

ARTICLE 49

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TEXT OF ARTICLE 49

The members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

INTRODUCTORY NOTE

1. In the period covered by this *Supplement*, there was no constitutional debate related to the interpretation of Article 49. This Article was specifically cited, however, in resolutions by both the Security Council¹ and the General Assembly² in connexion with the situation in the Republic of the Congo. Article 49 was often invoked during the debates on this question and incidental references to it were made also during the consideration of various other agenda items.

2. The resolutions of the Security Council and the General Assembly in which Article 49 has been explicitly or implicitly referred to are included in the General Survey, as are resolutions which recall earlier resolutions containing such references. References to Article 49 made in the course of debates in connexion with various agenda items are also mentioned.

¹ S C, 15th yr., Suppl. for July—Sept., S/4426, oper. para. 5, which was adopted as S C resolution 146 (1960).

² G A resolution 1474 (ES-IV), oper. para. 5 (b).

GENERAL SURVEY

3. During the period under review, Article 49 was explicitly invoked, together with Article 25, both by the Security Council and the General Assembly. Of the three draft resolutions³ regarding the situation in the Republic of the Congo in which an explicit reference was made to Article 49, together with Article 25, the first two were submitted to the Security Council: one was adopted, the other failed to be adopted. The third draft resolution was submitted to, and adopted by, the General Assembly.

4. In the first instance, under operative paragraph 5 of the draft resolution adopted⁴ by the Security Council as its resolution 146 of 9 August 1960, the Security Council called upon "all Member States, in accordance with Articles 25 and 49 of the Charter of the United Nations, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Council". In the second instance under the draft resolution⁵ before it, the Security Council would, *inter alia*, reaffirm specifically "its call to all Member States, in accordance with Articles 25 and 49 of the Charter of the United Nations, to accept and carry out the decisions of the Security

Council and to afford mutual assistance in carrying out measures decided upon by the Council". On 17 September 1960, the draft resolution was put to the vote and failed to be adopted because of the negative vote of a permanent member.⁶

5. Subsequently, on 20 September 1960, the General Assembly, having been convened in emergency special session, adopted a draft resolution⁷ on the situation in the Congo as its resolution 1474 (ES-IV) in which the Assembly, *inter alia*, requested "all Member States, in accordance with Articles 25 and 49 of the Charter of the United Nations, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Security Council".⁸

6. Security Council resolution 146 of 9 August 1960, together with two earlier Council resolutions⁹ on the situation in the Congo, and the General Assembly resolution 1474 (ES-IV) were reaffirmed by the Security Council¹⁰ in its resolution¹¹ of

³ S C, 15th yr., Suppl. for July—Sept., S/4426 and S/4523; A (ES-IV), Annexes, a. i. 6, A/L 292/Rev. 1.

⁴ See also S C, 15th yr., 886th mtg., para. 272.

⁵ S C, 15th yr., Suppl. for July—Sept., S/4523, oper. para. 5 (b).

⁶ S C, 15th yr., 906th mtg., para. 157.

⁷ G A (ES-IV), 863rd mtg., para. 271.

⁸ G A resolution 1474 (ES-IV), oper. para. 5 (b).

⁹ S C, resolutions 143 and 145 of 14 and 22 July 1960 respectively.

¹⁰ S C, 16th yr., 942nd mtg., para. 950.

¹¹ S C, 16th yr., Suppl. for Jan.—March, S/4741, part A, oper. para. 5, which was adopted as S/C resolution 161 (1961).

21 February 1961, under which the Council further called upon "all States to extend their full co-operation and assistance and take such measures as may be necessary on their part, for the implementation of this resolution".

7. The resolutions mentioned in paragraph 6 were recalled and reaffirmed by the General Assembly in its resolutions 1599 (XV)¹² and 1600 (XV),¹³ both of which were adopted on 15 April 1961.

