

Repertory of Practice of United Nations Organs**Supplement Nos. 7-9 (1985-1999)**

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ARTICLE 48**CONTENTS****Text of Article 40**

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TEXT OF ARTICLE 48

The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

I. INTRODUCTORY NOTE

1. In compliance with the decision of the Inter-Departmental Committee on Charter Repertory,¹ this study exceptionally combines practices of the Security Council and those of the General Assembly pertaining to Supplements 7, 8 and 9, of the Repertory, ranging from 1985 to 1999.

2. As a result, unlike the earlier studies of the *Repertory* and *Supplements Nos. 1, 2, 3, 4, 5* and *6*, this study presents the practice of the Security Council and the General Assembly separately, under two different subheadings.

3. It should be noted that, during the period covered, Article 48 was for the first time expressly invoked in the practice of the Security Council and the General Assembly. However, none of the resolutions or the discussions presented below gave rise to constitutional arguments regarding the interpretation or the application of Article 48.

4. Taking into account the interrelationship between Article 48 and Articles 40, 41 and 42, it the studies on those three Articles should also be examined.

¹ See A/66/201, para. 13

II. SUMMARY OF PRACTICE

A. SECURITY COUNCIL

5. During the period under review, the Security Council adopted one resolution in which it explicitly invoked Article 48, together with Article 25 of the Charter. By its Resolution 670 (1990), adopted in connection with the situation between Iraq and Kuwait, the Security Council reminded States of their obligation to apply sanctions against Iraq and Kuwait in order to “ensure respect for its decisions and the provisions of Article 25 and 48 of the Charter”. Furthermore, the Security Council declared that any acts taken by the Government of Iraq, which are not in accordance with Articles 25 or 48 of the Charter, shall be considered as null and void.²

6. During the same period, the Security Council adopted a number of other resolutions that might be considered as falling implicitly within the scope of Article 48. In these resolutions, the Security Council called upon all States, or particular States, to take various measures in accordance with Chapter VII of the Charter. For instance, the Security Council requested all States to: impose an arms³, oil⁴ and diamond⁵ embargo against a particular State, impose a ban on import of all commodities produced in a particular State,⁶ apply diplomatic⁷ and flight⁸ restrictions against a particular State, and freeze funds and other financial resources of a particular State⁹.

² S C Resolution 670 (1990), seventh and eighth preambular paras.

³ For instance, see S C Resolutions: 661 (1990), para. 3 (c) (Iraq and Kuwait); 713 (1991), para. 6 (Socialist Federal Republic of Yugoslavia); 733 (1992), para. 5 (Somalia); 748 (1992), para. 5 (Libya); 788 (1992), para. 8 (Liberia); 841 (1993), para. 5 (Haiti); 864 (1993), para. 19 (UNITA); 918 (1994), para. 13 (Rwanda); 1076 (1996), para. 4 (Afghanistan); 1132 (1997), para. 6 (Sierra Leone); and 1160 (1998), para. 8 (Federal Republic Yugoslavia (Serbia and Montenegro), including Kosovo).

⁴ For instance, see S C Resolutions: 787 (1992), para. 9 (Federal Republic of Yugoslavia (Serbia and Montenegro)); 841 (1993), para. 5 (Haiti); 864 (1993), para. 19 (UNITA); and 1132 (1997), para. 6 (Sierra Leone).

⁵ For instance, see S C Resolution 1173 (1998), para. 12 (b) (Angola).

⁶ For instance, see S C Resolutions: 661 (1990), para. 3 (a) (Iraq and Kuwait); 757 (1992), para. 4 (a) (Federal Republic of Yugoslavia (Serbia and Montenegro)); and 917 (1994), para. 6 (Haiti).

⁷ For instance, see S C Resolutions: 1054 (1996), para. 3 (Sudan); and 1173 (1998), paras. 12 (a), (UNITA).

⁸ For instance, see S C Resolutions: 670 (1990), para. 3 (Iraq and Kuwait); 748 (1992), para. 4 (Libya); 757 (1992), para. 7 (Federal Republic of Yugoslavia (Serbia and Montenegro)); 917 (1994), para. 2 (Haiti); 1127 (1997), para. 4 (d) (UNITA); and 1267 (1999), para. 4 (a) (Taliban in Afghanistan).

⁹ For instance, see S C Resolutions: 1173 (1998), para. 11 (UNITA); and 1267 (1999), para. 4 (b) (Taliban in Afghanistan).

