

ARTICLE 92

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TEXT OF ARTICLE 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

INTRODUCTORY NOTE

1. The functions of the International Court of Justice as "the principal judicial organ of the United Nations" are mainly those described in the Statute of the Court and in Chapter XIV of the Charter.
2. In the first place, the Court decides contentious cases between States, which may or may not be Members of the United Nations or parties to the Statute. Article 36 (1) of the Statute declares that its jurisdiction comprises "all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force". Article 36 (3) of the Charter provides that the Security Council, in making recommendations under that Article, should take into consideration that legal disputes should, as a general rule, be referred by the parties to the Court, in accordance with its Statute. Judgements of the Court, according to Articles 59 and 60 of the Statute, are binding between the parties in respect of the particular case decided, and are final and without appeal. Under Article 94 of the Charter, each Member of the United Nations undertakes to comply with the decision of the Court in any case to which it is a party, and if any party to a case fails to perform its obligations under a judgement, the other party may have recourse to the Security Council. States not Members of the United Nations which come before the Court in contentious cases must accept all of the obligations of a Member of the United Nations under Article 94.
3. The Court, in addition to having jurisdiction in contentious cases, may, in accordance with Article 96 of the Charter and Article 65 of the Statute, render advisory opinions on legal questions at the request of the General Assembly, the Security Council or any other organs of the United Nations and specialized agencies which may be so authorized by the General Assembly. The Court has said ^{1/} that a reply to a request for an opinion by the Court, "itself an 'organ of the United Nations,' represents its participation in the activities of the Organization, and, in principle, should not be refused."
4. The Court, or its President or Vice-President, also perform certain extra-judicial functions not referred to in the Charter or the Statute. Examples of such extra-judicial functions performed at the request of organs of the United Nations or the specialized agencies have included the nomination, by the President of the Court, ^{2/} at the request of the Secretary-General of the United Nations, of a chairman of a

^{1/} Interpretation of Peace Treaties, I C J, Reports 1950, p. 10. See also para. 11 below.

^{2/} I C J, Yearbook 1953-1954, pp. 44 and 45.

special advisory board to be appointed by the Secretary-General under the Staff Regulations and Staff Rules; ^{3/} and the designation by the President of the Court, ^{4/} in accordance with rules adopted by the Executive Board of the United Nations Educational, Scientific and Cultural Organization (UNESCO), of the president of an arbitral tribunal to decide a question relating to the interpretation of the Constitution of UNESCO.

5. Article 92 of the Charter provides that the Court "shall be the principal judicial organ of the United Nations." In the jurisprudence of the Court itself and in the practice of other organs, certain conclusions have been drawn, on the one hand, from the status of the Court as a principal organ of the United Nations, and, on the other, from its judicial character. The Court, for example, has referred to its status as a principal organ in meeting objections to its competence to render advisory opinions, and, in giving such opinions, it has examined the limits imposed on it by its judicial character. Thus, Article 92 has been closely linked with Article 96. In the present study, the relevant passages of advisory opinions in which the Court has invoked Article 92 are cited, as are the instances in which Article 92 has been invoked in other United Nations organs without any connexion with contemplated requests for advisory opinions on particular questions. The practice concerning advisory opinions - the discussions on whether they should be requested, on whether the Court should reply to requests for them, and on what effect should be given to them - is dealt with in this Repertory under Article 96.

I. GENERAL SURVEY

6. Article 92 is the first Article of Chapter XIV, dealing with the International Court of Justice. That Article, together with Article 7, under which the Court was established as a principal organ of the United Nations, and Article 1 of the Statute of the Court, which repeats the provisions of Article 92 that the Court is the principal judicial organ of the United Nations and that it functions in accordance with the Statute, contain the general provisions describing the position of the Court within the Organization. The status of the Court as a principal organ has been relied upon in connexion with questions regarding its competence to render advisory opinions. On the other hand, the judicial character of the Court has been adduced in support of its competence to interpret the Charter, a task which the Court has held to fall within the normal exercise of its judicial powers. That judicial character has also been referred to in the Security Council in support of the view that it prevented political considerations from governing access to the Court by States not parties to the Statute. The judicial character of the Court, however, has a negative as well as a positive effect on its competence, and the limitations imposed by its judicial character have been considered in an advisory opinion.

7. The provision of Article 92 that the Statute of the Court is based upon the Statute of the Permanent Court of International Justice has been cited as a basis for following the practice with respect to that Court.

^{3/} Staff regulation 9.1 (a) (G A resolution 782 (VIII)); staff rule 109.1 (I) (ST/SGB/94/Amend.1, p. 9).

^{4/} I C J, Yearbook 1948-1949, pp. 41 and 42.

