

ARTICLE 32

CONTENTS

	<i>Paragraphs</i>
Text of Article 32	
Introductory Note	1-2
I. General Survey	3-13
II. Analytical Summary of Practice	14-33
A. The question of the scope of application of Article 32	14-33
1. The question of the meaning of the term "state" under Article 32	15-25
<i>a.</i> Decision of 5 July 1961 in connexion with complaints by Kuwait and Iraq	16-18
<i>b.</i> Decision of 19 May 1964 in connexion with the complaint by Cambodia	19-23
<i>c.</i> Decision of 18 May 1966 in connexion with the situation in Southern Rhodesia	24-25
2. The question of the effect of the proviso "if it is a party to a dispute under consideration by the Security Council"	26-33
Decision of 7 August 1964 in connexion with the Complaint by the United States (the Gulf of Tonkin incident)	27-33
**B. The question of the mandatory character of the Article	
**C. The question of the conditions which the Security Council "shall lay down for the participation of a state which is not a Member of the United Nations".	
<i>Annex:</i> Classified tabulation of instances where invitations, other than those listed in the study on Article 31, were extended or denied by the Security Council to Members of the United Nations or other States.	

TEXT OF ARTICLE 32

Any Member of the United Nations which is not a member of the Security Council or any State which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a State which is not a Member of the United Nations.

INTRODUCTORY NOTE

1. Article 32 contains provisions for invitations by the Security Council to Members and to States which are not Members of the United Nations. It is the only Article which provides for the participation of non-member States. During the period under review, invitations were extended implicitly under the terms of this Article as well as under rule 39¹ of the provisional rules of procedure of the Security Council. In the discussion of requests or proposals for participation the principal matters which arose were whether the requesting entity was a State within the meaning of Article 32, and whether it was in fact a party to the dispute under consideration.
2. A tabulation of all invitations extended during the period under review will be found in the annex of this study.

I. GENERAL SURVEY

3. During the period between its 847th and 1340th meetings held between 7 September 1959 and 31 August 1966, the Security Council extended eleven invitations to participate in its proceedings, seven to Member States, four to non-member States, implicitly on the basis that the invited State was a party to a dispute under consideration by the Council.

4. In seven instances Article 32 was explicitly referred to in letters in which a Member State requested to be invited to participate in the Council's proceedings.²

¹ Under rule 39, the Council has normally extended invitations to representatives of subsidiary and other organs of the United Nations as well as to other persons in their individual capacity. These cases are not dealt with here, since this study is limited to the application of the rule in the case of representatives of States. See this *Supplement* under Article 30, paras. 26 and 27.

² In two of those cases an invitation was requested by a Member State both on its own behalf and as the representative of a number of other States. It was, however, not clear whether the Member concerned had considered itself "a party to the dispute under consideration" on the basis of the delegated authority or because of the substance of the questions before the Council. Despite the specific invocation of Article 32 in its request, the subsequent Council decision extending an invitation left unanswered the question whether the invitation was extended on the basis of that Article. (See letters dated 15 July 1963 from the Secretary of State for Foreign Affairs of Tunisia addressed to the President of the Security Council, S C, 18th yr., Suppl. for July—Sept., S/5351 and S/5352. See also decision at 1040th mtg., para. 7, and the study on Article 31, paras. 44 and 45.

5. In one instance a member of the Council proposed that a Member State be invited to participate in the proceedings of the Council under Article 32. However, the invitation was extended under rule 37 of the provisional rules of procedure and was subsequently declined.³

6. On two occasions⁴ Article 32 was referred to as a basis for the extension of invitations to non-member States to participate in the Council's proceedings.

7. In one instance⁵ an invitation was extended following an objection made by a Council member that the requesting entity did not have the attributes of a sovereign State. However, no reference was made to Article 32 in that connexion.

8. In all those instances the President, when extending invitations to participate in the proceedings of the Council, did not indicate explicitly that Article 32 constituted the basis for the extension of the invitations.

9. The material presented in the Analytical Summary of Practice includes instances referred to in paragraphs 6 and 7 above and another instance⁶ when a régime, having been declared illegal by the

³ See this *Supplement* under Article 31, para. 8.

⁴ See paras. 19—23 and 27—33 below.

⁵ See paras. 16—18 below.

⁶ See paras. 24 and 25 below.

United Nations, requested explicitly under Article 32 to participate in the proceedings of the Council.

10. In no instance during the period under review was the participation by invited States subject to any restriction or qualification other than the statutory limitation on voting and the submission of proposals and draft resolutions provided for in Article 32 of the Charter and rule 38 of the provisional rules of procedure, respectively.

