

# ARTICLE 34

## Table of Contents

	<u>Paragraphs</u>
Text of Article 34	
Introductory . . . . .	1
I. General Survey . . . . .	2 - 14
II. Analytical Summary of Practice . . . . .	15 - 53
A. The question of the Security Council being seized of disputes and situations under Article 34 . . . . .	15 - 19
Decision of 23 April 1946 in connexion with the Iranian question . . . . .	16 - 19
B. The question of the nature of the act of investigation under Article 34 . . . . .	20 - 31
1. Decision of 27 February 1947 in connexion with the Corfu Channel question . . . . .	21 - 25
2. Decisions of 24 May 1948 in connexion with the Czechoslovak question. . . . .	26 - 31
C. The question whether invitations to participate are incumbent on the Security Council in the preliminary investigation of questions . . . . .	32 - 36
1. Decisions of 11 and 12 September 1950 in connexion with the agenda item "Complaint of bombing by air forces of the territory of China". . . . .	33 - 34
2. Decisions of 1 and 3 July 1952 in connexion with the question of a request for investigation of alleged bacterial warfare. . . . .	35 - 36
D. The question of the duty of Members of the United Nations, and of States which have accepted the obligations of pacific settlement provided in the Charter, in connexion with decisions of the Security Council to investigate under Article 34 . . . . .	37 - 47
1. Decision of 22 May 1947 in connexion with the Greek frontier incidents question. . . . .	38 - 42
2. Decision of 29 July in connexion with the Greek frontier incidents question. . . . .	43 - 47

Table of Contents  
(continued)

	<u>Paragraphs</u>
E. The question of the power to continue investigation after a determination under Article 34 . . . . .	48 - 53
Proceedings in connexion with the Greek frontier incidents question . . . . .	50 - 53

## TEXT OF ARTICLE 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

## INTRODUCTORY NOTE

1. In connexion with the consideration of Article 34, reference should be made to the observations regarding Chapter VI as a whole included in the Introductory Note to the study on Article 33. Since the two occasions on which the Council has engaged in a procedure of investigation expressly under Article 34 do not by themselves afford an adequate basis for assessing the extent to which Article 34 is reflected in the work of the Council, the General Survey consists of a statement indicating the range of practice which would appear to be relevant to any survey of the significance of Article 34 in the activity of the Council within the field of pacific settlement. The Analytical Summary of Practice is confined to certain questions which would appear to derive directly from the interpretation of the text of the Charter. Proposals for investigation placed before the Council have necessarily given rise to discussion on questions of method, such as the most appropriate composition of a subsidiary organ for investigation; but such questions of method have not been dealt with in the present study since they fall rather within the sphere of the discretion of the Council. For this reason also, no attempt is made here to deal with the operation of the commissions of investigation, or with their relation with the Security Council, save as considerations related to the text of Article 34 have been involved. 1/

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1/ On certain occasions proposals submitted to the General Assembly have led to discussion whether the step envisaged would infringe the authority of the Security Council in violation of Article 34.

This question was discussed, for instance, in connexion with the consideration of the grant of authority to the Interim Committee to conduct investigations and to appoint commissions of inquiry, in the proceedings related to the following resolutions: 111 (II), "Establishment of an Interim Committee of the General Assembly", 196 (III), "Re-establishment of the Interim Committee of the General Assembly" and 295 (IV), "Re-establishment of the Interim Committee of the General Assembly".

Those Members who challenged the legality of the Interim Committee maintained that the grant of authority to the Committee to conduct investigations and to appoint commissions of inquiry violated Article 34 and even exceeded the powers of the Security Council under that Article. The General Assembly had the right to establish commissions for study but not for investigation. The Charter was explicit in stating that questions relating to the maintenance of international peace and security which had been brought before the General Assembly, had to be referred by it to the Security Council, either before or after discussion, if it became necessary to implement the measures provided for by the Charter. Thus, in their view, the Security Council alone possessed the power to consider such disputes or situations as called for sanctions or for investigation.  
(footnote continued on following page)

## I. GENERAL SURVEY

2. On two occasions the Security Council has instituted an investigation under Article 34 through the instrumentality of a subsidiary organ:

(a) In connexion with the Greek frontier incidents question, Greece, in submitting 2/ the matter, stressed the urgent need for an investigation on the spot of the situation which had arisen from the support given by neighbouring States to guerilla warfare in northern Greece. The Security Council, by its decision 3/ of 19 December 1946, established a Commission of Investigation under Article 34 "to ascertain the facts relating to the alleged border violations". In the discussion preceding the decision, it was urged that, all the four Governments concerned having made allegations that border violations had taken place, it was the inescapable and self-evident duty of the Council, as an essential first step in its proceedings in the case, to verify the various charges by means of an investigation on the spot carried out by a commission commanding the confidence of the Council; 4/

1/ (continued from p. 3)

Other Members who supported the establishment of the Interim Committee maintained that, while Article 34 had conferred upon the Security Council the power of conducting investigations, there was no suggestion in the Charter that the General Assembly could not investigate matters within its own jurisdiction. It was logical that, since the Assembly was empowered to consider disputes, discuss situations, and make recommendations, it should be able to conduct investigations as required. The authority of the General Assembly to establish commissions of inquiry was implicit even if it were not clear that Article 35 attracted to the General Assembly the jurisdiction and functions of the Security Council contained in Article 34.

A number of representatives who in principle supported the establishment and continuance of the Interim Committee, expressed doubts as to the legality of the power of the Committee to order investigations, not because they doubted that the Assembly possessed the authority to investigate, but rather because they questioned the right of the Assembly to delegate that authority to a subsidiary organ. In order to meet this objection, therefore, the General Assembly, in adopting the resolutions in question, made the investigatory powers of the Interim Committee subject, among other limitations, to the consent of the State in whose territory the investigation would take place.

For texts of relevant statements in connexion with General Assembly resolution 111 (II), see:

G A (II), Plen., vol. I, 84th mtg.: USSR, pp. 91 and 92;  
G A (II), Plen., vol. II, 110th mtg.: Australia, p. 784; USSR, pp. 775 and 776;  
United States, pp. 757 and 758; 111th mtg.: France, p. 811;  
G A (II), 1st Com., 74th mtg.: Australia, pp. 137 and 138; USSR, pp. 134-136;  
United States, pp. 130-132; 78th mtg.: Canada, p. 165; United States, pp. 172 and 173; 95th mtg.: Australia, p. 316; India, p. 317; USSR, p. 321; 96th mtg.: Norway, p. 325; United Kingdom, pp. 327 and 328.

For texts of relevant statements in connexion with General Assembly resolution 196 (III), see G A (III/1), Plen.; 168th mtg.: USSR, p. 668; 169th mtg.: Yugoslavia, pp. 680 and 681.

For text of relevant statement in connexion with General Assembly resolution 295 (IV), see G A (IV), Ad Hoc Pol. Com., 17th mtg.: Poland, para. 15.