8. Finally, the provision of Article 92 that the Statute forms "an integral part of the present Charter" has been relied upon in a dissenting opinion 5/ of a judge of the Court as supporting the principle that the jurisdiction of the Court with respect to certain classes of rights of States is to be determined by recourse to the spirit of the Charter.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The role of the International Court of Justice as "the principal judicial organ of the United Nations"

The right and duty of the Court, as an organ of the United Nations, to render advisory opinions

9. The International Court of Justice has relied upon the provision of Article 92 that it is the "principal judicial organ of the United Nations" in answering objections 6/ to its competence to render advisory opinions. In the advisory opinion in the Conditions of admission of a State to membership in the United Nations (Article 4 of the Charter) case, the Court said: 7/

"Lastly, it has also been maintained that the Court cannot reply to the question put because it involves an interpretation of the Charter. Nowhere is any provision to be found forbidding the Court, 'the principal judicial organ of the United Nations', to exercise in regard to Article 4 of the Charter, a multilateral treaty, an interpretative function which falls within the normal exercise of its judicial powers."

10. Similarly, in the advisory opinion in the Competence of the General Assembly for the admission of a State to the United Nations case, the Court said: 8/

"So far as concerns its competence, the Court will simply recall that, in a previous Opinion which dealt with the interpretation of Article 4, paragraph I, it declared that, according to Article 96 of the Charter and Article 65 of the

5/ Anglo-Iranian Oil Co. case (jurisdiction), I C J, Reports, 1952, Dissenting Opinion of Judge Alvarez, p. 131.

Judge Alvarez cited certain "fundamental rights of States (the right to independence, to sovereignty, to equality, etc.), as well as certain other rights conferred by the law of nations, such as that of the protection of nationals, the right to be indemnified for injuries, and so forth." In his view, Article 36 of the Statute of the Court did not refer to these rights, for they did not give rise to disputes and no thought had been given to them. His opinion continued:

"How then is this gap to be filled, or in short, how is the Court's jurisdiction with regard to this second category of rights to be determined? In order to do this, it is necessary to have recourse to the spirit of the Charter of the United Nations, of which the Statute of the Court forms an integral part (Article 92 of the Charter), and to the general principles of the law of nations."

6/ These objections are dealt with in this Repertory under Article 96.

7/ Admission of a State to the United Nations, I C J, Reports, 1948, p. 61.

8/ Competence of Assembly regarding admission to the United Nations, I C J, Reports, 1950, p. 6.

Statute, it may give an Opinion on any legal question and that there is no provision which prohibits it from exercising, in regard to Article 4 of the Charter, a multilateral treaty, an interpretative function falling within the normal exercise of its judicial powers (I C J Reports 1947-1948, p. 61)."

11. In the Interpretation of peace treaties with Bulgaria, Hungary and Romania case, one contention of those who argued that the Court could not give an advisory opinion was that Bulgaria, Hungary and Romania opposed the advisory procedure, and it was a principle of international law that judicial proceedings relating to a legal question pending between States could not take place without their consent. In its advisory opinion, the Court observed 9/ that this objection revealed a confusion between the principles governing contentious procedure, under which the consent of the parties was the basis of jurisdiction, and those applicable to advisory opinions, which were without binding force, and which, consequently, no State could prevent being given when the United Nations considered them desirable in order to obtain enlightenment as to the course of action it should take. The Court said: 10/

"The Court's Opinion is given not to the States, but to the organ which is entitled to request it; the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organization, and, in principle, should not be refused."

12. The principle that an advisory opinion should not be refused was repeated in another opinion, 11/ with a citation of the passage quoted.

B. The judicial character of the Court, and access to the Court
by States not parties to the Statute

13. Arguments were drawn from the judicial character of the International Court of Justice, as provided under Article 92, during the discussion 12/ in the Security Council concerning the conditions, to be laid down by the Council in accordance with Article 35 (2) of the Statute of the Court, under which the Court would be open to States not parties to the Statute. The Council unanimously adopted a draft resolution 13/ prepared by the Committee of Experts which had been charged by the Council with determining the conditions in question. These conditions, confined to the juridical realm, related primarily to adherence by the States concerned to the terms of Article 94 of the Charter and Article 36 (2) of the Statute of the Court. After the Council had adopted the above-mentioned resolution, the representative of Poland submitted a draft resolution 14/ under the terms of which the conditions laid down by the Council would not have applied "to States whose regimes have been installed with the help of armed forces of countries which have fought against the United Nations, so long as those regimes are in power". In submitting the draft resolution, the sponsor stated that its provision referred to the Franco régime in Spain. In opposition to the draft resolution, it was argued 15/ that, as the Court was a judicial organ and therefore a non-political body, it was improper to allow the question of access to it to be influenced by political considerations. On the other hand, the view was

9/ Interpretation of Peace Treaties, I C J, Reports 1950, p. 10.

10/ Ibid.

11/ Reservations to the Convention on Genocide, I C J, Reports 1951, p. 19.

12/ S C, 1st yr., 2nd Series, No. 19, 76th mtg., pp. 466-482.

13/ Ibid., pp. 470, 474, 476, 478 and 479.

14/ Ibid., pp. 472, 480 and 481.

15/ Ibid., p. 467.

expressed 16/ that the character of the Court did not justify the participation of fascist Governments. The draft resolution submitted by Poland was rejected by a vote of 7 to 4.

