ARTICLE 107

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TEXT OF ARTICLE 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

INTRODUCTORY NOTE

1. The question of the application and interpretation of Article 107 has been discussed in the proceedings of United Nations organs in connexion with objections raised to the consideration of a number of agenda items on the grounds that the United Nations was not competent to discuss them.

2. A list of the items with respect to the inclusion in the agenda and the consideration of which objections were raised on the ground that Article 107 precluded their consideration by United Nations organs is given in the General Survey.

3. The relevant proceedings of the General Assembly and the Security Council, in so far as they may throw light on the basic considerations involved in the application and interpretation of Article 107, are briefly reviewed in the Analytical Summary of Practice.

I. GENERAL SURVEY

4. Objections on grounds of competence based on the provisions of Article 107 were raised on several occasions in the General Assembly and on one occasion in the Security Council.

5. In the General Assembly, such objections were raised in connexion with the agenda items 1/ and at the sessions set forth below.

   a. Suggestions to countries concerned with the Peace Treaty with Italy. (Second session.)

   b. The problem of the independence of Korea. (Second session; third session, first part; fourth session.)

   c. Having regard to the provisions of the Charter and of the peace treaties, the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of church leaders. (Third session, second part.)

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1/ The items are indicated here in the form in which they appeared in the agenda of the General Assembly. In some cases, the titles of the items as originally submitted were worded differently.
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d. Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms. (Fourth and fifth sessions.)

e. The question of Formosa. (Fifth session.)

f. Complaint of failure on the part of the USSR to repatriate or otherwise account for prisoners of war detained in Soviet territory. (Fifth session.)

g. Appointment of an impartial international commission under United Nations supervision to carry out a simultaneous investigation in the Federal Republic of Germany, in Berlin, and in the Soviet Zone of Germany in order to determine whether existing conditions there make it possible to hold genuinely free elections throughout these areas. (Sixth session.)

h. Question of an appeal to the Powers signatories to the Moscow Declaration of 1 November 1943, for an early fulfilment of their pledges towards Austria. (Seventh session.)

6. All the above-mentioned items were included in the agenda of the General Assembly. The General Assembly adopted resolutions in respect of all these items, with the exception of those relating to suggestions to countries concerned with the Peace Treaty with Italy 2/ and to the question of Formosa. 3/

7. In the Security Council, objection to the inclusion in the agenda and the consideration of the item, based on the provisions of Article 107, was raised 4/ in connexion with the agenda item entitled "Identical notifications dated 29 September 1948 from the Governments of the French Republic, the United Kingdom and the United States of America". The question, which related to the situation in Berlin, was included 5/ in the agenda and considered by the Council. A draft resolution was submitted but was not adopted.

2/ This item was included in the agenda at the request of Argentina (G A (II), 1st Com., pp. 530 and 531, annex 3 (A/361)), Ecuador (A/358) and Honduras (A/357). At its 116th meeting on 19 November 1947, following a statement by the representative of Argentina that, in view of the many objections which had been raised to the inclusion of the item in the agenda, he would withdraw his proposal (G A (II), 1st Com., p. 545, annex 6 (A/379)) which had been submitted on 4 September, the First Committee decided to take no action on the question (G A (II), 1st Com., 116th mtg., p. 527). For texts of statements relating to Article 107, see G A (II), General Com., 37th and 38th mtgs. and G A (II), Plen., vol. I, 91st mtg.

3/ This item was included in the agenda at the request of the United States (G A (V), Annexes, a.i. 71, A/1381). The First Committee, at its 399th meeting on 15 November 1950, decided to defer consideration of the item, and, at the 442nd meeting on 7 February 1951, decided to adjourn debate on the item sine die (G A (V), 1st Com., vol. I, 399th mtg., paras. 32; vol. II, 442nd mtg., para. 14). For texts of statements relating to Article 107, see G A (V), General Com., 71st mtg. and G A (V), Plen., vol. I, 294th mtg.


5/ After the adoption of the agenda, the representatives of the Ukrainian SSR and the USSR declared that they would not participate in the discussion of the question.
II. ANALYTICAL SUMMARY OF PRACTICE

The question of the extent to which Article 107 may limit the competence of United Nations organs

8. In the various debates in the United Nations arising out of the contention that the competence of United Nations organs was restricted under the terms of Article 107, two broad trends in the interpretation of the provisions of that Article have emerged and are set forth briefly at this point before the relevant proceedings relating to specific agenda items are reviewed.

