

## ARTICLE 36

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#### TEXT OF ARTICLE 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

#### INTRODUCTORY NOTE

1. The present study applies the same criteria for the selection and presentation of material as those used in the corresponding study in volume II of the Repertory.

2. Consequently, although there was no express discussion of Article 36 in the Security Council during the period under review, nor express reference to Article 36 in any of its resolutions, it has been considered appropriate to examine certain decisions on the Palestine question in this study since they involve recommendations by the Security Council to the parties of procedures and measures of adjustment. Despite the absence of reference to Article 36 itself, statements made in the Council prior to the adoption of the decisions in question indicate that the considerations which guided the Council related to the appropriateness of recommendation by the Council of procedures of adjustment, on the one hand, and of proposals of specific practical measures for the reduction of tension on the other. These decisions by the Council are summarized in the General Survey.

3. The inclusion in this study of the decisions on the Palestine question should not be construed as implying that they were applications of Article 36. Some of these decisions may also be deemed relevant to Articles 39 and 40 and are treated in the studies of these Articles also, as well as in the study of Article 98. (See paragraphs 7, 9, and 10-12 below.)

4. In the Analytical Summary of Practice two questions are dealt with. The first which is treated under the heading of the nature of the recommendations of the Council throws light on the view of the Council concerning the need to obtain the agreement of the parties to its recommendation of methods of adjustment.

5. The second question, which is treated in a brief note, concerns the requirement to take into consideration procedures for settlement which have already been adopted by the parties. Under this heading is set out material showing the practice of the Council on a number of occasions when consideration of a complaint submitted to it had not been undertaken or had not been completed by the machinery of settlement established by the parties.

## I. GENERAL SURVEY

6. In connexion with the consideration of the complaints of Egypt and Israel concerning incidents in the Gaza area and of the complaint of Syria concerning incidents in the area east of Lake Tiberias, the Council made a number of decisions concerning practical measures proposed by the Chief of Staff to the parties for the preservation of security and the reduction of tension in those areas. The Council has endorsed these proposals, more frequently in general than in specific terms. The actual institution of the measures has been left to the agreement of the parties, aided therein by the Chief of Staff. The following paragraphs present, particularly, those provisions of the Council's decisions marked by emphasis on the promotion of agreement between the parties and, in less detail, the endorsements of practical measures by the Council.

7. In his reports 1/ to the Council on the complaints of Egypt and Israel concerning incidents in the Gaza area, and particularly the incident of 28 February 1955, the Chief of Staff of the Truce Supervision Organization suggested that both parties should agree to several practical measures with a view to decreasing tension along the armistice demarcation line between Egypt and Israel. The Council, after hearing the parties, adopted unanimously two resolutions. The first, adopted on 29 March 1955, 2/

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1/ S C, 10th yr., Suppl. for Jan., Feb. and March 1955, S/3373, para. 40;  
S C, 9th yr., Suppl. for Oct., Nov. and Dec. 1954, S/3319 and Corr.1, para. 13.  
2/ S C, 10th yr., 695th mtg., para. 114; S C, 10th yr., Suppl. for Jan., Feb.  
and March 1955, S/3378, pp. 95 and 96.

condemned the attack by Israel as a violation of the cease-fire provisions of the Security Council resolution of 15 July 1948 and called upon Israel to take all necessary measures to prevent a recurrence. A second resolution adopted on 30 March 1955 <sup>3/</sup> was addressed to both Egypt and Israel. It requested the Chief of Staff to continue his consultations with both parties with the aim of obtaining their agreement to put into effect his concrete proposals to preserve security in the area, and called upon the Governments of Egypt and Israel to co-operate with the Chief of Staff in this connexion. The Council observed that, in the opinion of the Chief of Staff, infiltration could be reduced to an occasional nuisance if an agreement were effected between the parties on the lines the Chief of Staff had proposed.

8. In his report <sup>4/</sup> to the Council on renewed outbreaks of violence in the Gaza strip, the Chief of Staff of the Truce Supervision Organization stressed that avoidance of a repetition of the incidents required the working out of better practical arrangements along the demarcation line by agreement between the parties. The Council, on 8 September 1955, endorsed <sup>5/</sup> the view of the Chief of Staff that the armed forces of both parties should be clearly and effectively separated by such measures as he had proposed, and called upon both parties to co-operate fully with him in the introduction of such practical measures.