2/ S C, 1st yr., 2nd Series, Suppl. No. 10, p. 170, annex 16 (S/203).

3/ S C, 1st yr., 2nd Series, No. 28, 87th mtg., pp. 700 and 701.

4/ S C, 1st yr., 2nd Series, No. 27, 85th mtg., pp. 629-631.

(b) In connexion with the India-Pakistan question, the Security Council decided on an investigation in circumstances in which an act of aggression was alleged by one party and extensive counter-charges were submitted by the other party. The Council, by its decision 5/ of 20 January 1948, declared an investigation within the terms of Article 34 to be a matter of urgency "in the existing state of affairs between India and Pakistan", and, accordingly, established a commission "To investigate the facts pursuant to Article 34 of the Charter". The Commission was to confine its immediate activity to the situation in the Jammu and Kashmir State, and, when the Council so directed, to other situations set out in the initial communication submitted by Pakistan. This further direction 6/ was given by the Council on 3 June 1948.

3. The Commission of Investigation concerning Greek Frontier Incidents, while exclusively charged with the task of investigation, was invited by the Council to make proposals for averting the repetition of border violations. The Commission for India and Pakistan was endowed with the additional function of exercising "mediatory influence"; its functions in this respect were elaborated by the decision 7/ of 21 April 1948.

4. The two subsidiary organs differed in their composition, and the question of composition in each case was decided after considerable debate. The Commission of Investigation concerning Greek Frontier Incidents was composed of a representative of each member of the Council. The Commission for India and Pakistan, as finally constituted, was composed of five Members of the United Nations -- one member selected by each of the two parties, one designated by the President of the Security Council, and two members appointed by the Council.

5. The Commission of Investigation concerning Greek Frontier Incidents submitted a single report 8/ to the Council at its 147th meeting on 27 June 1947. Consideration of the question by the Council proceeded with the discussion of two draft resolutions which had been submitted; one of these incorporated the recommendations of the Commission. The Commission remained in being until the question was removed from the agenda of the Council at its 202nd meeting on 15 September 1947.

6. The Commission for India and Pakistan, after having undertaken a preliminary investigation of the military, political and economic situation in Kashmir, concentrated on its mediatory duties with a view to procuring a cease fire. Three interim reports 9/ were submitted to the Council; in the third report, presented to the Security Council at its 457th meeting on 17 December 1949, the Commission reported that its function of investigating the facts had been completed, that further United Nations action should prove more effective on the foundation provided by the investigation, and that, with a view to further mediatory activity, the Security Council should designate a single representative to replace the Commission. The Commission was accordingly terminated in accordance with the decision 10/ of the Security Council of 14 March 1950.

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5/ S C, 3rd yr., Suppl. for Nov., pp. 64 and 65, annex 1 (S/654).

6/ S C, 3rd yr., No. 79, 312th mtg., p. 21.

7/ S C, 3rd yr., Suppl. for Apr., pp. 8-12, S/726.

8/ S C, 2nd yr., Special Suppl. No. 2, vol. I (S/360/Rev.1).

9/ S C, 3rd yr., Suppl. for Nov., pp. 17-144, S/1100;

S C, 4th yr., Suppl. for Jan., pp. 20-45, S/1196;

S C, 4th yr., Special Suppl. No. 7 (S/1430/Rev.1).

10/ S C, 5th yr., No. 12, 470th mtg., p. 4.

7. The proceedings of the Security Council bearing upon Article 34 have not been concerned only with the initiation of investigation under the terms of that Article through the instrumentality of a subsidiary organ. Under the provisions of Article 34 the Security Council is empowered to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the dispute or situation is one in respect of which the Council is authorized to make recommendations under Articles 36 and 37. In connexion with several matters, the Council, having included the matter in the agenda, entered into a debate in which a central question was whether the continuance of the dispute or situation was likely to endanger the maintenance of international peace and security.

8. With regard to the Spanish question, the Council had recourse to the deliberative procedure of entrusting the preliminary examination of the evidence to a sub-committee with a view to the determination by the Council envisaged in Article 34. That preliminary consideration of the gravity of a question brought before it might be undertaken by the Council itself in application of Article 34 was also affirmed in a decision 11/ of the Council of 29 September 1950 in connexion with the agenda item entitled "Complaint of armed invasion of Taiwan (Formosa)", in which the Council motivated its decision to invite a representative of the People's Republic of China in the following preambular paragraph:

"The Security Council,

"Considering that it is its duty to investigate any situation likely to lead to international friction or to give rise to a dispute, in order to determine whether the continuance of such dispute or situation may endanger international peace and security, and likewise to determine the existence of any threat to peace".

9. Proceedings on the Spanish question were initiated when a member of the Council submitted a draft resolution invoking Articles 39 and 41. During the discussion the objection was raised that Chapter VI, under which the case had been brought before the Council, required investigation before action could be taken. A draft resolution 12/ was submitted under which the Council would, in pursuance of Article 34, entrust to a committee of five members the task of reporting on the question whether the continuance of the Spanish situation was likely to endanger the maintenance of international peace and security. The draft resolution, as amended, 13/ was adopted by the Council at its 39th meeting on 29 April 1946. Express reference to Article 34 was omitted. The Council reserved to itself the function of arriving at a determination of the nature envisaged in Article 34, and instructed a sub-committee to examine the evidence and to report to the Council. In its report 14/ the sub-committee expressly designated the Spanish situation in the terms of Article 34, and recommended measures in pursuance of Article 36. The Security Council, thereafter, based its consideration on a draft resolution, submitted by the Chairman of the sub-committee, which incorporated the measures recommended by the sub-committee, without explicit determination in the terms of Article 34. The draft resolution was not adopted, though the question was retained in the agenda of the Council by its decision 15/ of 26 June 1946, in order to enable the Council to take measures to maintain international peace and security. By the

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11/ S C, 5th yr., No. 48, 506th mtg., pp. 3-5, S/1823/Corr.1.

12/ S C, 1st yr., 1st Series, No. 2, 35th mtg., p. 198.

13/ Ibid., 39th mtg., p. 244.

14/ S C, 1st yr., 1st Series, Special Suppl., Rev. ed., S/75.

15/ S C, 1st yr., 1st Series, No. 2, 49th mtg., pp. 441 and 442.

decision 16/ of the Council of 4 November 1946, the question was removed from the list of matters of which the Council was seized.

10. The proceedings of the Council on the following questions may also appropriately be examined for their analogy to the agenda item "Complaint of armed invasion of Taiwan (Formosa)" in relation to Article 34: the Greek question, brought before the Council by the communication of the USSR, dated 21 January 1946; the Indonesian question (I); the Greek question, brought before the Council by the communication of the Ukrainian SSR, dated 24 August 1946; the Egyptian question; the Hyderabad question; the item "Complaint of bombing by air forces of the territory of China"; and the Anglo-Iranian Oil Company case.