7. Further, the Security Council demanded particular States to cease hostilities,¹⁰ cooperate with the international organizations engaged in providing humanitarian assistance and ensure safety of their personnel,¹¹ as well as take measures for preventing any terrorist activities within their territory.¹² Moreover, in a number of its resolutions, the Security Council authorized States to take “all necessary measures”, in order to preserve international peace and security,¹³ and warned of the possibility of taking further measures, if they fail to abide by its demands.¹⁴

8. Throughout the period under review, the Security Council considered several draft resolutions that contained implicit references to Article 48. Nevertheless, the resolutions failed to be adopted, owing to negative votes of permanent members of the Security Council.¹⁵

¹⁰ For instance, see S C Resolutions: 573 (1985), para. 2 (Israel); 598 (1987), para. 1 (Islamic Republic of Iran and Iraq); 713 (1991), para. 4 (Socialist Federal Republic of Yugoslavia); 758 (1992), para. 6; 787 (1992), para. 6; (the parties to the conflict in Bosnia and Herzegovina); 788 (1992), para. 6 (Liberia); 918 (1994), para. 1 (Rwanda); 1173 (1998), para. 5 (UNITA); 1076 (1996), para. 1 (the parties to the conflict in Afghanistan); 1244 (1999), para. 3 (Federal Republic Yugoslavia (Serbia and Montenegro)); and 1272 (1999), para. 16 (the parties to the conflict in East Timor).

¹¹ For instance, in connection with the situation in the former Yugoslavia, see S C Resolution 787 (1992), para. 18; in connection with the situation in Somalia, see S C Resolution 733 (1992), paras. 7, 8; in connection with the situation in Rwanda, see S C Resolution 918 (1994), paras. 10, 11; in connection with the situation in Haiti, see S C Resolution 940 (1994), paras. 15, 16; in connection with the situation in Afghanistan, see S C Resolution 1076 (1996), para. 10; in connection with the situation in Angola, see S C Resolution 1237 (1999), para. 12; and in connection with the situation in East Timor, see S C Resolution 1272 (1999), para. 10.

¹² For instance, see S C Resolutions: 1054 (1996), para. 1 (b) (Sudan); 1267 (1999), para. 1 (Afghanistan); and 1269 (1999), para. 4 (all States).

¹³ For instance, in connection with the situation in Bosnia and Herzegovina, see S C Resolutions: 1088 (1996), paras. 19, 20, 21; 1174 (1998), paras. 11, 12, 13; 1247 (1999), paras. 11, 12, 13; and in connection with the situation in East Timor, see S C Resolution 1264 (1999), para. 3.

¹⁴ For instance, see S C Resolutions: 1053 (1996), para. 13; 1075 (1996), para.13; 1127 (1997), para. 9; 1160 (1998), para. 19; 1174 (1998), para. 7; 1247 (1999), para. 7; and 1267 (1999), para. 15.

¹⁵ For instance, in connection with the situation in the southern African region, the Security Council called upon States to impose sanctions against South Africa, see: S/18087/Rev.1 (1986), para. 6 (b); S/18163 (1986) paras. 6, 7 (b); S/18474 (1986), paras. 1-3, 5-11; S/18785 (1987), para. 8; in connection with the situation in the Middle East, the Security Council called for Israel to cease repressive measures against Palestinian civilians, and abide by the Geneva Convention relative to the Protection of Civilian Persons in Time of War see: S/17459 (1985), paras. 2, 3; S/19466 (1988), paras. 2, 4; S/20463 (1989), para. 4, and called upon Contracting Parties to the Convention to ensure respect for the Convention, see S/20945/Rev.1 (1989), para. 6; in connection with the situation in Libya, the Security Council requested the parties to the conflict to refrain from hostilities and to cooperate with the Secretary General, in order to reach a peaceful settlement, and demanded the United States to withdraw its armed forces from the Libyan coast, see S/20378 (1989), paras. 2, 3, 4; and in connection with the situation in Panama, the Security Council demanded the United States to withdraw its armed forces from Panama and requested all States to respect “the sovereignty, independence and territorial integrity of Panama”, see S/21048 (1989), paras. 2, 3.

9. The Security Council did not expressly invoke Article 48 in its deliberations held throughout the period. However, several statements, made during its discussions in respect of measures taken under Chapter VII of the Charter, might be considered as incidental references to Article 48.¹⁶

B. GENERAL ASSEMBLY

10. Throughout the period under review, Article 48 was explicitly invoked on two occasions in subsidiary bodies of the General Assembly, in the course of discussions regarding reducing the adverse effects of sanctions on third States.

11. During the first discussion which took place in the framework of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, held in March 1994, it was suggested that, in some cases, “in accordance with Article 48 of the Charter”, the Security Council might permit exceptions from the application of sanctions in favour of States, which could be affected by their implementation. However, such exceptions should be in accordance with the purpose of the sanctions.¹⁷