9. In connexion with a complaint of Syria against Israel concerning incidents in the area east of Lake Tiberias, the Council, taking into consideration the statements by the representatives of both parties, and the report <sup>6/</sup> of the Chief of Staff of the Truce Supervision Organization, adopted a decision on 19 January 1956 <sup>7/</sup> condemning the armed attack by Israel. The Council also called upon the parties to comply with their obligations under the General Armistice Agreement, and requested the Chief of Staff to pursue his suggestions for improving the situation in the area. The parties were likewise called upon to co-operate with the Chief of Staff in this and all other respects, to carry out the provisions of the General Armistice Agreement in good faith, and in particular to make full use of the mixed Armistice Commission's machinery in the interpretation and application of its provisions.

10. By its decision of 4 April 1956, <sup>8/</sup> the Council, after noting that the specific steps recommended in its resolutions of 30 March 1955, 8 September 1955, and 19 January 1956, in order to ensure a reduction of tensions along the armistice demarcation lines had not been carried out by the parties to the Palestine question, requested the Secretary-General to undertake, as a matter of urgent concern, a survey of the various aspects of enforcement of and compliance with the four General Armistice Agreements, as well as with the aforementioned resolutions. The Council considered that the situation prevailing between the parties as regards the enforcement of the Armistice Agreements and the compliance with these resolutions was such that its continuance was likely to endanger the maintenance of international peace and security. The Council specifically requested the Secretary-General to arrange with the parties for the adoption of any measures which, after discussion with the parties and with the Chief of Staff, he considered would reduce existing tensions. The resolution enumerated several specific measures for the prevention of incidents and the avoidance of further

<sup>3/</sup> S C, 10th yr., 696th mtg., para. 184; S C, 10th yr., Suppl. for Jan., Feb. and March 1955, S/3379, p. 96.

<sup>4/</sup> S C, 10th yr., Suppl. for July, Aug. and Sept. 1955, pp. 8 and 11, S/3430 and Add.1.

<sup>5/</sup> S C, 10th yr., 700th mtg., para. 133, S/3435.

<sup>6/</sup> S C, 10th yr., Suppl. for Oct., Nov. and Dec. 1955, p. 24, S/3516, paras. 22, 33 and 34.

<sup>7/</sup> S C, 11th yr., 715th mtg., para. 141, S/3538.

<sup>8/</sup> S C, 11th yr., Suppl. for April, May and June 1956, p. 1, S/3575.

friction. The parties concerned were called upon to co-operate with the Secretary-General in the implementation of this decision of the Council, and the Secretary-General was requested to report thereon to the Council.

11. Following his consultations on the spot with representatives of the Governments concerned, the Secretary-General submitted a report 9/ to the Council. In the report, the Secretary-General stated that he had devoted all his attention to the limited task of re-establishing first of all a cease-fire and, based on the cease-fire, a state of full compliance with the Armistice Agreements. 10/ He did not, however, indicate what further action the Council might take.

12. The report was considered by the Council at its 723rd to 728th meetings. By its decision of 4 June 1956, 11/ the Council, after noting, *inter alia*, that the measures called for in the third operative paragraph of its resolution of 4 April 1956 had not been completely agreed upon, called upon the parties to carry out speedily the measures already agreed upon with the Secretary-General, and requested the Secretary-General to continue exercising his good offices with the parties to the Armistice Agreements. Having noted the assurances given to the Secretary-General by all the parties concerned with regard to unconditional observance of the cease-fire, pursuant to the resolution of the Council of 11 August 1949, the Council endorsed the view of the Secretary-General that the re-establishment of full compliance with the Armistice Agreements represented a stage which had to be passed in order to make progress possible on the main issues between the parties. The Council also called upon the parties to the Armistice Agreements to take the steps necessary to implement this resolution of the Council, thereby increasing confidence and demonstrating their

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9/ *Ibid.*, p. 30, S/3596. See also *ibid.*, p. 15, S/3584, p. 19, S/3586, p. 23, S/3587 and a progress report, p. 27, S/3594.

10/ Concerning the question of the Egyptian interference with Israel shipping through the Suez Canal raised by the Government of Israel, the Secretary-General's attitude was that that question "as adjudicated by the Security Council, is not a question of compliance with the Armistice Agreement in the sense of my mandate". The Secretary-General also noted "in an approach looking beyond the immediate problems which, as I understand the resolution of 4 April 1956, the Security Council had in mind, it is obvious that the question raised by the Government of Israel should come under consideration in the light of the Council's finding in its resolution of 1 September 1951 that the blockade is incompatible with the Armistice régime, as this régime put an end to a state in which Egypt could avail itself of belligerent rights". (S C, 11th yr., Suppl. for April, May and June 1956, p. 30, S/3596, paras. 93 and 94). See also under Article 98 in this Supplement.