11. Except in the cases of the item "Complaint of bombing by air forces of the territory of China", and of the item "Request for investigation of alleged bacterial warfare", the Council discussed the above-mentioned questions, with the participation of Member States not members of the Council and States not Members of the United Nations, with a view to affording them an opportunity to develop orally before the Council the case made in the letter of submission, to reply to allegations, or to inform the Council of their special concern. With regard to the two exceptions in the matter of participation to which reference has been made, the question of whether to invite the People's Republic of China, which in the one case had brought the question before the Council, and in the other case was involved in the allegations made, was connected with the question of whether an invitation to participate should be extended before or after an investigation. These two cases are dealt with in the Analytical Summary of Practice.

12. On only one occasion have the proceedings of the Council, thus far outlined as bearing on the application of Article 34, resulted in a determination of the nature envisaged in Article 34. The resolution 17/ of 21 April 1948, on the India-Pakistan question, recorded in the preamble the view of the Council that the continuation of the dispute was "likely to endanger international peace and security"; in the text of the resolution the Security Council recommended measures appropriate to bring about a cessation of fighting and to create conditions for a free and impartial plebiscite in the State of Jammu and Kashmir. A determination under Article 34 was submitted to the Council in the debate on the Greek frontier incidents question consequent upon the report of the Commission of Investigation concerning Greek Frontier Incidents; the paragraph in question was adopted by the Council, but the resolution of which it formed a part was rejected. 18/ Thereafter, consideration of the Greek frontier incidents question was resumed on the basis of a renewed submission of the question, in which Article 39 was invoked.

13. Proceedings on the other questions indicated above were closed in a variety of ways: by a presidential statement taking note of declarations made and views expressed and indicating the closing of proceedings, as in the case of the Greek question, brought before the Council by the communication of the USSR, dated 21 January 1946; 19/ by a presidential declaration confined to the statement that the matter was closed, as in the case of the Indonesian question (I); 20/ by tacit agreement that negative votes on the proposal to retain the question on the agenda, together with the non-adoption of all pending proposals would result in the removal of the question from the agenda of the Council, as in the case of the Greek question, brought before the Council by the

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16/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 498.

17/ S C, 3rd yr., Suppl. for Apr., pp. 8-12, S/726.

18/ S C, 2nd yr., No. 66, 170th mtg., pp. 1602, 1603 and 1612.

19/ S C, 1st yr., 1st Series, No. 1, 10th mtg., pp. 171 and 172.

20/ Ibid., 18th mtg., p. 263.

communication of the Ukrainian SSR, dated 24 August 1946; 21/ by retention of the question on the agenda subsequent to the non-adoption of all proposals submitted, pending a decision by the Council to remove the question, as in the case of the Egyptian question; 22/ by suspension of further proceedings after the non-adoption of pending proposals, as in the case of the agenda items "Complaint of bombing by air forces of the territory of China", 23/ and "Complaint of armed invasion of Taiwan (Formosa)"; 24/ or by adjournment of the debate, as in the Anglo-Iranian Oil Company case. 25/

14. Of the questions which have been the subject of prolonged consideration by the Security Council, it is only in connexion with the Spanish question, the Greek frontier incidents question and the India-Pakistan question that it is possible to differentiate, on the basis of decisions by the Council, between initial proceedings relevant to Article 34 and proceedings which may be deemed relevant to other Articles of Chapter VI. In connexion with the Indonesian question (II), the Palestine question and the agenda item "Complaint of aggression upon the Republic of Korea", the proceedings of the Council afford no basis for discerning any preliminary stage of proceedings relevant to Article 34 as distinct from proceedings more directly concerned with the maintenance of international peace and security. The consideration of these questions was entered upon by the Council in circumstances in which active hostilities were either imminent or were actually in progress. 26/ In connexion with the Indonesian question (II), the view was expressed by a member of the Council that in the circumstances of that case investigation of the facts under Article 34 was not called for.

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. The question of the Security Council being seized of disputes and situations under Article 34

15. The Security Council has been seized of disputes and situations by the inclusion in the agenda of the Council of such questions after submission by Members of the United Nations or other States. In the letters of submission, Article 34, as well as Article 35, has frequently been cited. The problem of the retention on the agenda of the Iranian question gave rise to consideration whether the Council may, under Article 34, become seized of a dispute or situation on its own initiative.

#### *Decision of 23 April 1946 in connexion with the Iranian question*

16. At the 33rd and 36th meetings on 16 and 23 April 1946, the Security Council considered a draft resolution 27/ submitted by France which would take note of the withdrawal by Iran of its complaint against the USSR, would note that agreement had been reached between the two Governments concerned, and would request the Secretary-General to collect the necessary information in order to complete the report of the Council to the General Assembly.

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21/ S C, 1st yr., 2nd Series, No. 16, 70th mtg., p. 422.

22/ S C, 2nd yr., No. 88, 201st mtg., p. 2363.

23/ S C, 5th yr., No. 43, 501st mtg., p. 28.

24/ S C, 5th yr., No. 72, 530th mtg., pp. 21-25.

25/ S C, 6th yr., 565th mtg., paras. 10 and 62.

26/ For proceedings on the question of Guatemala, see in this Repertory under Article 52.

27/ S C, 1st yr., 1st Series, No. 2, 33rd mtg., pp. 142 and 143.



17. In connexion with the draft resolution submitted by France, there was discussion whether the Iranian question could properly be retained on the agenda in view of the fact that both Iran and the USSR had requested that it be removed. Interpretations were also offered with regard to the competence of the Security Council to initiate an investigation without a request by the parties or to continue an investigation after the original complaint had been withdrawn.

18. The Secretary-General, in a communication <sup>28/</sup> to the Council, expressed an opinion to the effect that there was no way of retaining the Iranian question on the agenda, and implied that, under Articles 34 and 35, the Council could not be seized of any dispute unless one of the parties had drawn the attention of the Council to it. The memorandum of the Secretary-General was referred to the Committee of Experts for examination and report. The Committee failed to formulate a common opinion, but the majority expressed the view that the Council was entitled further to concern itself with a question, even after agreement had been reached between the parties directly concerned, since circumstances might continue to exist which might still leave room for fears regarding the maintenance of peace. <sup>29/</sup> One member of the Council, who shared the view of the majority, adduced the following argument: Article 34 conferred upon the Council the power and function of examining every dispute or situation likely to endanger international peace and security. It followed that the Council did not have to wait until one party formally made a complaint. Consequently, if the Council could investigate and act without a complaint from any of the parties, it could also retain a matter for consideration independently of the wishes of the parties concerned. It was within the jurisdiction of the Council alone to decide that question, after it had examined the facts and had reached the conclusion that the matter was still of the nature referred to in Article 34.

19. The view that the Council had the right to investigate a dispute on its own initiative was also upheld by a member who opposed retention of the Iranian question on the agenda; however, in his opinion, when the Council had become seized of a dispute brought before it by one of the parties, its competence to consider such a dispute lapsed upon withdrawal of the original complaint. <sup>30/</sup>

#### Decision

At the 36th meeting on 23 April 1946, the draft resolution submitted by France was rejected. <sup>31/</sup> There were 3 votes in favour and 8 against.