8. Subsequently, in its resolution 169 of 24 November 1961,¹⁴ the Security Council recalled its earlier resolutions on the situation in the Congo, including those of 9 August 1960 and 21 February 1961, those of the General Assembly 1474 (ES-IV), 1599 (XV) and 1600 (XV).¹⁵ Operative paragraphs 6, 7, 10 and 11 of Council resolution 169 may also be considered to have a possible bearing upon Article 49. In those paragraphs, the Security Council, *inter alia*, urged all Member States to lend their support to the Central Government of the Republic of the Congo, in conformity with the Charter and the decisions of the United Nations, and requested them to refrain from any action which could, directly or indirectly, impede the policies and purposes of the United Nations in the Congo and be contrary to its decisions.

9. Security Council resolution 187 of 13 March 1964 on the Cyprus question¹⁶ may also be judged to have a possible bearing upon Article 49 of the Charter. In operative paragraph 2 of that resolution, the Security Council, *inter alia*, requested Member States to co-operate with the Secretary-General in the implementation of Security Council resolution 186 (1964) establishing the United Nations Peace-keeping force in Cyprus. Subsequently, in its resolution 192 of 20 June 1964, the Security Council, having expressed its deep appreciation to the States that had contributed troops, police, supplies and financial support for the implementation of resolution 186 (1964), called upon all States Members of the United Nations to comply with resolutions 186 (1964) and 187 (1964).¹⁷ The above-mentioned implicit references to Article 49 were repeated in Security Council resolutions of 25 September¹⁸ and 18 December 1964¹⁹ and 19 March²⁰ and 15 June²¹ 1965. These resolutions were reaffirmed by the Security Council in its resolutions of 17 December 1965,²² 16 March²³ and 16 June²⁴ 1966.

¹² G A resolution 1599 (XV) first oper. preamb. para.

¹³ G A resolution 1600 (XV), para. 1.

¹⁴ S C, 16th yr., Suppl. for Oct.—Dec., S/5002, which was adopted as S C resolution 169 (1061).

¹⁵ *Ibid.*, second preamb. para.

¹⁶ S C, resolution 187 (1964).

¹⁷ S C, resolution 192 (1964), third preamb. para. and oper. para. 2.

¹⁸ S C, resolution 194 (1964), fourth preamb. para. and oper. para. 2.

¹⁹ S C, resolution 198 (1964), fifth preamb. para. and oper. para. 2.

²⁰ S C, resolution 201 (1965), fifth preamb. para. and oper. para. 2.

²¹ S C, resolution 206 (1965), fifth preamb. para. and oper. para. 2.

²² S C, resolution 219 (1965), oper. para. 1.

10. During the period under review, Article 49 was cited also by the Secretary-General in some of his communications to,²⁵ and statements before,²⁶ the Security Council in connexion with the situation in the Republic of the Congo. In his written and oral statements with explicit references to Article 49, the Secretary-General stressed the preemptory character of the decisions of the Security Council and the obligations of States Members of the Organization, as well as of States being recommended for membership,²⁷ to implement the decisions of the Security Council.²⁸ On a number of occasions, the Secretary-General specifically referred to, or quoted, the provisions of operative paragraph 5 of Security Council resolution 146 of 9 August 1960;²⁹ in other instances, he made both explicit and implied references to the same provisions.³⁰

11. In the period covered by this *Supplement*, reference was made explicitly or implicitly to Article 49 in the Security Council and the General Assembly by various Member States in connexion with the following agenda items: the situation in the Republic of the Congo³¹ and the cost estimates for the United

²⁵ S C, resolution 220 (1966), oper. para. 1.

²⁶ S C, resolution 222 (1966), oper. para. 1.

