

ARTICLE 36

CONTENTS

Text of Article 36	
Introductory Note	1-2
Summary of Practice	3-10

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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. During the period under review the Security Council took no decision either explicitly invoking Article 36 or involving constitutional discussion of the various provisions of the Article. There were, however, a few resolutions containing implicit references to Article 36 requiring treatment in the Summary of Practice below.
2. Included in this study are also references to Article 36 as they occurred in the Security Council in connexion with a number of agenda items. The study also summarizes similar instances in the General Assembly or in its committees.¹

¹See this *Supplement* under Article 33 for decisions and references which might be considered to bear also on the interpretation or application of Article 36.

SUMMARY OF PRACTICE

3. In one of its resolutions the Security Council referred implicitly but clearly to Article 36. At the 1953rd meeting, on 25 August 1976, the Council adopted resolution 395 (1976) by consensus. The resolution was adopted in connexion with the complaint by Greece against Turkey and contained, together with an appeal to the parties to resume negotiations over their differences, the following provision in its paragraph 4:

"The Security Council

" . . .

"Invites the Governments of Greece and Turkey in this respect to continue to take into account the contribution that appropriate judicial means, in particular the International Court of Justice, are qualified to make to the settlement of any remaining legal differences which they may identify in connexion with their present dispute."

During the consideration of the draft resolution² the sponsors (France, Italy, the United Kingdom and the United States) stated in unmistakable terms the relevance of Article 36 and in particular its third paragraph for the issue at hand and mentioned the International Court of Justice as a suitable avenue for the resolution of the conflict between Greece and Turkey.³

4. During the consideration of the situation in the occupied Arab territories the President made a statement at the 1922nd meeting on 26 May 1976, in which he

expressed, on behalf of the majority of the members of the Security Council, the urgent hope that Israel would comply with the provisions of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War and refrain from and rescind any measure which would violate them.⁴ A similar appeal to Israel was issued at the 1969th meeting on 11 November 1976 by the President speaking on behalf of the whole Council.⁵

5. In connexion with the request by the Libyan Arab Republic and Pakistan in March 1976, for consideration of the serious situation which had arisen from recent developments in the occupied Arab territories, Benin, Guyana, Pakistan and the United Republic of Tanzania submitted a draft resolution⁶ which in its second paragraph would call on Israel to refrain from all measures against the Arab inhabitants of the occupied territories and in its third paragraph would ask Israel to respect the Holy Places, to desist from the expropriation of Arab property and to refrain from any steps to change the legal status of Jerusalem. During the consideration of the item the spokesman for the Palestine Liberation Organization repeatedly called for Security Council action under Article 36.⁷ At the 1899th meeting, on 25 March 1976, the draft resolution received 14 votes in favour and 1 against and was not adopted, owing to the negative vote of a permanent member.

⁴For the statement of the President, see S C (31), *Resolutions and Decisions, 1976*, p. 4. This appeal might be seen as an action by the Council under Article 36 (1).

⁵*Ibid.*, p. 5, especially paras 3-4 of the President's statement.

⁶S C (31), Suppl. for Jan.-March, 1976, S/12022.

⁷S C (31), 1893rd mtg.: Palestine Liberation Organization, paras. 68 and 69; 1899th mtg.: Palestine Liberation Organization, para. 124. The latter statement might indicate under which Article the Security Council was considering taking action.

²S C (31), Suppl. for July-Sept., 1976, S/12187, adopted without change as resolution 395 (1976).

³For the texts of relevant statements see S C (31), 1953rd mtg.: France (citing Article 36 (3)), para. 40; Italy (invoking Article 36 together with Article 33), para. 19; United Kingdom, para. 10; United States, paras. 28, 31.

6. At the 1849th meeting, on 20 October 1975, in connexion with the situation concerning Western Sahara, Costa Rica introduced in the Security Council a draft resolution⁸ which would call for an urgent end to Morocco's plan to march on Western Sahara. This draft was withdrawn at the 1850th meeting, after another draft resolution had been adopted.⁹

7. On several other occasions Article 36 was explicitly invoked in the Security Council without giving rise to a constitutional discussion.¹⁰

8. During the period under review the General Assembly adopted two resolutions which contained provisions bearing on Article 36. In 1970 the Assembly adopted as resolution 2734 (XXV) the Declaration on the Strengthening of International Security, paragraph 6 of which contained a request to the Security Council to take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice.¹¹ A similar reference to the jurisdiction of the Court and to the desirability of its use in legal disputes in accordance with Article 36 (3) was included in paragraph 3 of resolution 3283 (XXIX), entitled Peaceful settlement of disputes.¹² Neither of the two resolutions gave rise to a specific discussion about Article 36.

