

ARTICLE 35

Table of Contents

| | <u>Paragraphs</u> |
|--|-------------------|
| Text of Article 35 | |
| Introductory Note | 1 - 5 |
| I. General Survey | 6 - 12 |
| II. Analytical Summary of Practice | 13 - 18 |
| A. In the Security Council | 13 - 18 |
| 1. The question of the procedure of the Security Council giving effect to the provision that any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Council | 13 - 18 |
| a. Decision of 10 September 1954 in connexion with the question of an incident of attack on a United States Navy aircraft | 13 - 14 |
| b. Decision of 31 January 1955 in connexion with the question of hostilities in the area of certain islands off the coast of China | 15 - 16 |
| c. Decision of 26 June 1956 in connexion with the Algerian question | 17 - 18 |
| ** 2. The question of submission by States not Members of the United Nations | |
| ** 3. The question of acceptance "in advance, for the purposes of the dispute," of the obligations of pacific settlement provided in the Charter | |
| B. In the General Assembly | |
| ** 1. The question of the competence of the General Assembly arising from Article 35 | |
| ** 2. The question of delegation to a subsidiary organ of responsibilities of the General Assembly arising from Article 35 | |
| Annex. Tabulation of questions submitted to the Security Council (1954-1956) | |

TEXT OF ARTICLE 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

INTRODUCTORY NOTE

1. The General Survey below contains a breakdown of the initial communications submitting disputes and situations to the Security Council. The tabulation which is annexed includes the questions thus submitted to the Council, and which had not been previously under consideration by the Council. Reference is also made in the General Survey to questions brought to the attention of the Council under Article 35 (1) in respect of which no request for consideration was made.
2. Article 35 has also been mentioned in various instances of submission of questions to the General Assembly, 1/ or in the course of its debates on such questions. 2/ However, following the precedent of the previous volume of the Repertory, the General Survey does not include here any of those references. In each instance of submission where Article 35 was mentioned, references were also made to Articles 10 and 14 of the Charter. Due to this, a more appropriate treatment is called for under the Articles dealing with the broad scope of powers of the General Assembly. 3/
3. As in the previous volume, it has been deemed unnecessary to deal in the Analytical Summary of Practice with the procedure of the General Assembly giving effect to the provisions of Article 35, since the normal procedure of the Assembly in implementing this Article does not differ from the procedure of the Assembly for the inclusion of all other questions submitted to it.
4. There were no instances of questions submitted to the General Assembly by non-members under the provisions of Article 35 (2).
5. The authority granted the Interim Committee of the General Assembly to consider and report on any dispute or situation submitted to the General Assembly under Article 35 was not utilized during the period covered by this Supplement.

1/ In connexion with the question of West Irian (West New Guinea), see G A (IX), annexes, a.i. 61, A/2694, para. 17.

In connexion with the question of Cyprus, see G A (IX), annexes, a.i. 62, A/2703, part I.

2/ In connexion with the question of West Irian (West New Guinea), see G A (IX), 1st Com., 727th mtg., para. 39; 729th mtg., para. 22; 731st mtg., para. 69.

In connexion with the question of Cyprus, see G A (IX), Gen. Com., 93rd mtg., paras. 20 and 37; G A (X), Gen. Com., 102nd mtg., para. 43.

In connexion with the question of Algeria, see G A (X), Gen. Com., 103rd mtg., para. 69; 104th mtg., paras. 11 and 37; Plen., 548th mtg., paras. 88 and 89.

3/ See the studies of Articles 10, 11 and 13 in this Supplement.

