

ARTICLE 34

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ARTICLE 34

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. During the period under review, the Security Council did not institute any investigation for the explicit purpose of determining whether the continuance of a dispute or situation was likely to endanger the maintenance of international peace and security, nor did it invoke Article 34 in any of its decisions.
2. On several occasions, however, the Council took decisions relating in varying degrees to its function of investigation, as envisaged in the Article. Those decisions, which may have a bearing on Article 34, are presented in the present study.
3. Instances in which Article 34 was invoked in the proceedings of the Security Council, and in a communication as a basis for the submission of a question to the Council, are also mentioned.
4. Moreover, two notes issued by the President of the Security Council in connection with the report of the Secretary-General on the work of the Organization have been included in view of the general references contained therein to "fact-finding" by the Council.
5. During the period under review, the General Assembly did not request the Security Council to conduct any investigation for the purpose referred to in Article 34, but it adopted four resolutions requesting the Council to conduct investigations, thereby implicitly invoking the Article. Those resolutions are discussed in this study.
6. Implicit references to Article 34 in the Manila Declaration on the Peaceful Settlement of International Disputes, and explicit references in the proceedings of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, are included as well.
7. None of the above-mentioned references gave rise to a constitutional discussion on Article 34. Consequently, the study consists only of a summary of practice.

SUMMARY OF PRACTICE

8. On several occasions, the Security Council established, or rejected proposals to establish, a subsidiary organ assigned with investigative functions. Those decisions are reviewed in paragraphs 9 to 16 below.

9. In connection with the situation in the occupied Arab territories, the Security Council on 22 March 1979 adopted resolution 446 (1979), by which it, inter alia, established a commission¹ consisting of three members of the Security Council, to be appointed by the President after consultation with Council members, to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem; requested the Commission to submit its report to the Council by 1 July 1979; and decided to reconvene in July 1979 to review the situation in the light of the findings of the Commission.² Resolution 446 (1979) was adopted subsequent to a proposal that the Council send a

three- or five-member commission from among its membership to investigate the wide-ranging dimensions of the ongoing policy and practice of colonization of the "Israeli occupation authorities" in Jerusalem and the occupied Arab territories.³ In its resolution 452 (1979) of 20 July 1979, the Council accepted the recommendations contained in the Commission's report⁴ and requested the Commission to keep under close survey the implementation of the resolution and to report back to the Council before 1 November 1979.⁵

10. By its resolution 465 (1980) of 1 March 1980, the Council, inter alia, called upon all parties, particularly the Government of Israel, to cooperate with the Security Council Commission established under resolution 446 (1979); requested the Commission to continue to examine the

¹ The same Commission is treated in the study on Article 29. See the present *Supplement*, under Article 29, paras. 5-9.

² S C resolution 446 (1979), paras. 4, 5 and 7, adopted at the 2134th mtg.

³ S C (34), 2123rd mtg.: Jordan, paras. 15-76.

⁴ S C (34), Suppl. for July-Sept. 1979, S/13450.

⁵ S C resolution 452 (1979), paras. 2 and 4, adopted at the 2159th mtg. For the Commission's second report, submitted on 4 December 1979, see S C (34), Suppl. for Oct.-Dec. 1979, S/13679.

situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem, to investigate the reported serious depletion of natural resources, particularly the water resources, with a view to ensuring the protection of those important natural resources of the territories under occupation, to keep under close scrutiny the implementation of the resolution, and to report to the Council before 1 September 1980; and decided to convene at the earliest possible date thereafter in order to consider the report and the full implementation of the resolution.⁶

11. In connection with the complaint by Zambia, the Security Council on 23 November 1979 adopted resolution 455 (1979), by which it, inter alia, called for the payment of full and adequate compensation to the Republic of Zambia by the responsible authorities for the damage to life and property resulting from the acts of aggression against that country (para. 5) and decided to establish an ad hoc committee⁷ composed of four members of the Security Council, to be appointed by the President after consultation with Council members, in order to assist the Council in the implementation of the resolution, and report to the Council by 15 December 1979 (para. 7).⁸ In order to fulfil its mandate, the committee visited Zambia from 11 to 14 December 1979 and issued reports containing specific data on the damage inflicted upon Zambia.⁹