#### B. The question of the nature of the act of investigation under Article 34

20. In three instances -- in connexion with the Spanish question, the Corfu Channel question and the Czechoslovak question -- proposals were considered by the Council to elucidate the facts of the case through the instrumentality of a sub-committee, meeting at Headquarters. In each of these instances, the establishment of the sub-committee was regarded by the proponents as a preliminary step of a procedural character which would fall under Article 29 rather than under Article 34. The contrary view was expressed on two of these occasions by a permanent member which, on the grounds of the investigatory nature of the proposed subsidiary bodies, maintained that the decision related to investigation and was, therefore, a non-procedural matter.

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<sup>28/</sup> S C, 1st yr., 1st Series, No. 2, 33rd mtg., pp. 143 and 144, S/39.

<sup>29/</sup> S C, 1st yr., 1st Series, Suppl. No. 2, pp. 47-50, annex 2 g, S/42.

<sup>30/</sup> For texts of relevant statements, see S C, 1st yr., 1st Series, No. 2, 36th mtg.: Australia, pp. 204 and 205; Poland, p. 209.

<sup>31/</sup> Ibid., p. 213.

*1. Decision of 27 February 1947 in connexion with  
the Corfu Channel question*

21. At the 111th meeting on 24 February 1947, the Security Council had before it a draft resolution 32/ submitted by Australia which would establish a sub-committee to examine all the available evidence concerning the incidents in the Corfu Channel and to report on the facts of the case. The representative of Australia stated that the sub-committee should analyse the evidence obtained from the available documents and statements and supplement it by reference to the two parties to the dispute but not by undertaking any investigation beyond those limits.

22. The question then arose whether the creation of the proposed sub-committee was an act of investigation within the meaning of Article 34 and, therefore, subject to the proviso of Article 27 (3) or merely a decision under Article 29 which would be governed by the provision of Article 27 (2).

23. Upon inquiry by the representative of the United Kingdom, the President (Belgium) stated that Article 27 (3) did not apply to the case, since the establishment of a purely advisory sub-committee charged with analysing information submitted to the Council did not constitute a decision to undertake an investigation. Accordingly, he ruled that the United Kingdom, although a party to the dispute, would not be debarred from exercising its vote on the draft resolution submitted by Australia.

24. The ruling of the President was contested, but not formally challenged, by the representative of a permanent member who maintained that the establishment of a sub-committee for the preliminary elucidation of the facts of the question with which the Council was concerned, whether intended to work at Headquarters or anywhere else, was a decision regarding investigation, and hence was not procedural; the establishment of a subsidiary organ to investigate facts amounted to a decision about an investigation. He stated, however, that in this instance he would not oppose the establishment of a sub-committee.

25. In supporting the ruling of the President, other members of the Council advanced the following arguments:

(a) Under Article 29, the Council was empowered to establish such subsidiary organs as it deemed necessary for the performance of its functions. Since the Council itself could, as a matter of procedure, make inquiries about any question, it could also authorize a sub-committee of its own creation, drawn from its own members, to do the same thing if it found that a convenient method of conducting its business. Adoption of the view that the establishment of a sub-committee was equivalent to ordering an investigation would mean that contrary to the provision of Article 29, the Council could never, without the consent of each of the five permanent members, establish any agency to conduct its business.

(b) A distinction should be drawn between an investigation in the sense of Article 34, that is to say, an investigation to discover whether the dispute or situation in question was likely to endanger the maintenance of international peace and security, and the clarification of certain evidence by a sub-committee designed to facilitate the work of the Council without aiming at the determination mentioned in Article 34. 33/

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32/ S C, 2nd yr., No. 18, 111th mtg., pp. 364 and 365.

33/ For texts of relevant statements, see S C, 2nd yr., No. 21, 114th mtg.: President (Belgium), p. 426; Colombia, p. 429; Syria, p. 430; USSR, pp. 425, 427 and 428; United States, pp. 430 and 431.

Decision

At the 114th meeting on 27 February 1947, the draft resolution submitted by Australia, as amended, was adopted 34/ by 8 votes in favour with 3 abstentions. The representative of the United Kingdom participated in the voting.

*2. Decisions of 24 May 1948 in connexion with the Czechoslovak question*

26. In the course of the discussion of this question, reference was made to the desirability of following the normal procedure provided for the discharge of the functions of the Security Council under Article 34 by establishing a commission of investigation. It was remarked, however, that since Article 2 (7) had been invoked and the Council could not, therefore, ascertain what would be the attitude of the Government of Czechoslovakia towards such a commission, the question could not be investigated fully under the provisions of Article 34. It was suggested that it might be convenient if the Council established instead a fact-finding sub-committee to collect evidence about the situation in Czechoslovakia and to report to the Council thereon.

27. At the 281st meeting on 12 April 1948, the representative of Chile submitted the following draft resolution: 35/

"Whereas the attention of the Security Council has been drawn by a Member of the United Nations, in accordance with Articles 34 and 35 of the Charter, to the situation in Czechoslovakia which may endanger international peace and security; and the Security Council has been asked to investigate this situation; and

"Whereas during the debate which took place in the Council the existence of further testimonial and documentary evidence with regard to this situation has been announced;

"Whereas the Security Council considers it advisable that such further testimonial and documentary evidence should be heard,

"Therefore, to this end, and without prejudice of any decisions which may be taken in accordance with Article 34 of the Charter,

"The Security Council

"Resolves to appoint a sub-committee of ... members and instructs this sub-committee to receive or to hear such evidence, statements and testimonies and to report to the Security Council at the earliest possible time."

28. Discussion of the draft resolution submitted by Chile centred on the question whether the establishment of a sub-committee, empowered to hear testimony and to report back to the Council, constituted an act of investigation within the meaning of Article 34.

29. The representative of a permanent member maintained that the creation of the proposed subsidiary organ amounted to instituting an investigation, regardless of whether the action to be taken by that organ was specifically so defined or was merely

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34/ S C, 2nd yr., No. 21, 114th mtg., p. 432. For subsequent references to this case, see also S C, 3rd yr.,

No. 63, 288th mtg.: United States, pp. 20 and 21;

No. 71, 300th mtg.: USSR, pp. 41 and 42.

35/ S C, 3rd yr., No. 56, 281st mtg., p. 2.

described as an elucidation of facts. Consequently, the establishment of the sub-committee related to a non-procedural matter in the sense of the Statement by the Four Sponsoring Governments at San Francisco.

