

ARTICLE 94

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ARTICLE 94

TEXT OF ARTICLE 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

I. GENERAL SURVEY

1. During the period under review, no decision relating to Article 94 was taken by the organs of the United Nations. The Article was implicitly at stake in the consideration of the aftermath of two decisions which the International Court of Justice had delivered in the case concerning the *United States Diplomatic and Consular Staff in Tehran*.¹

2. The Article was, however, explicitly invoked and discussed in the *Continental Shelf (Tunisia-Libyan Arab Jamahiriya)* case² and in the case concerning *Nicaragua (Jurisdiction and Admissibility)*.³

¹*Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979, p. 7; Judgment, 24 May 1980, I.C.J. Reports 1980, p. 3.*

²*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982, p. 18. Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982, p. 18.*

³*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392.*

II. ANALYTICAL SUMMARY OF PRACTICE

A. Case concerning United States Diplomatic and Consular Staff in Tehran (United States v. Iran)

3. In the case concerning *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, the Court unanimously indicated by its Order for provisional measures of 15 December 1979⁴ that the Government of the Islamic Republic of Iran "should ensure the immediate release, without any exception", of all persons of United States nationality who were held as hostages in the Embassy of the United States in Tehran and that both Governments should not take any action which might aggravate the tension between them.

4. On 22 December 1979, the United States, in a letter addressed to the President of the Security Council,⁵ requested that the Security Council meet at an early date to consider the measures which should be taken to induce the Islamic Republic to comply with its international obligations. In response to the request of the United States, the Security Council held three meetings, from 29 to 31 December 1979.⁶ During the debates, although several representatives directed attention to the Court's Order of 15 De-

cember 1979, none of them explicitly referred to Article 94.⁷ On 31 December 1979, the Council adopted resolution 461 (1979), as proposed by the United States,⁸ by which it "deplore(d) the continued detention of the hostages contrary to . . . the Order of the International Court of Justice" and "urgently calle(d) once again" on the Government of the Islamic Republic of Iran to release immediately all persons of United States nationality being held as hostages in Iran".¹⁰

5. On 11 January 1980, the Security Council resumed its consideration of the situation between the United States and the Islamic Republic of Iran. During the debates which took place on 11 and 13 January, some representatives referred to the 1979 Order of the Court, but none of them explicitly invoked Article 94.¹¹

⁷Compare to the debates which took place in 1951 in the Security Council at the request of the United Kingdom of Great Britain and Northern Ireland, following an Order by the Court indicating interim measures of protection in the *Anglo-Iranian Oil Company* case, *Repertory*, under Article 94, paras. 12-24.

⁸S C (34), Suppl. for Oct.-Dec. 1979, S/13711, p. 147.

⁹See S C resolution 457 (1979), adopted unanimously by the Council at its 2178th meeting, on 4 December 1979.

¹⁰Adopted by the Council at its 2184th meeting on 31 December 1979, by 11 votes to none, with 4 abstentions (Bangladesh, Czechoslovakia, Kuwait, USSR).

¹¹S C (35), 2191st mtg. and resumption.

⁴*I.C.J. Reports 1979, p. 21.*

⁵S C (34), Suppl. for Oct.-Dec. 1979, S/13705, p. 140.

⁶S C (34), 2182nd-2184th mtgs.

6. Following the helicopter mission undertaken by the United States on 24 April 1980 in the Islamic Republic to rescue the hostages, neither the United States¹² nor the Islamic Republic¹³ in their respective communications to the President of the Security Council referred either to the 1979 Order of the Court, or to Article 94 of the Charter.

7. On 24 May 1980, the Court delivered its judgment in the case concerning *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*.¹⁴ In addressing the United States rescue attempt of 24 and 25 April 1980, the Court did not explicitly refer to Article 94. But it felt "bound to observe that an operation undertaken in those circumstances, from whatever motive, is of a kind calculated to undermine respect for the judicial process in international relations; and to recall that in paragraph 47, 1 B, of its Order of 15 December 1979 the Court had indicated that no action was to be taken by either party which might aggravate the tension between the two countries."¹⁵

8. By the same judgment, the Court, *inter alia*, "unanimously decide[d] that the Government of the Islamic Republic of Iran . . . must immediately terminate the unlawful detention of the United States Chargé d'affaires and other diplomatic and consular staff and other United States nationals now held hostage in Iran, and must immediately release each and every one and entrust them to the protecting Power (article 45 of the 1961 Vienna Convention on Diplomatic Relations)."¹⁶ By a letter dated 9 June 1980,¹⁷ the United States transmitted the judgment of 24 May 1980 of the Court to the President of the Security Council without requesting any meeting of the Council.

B. Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)

9. In the *Continental Shelf Case (Tunisia/Libyan Arab Jamahiriya)* case, the Court made explicit reference to Article 94 of the Charter in connection with the "effect and the force" of the judgment to be given.¹⁸

10. The Court in particular did not agree with the dissenting judge who alleged that articles 2 and 3 of the Special Agreement between Tunisia and the Libyan Arab Jamahiriya were not in conformity with Article 94 of the Charter¹⁹ since they made it possible for both Governments, immediately following the delivery of the judgment by the Court, to hold negotiations as to how the dividing line between them should be drawn, thus going so far as to modify the delimitation which would have been laid down in the judgment.

11. While considering the controversy "as of minor importance", the Court stated that it could not "agree with the repeated reference of Libya to 'guidance' as defining

the requirement of what the Court should specify" since the Court "has in any case to be precise as to what it decides".²⁰ Refusing to consider that it was asked to render an advisory opinion in the case, the Court held:

"What the Court is asked to do is to render a judgment in a contentious case in accordance with Articles 59 and 60 of the Statute and Article 94, paragraph 2, of the Rules of Court, a judgment which will have therefore the effect and the force attributed to it under Article 94 of the Charter of the United Nations and the said provisions of the Statute and the Rules of Court."²¹

C. Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)

12. In the *Nicaragua Case (Jurisdiction and Admissibility)* the Court referred to Article 94 of the Charter when addressing the fourth ground of inadmissibility put forward by the United States.²² The United States, *inter alia*, supported the view that the Application of Nicaragua should be held inadmissible in consideration of the doubts that were to be cast regarding implementation of the judgment to be given. The United States in particular emphasized that the circumstances alleged in the Application involved the activities of "groups indigenous to Nicaragua" that had their own motivations and were beyond the control of any State.

13. The Court rejected the United States contentions and held:²⁴

"As to the possibility of implementation of the judgment, the Court will have to assess this question also on the basis of each specific submission, and in the light of the facts as then established; it cannot at this stage rule out *a priori* any judicial contribution to the settlement of the dispute by declaring the Application inadmissible. It should be observed, however, that the Court neither can nor should contemplate the contingency of the judgment not being complied with (*Factory at Chorzów, P.C.I.J., Series A, No. 17, p. 63*). Both the parties have undertaken to comply with the decisions of the Court, under Article 94 of the Charter; and

"Once the Court has found that a State has entered into a commitment concerning its future conduct it is not the Court's function to contemplate that it will not comply with it." (*Nuclear Tests, I.C.J. Reports 1974, p. 272, para. 60; p. 477, para. 63*)."

14. In the same contentious case, Article 94 of the Charter was also implicitly at stake in the consideration of the effects of the Order of 10 May 1984,²⁵ by which the Court had indicated provisional measures "pending its final decision in the proceedings instituted on 9 April 1984 by the Republic of Nicaragua against the United States of America". In its judgment on Jurisdiction and Admissibility, the Court underlined that the Order, and the provisional measures indicated therein, "remain operative until the delivery of the final judgment in the present case".²⁶

¹²Letters dated 8 and 25 April from the United States (transmitting statements of 7 and 25 April by the United States President), S C (35), Suppl. for April-June 1980, S/13879, S/13908, pp. 8-9 and 28-29.

¹³Note verbale dated 28 April from the Islamic Republic of Iran (transmitting telegram of 25 April from Minister of Foreign Affairs), *ibid.*, S/13915, p. 34.

¹⁴*I.C.J. Reports 1980*, p. 3.

¹⁵*Ibid.*, p. 43, para. 93.1.

¹⁶*Ibid.*, p. 44.

¹⁷S/13989.

¹⁸*I.C.J. Reports 1982*, p. 40, para. 29.

¹⁹*Ibid.*, Dissenting Opinion of Judge Gros, pp. 143, 146, 147.

²⁰*Ibid.*, p. 40, para. 29.

²¹*Ibid.*

²²*I.C.J. Reports 1984*, pp. 436-438, paras. 99-101.

²³*Ibid.*, p. 436, para. 99.

²⁴*Ibid.*, pp. 437-438, para. 101.

²⁵*Ibid.*, Provisional Measures, pp. 169, 186.

²⁶*Ibid.*, p. 442, para. 112.