

Repertory of Practice of United Nations Organs

Supplement Nos. 7-9 (1985-1999)¹

(Advance version, to be issued in volume III of *Supplement Nos. 7-9* (forthcoming)
of the *Repertory of Practice of United Nations Organs*)

VOLUME III

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.

NOTE

1. During the review period, none of the decisions adopted by the Security Council contained an explicit reference to Article 36.² On a number of occasions, however, the Council adopted decisions, considered as falling implicitly within the scope of Article 36,

¹ At the bilateral meeting between the Codification Division of the Office of Legal Affairs and the Security Council Affairs Division of the Department of Political Affairs, on 11 March 2011, it was agreed that in order to expedite the elimination of the backlog in volume III, studies on *Supplements 7, 8 and 9* of the volume would be merged.

² See, for instance, thirteenth supplement to the *Repertoire of the Practice of the Security Council* (1996-1999), chapter X, part III “Decisions of the Security Council concerning the pacific settlement of disputes”; pp. 1086-1101.

which recommended appropriate procedures or methods aimed at the peaceful settlement of disputes.³

2. Article 36 (3) of the Charter provides that the Security Council, in making recommendations under Article 36, should 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. The importance of this was highlighted by the Secretary-General in his report entitled “An Agenda for Peace”, in which he stated that “greater reliance on the Court would be an important contribution to United Nations peacemaking.”⁴ He called attention to the powers of the Security Council under Articles 36 and 37 of the Charter to recommend to Member States the submission of a dispute to the International Court of Justice, arbitration or other dispute-settlement mechanisms.⁵

3. During the period under review, the principles enunciated in Article 36, including reference to the role of the International Court of Justice, were a subject of deliberation in the Security Council.⁶

4. On several occasions, during the deliberations of the Council, Member States questioned the competence of the Security Council to consider a dispute, owing to its alleged legal nature, or advanced arguments in favour of a referral of such dispute to the International Court of Justice.⁷

5. For detailed information regarding the Council’s practice on the pacific settlement of disputes , including in connection with the provisions under Article 36 (referred to in paragraphs 1 – 4 above), see Chapter X of the *Repertoire of the Practice of the Security Council*:

http://www.un.org/en/sc/repertoire/85-88/85-88_10.pdf#page=33 (during 1985-1988);

³ For instance, see S/RES/813 (1993), para. 4.

⁴ S/24111, para. 38.

⁵ Ibid.

⁶ See, for instance, thirteenth supplement to the *Repertoire of the Practice of the Security Council* (1996-1999), chapter X, part IV “Constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter”; pp. 1107-1109.

⁷ Ibid., pp. 1102-1110.

http://www.un.org/en/sc/repertoire/89-92/89-92_10.pdf#page=27 (during 1989-1992);
http://www.un.org/en/sc/repertoire/93-95/93-95_10.pdf#page=17 (during 1993-1995); and
http://www.un.org/en/sc/repertoire/96-99/96-99_10.pdf#page=12 (during 1996-1999).