30. Other representatives were of the opinion that the establishment of the proposed sub-committee would mean no more than a continuance by the Security Council of its consideration of the Czechoslovak question with the assistance of a subsidiary organ. The adoption of a resolution relating to such an organ was governed by Article 29 and concerned, therefore, a procedural matter. 36/

#### Decision

At the 303rd meeting on 24 May 1948, the Security Council, at the suggestion of the President (France), first voted 37/ on the preliminary question whether the vote on the draft resolution should be considered procedural. There were 8 votes in favour, 2 against (1 vote against being that of a permanent member), and 1 abstention. The President interpreted 38/ the result of the vote as a failure to decide that the draft resolution related to a procedural matter owing to the negative vote cast by a permanent member. Referring to the Statement of the Four Sponsoring Governments, the President was of the opinion that certain decisions, which in themselves might be procedural, must be considered to be substantive because of the "major political consequences" which they might have. He, therefore, considered that the word "investigation", to be found in part I, paragraph 5 of the Statement, was used in its widest meaning as calling for reports and the hearing of witnesses without dispatching a commission of inquiry to the spot.

The ruling of the President was challenged; a motion for its rejection, however, failed of adoption. 39/ There were 6 votes in favour of the challenge, 2 against and 3 abstentions.

The draft resolution submitted by Chile was not adopted. There were 9 votes in favour and 2 against (1 vote against being that of a permanent member). 40/

31. At the 305th meeting on 26 May 1948, the representative of Argentina drew attention to a draft resolution 41/ which he had submitted, which would entrust the Committee of Experts with the task of obtaining further testimonial evidence with regard to the situation in Czechoslovakia, and of reporting back to the Council. He justified his proposal, stating that the Council, having failed to create a special subsidiary body to collect information, could assign this task to a body already in

36/ For texts of relevant statements, see S C, 3rd yr., Nos. 36-51, 268th mtg.: Chile, p. 109; 276th mtg.: Chile, p. 268; Syria, p. 277;

No. 56, 281st mtg.: USSR, pp. 18-20; United States, pp. 26, 32 and 33;

No. 63, 288th mtg.: Argentina, pp. 15, 26 and 27; Belgium, p. 18; Canada, p. 21; Syria, p. 23; USSR, pp. 21 and 22; United States, pp. 19-21;

No. 71, 300th mtg.: Canada, pp. 39-41; USSR, pp. 41 and 42; United Kingdom, p. 38;

No. 73, 303rd mtg.: President (France), pp. 19-21; Argentina, p. 21; China, pp. 27 and 28;

No. 74, 305th mtg.: President (France), p. 35; Argentina, p. 35; USSR, pp. 36-39; United Kingdom, p. 33.

37/ S C, 3rd yr., No. 73, 303rd mtg., p. 19.

38/ Ibid., pp. 19-21.

39/ Ibid., pp. 21-27.

40/ Ibid., pp. 28 and 29.

41/ S C, 3rd yr., Suppl. for May, p. 99, S/782.

existence and which dealt solely with procedural matters. The representative of a permanent member objected to this proposal as a new attempt to institute an investigation of the Czechoslovak question. The draft resolution submitted by Argentina was not put to the vote. <sup>42/</sup>

C. The question whether invitations to participate are incumbent  
on the Security Council in the preliminary investigation  
of questions

32. The practice of the Security Council in the matter of invitations to participate in the proceedings of the Council is dealt with in the studies on Articles 31 and 32. In two instances, in connexion with the agenda items entitled "Complaint of bombing by air forces of the territory of China", and "Request for an investigation of alleged bacterial warfare", the Council has discussed the specific question whether such participation should be dispensed with by reason of the intention to proceed with an investigation as a preliminary to full consideration by the Council.

1. Decisions of 11 and 12 September 1950 in connexion with  
the agenda item "Complaint of bombing by air forces of  
the territory of China"

33. At its 493rd meeting on 31 August 1950, the Security Council had before it a complaint by the People's Republic of China containing charges that military aircraft of the United States had violated the air space of the People's Republic of China, had bombed its territory, had inflicted casualties and had caused material damage. The United States, while admitting the possibility of an accidental crossing of the frontier, denied the specific charges and suggested that a commission be dispatched to the area in order to make an investigation of the facts. At the 493rd meeting on 31 August 1950, the representative of the USSR submitted a draft resolution <sup>43/</sup> which would condemn the bombing of the territory of China and would call upon the Government of the United States to prohibit such acts in the future. At the 497th meeting on 7 September 1950, the representative of the United States submitted a draft resolution <sup>44/</sup> which would establish a commission of investigation and would request all parties concerned to provide the necessary facilities. He explained that the purpose of his proposal was to enable the Council to consider the matter further after the situation had been examined on the spot. At the same meeting, the representative of the USSR submitted a draft resolution <sup>45/</sup> which would invite a representative of the People's Republic of China to the meetings of the Council. He stressed that, before proceeding to discuss the substantive draft resolutions, the Council should first grant a hearing to the State which had lodged the complaint. Such questions as creating a commission and sending it to make an inquiry in a certain country could not be decided without the participation of a representative of that country.

34. The discussion of the draft resolutions centred on the question whether the Council should first appoint a commission to carry out the investigation on the spot so that the Council might, on the basis of the commission's findings, consider the proposal to invite the representative of the People's Republic of China, or whether it should first grant a hearing to the complainant to state its views before the Council which would thus be in a better position to consider the question whether to

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<sup>42/</sup> For texts of relevant statements, see S C, 3rd yr., No. 74, 305th mtg.: Argentina, p. 35; USSR, p. 36.

<sup>43/</sup> S C, 5th yr., No. 35, 493rd mtg., p. 14, S/1745/Rev.1.

<sup>44/</sup> S C, 5th yr., No. 39, 497th mtg., pp. 18 and 19, S/1752.

<sup>45/</sup> S C, 5th yr., No. 39, 497th mtg., pp. 26 and 27, S/1759.

undertake an investigation. In this connexion, reference was made to the provisions of Articles 32 and 34 and of rule 39 of the provisional rules of procedure of the Council. The opinion was expressed that the question before the Council concerned a situation of the nature envisaged in Article 34, and therefore warranted an investigation, whereas Article 32 would have been applicable if the question were deemed a dispute. <sup>46/</sup>

#### Decisions

At the 499th meeting on 11 September 1950, the draft resolution submitted by the USSR which would invite a representative of the People's Republic of China was rejected. <sup>47/</sup> There were 6 votes in favour, 3 against and 2 abstentions.

At the 501st meeting on 12 September 1950, the draft resolution submitted by the United States which would set up a commission of investigation was not adopted. <sup>48/</sup> There were 7 votes in favour, 1 against (the vote against being that of a permanent member), 2 abstentions, and 1 member not participating in the vote.

The draft resolution submitted by the USSR which would condemn the bombing by air forces of the territory of China was rejected. <sup>49/</sup> There were 1 vote in favour, 8 against, with 1 abstention and 1 member not participating in the vote.

#### *2. Decisions of 1 and 3 July 1952 in connexion with the question of a request for investigation of alleged bacterial warfare*

35. At the 580th to 587th meetings inclusive, held between 23 June and 3 July 1952, the Security Council considered the following two draft resolutions: (a) a draft resolution <sup>50/</sup> submitted by the United States which would request the International Committee of the Red Cross to investigate the accusations disseminated by certain Governments and authorities and repeated by the Government of the USSR in organs of the United Nations charging the use of bacterial warfare by United Nations forces, and would call upon the Governments and authorities concerned to accord to the Committee full co-operation in the performance of its task; (b) a draft resolution <sup>51/</sup> submitted by the USSR which would invite representatives of the People's Republic of China and of the Democratic People's Republic of Korea to the meetings at which the question was discussed.

