

*Repertoire of the Practice of the Security Council*  
Supplement 1993-1995

CHAPTER III

PARTICIPATION IN THE PROCEEDINGS OF THE SECURITY COUNCIL

[1993-1995]

<b>CONTENTS</b>		<b><i>Page</i></b>
	<b>INTRODUCTORY NOTE.....</b>	<b>2</b>
<b>PART I.</b>	<b>BASIS OF INVITATIONS TO PARTICIPATE</b>	
	Note.....	3
A.	Invitations extended under rule 37 (Member States of the United Nations).....	3
B.	Invitations extended under rule 39 (Members of the Secretariat and other persons).....	4
C.	Invitations not expressly extended under rule 37 or rule 39 .....	6
D.	Requests for invitations denied or not acted upon.....	7
<b>PART II.</b>	<b>PROCEDURES RELATING TO PARTICIPATION</b>	
	Note.....	10

## INTRODUCTORY NOTE

This Chapter considers the Security Council's practice in extending invitations to participate in its proceedings. Part I concerns the basis on which invitations were extended. Part II considers procedures relating to the participation of invited States and individuals in the proceedings of the Council.

Articles 31 and 32 of the Charter and rules 37 and 39 of the provisional rules of procedure of the Security Council provide for invitations to be extended to non-members of the Security Council in the following circumstances: (a) when a Member of the United Nations brings a dispute or situation to the attention of the Council in accordance with Article 35 (1) of the Charter (rule 37); (b) when a Member of the United Nations or a State that is not a member of the United Nations is "a party to a dispute" (Article 32); (c) when the interests of a Member of the United Nations are "specially affected" (Article 31 and rule 37); and (d) when "members of the Secretariat or other persons" are invited to supply information or give other assistance (rule 39). The Security Council has an obligation to extend an invitation only in the circumstances stated in (b) above.

In practice, the Council has continued to make no distinction between a complaint involving a "dispute" within the meaning of Article 32, a "situation", or a matter of another nature. Invitations during the period 1993-1995 were usually extended "under the relevant provisions of the Charter" and either rule 37 or rule 39 of the Council's provisional rules of procedure. The classification of invitations in Part I reflects this practice. It is based on the relevant rules of procedure where this was indicated. Those instances in which the Council decided to extend invitations to participate in its proceedings without pronouncing itself on the basis for such invitations are treated separately. Part II, on procedures relating to the participation of States or individuals in the proceedings of the Council, contains no cases relating to the practice of the Council, but reflects its practice in that regard.

## **PART I**

### **BASIS OF INVITATIONS TO PARTICIPATE**

#### **NOTE**

The Security Council's practice in connection with the extension of invitations is dealt with in this Part in four sections. Section A deals with invitations extended under rule 37 of the Council's provisional rules of procedure, which was the basis on which Member States not members of the Council were invited to participate in the Council's proceedings. The section describes the Council's general practice in this regard. Section B considers the Council's practice in extending invitations under rule 39. This was the basis on which "members of the Secretariat or other persons" were invited to provide the Council with information or other assistance. The section focuses on identifying the "other persons" invited to participate under rule 39. They included the following: 1) representatives of United Nations organs or subsidiary bodies; 2) representatives of regional and other international organizations; and 3) other individuals.

Section C concerns those invitations that were not expressly extended under either rule 37 or rule 39. Such invitations were issued to three individuals. This practice is described in two case studies. Section D relates to requests for invitations denied or not acted upon and includes three case studies.

#### **A. INVITATIONS EXTENDED UNDER RULE 37 (MEMBER STATES OF THE UNITED NATIONS)**

##### **Rule 37**

"Any Member of the United Nations which is not a member of the Security Council may be invited, as the result of a decision of the Security Council, to participate, without vote, in the discussion of any question brought before the Security Council when the Security Council considers that the interests of that Member are specially affected, or when a Member brings a matter to the attention of the Security Council in accordance with Article 35 (1) of the

Charter.”

During the period under consideration, Member States of the United Nations not members of the Security Council that were invited to participate in the Council’s proceedings were usually invited “under the relevant provisions of the Charter and rule 37 of the Council’s provisional rules of procedure”, without explicit reference being made to the relevant Charter articles.