I. GENERAL SURVEY

6. Under its responsibility for the maintenance of international peace and security, the Security Council has considered, during the period covered by this Supplement, two questions submitted by Members 4/ and described in the respective letters of submission as situations the continuance of which was likely to endanger international peace and security. In neither of the letters of submission was Article 35 expressly mentioned; both questions were included in the agenda. 5/
7. In one instance, a question submitted by a Member 6/ and described as "extension of acts of aggression" was included in the agenda 7/ as a sub-item of a composite agenda item. After including the question, the Council decided not to deal with it until the consideration of the other agenda sub-item had been completed. 8/
8. In another instance, a question submitted by thirteen Members (see paragraphs 17 and 18 below) and described as a situation under Article 35 (1) was not included in the agenda. 9/
9. In respect of two other questions, 10/ submitted by Members and described as situations, the initial communications invoked Article 35 (1) although no formal request was made for the Council to consider such questions. Therefore, they were not placed in the provisional agenda.
10. In one instance, a complaint submitted by a Member 11/ was included as a sub-item of a composite agenda item already under consideration by the Council. The representative of the Member submitting the complaint, in making his statement before the Council, 12/ invoked Article 34 and in this connexion referred also to Article 35. No such references had been made in the letters 13/ of submission.
11. The Council considered, in addition to the questions previously referred to, five sub-items of a composite agenda item already under consideration by the Council. 14/ Neither in the letters of submission nor in the statements before the Council was any reference made to Article 35 (1). These sub-items were brought to the attention of the Council by Members, but the original agenda item had been brought before the Council by the General Assembly. For this reason, this agenda item and its sub-items are not included in the tabulation attached as an annex to this study.

4/ See items 1 and 2 of annexed tabulation.

5/ S C, 9th yr., 679th mtg., para. 25; S C, 10th yr., 690th mtg., para. 114.

6/ See item 3 of annexed tabulation.

7/ S C, 10th yr., 690th mtg., para. 112.

8/ Ibid., para. 114.

9/ S C, 11th yr., 730th mtg., para. 85.

10/ S/3414 and S/3450.

11/ In connexion with the Palestine question, see:

S C, 10th yr., 697th mtg., para. 3.

12/ S C, 10th yr., 697th mtg., para. 5.

13/ S C, 10th yr., Suppl. for Jan., Feb. and March 1955, pp. 94 and 95, S/3376. Suppl. for April, May and June 1955, pp. 1-3, S/3385.

14/ In connexion with the Palestine question, see:

S C, 9th yr., 682nd mtg., preceding para. 1;

S C, 10th yr., 692nd mtg., preceding para. 6; 700th mtg., preceding para. 12;

707th mtg., preceding para. 1; S C, 11th yr., 717th mtg., preceding para. 4.

12. There has been no instance of submission of a dispute or situation to the Council by a non-Member State during the period under review.

II. ANALYTICAL SUMMARY OF PRACTICE

A. In the Security Council

1. *The question of the procedure of the Security Council giving effect to the provision that any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Council*

a. DECISION OF 10 SEPTEMBER 1954 IN CONNEXION WITH THE QUESTION OF AN INCIDENT OF ATTACK ON A UNITED STATES NAVY AIRCRAFT

13. At the 679th meeting on 10 September 1954, the Security Council had before it a letter 15/ from the representative of the United States dated 8 September 1954 bringing to the attention of the Security Council the question of an incident of attack by Soviet aircraft on a United States Navy aircraft. The incident was described in the letter as being of a type which might endanger the maintenance of international peace and security.

14. Objection was raised to the inclusion of the question in the agenda on the ground that the letter gave a completely distorted account of the incident, and that the proposal for the consideration of this matter by the Security Council was entirely without foundation. In opposing this view, it was stated that the United States had already made a prima facie case for the adoption of the agenda in its letter. The President then stated that approval of the agenda did not imply acceptance of the arguments put forward by either party, and that precisely in order to examine those arguments and learn the facts of the case, the agenda had first to be adopted by the Council. 16/

Decision

The Security Council decided 17/ to include the item in the agenda by 10 votes to 1.

b. DECISION OF 31 JANUARY 1955 IN CONNEXION WITH THE QUESTION OF HOSTILITIES IN THE AREA OF CERTAIN ISLANDS OFF THE COAST OF CHINA

15. At the 689th and 690th meetings on 31 January 1955, the Security Council had on its provisional agenda the letter 18/ dated 28 January 1955 from the representative of New Zealand to the President of the Council concerning the question of hostilities in the area of certain islands off the coast of the mainland of China, and the letter 19/ dated 30 January 1955 from the representative of the USSR to the President of the Council concerning the question of acts of aggression by the United States of America against the People's Republic of China in the area of Taiwan (Formosa) and other

15/ S C, 9th yr., Suppl. for July, Aug. and Sept. 1954, p. 35, S/3287.