12. In connection with the complaint by Seychelles, the Security Council on 15 December 1981 adopted resolution 496 (1981), by which it, inter alia, decided to send a commission of inquiry¹⁰ composed of three members of the Security Council in order to investigate the origin, background and financing of the mercenary aggression of 25 November 1981 against the Republic of Seychelles, as well as assess and evaluate economic damages, and to report to the Council with recommendations no later than 31 January 1982; and decided that the members of the commission of inquiry would be appointed after consultations between the President and the members of the Security Council and the Republic of Seychelles.¹¹ During the Council's delibera-

tions on the item, as a number of representatives¹² raised the possibility that the South African regime had had a role in planning and financing the mercenaries' attack, one representative¹³ stressed that there remained "a number of factual uncertainties surrounding the incident" and that "before the Council [could] determine which measures would be most appropriate it [was] essential that all relevant facts be presented to its members." Another representative¹⁴ was of the view that, since it was considering establishing a commission of inquiry, the Security Council presumed that the case was not purely an internal affair. He therefore asked if the Council was not "prejudging the very question which a commission of inquiry may be established to investigate, since the Council's resolution was premised on another State being involved in the incident."

13. In its report¹⁵ submitted on 15 March 1982, the Commission of Inquiry noted that it had been restricted in fulfilling its mandate because it had been unable to obtain complete information and suggested that, should the Council so desire, it could be authorized to prepare a supplementary report containing any further information relative to its mandate. In its resolution 507 (1982) of 28 May 1982, the Council, inter alia, decided to mandate the Commission of Inquiry established under resolution 496 (1981) to examine all further developments and present by 15 August 1982 a supplementary report, with appropriate recommendations, which should take into account, inter alia, the evidence and testimony presented at any trial of any member of the invading force.¹⁶ The Commission submitted its supplementary report¹⁷ to the Council on 17 November 1982.

14. On 4 April 1983, the President of the Security Council made a statement¹⁸ on behalf of the Council, in connection with the situation in the occupied Arab territories, in which the Council requested the Secretary-General to conduct independent inquiries concerning the causes and effects of the serious problem of the reported cases of poisoning and urgently to report on the findings. The Secretary-General submitted a report¹⁹ on 10 May 1983.

15. Two revised draft resolutions that failed of adoption may be considered as implicitly invoking Article 34. At its 2300th meeting, on 31 August 1981, in connection with the complaint by Angola against South Africa, the Council voted upon a revised draft resolution²⁰ by which, inter alia,

⁶ S C resolution 465 (1980), paras. 3, 8 and 9, adopted at the 2203rd mtg. For the Commission's third report, submitted on 25 November 1980, see S C (35), Suppl. for Oct.-Dec. 1980, S/14268. The report was not considered by the Council during the period under review.

⁷ The same Ad Hoc Committee is treated in the study on Article 29. See the present *Supplement*, under Article 29, paras. 10-14.

⁸ S C resolution 455 (1979), adopted at the 2171st mtg.

⁹ The Ad Hoc Committee issued two interim reports and one final report. See S C (34), Suppl. for Oct.-Dec. 1979, S/13681; *ibid.*, S/13694; S C (35), Suppl. for Jan.-Mar. 1980, S/13774.

¹⁰ The same Commission of Inquiry is treated in the study on Article 29. See the present *Supplement*, under Article 29, paras. 15-20.

¹¹ S C resolution 496 (1981), paras. 3 and 4, adopted at the 2314th mtg.

¹² S C (36), 2314th mtg.: Seychelles, para. 16; Botswana, paras. 22-30; German Democratic Republic, para. 75; Tunisia, para. 115; and Uganda, para. 121.

¹³ *Ibid.*, Japan, para. 41.

¹⁴ *Ibid.*, United States of America, paras. 82 and 83.

¹⁵ S C (37), Special Suppl. No. 2, S/14905/Rev.1.

¹⁶ S C resolution 507 (1982), para. 12, adopted at the 2370th mtg.

¹⁷ S C (37), Special Suppl. No. 3, S/15492/Rev.1.

¹⁸ S/15680.

¹⁹ S C (38), Suppl. for April-June 1983, S/15756.

²⁰ S C (36), Suppl. for July-Sept., 1981, S/14664/Rev.2. The draft resolution was sponsored by Mexico, Niger, Panama, the Philippines, Tunisia and Uganda.

it would have decided to send immediately to Angola a commission of investigation, comprising five members of the Security Council, in order to undertake an on-the-spot evaluation of the situation resulting from the armed invasion by South Africa and report to the Council not later than 30 September 1981. The revised draft was not adopted owing to the negative vote of a permanent member of the Council.