9. On the one hand, the views set forth below have been among those expressed.
   (l) The concept of division of competence with regard to the settlement of matters arising out of the Second World War and to the maintenance of peace had been accepted in international agreements concluded since the end of that war. (2) The provisions of Article 107 meant that all problems concerned with the post-war peace settlement, with the liquidation of the consequences of the Second World War and with situations resulting directly from the war were beyond the competence of the United Nations. Thus, questions relating to the interpretation or implementation of peace treaties were outside the scope of the Organization. (3) In answer to statements that the provisions of Article 107 were not prohibitive or mandatory, but permissive, it was contended that Article 107, which contained specific provisions, prevailed over Article 14, which was couched in general terms.

10. On the other hand, the arguments set forth below were among those advanced.
   (l) Article 107 had been designed so as to make it clear that the United Nations was not primarily concerned with the conclusion of peace treaties, for which the Governments of the Allied Powers had full authority. (2) It permitted those Governments to take action which might otherwise be contrary to the Charter. (3) It was intended to prevent former enemy States from contesting the decisions or actions of the Allied Powers before United Nations organs. (4) Its sole effect was to ensure that Article 103 would not apply to treaties with former enemy States and to rule out complaints submitted on the ground of a claim that the actions of the Allied Powers towards those States were contrary to the Charter. Article 107, therefore, could not be invoked to prohibit, a priori, any discussion or action by the United Nations with regard to all matters concerning former enemy States or peace settlements. (5) The General Assembly and the Security Council were competent to consider or recommend action in relation to such matters so long as such consideration did not preclude or invalidate action undertaken or authorized as a result of the Second World War. (6) Article 107 did not rule out the consideration of complaints regarding the actions of the Allied Powers based on grounds other than the contention that they were at variance with the Charter, such as breaches of international law or of a specific treaty, or proposals for dealing with a former enemy State in a certain way. (7) It did not exclude from the competence of the United Nations conflicts between Member States arising out of questions relating to former enemy States, nor did it prevent situations created by a peace treaty from being brought before the General Assembly for discussion, since Article 14 provided that, subject to the provisions of Article 12, the General Assembly might recommend measures for the peaceful adjustment of any situation "regardless of origin".

11. As indicated in the General Survey, the General Assembly and the Security Council have included in their agenda all the agenda items to which objection had been raised on the ground that, under the provisions of Article 107, the United Nations was not competent to consider them. The summaries of the relevant proceedings of the General Assembly and of the Security Council set forth below relating to those items which, after having been included in the agenda, were actually considered, have been included
for such light as they may throw on the question of the bearing of Article 107 on the competence of United Nations organs.

A. In the General Assembly

1. Decisions in connexion with the problem of the independence of Korea

12. The item entitled "The problem of the independence of Korea" was included in the provisional agenda of the second session of the General Assembly at the request of the United States and, on 23 September 1947, following the adoption of a decision to that effect by a vote of 61 to 6, with 7 abstentions, 1 delegation being absent, was included in the agenda.

13. During the debates in the General Committee and in plenary meeting on the question of the inclusion of the item in the agenda and during the consideration in the First Committee of the substance of the question, it was contended, on the one hand, that the item concerned the liquidation of the consequences of the Second World War and that, under the terms of Article 107, its discussion was beyond the competence of United Nations organs. An international agreement existed on the Korean question which was part of the problem of a peace settlement, and other organs had been established for the consideration of the question.

14. On the other hand, the arguments set forth below were among those advanced. (1) The General Assembly was not precluded under Article 107 from considering the question, although it might be compelled to take into consideration the provisions of the Moscow Agreement of November 1945 regarding the future of Korea. (2) The United Nations should not ignore the fact that the commitment to ensure the independence of Korea had not yet been carried out. (3) Since the Allied Powers had been unable to conclude peace treaties speedily, it was incumbent upon the United Nations to deal with the question. (4) The General Assembly was competent, under Article 107, to consider the matter and to make recommendations.

Decision

The General Assembly, by 43 votes to none, with 6 abstentions, adopted a draft resolution which became resolution 112 (II), by which it recommended that elections be held in Korea not later than 31 March 1948 to choose representatives who would constitute a National Assembly and establish a National Government. A United Nations Temporary Commission on Korea was established to facilitate and expedite the election of representatives who would be invited to take part in the consideration of the Korean
question. The Assembly recommended 10/ certain other measures in a programme designed to attain the national independence of Korea.