9. In connexion with the celebration of the twenty-fifth anniversary of the United Nations, Italy proposed an amendment¹³ to paragraph 4 of the draft resolution sub-

mitted by the Committee for the Twenty-fifth Anniversary of the United Nations, adding an appeal to all Member States to resort more to the compulsory jurisdiction of the International Court of Justice in international disputes. The draft Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations was adopted without vote as resolution 2627 (XXV) at the 1883rd plenary meeting on 24 October 1970.¹⁴ The adopted version did not incorporate the Italian amendment.

10. During the period under review Article 36, in particular its paragraph 3, was explicitly referred to and commented upon in connexion with the review of the role of the International Court of Justice¹⁵ and in connexion with a few other items¹⁶ without leading to constitutional discussions.

⁸ S C (30), Suppl. for Oct.-Dec. 1975, S/11853, subsequently slightly revised as S/11853/Rev.1. This proposal might again be seen in the light of Article 36 (1).

⁹ S C (30), 1850th mtg.: President, para. 19.

¹⁰ In connexion with the question concerning the islands of Abu Musa, the Greater Tunb and the Lesser Tunb, see: S C (26), 1610th mtg.: Somalia, para. 280. Somalia argued that it would be precipitate to initiate a Council recommendation under Article 36; the Council then decided to defer consideration to enable third-party efforts to materialize. In connexion with the Middle East problem including the Palestinian question, see: S C (31), 1870th mtg.: Palestine Liberation Organization, para. 188; 1876th mtg.: Guinea, para. 113. In connexion with the complaint by Kenya, on behalf of the African Group of States at the United Nations, concerning the act of aggression committed by South Africa against the People's Republic of Angola, see: S C (31), 1906th mtg.: United Kingdom, paras. 149, 151. In connexion with the question of the exercise by the Palestinian people of its inalienable rights, see: S C (31), 1935th mtg.: Laos, para. 77.

¹¹ G A resolution 2734 (XXV) was adopted at the 1932nd plenary meeting of the General Assembly. See G A (25), Annexes, a.i. 32, A/8096, for the report of the First Committee.

¹² G A resolution 3283 (XXIX) was adopted at the 2320th plenary meeting without having been considered by a Main Committee. See G A (29), Annexes, a.i. 20, pp. 2-3.

¹³ See G A (25), Annexes, a.i. 21, p. 11, A/L.597, for the text of the Italian amendment.

¹⁴ See G A (25), Plen., 1883rd mtg., para. 16 for the adoption of G A resolution 2627 (XXV).

¹⁵ See G A (25), Annexes, a.i. 96, A/8238, pp. 5, 8 and 9, also *ibid.*, 6th Com., 1210th mtg.: Italy, para. 22; 1211th mtg.: Netherlands, para. 19; 1213th mtg.: Spain, para. 27. See also G A (26), Annexes, a.i. 90, Review of the role of the International Court of Justice, paras. 20-22; and G A (26), 6th Com., 1281st mtg.: Bulgaria, para. 51; Pakistan, paras. 49-50; 1282nd mtg.: Iraq, para. 6; Italy, paras. 17-18; 1284th mtg.: Ecuador, para. 7; 1294th mtg.: Iraq, para. 33.

¹⁶ In connexion with the consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (a.i. 85), see: G A (25), Plen., 1860th mtg.: United Kingdom, para. 85; and *ibid.*, 6th Com., 1182nd mtg.: Turkey, para. 40. In connexion with the consideration of measures for the strengthening of international security (a.i. 32), see: G A (25), 1st Com., 1736th mtg.: Madagascar, para. 57. In connexion with the policies of *apartheid* of the Government of South Africa (a.i. 34), see: G A (25), Spec. Pol. Com., 701st mtg.: Mexico, para. 31. In connexion with the implementation of the Declaration on the Strengthening of International Security (a.i. 34), see: G A (26), 1st Com., 1810th mtg.: Ireland, para. 30. In connexion with the strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States (a.i. 24), see: G A (27), Plen., 2087th mtg.: Egypt, para. 43. In connexion with the importance of the universal realization of the right of people to self-determination and the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights (a.i. 51), see *ibid.*, 3rd Com., 1965th mtg.: United Kingdom, para. 29. In connexion with the report of the Security Council (a.i. 11), see: A/8847, annex, p. 3 (mimeographed). In connexion with the conclusion of a world treaty on the non-use of force in international relations (a.i. 37), see: G A (32), 6th Com., 65th mtg.: Mexico, para. 11. In connexion with the report of the Special Committee on the Charter of the United Nations and the Strengthening of the Role of the Organization (a.i. 117), see: G A (33), 6th Com., 25th mtg.: Byelorussian SSR, para. 26.