11. In accordance with previous practice the invitations have been initiated by the President or a member of the Council. In two cases formal requests were submitted by the non-member States concerned. In two others, invitations which were initiated by members of the Council were declined, one by a Member State⁷ and the other by a non-member of the United Nations.⁸

12. The invitations included in the tabulation to be found in the annex represent the initial decisions of the Council in extending an invitation. As before, Members or non-members of the United Nations having been invited to participate in the discussion continued to be invited to the Council table at subsequent meetings at which the item was considered. However, continuation of participation is not represented in the tabulation.

13. No request for participation or proposal to extend an invitation under Article 32 was denied by the Council.⁹

⁷ See para. 5 above.

⁸ See footnote 21 below.

⁹ One instance is recorded, however, in which action by the Council on a request invoking this Article was limited to hearing a statement by the Secretary-General concerning the request. See para. 25 below.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the scope of application of Article 32

14. The proceedings of the Security Council relevant to the scope of application of Article 32 have been concerned with the two questions which are examined below. The first concerns the meaning of the term "state", while the other deals with the condition that the State to be invited must be a party to the dispute.

1. THE QUESTION OF THE MEANING OF THE TERM "STATE" UNDER ARTICLE 32

15. Although there was no substantial constitutional discussion, on two occasions¹⁰ during the period under review, questions were raised as to whether certain parties requesting invitations to participate could be said to possess the necessary sovereignty and the essential attributes of a State, and hence eligibility to participate under Article 32. There was a third instance¹¹ concerning a request for participation under Article 32 by a régime in a Non-Self-Governing Territory declared to be illegal by the United Nations.

a. *Decision of 5 July 1961 in connexion with complaints by Kuwait and Iraq*

16. At the 958th meeting, on 5 July 1961, in connexion with complaints by Kuwait and Iraq, the President (Ecuador) drew the attention of the Council to a letter¹² from the Secretary of State for Kuwait addressed to the Secretary-General requesting that a representative of Kuwait be invited to participate in the discussion.

17. One representative objected to the extension of an invitation to the representative of Kuwait on the grounds that since Kuwait was occupied by United Kingdom forces, which exercised the real

power, its delegation could hardly act as the representative of a sovereign State. Its participation in the debates under such circumstances would not contribute to an objective consideration of the question by the Council. The proper course for the Council would be to refrain from inviting that delegation to the Council table.

18. The President declared that the members of the Council, with one exception, had agreed that the representative of Kuwait should be invited to take a place at the Council table.¹³

Decision

At the invitation of the President, the representative of Kuwait took a place at the Council table.¹⁴

b. *Decision of 19 May 1964 in connexion with the complaint by Cambodia*

19. At the 1118th meeting, on 19 May 1964, in connexion with the complaint by Cambodia concerning acts of aggression by the United States and the Republic of Viet-Nam against its territory and civilian population, the President (France) informed the Council that he had received a request¹⁵ from the Minister for Foreign Affairs of the Republic of Viet-Nam asking for permission to participate, through a representative of his Government, in the discussion of the question. He went on to explain that, although he had not then received from the Government concerned the credentials required under rule 14 of the provisional rules of procedure, the fact remained, nevertheless, that "the Council must take a decision regarding the invitation which it may address to the Government of the Republic of Viet-Nam, under Article 32 of the Charter, to

¹³ For the text of relevant statements, see S C, 16th yr., 958th mtg.: President (Ecuador), para. 21; USSR, paras. 15 and 16.

¹⁴ *Ibid.*, para. 21.

¹⁵ S C, 19th yr., Suppl. for April-June, p. 151, S/5709. That request was subsequently confirmed in a letter dated 19 May from the Observer of the Republic of Viet-Nam addressed to the President of the Security Council. *Ibid.*, p. 152, S/5710.

¹⁰ See below cases *a* and *b*, paras. 16–23.

¹¹ See below case *c*, paras. 24 and 25.

¹² S C, 16th yr., Suppl. for July–Sept., p. 4, S/4851.

participate without vote in the discussion of the item that has just been placed on our agenda.”

20. In objecting to the extension of the invitation, one representative said that it would be completely unnecessary to invite a representative of a régime which was illegal and did not reflect the will of the people.

21. The representative of the United States observed that Cambodia's complaint of aggression had also involved the Republic of Viet-Nam. As the Charter and the rules of procedure provided for invitations to non-members, there could be no question of the authority of the Council to invite the Republic of Viet-Nam to participate in the discussion.