In the course of the discussion, the representative of the USSR first insisted that the decision to extend an invitation to the parties directly concerned should be taken simultaneously with the decision to include the item in the agenda. After the adoption of the agenda, he emphasized that the invitation should be decided upon before the opening statement by the United States, so that both sides should be present during consideration of the substance of the matter.

36. Other members opposed extending an invitation to participate in the deliberations of the Council relating to the adoption of the agenda. With regard to the proposal to invite the representatives concerned at a later stage, the view was expressed that the

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<sup>46/</sup> For texts of relevant statements, see S C, 5th yr.;  
 No. 35, 493rd mtg.: President (USSR), p. 14; United Kingdom, p. 22;  
 United States, pp. 25 and 26;  
 No. 39, 497th mtg.: Ecuador, p. 30; USSR, pp. 23-25, 27 and 28;  
 No. 41, 499th mtg.: President (United Kingdom), pp. 17 and 18; Cuba, p. 15;  
 France, p. 15; India, pp. 16 and 17; Norway, p. 13; Yugoslavia, p. 16.  
<sup>47/</sup> S C, 5th yr., No. 41, 499th mtg., p. 19.  
<sup>48/</sup> S C, 5th yr., No. 43, 501st mtg., p. 28.  
<sup>49/</sup> S C, 5th yr., No. 43, 501st mtg., p. 28.  
<sup>50/</sup> S C, 7th yr., Suppl. for Apr. - June, p. 17, S/2671.  
<sup>51/</sup> S C, 7th yr.; 581st mtg., p. 10, footnote 1 to para. 53, S/2674/Rev.1.

facts of the situation could best be elucidated through an investigation on the spot and not through a debate in the Council. The question of hearing both parties would, therefore, arise only after the decision to institute an investigation had been taken. 52/

#### Decisions

At the 585th meeting 53/ on 1 July 1952, the draft resolution submitted by the USSR was rejected. There were 1 vote in favour and 10 against.

At the 587th meeting on 3 July 1952, the draft resolution submitted by the United States was not adopted. 54/ There were 10 votes in favour and 1 against (the vote against being that of a permanent member).

#### D. The question of the duty of Members of the United Nations, and of States which have accepted the obligations of pacific settlement provided in the Charter, in connexion with decisions of the Security Council to investigate under Article 34

37. Discussions on the relation between a decision by the Council to investigate and the obligations of pacific settlement in the light of Article 25 of the Charter arose at two stages during the consideration of the Greek frontier incidents question. On one occasion, the debate dealt with objections raised as to the validity of the terms of reference of the subsidiary group. On the other occasion, the debate centred on whether the decision to investigate was binding upon the parties concerned, regardless of their consent, or whether it was a simple recommendation.

##### *1. Decision of 22 May 1947 in connexion with the Greek frontier incidents question*

38. At the 131st meeting on 18 April 1947, the Security Council adopted an amended draft resolution 55/ submitted by the United States by which the Commission of Investigation concerning Greek Frontier Incidents, established by the resolution 56/ of the Council of 19 December 1946, was authorized to maintain in the area concerned a subsidiary group, composed of representatives of each of the members of the Commission, to continue to fulfil such functions as the Commission might prescribe in accordance with its terms of reference. The draft resolution was adopted by 9 votes to none, with 2 abstentions. The intent of the resolution was, according to its sponsor, to enable the Commission to continue its investigations along the northern Greek border during its absence from the area and until the Security Council itself had disposed of the Greek frontier incidents question.

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52/ For texts of relevant statements, see S C, 7th yr.; 580th mtg.: United Kingdom, paras. 80-82; United States, paras. 66-68; 585th mtg.: President (United Kingdom), para. 56; Brazil, paras. 52 and 53; China, para. 43; France, para. 37; Netherlands, paras. 45 and 46; Pakistan, paras. 39-41; Turkey, para. 54; USSR, paras. 6 and 7 and 61-63; United States, paras. 124-128, 135 and 140; 586th mtg.: Brazil, paras. 8-14; Chile, para. 110; China, paras. 92-96; France, paras. 62-65 and 73-83; Greece, paras. 36, 38 and 40; Netherlands, paras. 24-31; Turkey, paras. 56 and 59; 587th mtg.: President (United Kingdom), paras. 4-6.

53/ S C, 7th yr., 585th mtg., para. 58.

54/ S C, 7th yr., 587th mtg., para. 16.

55/ S C, 2nd yr., No. 37, 131st mtg., pp. 799 and 800.

56/ S C, 1st yr., 2nd Series, No. 28, 87th mtg., pp. 700 and 701.

39. At the 133rd to 137th meetings inclusive, held between 12 and 22 May 1947, the Council considered a question raised by the representative of the USSR, who had objected to the terms of reference assigned to the subsidiary group under the directive of the Commission of 29 April 1947. He submitted to the Council a draft resolution 57/ which would modify these terms of reference. At the same time, the Council considered a question referred to it by the Chairman of the Commission, who had informed the Council that the liaison representatives of Albania, Bulgaria and Yugoslavia had stated that they would not participate in the work of the subsidiary group. In the relevant communication 58/ the Commission expressed the view that it was within the jurisdiction of the Council to decide the question whether the obligations accepted by Albania, Bulgaria and Yugoslavia in connexion with the establishment of the Commission of Investigation would also apply to them in regard to the subsidiary group.

40. In the course of the debate, several members supported the view that the terms of Article 34 indicated that a decision to investigate involved an obligation, and was not a simple recommendation. The investigation provided for in Article 34 was only for the information of the Council without prejudice to the substance of the question. It was an act preparatory to any recommendation which might be made in conformity with the provisions of Chapter VI. Consequently, a decision to investigate was applicable as an injunction and had binding effects on Member States in the sense of Article 25. It was, likewise, binding upon non-member States which, as parties to a dispute, had assumed the obligations imposed by the Charter. Greece and Yugoslavia were in the former category, and Albania and Bulgaria in the latter. Therefore, since the resolution of the Council establishing the subsidiary group was binding on the four States concerned, they were, in principle, bound by the Commission's decision defining the terms of reference of the subsidiary group, which had been taken in pursuance of the instructions it had received under that resolution. It was further argued that Greece, Yugoslavia, Albania and Bulgaria, in their capacity as parties to the dispute, had been invited by the Security Council under the provisions of Article 32, to participate in the discussion of the Council; that Albania and Bulgaria, in complying with the conditions laid down by the Council for their participation as non-members of the United Nations, had declared that for the purposes of the dispute they assumed the obligations imposed by the Charter; and, that the intention of the Council was thus to assure these States a position similar to that of a Member State in the same circumstances.