15. At the first part of the third session and at the fourth session, the item was again included 11/ in the agenda, despite opposition on the ground that the Korean question was fully covered by international agreements and that consideration of the question was contrary to the provisions of Article 107. 12/

Decisions

At the first part of its third session, the General Assembly, by 48 votes to 6, with 1 abstention, adopted 13/ a draft resolution, which became resolution 195 (III), by which it declared that the Government established in South Korea was the only lawful Government based on free elections in Korea, recommended early withdrawal of the occupation forces in the country and established a United Nations Commission on Korea to lend its good offices to bring about the unification of Korea, to observe the withdrawal of occupation forces and for other purposes. At its fourth session, by resolution 293 (IV), adopted 14/ by 48 votes to 6, with 3 abstentions, the General Assembly continued the Commission on Korea. 15/

2. Decisions in connexion with the question of the observance of human rights and fundamental freedoms in Bulgaria, Hungary and Romania

16. Following a request 16/ by Bolivia that an item concerning "legal proceedings against Cardinal Mindszenty of Hungary" be included in the agenda of the second part

10/ A draft resolution submitted by the representative of the USSR (G A (II), Plen., vol. II, pp. 1557 and 1558, annex 17 a (A/477)), under which the General Assembly would have recommended the simultaneous withdrawal of United States and USSR troops from Korea at the beginning of 1948, was rejected by 34 votes to 7, with 16 abstentions (G A (II), Plen., vol. II, 112th mtg., p. 853).

11/ G A (III/1), Plen., 142nd mtg., p. 105; G A (IV), Plen., 224th mtg., p. 22.

12/ For texts of relevant statements, see G A (III/1), Plen., 142nd mtg.: Poland, pp. 104 and 105; USSR, pp. 95 and 96; 187th mtg.: Poland, pp. 1056 and 1057; General Com., 43rd mtg.: Poland, p. 8; USSR, pp. 7 and 8; 1st Com., 236th mtg.: Poland, p. 1024; G A (IV), Plen., 224th mtg.: Czechoslovakia, paras. 38 and 39; Ukrainian SSR, para. 43; General Com., 65th mtg.: USSR, paras. 17-19.

13/ G A (III/1), Plen., 187th mtg., p. 1042.

14/ G A (IV), Plen., 233rd mtg., para. 136.

15/ At the fifth session, the item was included in the agenda without discussion or vote (G A (V), Plen., vol. I, 264th mtg., para. 136). By resolution 376 (V) adopted by 47 votes to 5, with 7 abstentions (G A (V), Plen., vol. I, 294th mtg., paras. 62-69), the Assembly made recommendations regarding the establishment of a united, independent and democratic government in Korea, and established a Commission for the Unification and Rehabilitation of Korea. For other decisions relating to Korea adopted at the fifth session, see General Assembly resolutions 384 (V) and 498 (V). As from the sixth session, the Korean question was considered under a different title (see G A resolutions 507 (VI), 610 (VII), 711 (VII), and 716 (VIII)).

16/ G A (III/2), Plen., Annexes, p. 31, A/820.
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of the third session, and a request by Australia that an item concerning the observance of fundamental freedoms and human rights in Bulgaria and Hungary be included, the General Assembly decided, 18/ by 30 votes to 7, with 20 abstentions, to include the following single text in the agenda: "Having regard to the provisions of the Charter and of the peace treaties, the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of church leaders".

17. In the course of the discussions in the General Committee on the inclusion of the items submitted by Bolivia and Australia and in plenary meeting on the inclusion of the single text (see paragraph 16 above), it was argued in opposition to the inclusion of the items in the agenda and to consideration of the question that, under Article 107, the United Nations had no jurisdiction whatsoever with regard to the peace treaties and their implementation.

18. On the other hand, in support of inclusion of the items in the agenda, reference was made to the competence of the General Assembly with respect to human rights and the view was expressed that the peace treaties did not prevent the Assembly from considering the question under the provisions of the Charter. Specifically, it was argued that the fact that respect for human rights and fundamental freedoms was provided for in the peace treaties and, furthermore, that those treaties had been registered with the Secretariat of the United Nations, proved that the question was of an international character.