16. At its 2476th meeting, on 12 September 1983, concerning the shooting down of a Korean airliner,²¹ the Council voted upon a revised draft resolution²² by which, *inter alia*, it would have: invited the Secretary-General, making use of such expert advice as he deemed necessary and in consultation with appropriate international bodies, to conduct a full investigation into the circumstances of the tragedy; further invited the Secretary-General to report his findings to the Council within 14 days; and called upon all States to lend their fullest cooperation to the Secretary-General in order to facilitate the investigation pursuant to the present resolution. The revised draft was not adopted owing to the negative vote of a permanent member of the Council.

17. On a number of occasions, Article 34 was explicitly and implicitly invoked in the proceedings of the Security Council. During the discussion on the letters²³ dated 13 and 15 June 1979, respectively, from the representative of Morocco addressed to the President of the Security Council, the representative of Morocco, after describing the "acts of aggression" committed against Morocco's "national territory", assured the Security Council of his country's willingness "to facilitate any investigation that [the Council] may consider necessary in order to ascertain the veracity of the facts".²⁴ Subsequently, the representative of Madagascar opined that "the Council's obligations [could not] be limited solely to Articles 34 and 35 of the Charter, which the Mo-

²¹ The title of the item, as included in the agenda of the Security Council, was "Letter dated 1 September 1983 from the Acting Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/15947); Letter dated 1 September 1983 from the Permanent Observer for the Republic of Korea to the United Nations addressed to the President of the Security Council (S/15948); Letter dated 1 September 1983 from the Chargé d'affaires a.i. of the Permanent Mission of Canada to the United Nations addressed to the President of the Security Council (S/15949); Letter dated 1 September 1983 from the Permanent Representative of Japan to the United Nations addressed to the President of the Security Council (S/15950); Letter dated 2 September 1983 from the Acting Permanent Representative of Australia to the United Nations addressed to the President of the Security Council (S/15951)".

²² S C (38), Suppl. for July-Sept., 1983, S/15966/Rev.1. The revised draft resolution was sponsored by Australia, Belgium, Canada, Colombia, Fiji, France, the Federal Republic of Germany, Italy, Japan, Malaysia, the Netherlands, New Zealand, Paraguay, the Philippines, Thailand, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

²³ S C (34), Suppl. for April-June, 1979, S/13394 and S/13397.

²⁴ S C (34), 2151st mtg. para. 43.

roccan Government [had] chose[n] as the framework for its statement", but that the Council "must go further on the way to finally resolving the problem by requiring immediate cessation of the illegal occupation of Western Sahara".²⁵ No formal proposal thereon was submitted to the Council.

18. Article 34 was also invoked in communications as a basis for the submission of a question to the Council. In a letter²⁶ dated 19 March 1982 addressed to the Secretary-General, the representative of Nicaragua transmitted a request for an urgent meeting of the Council in view of the "worsening of tension in Central America" and the "ever-increasing danger of a large-scale military intervention by the armed forces of the United States of America". In another letter²⁷ dated 30 March 1982, the same representative rebutted the "unwonted thesis of obligatory prior recourse to the Organization of American States" and asserted his country's right to come before the Council "under Article 2, paragraph 4, and Articles 34, 35 and 103 of the Charter of the United Nations".²⁸ The Council subsequently considered a draft resolution,²⁹ which failed of adoption owing to the negative vote of a permanent member. In yet another instance, in a letter³⁰ dated 10 September 1981 addressed to the President of the Security Council, the representative of Guatemala stressed that, "in accordance with Article 34 of the Charter", the Security Council should "investigate the dispute between Guatemala and the United Kingdom over the Territory of Belize". No action was taken on that matter in the period under review.

19. On 12 September 1983, in accordance with the decision taken during consultations held on 17 August 1983, the President of the Security Council issued a note,³¹ in connection with the report of the Secretary-General on the work of the Organization,³² which stated, *inter alia*, that Council members, in their discussion of the 1982 report, had "considered measures which would ... enable [the Council] to recommend appropriate procedures or methods

²⁵ *Ibid.*, 2153rd mtg. para. 39.

