

# ARTICLE 36

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## ARTICLE 36

### 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. During the period under review, there were no decisions by the Security Council which explicitly invoked Article 36 or gave rise to a constitutional discussion with respect to the provisions of the Article. In a number of instances, however, the Council adopted decisions, certain provisions of which may be considered as falling implicitly within the scope of the Article 36.
2. Those decisions, reviewed in the summary of practice, contained calls on Member States to take or refrain from specific measures with regard to disputes of the nature referred to in Article 33. On the other hand, recommendations for provisional measures to prevent aggravation of situations determined by the Council as threats to the peace, breaches of peace or acts of aggression within the meaning of Article 39 are treated in the study on Article 40 in the present *Supplement*.
3. In connection with various agenda items, the Council engaged in discussions on whether it should become involved in disputes already under consideration by a regional agency or arrangement. That material is dealt with in the study on Article 33 in the present *Supplement*.
4. The General Assembly adopted one resolution the annex to which contained provisions bearing on the subject matter of Article 36. Also included in the summary of practice are two decisions of the International Court of Justice with explicit references to Article 36.
5. The present study should be read in conjunction with the studies on Articles 33, 37, 39, 40, 52 and 92. No constitutional significance should, however, be attached to this reference to other Charter Articles, which is made merely for the convenience of the reader.

### SUMMARY OF PRACTICE

6. In connection with the situation in Cyprus, the Security Council adopted nine resolutions, by which it reaffirmed that the "situation with regard to Cyprus is likely to threaten international peace and security"<sup>1</sup> and urged "the parties" to engage in "intercommunal talks" within the framework of an agreement reached under the auspices of the Secretary-General, and requested the Secretary-General "to continue his mission of good offices".<sup>2</sup> By five subsequent resolutions the Security Council requested the Secretary-General to pursue his mission of good offices.<sup>3</sup>

<sup>1</sup> See S C resolution 186 (1964), preamb. para. 1, invoked by those nine resolutions.

<sup>2</sup> S C resolutions 451 (1979), paras. 2, 3; 458 (1979), paras. 2, 3; 472 (1980), paras. 2, 3; 482 (1980), paras. 2, 3; 486 (1981), paras. 2, 3; 495 (1981), paras. 2, 3; 510 (1982), paras. 2, 3; 526 (1982), paras. 2, 3; 534 (1983), paras. 2, 3.

<sup>3</sup> S C resolutions 541 (1983), para. 4; 544 (1983), para. 2; 550 (1984), para. 8; 553 (1984), para. 2; 559 (1984), para. 2.

7. With respect to the situation between Iran and Iraq, the Council adopted four resolutions in which it expressed its concern at "the prolongation of the conflict between the two countries, resulting in heavy losses ... and endangering peace and security" and urged Iran and Iraq "to accept any appropriate offer of mediation or conciliation or to resort to regional agencies or arrangements or other peaceful means of their own choice that would facilitate the fulfilment of their obligations under the Charter". The Council requested the Secretary-General "to continue his mediation efforts with the parties concerned, with a view to achieving a comprehensive, just and honourable settlement acceptable to both sides" and "to consult with the parties concerning ways to sustain and verify the cessation of hostilities, including the possible dispatch of United Nations observers".<sup>4</sup>

<sup>4</sup> S C resolutions 514 (1982), preamb. paras. 2 and 6, para. 4; 479 (1980), paras. 2 and 4; 522 (1982), paras. 3 and 5; 540 (1983), paras. 1, 4 and 7.

8. In connection with the situation in the occupied territories and the situation in the Middle East, the Security Council adopted a number of resolutions by which it called upon Member States to take or refrain from specific measures that might be considered as falling implicitly within the scope of Article 36.

9. Stating in resolution 450 (1979) of 14 June 1979 that the situation in Lebanon "has serious consequences for peace and security in the Middle East", the Council called upon Israel to cease its incursions into that country and the assistance it continued to lend to "irresponsible armed groups".<sup>5</sup> In subsequent resolutions the Council called for the withdrawal of the Israeli armed forces from Lebanon.<sup>6</sup>

10. By its resolution 452 (1979) of 20 July 1979, the Council drew attention "to the grave consequences the [Israeli] settlements policy is bound to have on any attempt to reach a peaceful solution in the Middle East" and called upon Israel to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem.<sup>7</sup> In a subsequent resolution, the Council reiterated that all such measures that had altered the character and status of Jerusalem must be rescinded in compliance with the relevant resolutions of the Security Council, and urgently called on Israel to desist forthwith from persisting in the policy and measures affecting the character and status of Jerusalem.<sup>8</sup> Subsequently, the Council determined that the "basic law" on Jerusalem must be rescinded forthwith.<sup>9</sup>

11. In a number of decisions the Council called upon the parties to respect the rights of civilians, to refrain from acts of violence against them and to take measures to alleviate their suffering<sup>10</sup> and urged Israel to adhere to the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.<sup>11</sup> In subsequent resolutions, the Council also called upon Israel to lift immediately the blockade of the city of Beirut<sup>12</sup> and to withdraw promptly its troops which had moved forward subsequent to the Council's demand for an immediate ceasefire.<sup>13</sup> In another resolution, the Council demanded that Israel rescind its decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights.<sup>14</sup>

<sup>5</sup> S C resolution 450 (1979), para. 2.

<sup>6</sup> S C resolutions 498 (1981), para. 1(b); 501 (1982), para. 2; 509 (1982), para. 1.

<sup>7</sup> S C resolution 452 (1979), para. 3. The Council reiterated this call in resolution 465 (1980), para. 6, on the same item.

<sup>8</sup> S C resolution 476 (1980), paras. 4 and 5.