Decision

The General Assembly, by 34 votes to 6, with 9 abstentions, adopted a draft resolution, which became resolution 272 (III), by which it drew the attention of the Governments of Bulgaria and Hungary to their obligations under the peace treaties, and decided to include the item in the provisional agenda of the fourth session.

19. In accordance with General Assembly resolution 272 (III), the above-mentioned item was included in the provisional agenda of the General Assembly at its fourth session. Following a request by Australia that the question be considered in relation to Romania as well, the General Assembly decided without a vote, to include the item in the agenda in the following form: "Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms".

20. In the course of discussion, it was argued, in opposition to the inclusion of the item in the agenda and to consideration of the question, that questions relating to situations arising out of the war had been excluded from the competence of the General Assembly.

17/ G A (III/2), Plen., Annexes, pp. 31 and 32, A/821.
18/ G A (III/2), Plen., 190th mtg., p. 29.
19/ For texts of relevant statements, see: G A (III/2), General Com., 58th mtg., Poland, pp. 12 and 13; 59th mtg., China, p. 33; USSR, p. 26; Plen., 189th mtg., Bolivia, p. 18; 190th mtg., USSR, p. 23.
20/ G A (III/2), Plen., 203rd mtg., p. 273.
21/ A/948.
22/ For texts of relevant statements, see: G A (IV), General Com., 65th mtg., Chile, para. 54; Poland, paras. 47-49; Venezuela, paras. 52 and 53.
21. On the other hand, it was stated that, since the interpretation of the peace treaties and of the provisions on human rights had given rise to serious controversy, it was advisable to consider the problem. Under the provisions of Article 107, the Assembly was authorized to examine any violation of the principles of the Charter, and one of the fundamental principles embodied in its Preamble concerned the observance of treaties.

**Decision**

The General Assembly, by 47 votes to 5, with 7 abstentions, adopted a draft resolution, which became resolution 294 (IV), by which it expressed increased concern at the accusations made against the three States and decided to submit certain questions to the International Court of Justice for an advisory opinion.

22. At the fifth session of the General Assembly, no objection based on Article 107 was raised to the inclusion in the agenda of the item concerning the observation of human rights in Bulgaria, Hungary and Romania. During the discussion of the substance of the question in plenary meeting, it was contended by certain representatives that the matter arose from the peace treaties and, therefore, the Assembly was not competent to deal with it. The United Nations was not a party to the peace treaties and United Nations organs had no right to interpret the peace treaties.

**Decision**

The General Assembly, by 40 votes to 5, with 12 abstentions, adopted a draft resolution, which became resolution 385 (V), by which the Assembly condemned the refusal of the three Governments to fulfil their obligations under the provisions of the treaties of peace.

3. **Decision in connexion with the question of the complaint of failure on the part of the Union of Soviet Socialist Republics to repatriate or otherwise account for prisoners of war detained in Soviet territory**

23. Following a request by the representatives of Australia, the United Kingdom and the United States, the General Assembly decided, by 43 votes to 5, with 5 abstentions, to include the item entitled "Complaint of failure on the part of the Union of Soviet Socialist Republics to repatriate or otherwise account for prisoners of war detained in Soviet territory" in its agenda for the fifth session.
24. Inclusion of the item in the agenda and consideration of the question were opposed by certain representatives in the course of discussions on the adoption of the agenda in the General Committee and in plenary meeting and, subsequently, in substantive debate in the Third Committee, on the grounds that, under the provisions of Article 107, the matter was outside the competence of the United Nations. The question of the repatriation of the prisoners of war was governed by various agreements resulting from the Second World War and Article 107 was applicable to all problems arising out of that war. The problem of the German prisoners of war, for instance, was within the exclusive competence of the Council of Foreign Ministers, the Allied Control Council in Berlin and certain other organs, as provided by the Potsdam Agreement.

25. On the other hand, it was argued, in support of consideration of the question, that the provisions of Article 107 were intended to prevent former enemy States from bringing complaints to United Nations organs against action taken or authorized as a result of the war, but not to restrain Allied Powers from bringing their differences before the United Nations. The question before the Assembly did not concern an action taken or authorized as a result of the war, but an alleged breach of international agreements. The matter was, therefore, a dispute among Member States, and Article 107 was not applicable. Article 107 dealt with action in relation to States, and a claim that the Article applied to prisoners of war was tantamount to identifying them with the States of which they were nationals, and consequently to take revenge on individuals for the action taken by those States; such an interpretation would be entirely contrary to the spirit of the Charter.