²⁶ SC (37), Suppl. for Jan.-March 1982, S/14913.

²⁷ *Ibid.*, S/14936.

²⁸ See also S C (37), Suppl. for Jan.-March 1982, S/14927; and S C (38), Suppl. for Apr.-June 1983, S/15704. For additional explicit and implicit references to Article 34, see S C (37), 2337th mtg.: Mexico, para. 60; 2339th mtg.: Togo, para. 66; 2347th mtg.: Costa Rica, para. 76; and S C (38), 2435th mtg.: Mali, para. 116; 2469th mtg.: Guyana, para. 39; 2491st mtg.: Jordan, p. 191. A number of proposals or suggestions that were made to the Council might also be considered to have implicitly invoked Article 34. See S C (36), Suppl. for July-Sept. 1981, S/14651; S C (37), Suppl. for July-Sept. 1982, S/15416; *ibid.*, S/15434; S C (37), 2339th mtg.: France, para. 43; and S C (38), 2469th mtg.: Guyana, para. 38; 2487th mtg.: Libyan Arab Jamahiriya, para. 157.

²⁹ S/14941, rejected at the 2347th mtg., on 2 April 1982.

³⁰ S C (36), Suppl. for July-Sept. 1981, S/14683. See also *ibid.*, S/14699.

³¹ S/15971.

³² G A (38), Suppl. No. 1.

of adjustment” and, in that context, given consideration to “enhancing the means for the Council to dispatch fact-finding or inquiry missions”.³³ On 28 September 1984, in accordance with the decision taken during consultations on the same date, the President of the Council issued another note³⁴ on the subject, which stated, inter alia, that Council members had initiated a new round of discussions on the basis of the points contained in the previous note, in the course of which “the role of fact-finding missions undertaken by the Council was explored and modalities for their utilization [were] suggested”.³⁵

20. During the period under review, the General Assembly did not adopt any resolution requesting the Security Council to institute an investigation expressly for the purpose referred to in Article 34. However, it adopted four resolutions in which it requested the Council to conduct investigations, thereby implicitly invoking the Article. Those resolutions are reviewed in paragraphs 21 and 22 below.

21. In connection with the armed Israeli aggression against the Iraqi nuclear installations,³⁶ the General Assembly on 13 November 1981 adopted resolution 36/27, by which it, inter alia, requested the Security Council to investigate Israel’s nuclear activities and the collaboration of other States and parties in those activities.³⁷ Similar requests were contained in Assembly resolutions 37/82 of 9 December 1982 and 39/147 of 17 December 1984 on Israeli nuclear armament.³⁸

22. In connection with the question of Palestine, the General Assembly on 25 September 1982 adopted resolution ES-7/9 by which it, inter alia, urged the Security Council to investigate, through the means available to it, the circumstances and extent of the massacre of Palestinians and other civilians in Beirut on 17 September 1982, and to make public the report on its findings as soon as possible.³⁹

23. At its thirty-seventh session, on 15 November 1982, the General Assembly, on the recommendation of the Sixth Committee, adopted by consensus resolution 37/10 on the peaceful settlement of disputes between States. Annexed to the resolution was the Manila Declaration on the Peaceful Settlement of International Disputes, which contained the following provisions:

“II

“... ”

“4. Member States should strengthen the primary role of the Security Council so that it may fully and effectively discharge its responsibilities, in accordance with the Charter of the United Nations, in the area of the settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security. To this end they should:

“... ”

“(c) Encourage the Security Council to make wider use of the opportunities provided for by the Charter in order to review disputes or situations the continuance of which is likely to endanger the maintenance of international peace and security;

“(d) Consider making greater use of the fact-finding capacity of the Security Council in accordance with the Charter;

“(e) Encourage the Security Council to make wider use, as a means to promote peaceful settlement of disputes, of the subsidiary organs established by it in the performance of its functions under the Charter.”⁴⁰

24. At its sessions held from 1979 to 1984, in accordance with the mandate given to it by the General Assembly,⁴¹ the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization examined several proposals relating to the questions of the peaceful settlement of disputes and the maintenance of international peace and security, some of which contained explicit references to Article 34 or touched upon its provisions. The relevant proposals dealt with, among other things, establishing a standing body on fact-finding, conciliation and mediation,⁴² examining areas where the use of the veto could be limited, including “missions whose remit is clearly limited to fact-finding” and “ascertaining facts by the Security Council”,⁴³ and the scope of the respective

³³ S/15971, paras. 12 and 14.