22. Another representative stated that by granting the request the Security Council would be permitting participation by a private individual pretending to be a representative of a people whom his Government did not represent. Furthermore, since the foreign power responsible for the grave situation regarding the frontier between Cambodia and South Viet-Nam was a member of the Council, it could easily give all pertinent information.

23. The President stated that he had a formal proposal by the United States to invite the representative of the Republic of Viet-Nam to participate, without vote, in the discussion which he proposed to put to the vote.¹⁶

Decision

The United States proposal was adopted¹⁷ by 9 votes to 2.

c. Decision of 18 May 1966 in connexion with the situation in Southern Rhodesia

24. At the 1280th meeting, on 18 May 1966, in connexion with the situation in Southern Rhodesia, the President (Netherlands) stated that as some communications from “the Smith régime” had been received by the Secretary-General, he intended to call on him to make a statement.

25. The Secretary-General stated that on the previous day he had made available to the members of the Council copies of telegrams from Salisbury which he had received from a Mr. Lardner Burke “who calls himself ‘Minister of Justice’”, and who, invoking Article 32 of the Charter, had requested an invitation to participate in the Security Council debate concerning Southern Rhodesia. After recalling the provisions of Article 32 of the Charter, the Secretary-General said:

“...the legal status of Southern Rhodesia is that of a Non-Self-Governing Territory under resolution 1747 of the sixteenth session of the General Assembly, and Article 32 of the Charter does not apply. In the circumstances, it is for the Council to decide what consideration, if any, it wishes to give to these telegrams. It is for that reason that I made available to the members of the Council copies of the telegrams I received from Salisbury.

¹⁶ For the text of relevant statements, see S C, 19th yr., 1118th mtg.: President (France), para. 2; Czechoslovakia, para. 11; USSR, paras. 3 and 4; United States, paras. 8 and 9.

¹⁷ *Ibid.*, para. 13.

“I need hardly recall to the Council that in several resolutions on the subject the Council has labelled the régime in Southern Rhodesia as illegal. For this reason, and in line with the policy of the Secretariat not to enter into correspondence with illegal régimes, I decided not to reply to the various telegrams from Salisbury.”¹⁸

Decision

After the Secretary-General had spoken, the President declared:

“Members of the Council have heard the statement of the Secretary-General. Unless any representative wishes to speak on the subject, I think that the statement of the Secretary-General both covers and settles it. I believe that we can now continue our debate on the item on the agenda.”¹⁹

2. THE QUESTION OF THE EFFECT OF THE PROVISIO “IF IT IS A PARTY TO A DISPUTE UNDER CONSIDERATION BY THE SECURITY COUNCIL”

26. In the case presented below it was contended that a non-member State against which a complaint had been made should be invited as a party to the dispute under consideration. Article 32 was explicitly invoked in support of the request for invitation.

Decision of 7 August 1964 in connexion with the complaint by the United States (the Gulf of Tonkin incident)

27. At the 1140th meeting, on 5 August 1964, during consideration of the United States complaint against the Democratic Republic of Viet-Nam concerning the incident in the Gulf of Tonkin, the representative of the USSR submitted a draft resolution²⁰ under which

“*The Security Council,*

“... ”

“2. *Invites* representatives of the Government of the Democratic Republic of Viet-Nam to take part without delay in the meetings of the Security Council.”

28. The representative of the USSR, drawing the attention of the Council to Article 32 of the Charter which he considered to be directly applicable to the matter under consideration, stated that if the Government of the Democratic Republic of Viet-Nam wished to take part in the discussion of the question, it would be the obligation of the Council, in accordance with Article 32, to invite forthwith a representative of that Government.

29. One representative stated that to invite the régime concerned to come to the Council would be to confer on it a status it had not hitherto enjoyed in the United Nations.

30. Another representative expressed the view that in line with the Charter and the Council's

¹⁸ S C, 21st yr., 1280th mtg., paras. 6–8.

¹⁹ *Ibid.*, President (Netherlands), para. 9.

²⁰ This proposal, later circulated in writing, was distributed as document S/5851; see S C, 19th yr., 1140th mtg., para. 73.

tradition, "the parties to a dispute should be enabled to state their case". Consequently, the representative of the Democratic Republic of Viet-Nam should be invited as a matter of urgency, to participate without vote in the debate. With regard to the USSR proposal, he suggested that instead of voting on a draft resolution, the President might be entrusted with the task of taking action on any wishes the Council might express if the Council proved favourable to the participation of a representative of the Democratic Republic of Viet-Nam.