Decision

The General Assembly, by 47 votes to 5, with 6 abstentions, adopted a draft resolution, which became resolution (V), entitled "Measures for the peaceful solution of the problem of prisoners of war". By this resolution, the General Assembly expressed concern at the information presented to it tending to show that large numbers of prisoners taken in the course of the Second World War had neither been repatriated nor otherwise accounted for, called upon all Governments still having control of such persons to act in conformity with recognized standards of international conduct and established a commission with a view to settling the question.

4. Decision in connexion with the question of the appointment of a commission to investigate whether conditions in Germany made it possible to hold free elections

26. Following a request by the representatives of France, the United Kingdom and the United States, the General Assembly decided, by 47 votes to 6, with 

29/ For texts of relevant statements, see: G A (V), Plen., vol. I, 265th mtg.: Ukrainian SSR, para. 64; USSR, paras. 56 and 57; 25th mtg.: Poland, paras. 46 and 47; USSR, para. 53; General Com., 69th mtg.: USSR, paras. 36, 51 and 52; United States, paras. 40-42; 3rd Com., 339th mtg.: USSR, para. 32; 342nd mtg.: Byelorussian SSR, para. 60; Czechoslovakia, paras. 46, 53; Poland, paras. 29 and 30; Union of South Africa, paras. 87 and 88; United Kingdom, paras. 80-82; 343rd mtg.: Iraq, para. 33; New Zealand, paras. 80 and 81; Poland, para. 72; Ukrainian SSR, paras. 2 and 3; Yugoslavia, para. 27.

30/ G A (V), Plen., vol. I, 325th mtg., para. 36.

31/ G A (VI), Annexes, a.i. 65, pp. 1 and 2, A/1938.

32/ G A (VI), Plen., 341st mtg., para. 111.

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2 abstentions, to include in its agenda for the sixth session the item entitled "Appointment of an impartial international commission under United Nations supervision to carry out a simultaneous investigation in the Federal Republic of Germany, in Berlin, and in the Soviet Zone of Germany in order to determine whether existing conditions there make it possible to hold genuinely free elections throughout these areas".

27. In opposition to the inclusion of the item in the agenda and to consideration of the substantive question, the views set forth below were among those expressed 33/ in the General Committee and in plenary meeting, and in the Ad Hoc Political Committee respectively. (1) The question of Germany was outside the competence of the United Nations. (2) That question was entirely within the competence of the Governments referred to in Article 107 and, since the Potsdam Agreement had laid down a definite procedure for the consideration of all questions relating to Germany, the General Assembly was not competent to intervene in the organization of elections in that country.

28. The views set forth below were among those expressed in support of inclusion of the item and consideration of the question. (1) The provisions of Article 107 did not prevent consideration of a proposal to send an impartial investigating commission to Germany, since the appointment of the proposed commission would not invalidate or preclude any action taken or authorized by the four occupying Powers. (2) The proposed commission would merely assemble information on conditions in the country and would not supervise elections or deal with such matters as boundaries, territorial readjustments and reparations. The Commission was only intended to facilitate the carrying out of an obligation assumed by the four Powers and would be available to them if they so wished. The absence of agreement among the four Powers on the implementation of their decision to establish a democratic and unified Germany might not only threaten international peace and security, but also might create an acute conflict.

Decision

The General Assembly, by 45 votes to 6, with 8 abstentions, adopted 34/ a draft resolution, which became resolution 510 (VI), by which it appointed a commission to conduct an investigation to ascertain whether conditions in Germany were such as to make it possible to hold free and secret elections throughout the country, and declared that the United Nations was prepared, after being satisfied in this respect, to offer its assistance in order to guarantee the freedom of the elections.