41. In opposing these views, some representatives stated that the agreement of Albania, Bulgaria and Yugoslavia to implement the decisions of the Security Council on the Greek question could not apply to the resolution of 18 April 1947, and that this resolution whereby the Council delegated its own powers to a subsidiary organ could not be considered valid. Even less could this agreement of the parties apply to decisions of the Commission of Investigation or its subsidiary group. The observation was made that the directive of the Commission defining the terms of reference of the subsidiary group had been adopted without the participation of, or consultation with, the above-mentioned parties directly concerned in this question.

42. Before the draft resolution submitted by the USSR was put to the vote, the representative of a permanent member of the Council expressed the opinion that the position of Yugoslavia, a Member State, not to accept the decision of the Commission was tantamount to a refusal to accept a decision of the Security Council. However, it was his view that if, as a result of the discussion, the Council rejected the draft resolution submitted by the USSR, thus sustaining the validity of the terms of reference of the subsidiary group, the parties concerned would conform to the decision

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57/ S C, 2nd yr., No. 39, 133rd mtg., p. 832.

58/ S C, 2nd yr., Suppl. No. 11, pp. 123-125, annex 27 (S/343).



of the Council and would not persist in an attitude which he considered to be a violation of Article 25 of the Charter. 59/

### Decision

At the 137th meeting on 22 May 1947, the draft resolution submitted by the USSR was rejected. 60/ There were 2 votes in favour, 6 against, and 3 abstentions.

### *2. Decision of 29 July in connexion with the Greek frontier incidents question*

43. At its 147th meeting on 27 June 1947, the Security Council began consideration of a United States draft resolution 61/ which had been submitted in pursuance of the report presented by the Commission of Investigation. The draft resolution would have provided for the establishment of a commission as a subsidiary organ, composed of representatives of each of the members of the Council, and authorized to investigate any alleged frontier violations and to use its good offices for the settlement of controversies existing between Greece and its northern neighbours.

44. In the course of the discussion, the question was raised whether a decision by the Security Council to conduct an investigation under the provisions of Article 34 was a decision in the sense of Article 25, and as such binding upon the States concerned, or whether it was merely a recommendation having no compulsory quality. In this connexion it was generally agreed that the obligation which Article 25 imposed on Members of the United Nations to accept and to carry out the decisions of the Security Council applied equally to non-member States which had assumed the obligations of Members for the purposes of the dispute under consideration.

45. The representatives of Albania, Bulgaria and Yugoslavia, who had been invited to participate in the discussion of the Council, objected to the establishment of the proposed commission on the ground that, under the draft resolution submitted by the United States, the commission would be empowered to undertake investigations regardless of whether or not the consent of the States concerned had been obtained. The establishment of such a commission would be a measure taken within the framework of Chapter VI of the Charter dealing with procedures for the pacific settlement of disputes and adjustment of situations. Procedures adopted under Chapter VI were of the nature of recommendations which required the consent of the parties concerned in order to be implemented.

46. In support of this view, it was argued that:

(a) The powers of the Security Council to take steps under Chapter VI were of a limited character. All resolutions adopted for the pacific settlement of disputes,

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59/ For texts of relevant statements, see S C, 2nd yr.;  
No. 30, 123rd mtg.: United States, pp. 618 and 619;  
No. 39, 133rd mtg.: USSR, pp. 828, 829 and 831;  
No. 40, 134th mtg.: Belgium, pp. 842-844; Yugoslavia, pp. 847-849;  
No. 41, 135th mtg.: Albania, pp. 867 and 868; Australia, p. 877; Brazil, pp. 880 and 881; China, pp. 882 and 883; Greece, p. 869; United States, pp. 873-875;  
No. 42, 136th mtg.: Bulgaria, p. 892; France, p. 905; Poland, pp. 907 and 908; United Kingdom, p. 899; Yugoslavia, p. 901;  
No. 42, 137th mtg.: Australia, pp. 919 and 920; Syria, pp. 911 and 912; USSR, pp. 913 and 914.

60/ S C, 2nd yr., No. 42, 137th mtg., pp. 924 and 925.

61/ S C, 2nd yr., No. 51, 147th mtg., pp. 1124-1126, S/391.

including those to conduct investigations under Article 34, were merely recommendations so far as the States which might be affected were concerned. States which did not carry out such recommendations bore only a moral responsibility;

(b) The Charter established a distinction between measures envisaged in Chapter VI and those provided in Chapter VII. While procedures with respect to pacific settlement adopted by the Security Council had the force of a recommendation, those relating to the prevention or suppression of breaches of the peace took on a binding quality;

(c) The singular nature of the decisions under Chapter VII was attested in Article 2 (7), which affirmed the principle of non-intervention in matters falling essentially within the domestic jurisdiction of a State, save in the application of enforcement measures under Chapter VII. This would indicate that the sovereignty of States could not be restricted by measures taken under Chapter VI;

(d) If measures in connexion with the pacific settlement of disputes were obligatory, a State which failed to comply with certain recommendations would automatically be liable to other measures of a compulsory character. In that event, the whole of Chapter VI dealing with peaceful methods would lose its significance and meaning.

47. Other representatives, who favoured the establishment of a commission, put forward the following views on the Charter question involved:

(a) The powers of the Security Council under Chapter VI were not limited to the adoption of recommendations. Chapter VI conferred upon the Council two distinct powers for the performance of its function as a guardian of international peace: the power of conciliation and the power of investigation. While the conciliatory actions of the Council could not be enforced upon the States concerned, actions of an investigatory nature could be taken irrespective of the attitude of any individual State. The power of conciliation, by definition, could not encroach upon what the various States might finally decide to accept or reject. It implied voluntary co-operation on the part of the opposing parties. It imposed on the States concerned a moral obligation to heed the admonitions of the Council;

(b) The power of investigation of the Council was of a different nature. Article 34 conferred upon the Council the authority to investigate any dispute or any situation which might lead to international friction or might give rise to a dispute. The sole purpose of an investigation was to provide the Council with information in order to enable it to take the appropriate steps at the end of its inquiry. It was a preliminary measure, preceding all other measures contemplated in Chapter VI. It was, therefore, natural that the Council should be able to decide, and not merely to recommend, that an investigation should be made. The function of investigation might be performed directly by the Council or through the employment of a subsidiary organ. To make the discharge of this function conditional on the consent of the State concerned in the investigation would nullify the whole operative intent of Chapter VI;

(c) The nature of the obligation to conform to a decision instituting an investigation was referred to in Article 25. This Article did not differentiate as to decisions under Chapter VI or under Chapter VII. On the other hand, Article 27 specifically referred to "decisions under Chapter VI", and nowhere did the Charter state that the Security Council was limited to making recommendations. It followed that the Council had the right to take various decisions under Chapter VI which, regardless of whether they infringed or impaired the sovereignty of any State, were binding decisions within the meaning of Article 25;

(d) The terms of Article 34 appeared sufficiently clear in themselves when compared with those used in the other Articles of Chapter VI. Article 33 (2) provided that the

Security Council, when it deemed it necessary, should "call upon" the parties. Article 36 (1) envisaged that the Council might, at any stage, "recommend", and Article 36 (3) began with the words "In making recommendations". In Article 37 the word "recommend" was used, and in Article 38 the word "recommendations" appeared again. On the other hand, Article 34 provided that the Council "may investigate". Here there was no question of "recommending" an investigation, or of "calling upon" the parties to accept an investigation. The difference in the wording between Article 34 and the other Articles of Chapter VI would thus indicate that there was a difference between the extent of the power conferred upon the Council under Article 34 and the powers entrusted to it in the other Articles of Chapter VI. 62/

#### Decision

At the 170th meeting on 29 July 1947, the United States draft resolution, submitted by the United States, as amended in the course of the debate, was not adopted. 63/ There were 9 votes in favour and 2 against (1 vote against being that of a permanent member).

