth paragraph of the preamble of the seven-Power joint draft resolution; 5/

(c) An amendment 6/ submitted by Israel at the same meeting which would insert in the fifth paragraph of the preamble of the seven-Power joint draft resolution a qualification indicating the primacy of Article 106;

(d) An amendment 7/ to draft resolution A 8/ recommended by the First Committee submitted by the USSR at the 299th plenary meeting on 1 November 1950, identical with the amendment in (b) above;

(e) A draft resolution 9/ submitted by the USSR at the 299th plenary meeting on 1 November 1950, identical with the draft resolution in (a) above.

All these draft resolutions and amendments were rejected.

4. In the Security Council, following the report of the Palestine Commission that it would be unable to implement the plan of partition for Palestine without the assistance of an effective armed force, the representative of Colombia submitted a draft resolution, 10/ at the 254th meeting on 24 February 1948, inviting the permanent members of the Council, in pursuance of Article 106, to consult with a view to joint action on behalf of the United Nations. The draft resolution was withdrawn at the 258th meeting on 27 February 1948 in favour of another draft resolution.

II. ANALYTICAL SUMMARY OF PRACTICE

The question of the relation between Article 106 and Article 43

5. During consideration of the item "United action for peace" by the General Assembly at its fifth session, the question of the desirability of invoking Article 106 and of calling on the five permanent members of the Security Council to take steps to ensure the implementation of its provisions was raised.

6. The item had been included in the agenda of the Assembly at the request of the United States 11/ which, with six other delegations, submitted a draft resolution 12/ thereon at the 354th meeting of the First Committee on 9 October 1950. The joint draft resolution, "Reaffirming that the initiative in negotiating the agreements ... provided for in Article 43 of the Charter belongs to the Security Council and desiring to ensure that, pending the conclusion of such agreements, the United Nations have at its disposal means for maintaining international peace and security," provided for various

4/ G A (V), Annexes, a.i. 68, pp. 9 and 10, A/C.1/583. See para. 7 below.

5/ G A (V), Annexes, a.i. 68, pp. 4-6, A/C.1/576.

6/ G A (V), Annexes, a.i. 68, p. 10, A/C.1/584. See para. 7 below.

7/ G A (V), Plen., vol. I, 302nd mtg., p. 345, para. 51, A/1465.

8/ G A (V), Annexes, a.i. 68, pp. 18-20, A/1456, resolution A.

9/ G A (V), Plen., vol. I, 302nd mtg., p. 347, para. 76, A/1467.

10/ S C, 3rd yr., 254th mtg., pp. 292 and 293, S/684.

11/ G A (V), Annexes, a.i. 68, p. 2, A/1373.

12/ G A (V), Annexes, a.i. 68, pp. 4-6, A/C.1/576.

measures including a recommendation to Member States to maintain within their national armed forces elements so trained and organized that they could promptly be made available for service as a United Nations unit or units.

7. Two amendments, seeking to replace the words quoted above, were submitted at the 302nd meeting of the Committee on 13 October: one submitted by the USSR 13/ which would substitute the words "and taking into account the obligation to implement Article 106 of the Charter", and one submitted by Israel 14/ which would substitute the words "and desiring to ensure that, pending the conclusion of such agreements and in case the five permanent members of the Security Council have failed to develop procedures for the taking of joint action as envisaged in Article 106 of the Charter, the United Nations have at its disposal means for maintaining international peace and security;".

8. At the 358th meeting of the First Committee on 11 October 1950, the representative of the USSR submitted the following draft resolution: 15/

"The General Assembly,

"Taking into account the particular importance of concerted action by the five permanent members of the Security Council in defending and strengthening peace and security among nations,

"Recommends that before armed forces are placed at the disposal of the Security Council under appropriate agreements concluded in accordance with Article 43 of the Charter, the five permanent members of the Security Council - the Union of Soviet Socialist Republics, the United States of America, the United Kingdom, China and France - should take steps to ensure the necessary implementation of Article 106 of the Charter providing for consultation between them, and that they should consult together in accordance with the said Article 106 of the Charter for the purpose of taking such joint action on behalf of the Organization as may prove to be necessary for the maintenance of international peace and security."