33/ For texts of relevant statements, see: GA (VI), General Com., 76th mtg.: Poland, para. 49; USSR, paras. 38 and 39; United Kingdom, para. 46; United States, paras. 44 and 45; Plen., 34th mtg.: Czechoslovakia, paras. 43-47; USSR, paras. 48-54; United Kingdom, para. 73; United States, paras. 102 and 103; 36th mtg.: Czechoslovakia, paras. 78, 81; Poland, para. 69; USSR, paras. 55-59; Ad Hoc Pol. Com., 15th mtg.: United Kingdom, paras. 6-10; 16th mtg.: Byelorussian SSR, para. 24; Czechoslovakia, para. 23; Poland, paras. 14, 19 and 20; USSR, paras. 6 and 9; United States, paras. 31 and 32; 17th mtg.: Sweden, paras. 1 and 2; 21st mtg.: Czechoslovakia, para. 16; Greece, paras. 26-31; Iraq, para. 3; Netherlands, paras. 7, 12, 14; 22nd mtg.: Cuba, para. 37; Philippines, paras. 29-34; Poland, para. 6-8; 23rd mtg.: Byelorussian SSR, paras. 6 and 7; Ukrainian SSR, para. 36; 24th mtg.: Chile, paras. 10-12, 18; Nicaragua, para. 52; United Kingdom, paras. 28 and 31; 25th mtg.: Belgium, para. 1; Ecuador, paras. 41-57; USSR, paras. 60, 67 and 69; 26th mtg.: Poland, paras. 40, 46 and 47; Yugoslavia, paras. 67-69.

34/ GA (VI), Plen., 35th mtg., para. 83.
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5. Decision in connexion with the question of an appeal to the four Powers for an early fulfilment of their pledges towards Austria

29. The item entitled "Question of an appeal to the Powers signatories to the Moscow Declaration of 1 November 1943 for an early fulfilment of their pledges towards Austria" was included in the provisional agenda of the seventh session of the General Assembly at the request of Brazil.

30. Inclusion of the item in the agenda was opposed in the General Committee and in plenary meeting on the ground that, under Article 107, the conclusion of a treaty with Austria was exclusively a matter for the four Powers which undertook obligations in that respect under the Moscow Declaration of 1943 and the Potsdam Agreement of 1945. In answer to statements by the sponsors of the agenda item and by other representatives that Austria could not be regarded as a former enemy State in view of the Moscow Declaration, it was argued that Austria could not evade its responsibility for participation in the war on the side of Hilterite Germany. A proposal to exclude the item from the agenda was rejected in plenary meeting by 46 votes to 5. During the consideration of the substance of the question in the First Committee, five representatives reiterated their view that consideration of the question by the United Nations was a violation of Article 107, and declared that they would participate neither in the debates on the question nor in the votes.

31. The sponsor of the agenda item and other representatives contended that Austria could not be treated as a former enemy State, since it had been annexed by Hilterite Germany before it had participated in the war against the Allies and since the Moscow Declaration had stated that Austria would be liberated from German domination. Moreover, the Assembly was competent to consider the question since the item dealt with differences between Member States and since the inconclusive state of negotiations between the four responsible Powers had led to a serious situation affecting the peace of the area. An appeal to the responsible Powers would not preclude or invalidate any action taken or authorized by them as a result of the Second World War. The proposal before the Assembly did not deal with the substance of the question or set out the details of the action which might be taken, but was merely an appeal to the four Powers to take action. Article 107 did not apply to such recommendations.

Decision

The General Assembly, by 48 votes to none, with 2 abstentions, adopted a draft resolution, which became resolution 613 (VII), under which it addressed an appeal to

G A (VII), Annexes, a.i. 63, p. 2, A/2166.
G A (VII), Plen., 380th mtg., para. 201.

For texts of relevant statements, see: G A (VII), Plen., 380th mtg.: Brazil, paras. 188 and 189; Czechoslovakia, paras. 195 and 196; USSR, paras. 160 and 161; General Com., 79th mtg.: Brazil, para. 29; Czechoslovakia, para. 35; France, para. 32; USSR, paras. 19 and 20 and 46-48; United Kingdom, para. 23; United States, paras. 39-42; 1st Com., 553rd mtg.: Brazil, paras. 28-39; Byelorussian SSR, para. 26; Czechoslovakia, para. 22; Poland, paras. 47-51; Ukrainian SSR, paras. 23 and 24; USSR, paras. 5-13; 554th mtg.: United States, paras. 16 and 17; 555th mtg.: Australia, para. 60; Canada, para. 38; Greece, paras. 11-14; Peru, para. 43; Union of South Africa, paras. 46-48; 556th mtg.: Dominican Republic, paras. 2 and 3; Uruguay, para. 24.