In practice, such invitations are usually extended as a matter of course and without discussion. They are requested in letters from the State concerned addressed to the President of the Council. The President informs the Council at the beginning or during the course of its meetings of the receipt of such letters and proposes that, with the consent of the Council, the invitations be extended. Usually, there being no objection, it is so decided.

As these decisions to extend invitations constitute decisions of the Council, they are recorded, in respect of each meeting, in the annual publication of *Resolutions and Decisions of the Security Council*.<sup>1</sup> The invitations are also reflected in the case studies on each meeting included in Chapter VIII of this *Supplement*.

## **B. INVITATIONS EXTENDED UNDER RULE 39 (MEMBERS OF THE SECRETARIAT OR OTHER PERSONS)**

### **Rule 39**

“The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence”.

During the period under review, the Security Council continued its practice of extending invitations under rule 39 to a wide range of individuals to participate in its proceedings, to brief it on issues under consideration. The Assistant-Secretary-General for Political Affairs and the Director of the Security Council Affairs Division of the Secretariat were, on three separate

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<sup>1</sup> The decisions taken at each meeting are set out therein by agenda item. For the period covered by this *Supplement*, see the volumes of *Resolutions and Decisions of the Security Council* for the years 1993 to 1995: documents

occasions, invited to participate and to give explanatory statements in connection with the agenda item “Consideration of the draft report of the Security Council to the General Assembly”.<sup>2</sup> The “other persons” invited to participate under rule 39 included the following: 1) representatives of United Nations organs or subsidiary bodies; 2) representatives of regional or other international organizations; and 3) other individuals.

Some general aspects of the Council’s practice under rule 39 may be noted. Invitations to representatives of subsidiary bodies were extended as a matter of course and without any formal discussion.<sup>3</sup> Letters of request from the body concerned were read into the record of the meeting by the President of the Council and were not issued as official documents of the Security Council. In the case of invitations to representatives of regional or other international organizations, the requests were made by a Member State on behalf of the proposed participant, and invariably granted without any formal discussion.<sup>4</sup> Other individuals, too, were invited at the request of a Member State,<sup>5</sup> with the exception of the Co-Chairman of the Steering Committee of the International Conference on the Former Yugoslavia, who was invited directly by the President of the Council with the consent of the members of the Council.<sup>6</sup>

The decisions of the Council to extend invitations under rule 39 are contained in the publication *Resolutions and Decisions of the Security Council* covering the period 1993 to 1995 and in the case studies contained in Chapter VIII of this *Supplement*.

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S/INF/49, 50 and 51 respectively.

<sup>2</sup> The following members of the Secretariat were invited to address the Council: Mr. Sevan, Assistant Secretary-General for Political Affairs (see S/PV.3294) and Ms Bali, Director of the Security Council Affairs Division (see S/PV.3440 and S/PV.3593).

<sup>3</sup> See, for example, invitations extended to the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People: S/PV.3341, p.2 and S/PV. 3505, p.2.

<sup>4</sup> See, for example, invitation extended to Mr. Ahmet Engin Ansay, Permanent Observer of the Organisation of the Islamic Conference (OIC) upon the request of the representative of Turkey : S/PV.3201, p. 3-5 and invitation extended to Mr. Salim Ahmed Salim, Secretary-General of the Organization of African Unity (OAU) upon the request of the Permanent Representative of Nigeria: S/PV/3499, p. 5.

<sup>5</sup> See, for example, invitation extended to Mr. Kinglsey Makhubela, Acting Chief Representative of the African National Congress, upon the request of the representatives of Djibouti, Nigeria and Rwanda on the Council: S/PV.3329, p. 2, and invitation extended to Mr. Abdul Minty, Director of the World Campaign Against Military and Nuclear Collaboration with South Africa, upon the request of the Deputy Permanent Representative of Nigeria: S/PV. 3379, p.2.

<sup>6</sup> See S/PV.3200, p.3.