31. The representative of the United States had no objection to the invitation proposed by the USSR. He suggested that the Republic of Viet-Nam should also be invited to appear since the attack on the United States destroyer was an extension of aggression against that Republic.

32. The representative of the USSR saw no practical justification for relating the invitation of a representative of South Viet-Nam to the content and framework of the item now being considered by the Security Council.

33. At the 1141st meeting on 7 August 1964, the President reported that as a result of consultations among the members, the Council had arrived at the following understanding:

"The Security Council for its further consideration of the complaint against the Democratic Republic of Viet-Nam referred to in the letter dated 4 August 1964 from the Permanent Repre-

sentative of the United States of America to the President of the Security Council, would welcome such information relating to this complaint as the Democratic Republic of Viet-Nam would desire to make available to the Council either through taking part in the discussion of the complaint in the Council or in the form which it might prefer.²¹ Furthermore, the Security Council would receive in the same manner such information relating to the complaint as the Republic of Viet-Nam would desire to make available to the Council."²²

Decision

There was no objection to that formulation.²³

****B. The question of the mandatory character of the Article**

****C. The question of the conditions which the Security Council "shall lay down... for the participation of a State which is not a Member of the United Nations"**

²¹ The Democratic Republic of Viet-Nam did not accept the invitation of the Council to participate in its proceedings, but its comments on the incident were brought to the attention of the Council in a document circulated by the Security Council at the request of the USSR. S C, 19th yr., Suppl. for July—Sept., p. 170, S/5888.

²² For texts of relevant statements, see S C, 19th yr., 1140th mtg.: China, para. 86; France, paras. 88—91; USSR, paras. 57, 58, 60, 61, 64, 72—74, 101, 102 and 104; United States, paras. 95 and 96; 1141st mtg.: President (Norway), para. 22.

²³ S C, 19th yr., 1141st mtg., para. 23.

ANNEX

Classified tabulation of instances where invitations, other than those listed in the study on Article 31, were extended or denied by the Security Council to Members of the United Nations or other States

A. INVITATIONS EXTENDED

<i>Invitation to</i>	<i>Question</i>	<i>Initiation by</i>	<i>Request</i>	<i>Decision of the Council: Meeting and date</i>
1. INVITATIONS UNDER ARTICLE 32				
a. <i>In the case of Members</i>				
1. Tunisia	Situation in Territories in Africa under Portuguese administration	President (Morocco)	S/5351	S C, 18th yr., 1040th mtg., para. 7; 22 July 1963
2. Tunisia	Race conflict in South Africa	President (Morocco)	S/5352	<i>Ibid.</i>
b. <i>In the case of non-members</i>				
3. Kuwait	Complaints by Kuwait and Iraq	President (Ecuador)	S/4851	S C, 16th yr., 958th mtg., para. 21; 5 July 1961
4. Republic of Viet-Nam	Complaint by Cambodia	President (France)	S/5709 S/5710	S C, 19th yr., 1118th mtg., para. 13; 19 May 1964
5. Democratic Republic of Viet-Nam	Complaint by the United States (the Gulf of Tonkin incident)	President (Norway)	None	S C, 19th yr., 1141st mtg., para. 22; 7 August 1964
6. Republic of Viet-Nam	Complaint by United States (the Gulf of Tonkin incident)	President (Norway)	None	<i>Ibid.</i>
7. Greece	Complaint by the Government of Cyprus	President (Norway)	S/5863	S C, 19th yr., 1142nd mtg., para. 7; 8 August 1964
8. Greece	Complaint by the Government of Cyprus	President (USSR)	S/5975	S C, 19th yr., 1151st mtg., para. 1; 16 September 1964
9. Greece	Complaint by the Government of Cyprus	President (Netherlands)	S/6437	S C, 20th yr., 1224th mtg., para. 1; 15 June 1965
10. Greece	Complaint by the Government of Cyprus	President (Jordan)	S/7200	S C, 21st yr., 1274th mtg., pp. 18—20; 15 March 1966
11. Greece	Complaint by the Government of Cyprus	President (New Zealand)	S/7355	S C, 21st yr., 1286th mtg., para. 6; 16 June 1966

**2. INVITATIONS EXPRESSLY UNDER RULE 39^a

^a For discussion concerning invitations extended under rule 39, see this *Supplement* under Article 30, paras. 52—70.

**B. INVITATIONS DENIED

Chapter VI

PACIFIC SETTLEMENT OF DISPUTES