

ARTICLE 95

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ARTICLE 95

TEXT OF ARTICLE 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

NOTE

1. During the period under review, no decisions involving interpretation of Article 95 were taken by United Nations organs.¹ However, the following may be noted as having a bearing on that Article:

A. Consideration of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States

2. Following the adoption of a consensus text on the peaceful settlement of disputes at its 1966 session,² the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States was requested by the General Assembly, by its resolution 2181(XXI), to examine "any additional proposals with a view to widening the areas of agreement expressed in the formulation of the 1966 Special Committee concerning the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered." At its 1967 session, the Special Committee had before it several proposals and amendments designed to supplement the 1966 consensus text. Since the 1966 consensus text did not mention the International Court of Justice, one of the proposals to widen that text by adding a reference to the Court read as follows:³

"6. Such procedures may include reference to the International Court of Justice or other tribunals by virtue of agreements already in existence or which may be concluded in the future.

"7. In order to ensure the more effective application of the foregoing principle:

"(a) Unless they are capable of settlement by some other means, legal disputes should, as a general rule, be referred by the parties to the International Court of Justice, and in particular, States should endeavour to accept the jurisdiction of the International Court of Justice pursuant to Article 36, paragraph 2, of the

Statute of the Court with as few reservations as possible;

"(b) States should, as far as possible, include in the bilateral and multilateral agreements to which they become parties, provisions concerning the specific peaceful means by which they desire to settle their differences; in particular, general multilateral agreements concluded under the auspices of the United Nations should provide that disputes relating to the interpretation or application of the agreement, and which the parties have not been able to settle by negotiation or any other means, may be referred on the application of any party to the International Court of Justice or to an arbitral tribunal, the members of which are appointed by the parties or, failing such appointment, by an appropriate organ of the United Nations;

"(c) States should give renewed consideration to the desirability of adhering to existing multilateral conventions, whether general or regional, providing means or facilities for the peaceful settlement of disputes, such as the Permanent Court of Arbitration, the American Treaty on Pacific Settlement of 30 April 1948, the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, and the Protocol of the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity, signed at Cairo on 21 July 1964."

3. During the discussion, several delegations emphasized the importance of adding a reference to the International Court of Justice in the formulation of the principle for the peaceful settlement of disputes. Others, without mentioning Article 95, considered that the addition changed the balance as agreed to in the 1966 consensus text between the different methods of settling disputes peacefully, and would not be in accordance with Chapter VI of the Charter which did not contemplate any special role for the Court and judicial settlement in relation to other means for the peaceful settlement of disputes.⁴

4. Although there was no disagreement in substance on the proposition that settlement procedure might include, in accordance with the Charter, reference to judicial or arbitral processes by virtue of existing or future agreements, no agreement was reached on the inclusion of a provision to that effect in the statement of principle. Nor was agreement reached on the inclusion of a specific reference to the settlement of international disputes through the International Court of Justice.⁵

¹International conventions adopted by conferences convened under the auspices of the United Nations, other than those described below, also contained provision for the peaceful settlement of disputes. See also International Coffee Agreement 1968, opened for signature at New York from 18 to 31 March 1968, Article 59 (United Nations, *Treaty Series*, vol. 647, p. 3) and the International Sugar Agreement 1968, opened for signature at New York from 3 to 24 December 1968 (United Nations, *Treaty Series*, vol. 654, p. 3), which provide that the settlement of disputes concerning the interpretation or application of the Agreement which are not settled by negotiation shall be referred to its Council respectively for decision.

²See *Repertory, Supplement No. 3*, under Article 95, para. 2.

³See G A (XXII), Annexes, a.i. 87, A/6799, para. 374.

⁴*Ibid.*, para. 390.

⁵*Ibid.*, para. 438.

5. The question of peaceful settlement of disputes was considered by the Sixth Committee at the twenty-second session of the General Assembly during which similar views were expressed and, in one instance, specific reference to Article 95 was made. It was reported that "various representatives commented on some aspects of the principle in relation to the consensus text of 1966, one of them considered that that text was open to misinterpretation because it ignored the principle which appeared in Article 95 of the United Nations Charter."⁶ However, no decision concerning the principle of peaceful settlement of disputes was taken by the General Assembly.

B. Protocol relating to the Status of Refugees

6. In 1966, the General Assembly took note of the Protocol relating to the Status of Refugees⁷ which contained provisions entrusting the solution of differences arising out of interpretation and application of the Protocol, which could not be settled by other means, to the International Court of Justice.⁸

C. Optional Protocol to the Convention on Special Missions concerning the Compulsory Settlement of Disputes

7. In 1969, the General Assembly adopted⁹ the Optional Protocol to the Convention on Special Missions concerning the Compulsory Settlement of Disputes, which includes arbitration and conciliation as means for the settlement of disputes arising out of the interpretation or application of the Convention on Special Missions, as substitutes for resorting to the International Court of Justice.

D. Convention on the Law of Treaties

8. The Convention on the Law of Treaties¹⁰ adopted in 1969 by the United Nations Conference on the Law of Treaties contained two articles and related Annex setting out procedures for the settlement of disputes. Article 65 states:

"1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim.

" . . .

"3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations."

Article 66 states:

"If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

"(a) Any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

"(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations."¹¹

¹⁰For text see A/CONF.39/27 (United Nations publication, Sales No. E.70.V.5).

¹¹Article 53 of the Convention deals with treaties conflicting with a peremptory norm of general international law (*jus cogens*). Article 64 deals with emergence of a new peremptory norm of general international law (*jus cogens*). The Annex provides for the submission of disputes to a conciliatory commission set up in accordance with the terms as provided for in the Annex.

⁶*Ibid.*, A/6955, para. 95.

⁷United Nations, *Treaty Series*, vol. 606, p. 267.

⁸See G A resolution 2198(XXI) of 16 December 1966.

⁹G A resolution 2530(XXIV).