### C. INVITATIONS NOT EXPRESSLY EXTENDED UNDER RULE 37 OR RULE 39

During the period under review, the Council, on several occasions, extended an invitation to participate in its proceedings without referring to either rule 37 or 39. The practice of the Council evolved with respect to extending invitations to the Permanent Observer of Palestine to participate in its proceedings. Following a compromise reached, at the 3340<sup>th</sup> meeting of the Council held on 28 February 1994 to consider the agenda item “The situation in the occupied Arab territories”, an invitation was extended to the Permanent Observer of Palestine using a new formula (case 1). The Council also continued to use a special form of invitation when granting requests for participation from the Federal Republic of Yugoslavia (Serbia and Montenegro) following the dissolution of that State. The President of the Council, in response to a written request from the representative of the Federal Republic of Yugoslavia, invited that representative by name (Foreign Minister Vladislav Jovanovic or Ambassador Dragomir Djokic).

Those decisions of the Council are contained in the *Resolutions and Decisions* of the Security Council covering the period 1993 to 1995 and in Chapter VIII of this *Supplement*.

#### CASE 1

At the Security Council’s 3340<sup>th</sup> meeting held on 28 February 1994 to consider the agenda item entitled “The situation in the occupied Arab territories”, the President informed the Council that he had received a letter dated 26 February 1994 from the Permanent Observer of Palestine to the United Nations<sup>7</sup> requesting that, in accordance with its previous practice, the Security Council invite the Permanent Observer of Palestine to participate in the debate. The President proposed, with the consent of the Council, to invite the Permanent Observer of Palestine to participate in the debate “in accordance with the rules of procedure and previous practice” in that regard. There being no objection, it was so decided. Thereafter, invitations were extended, throughout the period under

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<sup>7</sup> S/1994/232

review, to the Permanent Observer of Palestine, on his direct request and “in accordance with the rules of procedure and previous practice” in that regard. Prior to that meeting, such requests had been explicitly granted “not under rule 37 or rule 39, but with the same rights of participation as under rule 37”, a formula which had led to a procedural vote in each instance.

## CASE 2

At the Security Council’s 3174<sup>th</sup> meeting on 19 February 1993 in connection with agenda item “The situation in the Republic of Bosnia and Herzegovina”, the President (Morocco) stated that he had received a request dated 19 February 1993 from Ambassador Dragomir Djokic to address the Council. He continued: “With the consent of the Council, I would propose to invite him to address the Council in the course of the discussion of the item before it”.<sup>8</sup> The representative of the Federal Republic of Yugoslavia (Serbia and Montenegro) sat behind the nameplate “Yugoslavia”.<sup>9</sup> During the period under consideration, subsequent invitations to the representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro), Mr. Dragomir Djokovic and Mr. Vladislav Jovanovic, to participate in the Council’s discussions were extended on the basis of the same formula. On a number of occasions, the representatives of Bosnia and Herzegovina and Croatia, respectively, expressed doubts and discontent about the right granted to the Federal Republic of Yugoslavia (Serbia and Montenegro) to participate in the Council’s discussions.<sup>10</sup>

### D. REQUESTS FOR INVITATIONS DENIED OR NOT ACTED UPON

During the period under review, there were no cases where a request for an invitation was expressly denied. However, there were instances where requests for participation were not acted upon in circumstances where, for example, the Security Council had discussed the agenda item in the

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<sup>8</sup> S/PV.3174, p. 2.

<sup>9</sup> The Legal Counsel stated in his explanatory letter (A/47/485, Annex) that General Assembly resolution 47/1 “neither terminates nor suspends Yugoslavia’s membership in the Organization. Consequently, the seat and nameplate remain as before, but in Assembly bodies representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot sit behind the sign “Yugoslavia”...The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies” (underlining in original).

<sup>10</sup> See S/PV. 3336 (Resumption 3), Bosnia and Herzegovina, pp. 245-247; S/PV.3367, Bosnia and Herzegovina, p. 56; S/PV.3434, Croatia, p. 4.



course of prior consultations and therefore proceeded directly to vote on a draft resolution (case 3) or where it did not hold a formal meeting pursuant to a request of a Member State (case 4) or where the members had agreed that no statements would be delivered during the consideration of an agenda item (case 6). In another instance, Member States did not press their respective requests for invitations, following an appeal by the President of the Security Council (case 5).