9. The representative of the USSR, in support of his draft resolution and amendment, argued that Article 106 was in force and that no attempt had thus far been made to act in accordance with its provisions. Consultations in conformity with Article 106, and not procedures contrary to the Charter, would succeed in procuring for the United Nations the armed forces necessary for the maintenance of international peace and security.

10. Other representatives supporting the USSR proposals contended that the seven-Power draft resolution, especially its provision concerning military forces, was contrary to various Articles of the Charter, including Article 106. They suggested that methods to make the United Nations more effective should be found in the Charter itself, and stated that the only possible alternative in the Charter to Article 43 was Article 106.

13/ G A (V), Annexes, a.i. 68, pp. 9 and 10, A/C.1/583.

14/ G A (V), Annexes, a.i. 68, p. 10, A/C.1/584.

15/ G A (V), 1st Com., vol. I, 369th mtg., para. 75, A/C.1/580.

11. The representative of Israel, while favouring a renewed effort to carry out Article 106, felt that the Assembly would not be acting realistically and in conformity with its responsibilities if it merely reaffirmed the merits of Article 106 without providing for alternative procedures to be followed in the event of failure to carry out its provisions. He supported, therefore, the essential objectives of the seven-Power draft resolution, but introduced an amendment stipulating clearly that alternative measures should not be taken except in the event of failure to apply Article 106.

12. The sponsors of the seven-Power draft resolution considered that its terms were entirely in conformity with the Charter. One of the sponsors, the representative of Canada, opposing the USSR proposals, argued that the transitional period should not last for as long as the USSR could frustrate agreement.

13. Another representative, supporting the seven-Power draft resolution, expressed the view that, while Article 106 could be implemented with or without an Assembly decision, the implementation of that Article would give a false sense of security to the people of the world. Even if it had been implemented, the United Nations would not have had the force necessary to suppress the aggression in Korea, since the use of force was subject to the veto. 16/

Decisions

At the 368th meeting of the First Committee on 18 October 1950, the USSR amendment 17/ to the seven-Power draft resolution was rejected by 45 votes to 5, with 8 abstentions, and the Israeli amendment 18/ by 47 votes to 4, with 7 abstentions. At the 369th meeting on 19 October, the USSR draft resolution 19/ was rejected by 34 votes to 6, with 18 abstentions.

At the 302nd plenary meeting on 3 November, the USSR amendment to the seven-Power draft resolution, 20/ which had been reintroduced in the plenary meeting, was rejected by 45 votes to 5, with 5 abstentions. At the same meeting, the USSR draft resolution, 21/ which had been reintroduced in the plenary meeting, was rejected by 39 votes to 5, with 11 abstentions.

16/ For texts of relevant statements see:

- G A (V) 1st Com., vol. I: 356th mtg., Australia, paras. 19-22.
 357th mtg., USSR, para. 46.
 358th mtg., Canada, para. 53; Philippines, para. 62.
 359th mtg., Czechoslovakia, para. 46.
 361st mtg., China, para. 66; Poland, paras. 28-39.
 362nd mtg., Israel, paras. 2-8.
 366th mtg., Poland, paras. 48-58; USSR, para. 41.

- G A (V) Plen., vol. I: 299th mtg., Poland, para. 184.
 300th mtg., Byelorussian SSR, para. 129;
 Czechoslovakia, para. 52.

17/ G A (V), Annexes, a.i. 68, pp. 9 and 10, A/C.1/583. See para. 7 above.

18/ G A (V), Annexes, a.i. 68, p. 10, A/C.1/584. See para. 7 above.

19/ G A (V), 1st Com., vol. I, 369th mtg., p. 164, para. 75, A/C.1/580. See para. 8 above.

20/ G A (V), Plen., vol. I, 302nd mtg., p. 345, para. 51, A/1465.

21/ G A (V), Plen., vol. I, 302nd mtg., p. 347, para. 76, A/1467.