<sup>9</sup> S C resolution 478 (1980), para. 3.

<sup>10</sup> S C resolutions 512 (1982), para. 1; 513 (1982), paras. 2 and 3; statement by the President, S/15342, para. 3; S C resolutions 520 (1982), para. 5; 521 (1982), para. 2.

<sup>11</sup> S C resolution 484 (1980), paras. 2 and 3.

<sup>12</sup> S C resolution 515 (1982), para. 1. In resolution 518 (1982), para. 1, on the same item, the Council demanded the immediate lifting of all restrictions on the city of Beirut.

<sup>13</sup> S C resolutions 517 (1982), para. 4; 520 (1982), para. 3.

<sup>14</sup> S C resolution 497 (1981), para. 2.

12. In connection with the question of South Africa, the Security Council on 17 August 1984 adopted resolution 554 (1984), by which it expressed its conviction that "the so-called 'elections' to be organized by the Pretoria regime ... will inevitably aggravate tension in South Africa and in southern Africa as a whole" and called upon all Governments and organizations not to recognize the results of "the so-called 'elections'".<sup>15</sup> In earlier presidential statements the Council urged all Governments to deny any form of recognition to the "so-called 'independent' bantustans" and to refrain from any dealings with them.<sup>16</sup>

13. During the period under review, the Security Council issued five presidential statements with respect to the situation between Iran and Iraq, in which it affirmed that the conflict between Iran and Iraq "gravely endanger[ed] international peace and security", called for an immediate ceasefire and an end to all military operations as well as the withdrawal of forces up to internationally recognized boundaries, urged all Member States "to exert all efforts to assist in the restoration of peace and security in the region" and expressed support for the good offices of the Secretary-General and the President of the Security Council "to bring about peaceful negotiations between Iran and Iraq with a view to arriving at a just solution".<sup>17</sup>

14. In connection with the situation in the region of the Falkland Islands (Islas Malvinas), the Security Council issued a presidential statement on 5 May 1982, in which it expressed concern at the deterioration of the situation in the region of the islands and supported the Secretary-General in his contacts with the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland.<sup>18</sup>

15. During the period under review, there were numerous references in the proceedings of the Security Council to procedures or methods of adjustment with a view to the peaceful settlement of a dispute in accordance with Article 36 (1). Some speakers emphasized that the Council should take into consideration procedures already adopted by the parties in line with Article 36 (2) or recommend the referral of a dispute to the International Court of Justice under Article 36 (3). None of the statements that may have a bearing on the subject matter of Article 36 gave rise to a constitutional discussion.

16. On 15 November 1982, the General Assembly adopted resolution 37/10, the annex to which contained the Manila Declaration on the Peaceful Settlement of Interna-

<sup>15</sup> S C resolution 554 (1984), preamb. para 7, para. 5.

<sup>16</sup> S C 34), Suppl. for July-Sept. 1979, S/13549, para. 4; S C (36), Suppl. for Oct.-Dec. 1981, S/14794, para. 4.

<sup>17</sup> S C (35), Suppl. for July-Sept. 1980, S/14190, paras. 2-3; *ibid.*, Suppl. for Oct.-Dec. 1980, S/14244, paras. 3-4; S C (37), Suppl. for July-Sept. 1982, S/15296, para. 2; S C (38), Suppl. for Jan.-March 1983, S/15616, para. 5-7; S C (39) Suppl. for Jan.-March 1984, S/16454, paras. 9-10.

<sup>18</sup> S C (37), Suppl. for April-June 1982, S/15047, para. 2.

tional Disputes<sup>19</sup>. By that Declaration the Assembly stated, inter alia, that Member States should strengthen the primary role of the Security Council and to that end bear in mind that it “may, at any stage of a dispute of the nature referred to in Article 33 of the Charter or of a situation of like nature, recommend appropriate procedures or methods of adjustment”.<sup>20</sup> The Declaration further provided 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”.<sup>21</sup>

17. During the period under review, the International Court of Justice, in its decisions and advisory opinions, made two explicit references to Article 36. In connection with the case concerning the *United States Diplomatic and Consular Staff in Tehran* (*United States v. Iran*), the Court recalled its power under the Charter “to resolve any legal questions that may be in issue between parties to a dispute” and, citing Article 36 (3) in full, stated that the resolution of such legal questions by the Court might be an “important,

and sometimes decisive, factor in promoting the peaceful settlement of the dispute”.<sup>22</sup>

18. In the case concerning *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States*), the Court emphasized that, from a juridical standpoint, the decisions of the Court and the actions of the Security Council were “entirely separate”.<sup>23</sup> Until the Council made a determination under Article 39, “a dispute [remained] to be dealt with by the methods of peaceful settlement provided under Article 33, including judicial settlement”. Citing a passage from the case concerning the *United States Diplomatic and Consular Staff in Tehran* (*United States v. Iran*) with an explicit reference to Article 36,<sup>24</sup> the Court held that proceedings before the Council and the Court could be pursued simultaneously. The fact that a matter was before the Council “should not prevent it being dealt with by the Court”.<sup>25</sup>

<sup>19</sup> See also the study on Article 33 in the present *Supplement*.

<sup>20</sup> G A resolution 37/10, annex, sect. II, para. 4 (f).

<sup>21</sup> *Ibid.*, para. 5 (a).

<sup>22</sup> *I.C.J. Reports 1980*, pp. 21-22, para. 40.

<sup>23</sup> *I.C.J. Reports 1984*, p. 432, para. 90.

<sup>24</sup> See paragraph 17 above.

<sup>25</sup> *I.C.J. Reports 1984*, pp. 433-434, para. 93.