16/ For texts of relevant statements, see:

S C, 9th yr., 679th mtg.: President (Colombia), para. 24; USSR, paras. 4-22; United States, para. 23.

17/ S C, 9th yr., 679th mtg.: para. 25.

18/ S C, 10th yr., Suppl. for Jan., Feb. and March 1955, p. 27, S/3354.

19/ Ibid., pp. 27 and 28, S/3355.

islands of China. The communication from New Zealand stated that a situation existed, the continuance of which was likely to endanger the maintenance of international peace and security. The USSR communication asserted that the acts of aggression in reference were aggravating tension in the Far East and increasing the threat of a new war. A draft resolution was attached to the latter communication under which the Council would condemn those acts of aggression, and recommend immediate steps to put an end to them.

16. Objection was raised to the inclusion in the agenda of the Council of the item as proposed and construed by the representative of New Zealand, on the basis that he had not referred to the real reason for the threats to the peace which had arisen in the Far East. A member of the Council remarked that regardless of what the causes, importance and nature of the danger might be, both parties were in agreement on the existence of such a danger and on the competence of the United Nations to deal with the matter and to dispel that danger. The representative of the United Kingdom, taking into account the related questions of the adoption of the agenda and the priority of consideration to be given to the two items on the provisional agenda, made a motion which as revised provided that the Council vote on the following questions, first, whether to inscribe the New Zealand item in the agenda; second, whether to inscribe the USSR item; and third, whether to conclude consideration of the New Zealand item before taking up the USSR item. The representative of the USSR, while expressing concurrence with the proposed procedure, submitted an amendment to the third part of the United Kingdom motion, to the effect that the item proposed by the USSR be considered first by the Council. 20/

Decisions

The Security Council decided 21/ to adopt the agenda in the form proposed by the representative of the United Kingdom. The first part of his revised motion was adopted by 9 votes to 1, with 1 abstention. The second part of his revised motion was adopted by 10 votes to 1. Following the rejection of the USSR amendment by 10 votes to 1, the third part of the United Kingdom revised motion was adopted by 10 votes to 1.

c. DECISION OF 26 JUNE 1956 IN CONNEXION WITH THE ALGERIAN QUESTION

17. At the 729th and 730th meetings on 26 June 1956, the Security Council had on its provisional agenda a request 22/ submitted under Article 35 (1) by Afghanistan, Egypt, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Pakistan, Saudi Arabia, Syria, Thailand and Yemen to consider the situation in Algeria which was said to have deteriorated to the extent that the United Nations could not remain indifferent to the threat to international peace and security and the infringement of the basic right of self-determination, and to the flagrant violation of the other fundamental human rights.

20/ For texts of relevant statements, see:
S C, 10th yr., 689th mtg.: President (New Zealand), paras. 29-43; USSR, paras. 44-67 and 76-86; 690th mtg.: Belgium, paras. 44-47, 106 and 107; Peru, paras. 48-55; USSR, paras. 76-78, 89-93 and 109; United Kingdom, paras. 74, 95 and 96; United States, paras. 11-21 and 81-87.

21/ S C, 10th yr., 690th mtg., para. 114.

22/ S/3609. Communications drawing the attention of the Security Council to the situation in Algeria under Article 35 (1) had been previously submitted by the representative of Saudi Arabia (S/3341), and by 17 Members (S/3589 and Add.1). Explanatory memoranda were transmitted with those communications.