G A (VII), Plen., 409th mtg., para. 89. The representatives of the Byelorussian SSR, Czechoslovakia, Poland, the Ukrainian SSR and the USSR did not participate in the vote.
the Governments concerned to make a renewed and urgent effort to reach agreement on the terms of a treaty with Austria with a view to an early termination of the occupation of Austria and the full exercise of the powers inherent in its sovereignty.

B. In the Security Council

Decision in connexion with the question of the situation in Berlin

32. By identical communications 39/ dated 29 September 1948, the representatives of France, the United Kingdom and the United States drew the attention of the Security Council to "the serious situation which has arisen as a result of the unilateral imposition by the Government of the Union of Soviet Socialist Republics of restrictions on transport and communications between the Western Zones of Occupation in Germany and Berlin", and requested consideration of the question by the Council. In accordance with this request, the item entitled "Identical notifications dated 29 September 1948, from the Governments of the French Republic, the United Kingdom and the United States of America" was included in the provisional agenda of the 361st meeting of the Security Council held on 4 October 1948.

33. In the course of the discussion 40/ on the adoption of the agenda, inclusion of the item was opposed by the representative of the USSR on the ground that the matter did not fall within the competence of the Security Council. He argued that, according to Article 107, the question of the situation in Berlin, forming as it did a part of the question of Germany, could not be considered by the Council. International agreements had provided for the settlement of the whole problem of Germany by other organs and, according to Article 107, the problem could not legally be referred to the Council. The actions of the three occupying Powers which led to defensive measures by the USSR military authorities not only took place in Germany, but were directed against Germany's economy, and harmed the interests of the population of the Soviet Zone of occupation. Even if there existed a threat to international peace and security, as claimed in the identical notifications, the terms of Article 107 excluded intervention in this matter by the United Nations. It was erroneous to claim that the Security Council was the only instrument for the maintenance of peace and security, since the Council of Foreign Ministers was also an instrument for that purpose.

34. The views set forth below were among those expressed by the sponsors of the agenda item. (1) The question before the Council was not the problem of Germany but the threat to international peace and security caused by measures taken by the USSR in relation to France, the United Kingdom and the United States. (2) Article 107 applied only to the extent that action was taken in relation to former enemy States and not to action against or in relation to a Member of the United Nations on the territory of a former enemy State. (3) Article 107 ceased to apply when certain actions, although relating in some measure to former enemy States, were in fact directed against Members of the United Nations. (4) There was nothing in the Charter which prevented the United Nations from assuming jurisdiction over matters that involved enemy States, when such assumption of jurisdiction was necessary in order to remove a threat to the peace created by the action of one of the Members of the United Nations against other Members.

40/ For texts of relevant statements, see: S C, 3rd yr., No. 113, 361st mtg.: USSR, pp. 9-14, 18 and 19; United Kingdom, pp. 23-30; United States, pp. 20-27; No. 114, 362nd mtg.: Belgium, pp. 18-20; France, p. 3; Syria, pp. 5-7; USSR, pp. 8-18.
Another representative, who supported consideration of the item, questioned whether the USSR had authority to impose the alleged blockade of Berlin and whether that action was a result of the Second World War.

36. At the 362nd meeting on 5 October 1948, the Council decided by 9 votes to 2, to include the item in the agenda. The representatives of the USSR and the Ukrainian SSR then stated that the decision represented a violation of the provisions of Article 107 and that their delegations would not participate in the discussion of the question.

Decision

At the 372nd meeting of the Security Council on 25 October 1948, a draft resolution, submitted by six representatives, calling upon the four occupying Powers to take certain measures and thereafter to reopen negotiations in the Council of Foreign Ministers on all outstanding problems concerning Germany was not adopted. There were 9 votes in favour and 2 against (1 vote against being that of a permanent member).

The question remained on the list of matters of which the Security Council is seized.

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41/ S C, 3rd yr., No. 114, 362nd mtg., p. 21.
42/ Ibid., pp. 22 and 23.
43/ G A (IV), Suppl. No. 2 (A/945), p. 65, S/1048.
44/ S C, 3rd yr., No. 120, 372nd mtg., p. 14.
45/ On 30 November 1948, the President of the Council "in the exercise of his powers" instituted a Technical Committee on Berlin Currency and Trade formed by experts nominated by neutral members of the Council to study and make recommendations upon the establishment of a single currency in Berlin. The report of the Committee was made public on 15 March 1949.
Chapter XVIII

AMENDMENTS