11/ S C, 11th yr., Suppl. for April, May and June 1956, p. 72, S/3605.

wish for peaceful conditions, and the Secretary-General was requested to report to the Council as appropriate. 12/

## II. ANALYTICAL SUMMARY OF PRACTICE

### \*\* A. The question of the circumstances in which the Security Council may make recommendations in accordance with Article 36

#### B. The question of the nature of recommendations under Article 36 (1)

13. In the course of proceedings of the Council on the Palestine question, in connexion with a paragraph of the preamble of a draft resolution submitted to the Council, the question arose whether in recommending procedures for the alleviation of tension between the parties, the Council could couple them with an implicit recommendation concerning the basis of settlement of the dispute between the parties to which some of them objected. Following private consultations between members of the Council, the sponsor of the draft resolution agreed to the deletion of the paragraph in order to facilitate unanimous adoption of the draft resolution, and to ensure the co-operation of all the parties in implementing the recommendations of the Council designed to reduce the tensions between the parties.

#### Decision of 4 June 1956 in connexion with the Palestine question

14. At the 723rd meeting on 29 May 1956, in connexion with the discussion on the status of compliance given to the General Armistice Agreements and the resolutions adopted by the Security Council, and, in particular, in connexion with the report 13/ of the Secretary-General on that subject, a draft resolution 14/ was introduced by the representative of the United Kingdom with the object of providing all possible assistance to the parties to which the Council must look primarily for agreement on further measures to ensure full compliance with the Armistice Agreements and the resolutions of the Council. The preamble of the draft resolution also contained the following paragraph:

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12/ (a) The Secretary-General reported to the Council on 3 August 1956 (S/3632) and on 21 August 1956 (S/3638) with regard to further Palestine incidents. (b) On 26 September 1956, the Secretary-General called the attention of the Council to the latest development along the Jordan-Israel Armistice Demarcation Line. He mentioned that, if the situation was not brought rapidly under control, "the Council should take the matter up in order to reaffirm its policy, as established in previous resolutions, and, were the Council to find the continued deterioration to constitute a threat to the peace, to decide on what further measures may be indicated" (S/3658). (c) Pursuant to the resolutions of the Council of 4 April and 4 June, the Secretary-General submitted to the Council a comprehensive report, dated 12 September 1956, (S/3659) concerning continued incidents along the Armistice Demarcation Lines, and the temporary suspension of discussions between the Chief of Staff and the parties concerned in connexion with several local arrangements which had been proposed for improving the situation. The Secretary-General, in concluding his report, stated that later developments in the Palestine region indicated that the will to establish peaceful conditions had not grown strong enough for any of the parties concerned to take the risks necessary for a use of existing possibilities for improvements of the situation. (S/3659, p. 10).

13/ S C, 11th yr., Suppl. for April, May and June 1956, p. 30, S/3596.

14/ Ibid., pp. 66-70, S/3600, S/3600/Rev.1 and S/3600/Rev.2.

"The Security Council,

"...

"Conscious of the need to create conditions in which a peaceful settlement on a mutually acceptable basis of the dispute between the parties can be made,"

In support of this paragraph, the representative of the United Kingdom stated that although the Council should work at that stage to reduce tensions along the Armistice Demarcation Lines, it should not lose sight of the need for a mutually acceptable peaceful settlement of the differences between Israel and its Arab neighbours.

15. In making their views known to the Council, the representatives of Egypt, Jordan, Lebanon and Syria, parties to the General Armistice Agreements with Israel, raised objection to the text of this paragraph on the ground that it was outside the framework of the item under consideration, which concerned the mission entrusted by the Council to the Secretary-General to promote compliance with the Armistice Agreements and the reduction of tensions in the Palestine area. The pronouncement contained in the proposed paragraph would give rise to controversial questions because, in their opinion, the only basis for a peaceful settlement was the full implementation of the United Nations resolutions on Palestine, including decisions on the repatriation of refugees, the internationalization of the Jerusalem area, and the territorial adjustment.

16. At the 726th meeting on 1 June 1956, the representative of the United Kingdom, in further explanation of the proposed paragraph, observed that it was intended to stress the point that any eventual settlement between the parties should be one arrived at through agreement and should not be imposed by the United Nations. He also emphasized that there was nothing in the paragraph that affected the nature of any possible settlement, and that the parties could not be prevented from taking any position they wished regarding the basis for a peaceful settlement of the dispute.