18. Objection was raised to the inclusion of the matter on the agenda on the ground of Article 2 (7), since the French Government considered that Algerian affairs were matters essentially within the domestic jurisdiction of France. It was also contended that the situation in Algeria was not likely to endanger international peace and security, and that neither the alleged violation of fundamental human rights nor the hypothetical denial of the right of self-determination were matters within the competence of the Security Council. Other members of the Council maintained that the Council, acting under the provisions of Articles 34 and 35 of the Charter, should examine the question which had already led to international friction in the sense that thirteen Member States had expressed their serious concern about the aggravated situation in Algeria. Furthermore, the view was expressed that Article 2 (7) was not applicable since the inclusion of the item in the agenda did not even prejudice the question of competence which could be discussed at a later stage, once the problem had been placed on the agenda of the Council. This had been the practice of the Council on previous occasions. Some other representatives remarked that the Council could not take action under Articles 34 and 35 of the Charter, requested, because, to be fruitful, such action had to have the willing co-operation of France with the Security Council. The consideration of the question, under such circumstances, would not lead, therefore, to any practical results. It was observed that the function of the Council under the Charter was essentially guided by the purpose of seeking co-operation with a view to a peaceful settlement. The practice of placing a matter on the agenda to offer an opportunity of elucidating the question of competence, was advisable when that question had not been discussed. This was not the case in the Algerian matter which had been the subject of lengthy discussion in the past year. 23/

Decision

At the 730th meeting on 26 June 1956, the Security Council rejected 24/ the inclusion of the item in the agenda. There were 2 votes in favour, 7 against and 2 abstentions.

***2. The question of submission by States not Members of the United Nations*

***3. The question of acceptance "in advance, for the purposes of the dispute", of the obligations of pacific settlement provided in the Charter*

B. In the General Assembly

***1. The question of the competence of the General Assembly arising from Article 35*

***2. The question of delegation to a subsidiary organ of responsibilities of the General Assembly arising from Article 35*

23/ For texts of relevant statements, see:
S C, 11th yr.: 729th mtg., France, paras. 93-111; Iran, paras. 30-41 and 78-84;
730th mtg., Belgium, paras. 59-62; China, paras. 32 and 33; Iran, paras. 9 and
22-27; Peru, paras. 43-46; USSR, paras. 74-80; United Kingdom, paras. 50-58.

24/ S C, 11th yr., 730th mtg., para. 85.

ANNEX

Tabulation of questions submitted to the Security Council (1954-1956)

** A. Questions submitted by Members as disputesB. Questions submitted by Members as situations

| <u>Question</u> | <u>Submitted by</u> | <u>Article invoked as basis for submission</u> | <u>Action taken</u> |
|---|------------------------------------|--|--|
| 1. Letter dated 8 September 1954 from the representative of the United States addressed to the President of the Security Council | United States, 8 September 1954 | - | Included in the agenda. S C, 9th yr., 679th mtg., para. 25. |
| 2. Letter dated 28 January 1955 from the representative of New Zealand to the President of the Security Council concerning the question of hostilities in the area of certain islands off the coast of the mainland of China | New Zealand, 28 January 1955 | - | Included in the agenda. S C, 10th yr., 690th mtg., para. 114. |
| 3. Letter dated 30 January 1955 from the representative of the Union of Soviet Socialist Republics to the President of the Security Council concerning the question of acts of aggression by the United States of America against the People's Republic of China in the area of Taiwan (Formosa) and other islands of China | USSR, 30 January 1955 | - | Included in the agenda. S C, 10th yr., 690th mtg., para. 114. |
| 4. Letter dated 13 June 1956 from the representatives of Afghanistan, Egypt, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Pakistan, Saudi Arabia, Syria, Thailand and Yemen, addressed to the President of the Security Council concerning Algeria | 13 Members, 13 June 1956 | 35 (1) | Proposal for inclusion in the agenda rejected, S C, 11th yr., 730th mtg., para. 85. |