#### E. The question of the power to continue investigation after a determination under Article 34

48. In connexion with the India-Pakistan question, the task of investigation conferred on the Commission for India and Pakistan by the decision of 20 January 1948 was carried out subsequent to the determination embodied in the decision 64/ of 21 April 1948, that the continuation of the dispute was likely to endanger international peace and security.

49. In connexion with the Greek frontier incidents question, the proposal to establish a commission in conformity with the recommendations of the Commission of Investigation resulted in a discussion of whether the power of investigation was exhausted once a determination under the terms of Article 34 had been made.

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- 62/ For texts of relevant statements, see S C, 2nd yr.;
- No. 51, 147th mtg.: Greece, pp. 1126 and 1127; United States, pp. 1124-1126;
  - No. 53, 150th mtg.: Belgium, pp. 1199 and 1200;
  - No. 57, 156th mtg.: Bulgaria, p. 1280; United States, pp. 1290 and 1291;
  - No. 59, 159th mtg.: Yugoslavia, pp. 1371 and 1372;
  - No. 59, 160th mtg.: USSR, pp. 1379 and 1383;
  - No. 61, 162nd mtg.: Australia, pp. 1418-1420; Brazil, p. 1422; Colombia, pp. 1420 and 1421; France, pp. 1416, 1425 and 1426; United States, pp. 1422 and 1423;
  - No. 61, 163rd mtg.: Yugoslavia, pp. 1432 and 1433;
  - No. 63, 166th mtg.: France, pp. 1523 and 1524; United States, pp. 1522, 1523, 1526 and 1527; Yugoslavia, pp. 1519-1522, 1524 and 1525;
  - No. 64, 167th mtg.: President (Poland), p. 1547; Australia, pp. 1544 and 1545; Belgium, pp. 1539 and 1540; Brazil, p. 1530; Bulgaria, p. 1535; France, p. 1540; Greece, pp. 1542-1544; USSR, pp. 1536-1539, 1541 and 1542; United States, pp. 1540 and 1541; Yugoslavia, pp. 1545 and 1546;
  - No. 65, 168th mtg.: Colombia, pp. 1568 and 1569; France, pp. 1551-1556, 1569 and 1570; United Kingdom, pp. 1556-1558; United States, p. 1568; Yugoslavia, p. 1570;
  - No. 66, 169th mtg.: Albania, pp. 1598 and 1599; Colombia, pp. 1592 and 1593; Yugoslavia, pp. 1597 and 1598;
  - No. 66, 170th mtg.: President (Poland), p. 1611.
- 63/ S C, 2nd yr., No. 66, 170th mtg., p. 1612.
- 64/ S C, 3rd yr., Suppl. for April, pp. 8-12, S/726.

*Proceedings in connexion with the Greek frontier incidents question*

50. At the 162nd and 163rd meetings on 22 July 1947, in the course of the discussion on a draft resolution 65/ submitted by the United States, which would have provided for the establishment of a commission of investigation and good offices, the representative of France submitted 66/ an amendment to include in the preamble a reference to Article 24 of the Charter and the phrase:

"... finds that a dispute exists, the continuance of which is likely to endanger the maintenance of international peace and security."

51. The representative of Syria observed that the preamble offered by France would prejudice the question before the Council. The object of, and the justification for, the establishment of a commission of investigation under Article 34 lay in the necessity to determine whether the situation was likely to endanger international peace and security. However, the text of the preamble offered by France, which already contained such a determination, implied that the act of investigation had been completed. In order to make it clear that the determination had not yet been made and that the establishment of the commission was justified, he proposed to substitute the following text 67/ for that offered by France:

"... finds that further action must be taken by the Security Council under Article 34 of the Charter in order to determine whether the continuance of that situation is likely to endanger the maintenance of international peace and security."

52. In connexion with these amendments, the question was raised whether the power of investigation under Article 34 should be considered as having been exercised by the submission of a report containing a finding that the situation was dangerous. In objecting to this strict interpretation of Article 34, it was argued that if the Security Council was empowered to initiate an investigation for the purpose of obtaining information and of ascertaining whether a situation endangering peace existed, it was reasonable to suppose that it could continue this investigation when the situation itself seemed likely to continue. A literal interpretation of the text of Article 34 would lead to the paradoxical conclusion that an investigation could be continued if the Council did not find that there was a threat to the peace, but that it could not be continued if a threat to the peace was found to exist. 68/

53. At the 162nd meeting, the representative of the United States accepted 69/ the amendment to the preamble submitted by France. At the 163rd meeting, the amendment submitted by Syria was withdrawn. 70/

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65/ S C, 2nd yr., No. 51, 147th mtg., pp. 1124-1126, S/391.

66/ S C, 2nd yr., No. 61, 162nd mtg., p. 1416. For text, see S C, 2nd yr., Suppl. No. 15, pp. 146-148, S/430.

67/ S C, 2nd yr., No. 61, 162nd mtg., p. 1424.

68/ For texts of relevant statements, see S C, 2nd yr.,

No. 61, 162nd mtg.: France, pp. 1426 and 1427; Syria, pp. 1423 and 1424; United States, pp. 1424 and 1425;

No. 61, 163rd mtg.: President (Poland), pp. 1431, 1435 and 1437; Australia, pp. 1433-1436; Belgium, p. 1430; Brazil, pp. 1428, 1429, 1435 and 1437; France, pp. 1430, 1431, 1434 and 1437; Syria, pp. 1429, 1430 and 1434-1436; United Kingdom, p. 1435; United States, pp. 1431, 1434 and 1435.

69/ S C, 2nd yr., No. 61, 162nd mtg., p. 1422.

70/ S C, 2nd yr., No. 61, 163rd mtg., p. 1436.

Decisions

At the 170th meeting on 29 July, the preamble, as amended, was adopted 71/ by 9 votes to 1, with 1 abstention.

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71/ S C, 2nd yr., No. 66, 170th mtg., p. 1602. For decision on the United States draft resolution as a whole, see paras. 43-47 above.