C. Limitations imposed on the Court by its judicial character

14. The International Court of Justice has considered the limitations imposed on it by its judicial character, laid down under Article 92. In the advisory opinion in the Interpretation of peace treaties case (see paragraph 11 above), the Court said, 17/ after stating that advisory opinions should, in principle, not be refused, that

"There are certain limits, however, to the Court's duty to reply to a Request for an Opinion. It is not merely an 'organ of the United Nations'; it is essentially the 'principal judicial organ' of the Organization (Art. 92 of the Charter and Art. 1 of the Statute). It is on account of this character of the Court that its power to answer the present Request for an Opinion has been challenged."

The Court went on to observe that it had the power to examine whether the circumstances of the case were such as should lead it to decline to answer a request for an advisory opinion. The circumstances of the case under consideration, however, were profoundly different from those in the Eastern Carelia case, in which the Permanent Court of International Justice had declined to give an opinion, first, because to do so would be equivalent to deciding a dispute then actually pending between States, and secondly, because the request raised a question of fact which could not be elucidated without hearing both parties. The request in the case under consideration was solely concerned with the applicability to certain disputes of the procedure for settlement instituted by the peace treaties, and did not touch the merits of the disputes. The sole object of the request was to enlighten the General Assembly as to the opportunities which the procedure of the peace treaties might afford for putting an end to a situation which had been presented to it, and consequently the opposition of Bulgaria, Hungary and Romania was no reason why the Court should abstain from replying to the request.

15. Moreover, Judge Alvarez, in his individual opinion in the advisory case concerning admission of a State to membership in the United Nations (see paragraph 9 above), said: 18/

"Article 92 lays down that it [the Court] is [the] principal judicial organ [of the United Nations] ... When a question is referred to the Court, the latter therefore must decide whether its dominant element is legal, and whether it should accordingly deal with it, or whether the political element is dominant and, in that case, it must declare that it has no jurisdiction."

D. Continuity of the Court with the Permanent Court of International Justice

16. The statement in Article 92 that the Statute of the International Court of Justice "is based upon the Statute of the Permanent Court of International Justice" has been invoked in support of the view that United Nations organs should follow the practice which prevailed in respect of the Permanent Court. An example of such invocation arose in the course of the consideration by the Security Council of conditions, to be laid down in accordance with Article 35 (2) of the Statute, on which the Court would be open

16/ Ibid., p. 468.

17/ Interpretation of Peace Treaties, I C J, Reports 1950, pp. 10 and 11.

18/ Admission of a State to the United Nations, I C J, Reports 1948, p. 70.

to States not parties to the Statute. The report 19/ of the Rapporteur of the Committee of Experts of the Security Council 20/ stated that the circumstances under which the question arose were almost identical with those which had confronted the Council of the League of Nations. Article 35 (2) was practically identical with the corresponding provision of the former Statute. The report continued as follows:

"Furthermore, Article 92 of the Charter states that the Statute of the International Court of Justice is based upon the Statute of the Permanent Court. The Committee thought it advisable, in view of the similarity of these texts, to find, in the attached draft, a solution to this problem analogous to that adopted by the Council of the League of Nations, taking into account the changes necessary to adapt the text of the resolution of the Council of the League of Nations of 17 May 1922 to the provisions of the Charter and of the new Statute,".

The draft resolution (see paragraph 13 above) prepared by the Committee of Experts was adopted unanimously by the Security Council.

17. Article 92 has also been cited in the context of opinions in respect of the continuity of the International Court of Justice with the Permanent Court of International Justice in the Reports of the International Court of Justice. In the second phase of the case relating to the request for an advisory opinion on the interpretation of the peace treaties with Bulgaria, Hungary and Romania, Judge Read was one of two judges who dissented from the majority of the Court, and preferred an interpretation of the articles of those treaties on disputes which would not allow a party to prevent arbitration by failing to appoint a member of a treaty commission. He argued that though the Permanent Court had not passed on the precise point at issue, it had nevertheless established a principle that an interpretation which would deprive a treaty of a great part of its value was inadmissible. He said: 21/

"The provisions of Article 92 of the Charter disclose the intention of the United Nations that continuity should be maintained between the Permanent Court of International Justice and this Court. There can be no doubt that the United Nations intended continuity in jurisprudence, as well as in less important matters. While this does not make the decisions of the Permanent Court binding, in the sense in which decisions may be binding in common-law countries, it does make it necessary to treat them with the utmost respect, and to follow them unless there are compelling reasons for rejecting their authority. This is doubly true in matters of treaty interpretation, because draftsmen, in deciding upon the language to be used in a treaty provision, e.g., the Disputes Article, have constantly in mind the principles of interpretation as formulated and applied by the Permanent Court and by this Court. Failure to follow established precedents in the matter of treaty interpretation inevitably leads to the frustration of the intention of the parties."

19/ S C, 1st yr., 2nd Series, Suppl. No. 6, p. 153, annex 11 (S/169).

20/ See para. 13 above.

21/ Interpretation of Peace Treaties (second phase), I C J, Reports 1950. pp. 15 and 16.