³⁴ S/16760.

³⁵ *Ibid.*, para. 11.

³⁶ The full title of the item reads: “Armed Israeli aggression against the Iraqi nuclear installations and its grave consequences for the established international system concerning the peaceful uses of nuclear energy, the non-proliferation of nuclear weapons and international security”.

³⁷ G A resolution 36/27, para. 4.

³⁸ G A resolutions 37/82, para. 3; 39/147, para. 3.

³⁹ G A resolution ES-7/9, para. 2.

⁴⁰ For the full text of the Manila Declaration on the Peaceful Settlement of International Disputes, see the present *Supplement*, under Article 33, annex.

⁴¹ G A resolutions 33/94, para. 3(a) and (b), 34/147, paras. 3(a) and 4; 35/164, paras. 3(a) and 4; 36/122, paras. 4(a) and 6; 37/114, para. 5(a) and (b); and 38/141, para. 3(a) and (b). G A resolution 39/88 A, para. 3(a) and (b), contained similar provisions and, in accordance with that resolution, the Special Committee continued its work on the two questions in 1985.

⁴² G A (34), Suppl. No. 33, para. 13 (b)(ii).

⁴³ G A (35), Suppl. No. 33, paras. 45 and 57-58 (A/AC.182/WG/37), paras. 61, 69 and 74 (A/AC.182/WG/44 and Rev.1), paras. 76, 127 and 136 (A/AC.182/WG/46/Rev.1 and Rev.2); G A (36), Suppl. No. 33, paras. 127 and 166-167 (proposal 30), para. 266 (A/AC.182/WG/50); G A (37), Suppl. No. 33, paras. 188 and 228-

fact-finding powers of the Security Council and the Secretary-General.⁴⁴ However, the Special Committee did not reach agreement on any of these proposals during the period under review.

25. At its session in 1984, in particular, the Special Committee had before it a working paper⁴⁵ entitled "Prevention and removal of threats to peace and of situations which may lead to international friction or give rise to a dispute", the examination of which elicited pertinent remarks. Paragraph 2 of the working paper read:

"2. When a specific situation or dispute is brought to the attention of the Security Council without a meeting being requested, the Council may hold informal consultations with a view to ascertaining the facts of the situation and keeping it under review, with the assistance of the Secretary-General ... (b) Increased use should be made of United Nations fact-finding missions in the areas concerned with the consent of the receiving State."

²³⁵ (A/AC.182/L.29); G A (38), Suppl. No. 33, paras. 24 and 52-56 (A/AC.182/L.29/Rev.1).

⁴⁴ G A (35), Suppl. No. 33, paras. 61, 70-71 and 74 (A/AC.182/WG/44 and Rev.1); G A (36), Suppl. No. 33, para. 214 (proposal 42).

⁴⁵ Working paper A/AC.182.L.38, submitted by Belgium, the Federal Republic of Germany, Italy, Japan, Spain and New Zealand, contained in G A (39), Suppl. No. 33, para. 20.

26. During the discussion of the proposal, the view was expressed that, as it stood, the text was "too imprecise and vague" since it did not distinguish between the various kinds of missions. Those fact-finding missions as such, established by a non-procedural decision taken by the Security Council, under Article 27, paragraph 3, of the Charter, were binding and did not require the consent of the parties concerned although such consent was highly desirable; they could not be equated with information-gathering missions sent by the Secretary-General to obtain information and ascertain facts, which did require the consent of States. It was also maintained that only the Security Council could establish so-called "fact-finding" missions and that it did so under Article 34 of the Charter which carefully circumscribed the purpose of such missions. In response, it was explained that the sponsors of the working paper had intended to provide a comprehensive formula to cover both fact-finding missions established by the Security Council and missions dispatched by the Secretary-General to gather information. In their view, the Secretary-General was competent to dispatch the latter kind of missions. Through drafting adjustments, a distinction could be made between the two cases.⁴⁶

27. In its resolution 39/88 A of 13 December 1984, the General Assembly, inter alia, recommended that the Special Committee at its session in 1985 should continue its work on the working paper.⁴⁷

⁴⁶ G A (39), Suppl. No. 33, paras. 66-68.

⁴⁷ G A resolution 39/88 A, para. 3(a).