### CASE 3

By a letter dated 27 May 1994 addressed to the President of the Security Council<sup>11</sup>, the representative of Uganda requested that an urgent meeting of the Security Council be convened and that he be permitted to make a statement in connection with the situation in Rwanda. The Council convened its 3388<sup>th</sup> meeting on 8 June 1994 on the agenda item “The situation concerning Rwanda” for the purpose of voting on a draft resolution which had been prepared in the course of the Council’s prior consultations. At that meeting, the Council proceeded directly to the vote, without debate and consequently, only Council members spoke, in explanation of vote. By the draft resolution which was adopted as resolution 925(1994), the Council *inter alia*, extended the mandate of the United Nations Assistance Mission in Rwanda (UNAMIR) and agreed to the deployment of the expanded Mission.<sup>12</sup> The request by the representative of Uganda to make a statement was not acted upon as he was not invited to participate in the formal meeting of the Council.

### CASE 4

In a letter dated 1 December 1995 addressed to the President of the Security Council,<sup>13</sup> the representative of Afghanistan brought to the attention of the Security Council information concerning the latest situation in Kabul City, pursuant to Article 35 of the Charter, and requested the President to urgently convene a meeting of the Security Council to address that critical situation. Furthermore, he requested, in accordance with the provisional rules of procedure of the Security

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<sup>11</sup> S/1994/648

<sup>12</sup> S/925(1994)

<sup>13</sup> S/1995/1004

Council, “that the delegation of the Islamic State of Afghanistan be given an opportunity to address the Council.” During the period under review, the Security Council did not formally convene to discuss the issue. The letter was recorded in the Report of the Security Council to the General Assembly covering the period 16 June 1995 to 15 June 1996.<sup>14</sup>

## CASE 5

At the Council’s 3235<sup>th</sup> meeting, on 11 June 1993 to consider the agenda item “The situation in Cyprus”, the President (Spain) stated that he had received requests to participate in the meeting. However, those making the requests had responded to his appeal on behalf of the members of the Council and had agreed not to press their requests on that occasion, without prejudice to their right to request participation in future meetings. No statements were made during that meeting, which concluded with the adoption of a draft resolution on the extension of the mandate of the United Nations Peacekeeping Force in Cyprus.<sup>15</sup>

## CASE 6

In a letter dated 31 May 1994 addressed to the President of the Security Council,<sup>16</sup> the representative of Qatar requested a “meeting of the Security Council to discuss the situation in Yemen and the resulting tragic loss in civilian lives”. In a subsequent letter dated 1 June 1994,<sup>17</sup> the representative of Qatar referred to his letter of 1 June 1994 addressed to the President of the Security Council in which he had requested to be allowed to participate, under rule 37 of the provisional rules of procedure of the Security Council, in the discussion of the item entitled “The situation in Yemen” at the 3386<sup>th</sup> meeting of the Council. In that letter, he transmitted the text of a statement which he had intended to deliver at the 3386<sup>th</sup> meeting “since the members of the Council agreed that no statements would be delivered during the discussion”.<sup>18</sup>

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<sup>14</sup> A/51/2, p.221.

<sup>15</sup> S/RES/839 (1993)

<sup>16</sup> S/1994/639

<sup>17</sup> S/1994/651

<sup>18</sup> *Ibid.*

## **Part II**

### **PROCEDURES RELATING TO PARTICIPATION**

#### **NOTE**

Part II is concerned with procedures relating to the participation of invited States or individuals after an invitation has been extended. During the period under review, there was no discussion by the Council concerning the stage at which those invited to participate are heard. The Council has generally followed the practice whereby the parties to the conflict situation under consideration speak first, immediately after the adoption of the agenda. With respect to the question of limitations on participation, there are two express limitations to the participation of non-members of the Security Council. Articles 31 and 32 of the United Nations Charter and rule 37 of the Council's provisional rules of procedure provide that the participation of non-members is without vote. Rule 38 stipulates that United Nations members may submit proposals and draft resolutions but they will be put to the vote only at the request of a member of the Council.