

ARTICLE 37

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ARTICLE 37

TEXT OF ARTICLE 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.
2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

INTRODUCTORY NOTE

1. During the period under review there was no instance in which Article 37 was invoked explicitly in decisions of the Security Council or the General Assembly. However, the Council adopted three resolutions and issued two presidential statements which can be considered as having a bearing on Article 37. Implicit references to Article 37 were also contained in a number of communications by which one of the parties referred a dispute to the Council. This material is treated in the general survey.
2. On two occasions, a constitutional discussion arose with respect to the question whether the parties had failed, within the meaning of Article 37, paragraph 1, to settle a dispute prior to its referral to the Council. Both are dealt with in the analytical summary of practice.
3. No clear distinction can be drawn between the proceedings of the Council related to a referral of the dispute under Article 37 and the proceedings following communications submitting disputes under Article 35 in which the parties have indicated the prior efforts made by them to seek a peaceful solution. The present study should therefore be read jointly with the study on Article 35.

I. GENERAL SURVEY

4. In connection with the detention of United States diplomatic personnel in Iran,¹ the Security Council adopted two resolutions containing provisions which can be considered as a determination of the nature of the dispute as well as recommendations concerning appropriate terms of settlement. In its resolution 457 (1979) of 4 December 1979, the Council expressed concern at the "dangerous level of tension" between Iran and the United States which could have "grave consequences for international peace and security"; called upon the Government of Iran "to release immediately the personnel of the Embassy of the United States of America being held at Teheran, to provide them with protection and to allow them to leave the country"; and requested the Secretary-General "to lend his good offices for the immediate implementation of the present resolution and to take all appropriate measures to [that] end".²

5. In its resolution 461 (1979) of 31 December 1979, the Security Council reaffirmed the provisions of resolution 457 (1979); deplored the continued detention of the hostages contrary to that resolution; called once again on

¹ The item, as included in the agenda of the Security Council, was entitled "Letter dated 25 November 1979 from the Secretary-General to the President of the Security Council and letter dated 22 December 1979 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council".

² S C resolution 457 (1979), preamb. para. 2 and paras. 1-4.

the Government of Iran "to release immediately all persons of United States nationality being held as hostages in Iran, to provide them with protection and to allow them to leave the country"; reiterated its request to the Secretary-General "to lend his good offices and to intensify his efforts with a view to assisting the Security Council in achieving the objectives called for in the present resolution"; took note, in that connection, of his "readiness to go personally to Iran"; and requested the Secretary-General "to report to the Security Council on his good offices efforts before the Council [met] again".³

6. In connection with the situation in Namibia, the Security Council adopted resolution 539 (1983) of 28 October 1983, by which it expressed concern at the "tension and instability prevailing in southern Africa" and the "mounting threat to the security of the region and its wider implications for international peace and security" and reiterated that resolution 435 (1978) of 29 September 1978 embodying the United Nations plan for the independence of Namibia formed the only basis for a peaceful settlement of the Namibian problem.⁴

7. The Council further issued two presidential statements which may be considered as having a bearing on the subject matter of Article 37. In connection with the detention of United States diplomatic personnel in Iran, the rep-

³ S C resolution 461 (1979), paras. 1-5.

⁴ S C resolution 539 (1983), preamb. para. 5 and para. 5.

representative of the United States stated in a letter⁵ to the President of the Council dated 9 November 1979 that all efforts to secure the release of the diplomatic personnel, "including an offer of discussions with emissaries, [had] so far been unavailing". The occupation of the embassy and the detention of American diplomatic personnel on its premises were a violation of the "very basis for the maintenance of international peace and security". He requested that the Council urgently consider measures to secure the

⁵ S C (34), Suppl. for Oct.-Dec. 1979, S/13615.

release of the diplomatic personnel. The Council issued a presidential statement dated 9 November 1979,⁶ in which it expressed its concern at the prolonged detention of United States diplomatic personnel in Iran and urged that the personnel "should be released without delay and provided protection" and that the Secretary-General should "continue to use his good offices to assist in attaining [that] objective". The Council reiterated that appeal in a presidential statement⁷ dated 27 November 1979.

⁶ S C (34), Suppl. for Oct.-Dec. 1979, S/13616.

⁷ S C (34), 2172nd mtg., para. 16, S/13652.