¹⁶ For instance, in connection with the situation in the southern African region, it was argued that measures should be taken against South Africa, in accordance with Articles 39, 41 and 42 in order to compel it to cease with its acts of aggression in the southern African region, see S/PV.2629: Trinidad and Tobago, paras. 38-40; S/PV.2686: Madagascar, p. 12; in connection with the situation in Libya, see S/PV.3312: Libyan Arab Jamahiriya, pp. 4, 12, 22, 23, 24, 25, Egypt, pp. 29, 30, Sudan p. 32, United States, p. 40, United Kingdom, p. 45, Brazil, pp. 48, 49, 51, Russian Federation, p. 55, Spain, pp. 57, 58, 59, Hungary, p. 60, Venezuela, p. 62, Japan, p. 63; in connection with the measures taken against Somalia, see S/PV.3447: New Zealand, p. 6, France, p. 10, Argentina, p. 13, Russian Federation, p. 18; in connection with the measures taken in order to establish peace in the region of former Yugoslavia, see S/PV.3487: Bosnia and Herzegovina, pp. 3, 4, Croatia, p. 5, Turkey, pp. 6, 7, Egypt, pp. 7, 8, Pakistan, pp. 8, 9, Malaysia, p. 9, Federal Republic of Yugoslavia (Serbia and Montenegro), pp. 11, 12, Italy, p. 13, Oman, p. 14, Germany, p. 15, Russian Federation, p. 21, United Kingdom, pp. 22, 23, Indonesia, pp. 24, 25, United States, pp. 25, 26, Argentina, p. 26; in connection with the measures taken against Sudan, see: S/PV.3690: Sudan, p. 8, United Kingdom, p. 9, United States, pp. 9, 10, Russian Federation, p. 10, Indonesia, pp. 11, 12, Republic of Korea, p. 12, China, pp. 12, 13, Italy, p. 13, Botswana, p. 13, Guinea-Bissau, p. 14, Egypt, pp. 14, 15, France, pp. 15, 16, Poland p. 16, Chile, p. 16, Germany, p. 17, in connection with the measures against Iraq, see S/PV.3858: the Secretary-General, p. 3, United Kingdom, p. 4, Costa Rica, p. 5, Brazil, p. 7, Bahrain, p. 8, Sweden, p. 9, Gabon, p. 9, Kenya, p. 10, Japan, p. 11, Slovenia, p. 12, Portugal, p. 13, China, p. 14, France, p. 15, United States, p. 16, Russian Federation, p. 17, Gambia, p. 18, Pakistan, p. 19, Malaysia, p. 20, Egypt, p. 22, Peru, p. 23; and in connection with the measures taken to establish peace in Angola, see S/PV.3891: United Kingdom, p. 3, Brazil, p. 4, Costa Rica, p. 5, Russian Federation, pp. 5, 6, China, p. 6, Sweden, p. 6, Japan, p. 7, Bahrain, p. 8, Slovenia, p. 8, France, p. 9, United States, pp. 9, 10, Kenya, p. 10, Portugal, p. 11.

¹⁷ A/49/33(SUPP), para. 25.

12. During the second discussion, which arose during a meeting of the Sixth Committee, it was stated that “the Security Council should, in accordance with Article 48 of the Charter, consider on a case-by-case basis the granting of partial or limited exemptions from the sanctions regime in favour of the most adversely affected States, under appropriate forms of monitoring and control.”¹⁸

13. At the same time, the General Assembly adopted a number of resolutions which might be considered as falling implicitly within the scope of Article 48. For instance, in its resolutions, the General Assembly called upon the Security Council to impose mandatory sanctions against a particular State, under Chapter VII of the Charter,¹⁹ and urged Member States, or a Member State, to abide by the Security Council’s Resolutions and take the requested measures, for the purpose of maintaining international peace and security.²⁰

14. For detailed information regarding the practice of the Security Council on Article 48, referred to in the paragraphs II A 1-5 and II B 1-4 above, see Chapter XI of the tenth, eleventh, twelfth and thirteenth supplement of the *Repertoire of the Practice of the Security Council*:

http://www.un.org/en/sc/repertoire/85-88/85-88_11.pdf (during 1985-1988);

http://www.un.org/en/sc/repertoire/89-92/89-92_11.pdf (during 1989-1992);

http://www.un.org/en/sc/repertoire/93-95/93-95_11.pdf (during 1993-1995); and

http://www.un.org/en/sc/repertoire/96-99/96-99_11.pdf (during 1996-1999).

¹⁸ G A, Fiftieth Session, Sixth Committee, 36th mtg.: Bulgaria, para. 37. Furthermore, at the same meeting was stated also that “Articles 49 and 50 should be no less mandatory in nature than the other Articles contained in Chapter VII.” (see para. 1).

¹⁹ For instance, in connection with the situation in the southern African region, see GA Resolutions: 40/56, para. 20; 40/64 A, para. 7; 41/35 B, para. 5; 41/95, para. 5; 42/23 C, para. 3; 42/23 G, para. 5; 43/50 C, para. 5; and in connection with the situation in Bosnia and Herzegovina, see GA Resolution 46/242, para. 5.

²⁰ For instance, in connection with the situation in the Middle East, see GA Resolutions: 49/87 A, para. 3; 49/87 B, para. 5; 50/22 A, para. 3; 50/22 B, para. 5; 52/53, para. 3; in connection with the situation in the former Yugoslavia, see GA Resolutions: 48/88, para. 13; 49/10, para. 20; 49/196, para. 10; 51/116, para. 23; 52/147, paras. 15, 28; 53/35, paras. 16, 17; in connection with the situation in Haiti, see GA Resolution 48/27 para. 10; in connection with the situation in Rwanda, see GA Resolutions: 50/200, paras. 7, 8, 14; 54/188, para. 5; and in connection with the situation in Iraq, see GA Resolutions: 49/203, para. 11; 53/157, para. 17.