17. At the same meeting, in submitting an amendment 15/ to delete the proposed paragraph, the representative of Iran contended that it might give rise to different interpretations and might compromise former United Nations resolutions on Palestine in the eyes of some of the interested parties. He proposed therefore to delete the paragraph because it was advisable in the case of the draft resolution under discussion, as in connexion with previous resolutions of the Council on the Palestine question, that a unanimous decision should be obtained which would also be acceptable to all the parties concerned. Speaking in support of the Iranian amendment at the 727th meeting on 1 June 1956, the representative of China remarked that the Council was empowered by the Charter to impose a cease-fire on all Member States but that experience had amply shown that the legal authority of the Council had been insufficient by itself, and that the co-operation of all the parties concerned was vitally important. At the 728th meeting on 4 June 1956, after accepting the Iranian amendment in the interests of unanimity, the representative of the United Kingdom stated that the omission of the proposed paragraph from the text of the resolution should not imply any expression of the views of the Council about the nature of an eventual settlement. It could not mean, therefore, that the Council considered that the settlement should be on some basis other than one mutually accepted. The

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15/ Ibid., p. 70, S/3602.

representative of the USSR maintained that the success of any United Nations measures to strengthen peace in the Palestine area depended, above all, on co-operation between the parties concerned in carrying out such measures. 16/

#### Decision

At the 728th meeting on 4 June 1956, the draft resolution submitted by the United Kingdom, as amended, was adopted unanimously. 17/

#### **C. The question of the requirement to take into consideration procedures for settlement which have already been adopted by the parties**

18. In connexion with the consideration by the Council of several complaints by parties to the Armistice Agreements, the Council decided at the outset to adjourn consideration until it could have before it the findings of the machinery established by the parties for the resolution of difficulties arising under the Armistice Agreements. In one instance the Council followed up such a decision with a communication to the parties urging them to expedite the consideration of their dispute by the corresponding Mixed Armistice Commission. 18/

19. Decisions to adjourn consideration pending receipt of the findings of the Mixed Armistice Commission were made by the Council on 14 October 1954, in connexion with the Bat Galim incident; 19/ on 4 March 1955, in connexion with the complaints by Egypt and Israel concerning incidents in the Gaza area; 20/ and on 6 April 1955, in connexion with a further complaint by Israel against Egypt concerning alleged violations of the Armistice Agreements and of the resolutions of the Security Council. 21/ In connexion with the first of these decisions reference was made to Article 36 (2) by a non-member of the Council. 22/

#### **\*\* D. The question of recommending, in accordance with the general rule in Article 36 (3), that legal disputes should be referred by the parties to the International Court of Justice**

16/ For texts of relevant statements, see S C, 11th yr.: 723rd mtg., provisional record, United Kingdom, pp. 10-12; 725th mtg., provisional record, Egypt, p. 37; Israel, p. 31; Jordan, pp. 46-48; Lebanon, pp. 54-56; Syria, pp. 7-11 and 16-20; USSR, pp. 59 and 60; 726th mtg., provisional record, Iran, pp. 16 and 17; United Kingdom, pp. 6 and 7; 727th mtg., provisional record, China, pp. 9 and 10; 728th mtg., provisional record, France, p. 12; Israel, pp. 29-32; USSR, pp. 42-43, United Kingdom, pp. 2 and 23-27.

17/ S C, 11th yr., 728th mtg., provisional record, p. 23.

18/ S C, 9th yr., 685th mtg., paras. 15-17.

19/ S C, 9th yr., 682nd mtg., paras. 81 and 82. For texts of relevant statements, see S C, 9th yr., 682nd mtg.: Brazil, paras. 162-164; China, paras. 31 and 32; Egypt, paras. 107-113 and 151-153; Lebanon, paras. 14-21.

20/ S C, 10th yr., 692nd mtg., para. 68. For texts of relevant statements, see S C, 10th yr., 692nd mtg.: Turkey (President), paras. 66, 68 and 69; Belgium, paras. 31-34; Brazil, paras. 50 and 51; France, paras. 14 and 15; New Zealand, paras. 40 and 41; Peru, para. 58; United Kingdom, paras. 23-25; United States, paras. 7 and 11.

21/ S C, 10th yr., 697th mtg., para. 83. For text of relevant statement, see S C, 10th yr., 697th mtg., paras. 79-81.

22/ S C, 9th yr., 682nd mtg., para. 107.