II. ANALYTICAL SUMMARY OF PRACTICE

Scope of the Council's power to recommend terms of settlement

1. THE DISPUTE BETWEEN THE LIBYAN ARAB JAMAHIRIYA AND MALTA

8. In two letters to the President of the Security Council dated 1 and 4 September 1980, the representative of Malta requested a meeting of the Council, asserting that the Libyan Government had taken an illegal action which constituted "a threat to regional and international peace". He stated that his Government and the Libyan Government had signed, in 1976, an agreement to submit the question of the delimitation of the continental shelf area between the two countries to the International Court of Justice. The Libyan authorities, however, had not implemented the ratification of that agreement. His Government had therefore authorized drilling operations, which the Libyan Government now sought to deter with a threat of force⁸. The representative of the Libyan Arab Jamahiriya, in a letter to the President of the Security Council dated 3 September 1980, contended that the "Maltese-Libyan dispute over the continental shelf" was a "bilateral issue" that could be settled through negotiations and direct communication between the two countries. He qualified the dispute as "secondary in significance" and confirmed that it would be submitted to the International Court of Justice. He further informed the Council that the Chairman of the Movement of Non-Aligned Countries had sent two envoys to both countries "to seek

their points of view and find a peaceful settlement to the dispute".⁹

9. At the meeting convened accordingly, the representative of Malta stated that it was "unacceptable" that legitimate activities authorized by his country's authorities should be threatened by the use of force, with consequent danger to the prospects of regional security. His Government had asked several friendly countries "to use their good offices to persuade" Libya to allow the continuation of "the peaceful activities" which Malta was conducting. The rep-

⁸ S C (35), Suppl. for July-Sept. 1980, S/14140 and S/14147.

⁹ *Ibid.*, S/14145.

representative therefore requested the Council "to ask Libya to desist from making further provocative threats" and to allow his Government "to pursue [its] legitimate rights in peace".¹⁰ The representative of the Libyan Arab Jamahiriya requested the postponement of the consideration of the matter so that his delegation might study the Maltese statement and consult his Government.¹¹ No action was taken on the matter during the period under review.

2. THE SITUATION IN THE REGION OF THE FALKLAND ISLANDS (ISLAS MALVINAS)

10. In connection with the question concerning the situation in the region of the Falkland Islands (Islas Malvinas), the representative of the United Kingdom of Great Britain and Northern Ireland, in a letter to the President of the Security Council dated 1 April 1982, requested a meeting of the Council, invoking the prospect of an imminent invasion of the islands by the armed forces of Argentina.¹²

11. The representative of Argentina, in a letter of the same date addressed to the President of the Security Council, claimed that it was the "British threat to use force" that had created a "situation of grave tension, the continuation of which could eventually endanger the maintenance of international peace and security". His Government had "maintained its trust in the use of negotiation for a just settlement of the dispute and in the role of the United Nations in putting an end to an unjust and anachronistic colonial situation". In view of the primary responsibility of the Security Council, his Government considered that the Council should be "informed of the development of this situation".¹³

12. At the meeting of the Security Council convened on 1 April 1982, the representative of the United Kingdom stated that his Government and the Government of Argen-

¹⁰ S C (35), 2246th mtg., paras. 25, 34 and 42.

¹¹ *Ibid.*, para. 47.

¹² S C (37), Suppl. for April-June 1982, S/14942.

¹³ *Ibid.*, S/14940.

tina had held “a series of meetings to discuss the situation in the Falkland Islands”, but it appeared that the Argentine Government had decided that it did not wish to continue on that course. The previous day, his Government had proposed to send a senior official to Buenos Aires “to discuss a diplomatic solution” of the incident involving the island of South Georgia with a view to preparing the way for “resumption of a dialogue on the broader sovereignty issue” of the Falkland Islands (Islas Malvinas). The Government of Argentina had declined that proposal, specifically stating that it “no longer wished to use diplomatic channels to discuss the situation in South Georgia”. It was that “refusal of the Argentine Government to pursue the path of negotiation, combined with its disturbing naval and military preparations”, which had led his Government to request the urgent meeting of the Security Council. The Council was to call on the Government of Argentina “to exercise the utmost restraint and to refrain from the use or threat of force in the South Atlantic”.¹⁴

13. The representative of Argentina asserted that the United Kingdom persisted “in delaying negotiations that

could end the dispute”. It was therefore “inadmissible” for the Council to be convened by the United Kingdom. The British Government was aware of his Government’s “firm decision to negotiate generously and with justice so as to protect the interests” of the islands’ population. His Government was ready “to continue negotiations”, provided that the United Kingdom recognized his country’s sovereignty over the Falkland Islands (Islas Malvinas).¹⁵

14. Following the interventions of the two representatives, the Security Council issued a presidential statement, in which it recalled its primary responsibility under the Charter for the maintenance of international peace and security; expressed concern about the tension in the region of the Falkland Islands (Islas Malvinas); called on the Governments of Argentina and the United Kingdom “to exercise the utmost restraint”, “to refrain from the use or threat of force in the region and to continue the search for a diplomatic solution”; and decided to remain seized of the question.¹⁶

¹⁴ S C (37), 2345th mtg.: United Kingdom, paras. 8-9; 18-19 and 24.

¹⁵ *Ibid.*, Argentina, paras. 48 and 71-72.

¹⁶ *Ibid.*, the President, para. 74.