²⁷ See Second Report of the Secretary-General on the implementation of Security Council resolutions S/4387 of 14 July 1960 and S/4405 of 22 July 1960 (S C, 15th yr., Suppl. for July—Sept., S/4417, para. 6); telegram dated 9 August 1960 from the Secretary-General to the Prime Minister of the Republic of the Congo (S/4417/Add. 3); *note verbale* of 18 August 1960 from the Secretary-General to the Government of the Republic of the Congo, (S/4417/Add. 8, annex II, paras. 5 and 6); note dated 18 August 1960 on conversation with the representative of Ghana (S/4445, annex 1, para. 3); *note verbale* dated 8 September 1960 from the Secretary-General to the representative of Belgium (S/4482/Add. 1); letters dated 14 December 1960 from the Secretary-General addressed to the President of the Republic of the Congo (Leopoldville), (S C, 15th yr., Suppl. for Oct.—Dec., S/4599); message dated 8 March 1961 from the Secretary-General to the President of the Republic of the Congo (Leopoldville), (S C, 16th yr., Suppl. for Jan.—March, S/4775).

²⁸ See S C, 15th yr., 884th mtg., para. 22; 916th mtg., para. 7 and 920th mtg., para. 74.

²⁹ S/4417, para. 6. In connexion with Mr. Tshombe's message expressing the determination of the Katanga government to resist, *inter alia*, the dispatch of United Nations forces to Katanga, the Secretary-General drew attention to Articles 25 and 49 of the United Nations Charter "which Articles confer on the Security Council an authority applicable directly to Governments, and *a fortiori* to subordinate territorial non-governmental authorities of Member Nations. The same obligations must be regarded as applicable by analogy to nations which, like the Republic of the Congo, have been recommended for admission to the United Nations. Resistance by a Member Government to a Security Council decision has legal consequences laid down in the Charter. These sanctions necessarily apply also to the subordinate territorial organs of a nation to which the Charter rules apply".

³⁰ See, for example, S/4417, para. 6; S C, 15th yr., 884th mtg., para. 22; S C, 15th yr., 896th mtg., para. 109; and 196th mtg., para. 7.

³¹ See S/4482/Add. 1, Rev. 1; S/4599; S/4775; S C, 15th yr., 920th mtg., para. 74.

³² S/4417/Add. 3; S/4417/Add. 8, annex II; S/4445, annex I, para. 3.

³³ S C, 15th yr., 886th mtg.: Belgium, para. 244; Ecuador, paras. 46, 47, 49 and 52; 896th mtg.: Tunisia, para. 157; 897th mtg.: President (Italy), paras. 83—84; G A (XV), Plen., 957th mtg.: India, paras. 296 and 297; 972nd mtg.: Japan, paras. 70 and 89.

Nations Operation in the Congo;³² the policies of *apartheid* of the Government of the Republic of South Africa;³³ consideration of the financial situation of the Organization;³⁴ cost estimates for the maintenance of the United Nations Emergency Force³⁵ and the

³² G A (XV), 5th Com., 811th mtg.: Pakistan, paras. 7 and 12.

³³ G A (XVII), Spec. Pol. Com., 341st mtg.: Ghana, para. 10.

³⁴ G A (S-IV), 5th Com., 989th mtg.: Hungary, paras. 5 and 7; 99th mtg.: Poland, para. 6; G A (S-IV), Annexes, a. i. 7, A/5407, para. 9 (*a*) and (*d*); positions taken by Bulgaria, Mongolia and USSR, members of the Working Group.

³⁵ G A (XVIII), 5th Com., 1056th mtg.: Czechoslovakia, para. 38.

situation in Southern Rhodesia.³⁶ In some instances, Article 49 was cited to stress the binding character of the decisions of the Security Council and to draw the attention of Member States to their obligations to accept, comply with, and co-operate in the implementation of, measures decided upon by the Security Council.³⁷ In other instances, Article 49 was mentioned, together with other Articles of the Charter, in support of the view that the Security Council had exclusive jurisdiction in matters relating to organization and conduct of peace-keeping operations by the United Nations, including their financing.³⁸

³⁶ S C, 20th yr., 1261st mtg.: Uruguay, para. 47.

³⁷ See footnotes 31, 32, 33 and 36 above.

³⁸ See footnotes 35 and 36 above.