

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

## ANALYTICAL SUMMARY OF PRACTICE

### A. General Assembly resolutions on the peaceful settlement of international disputes

2. During the period under review, the General Assembly adopted four resolutions on the item entitled “Peaceful settlement of disputes between States”,<sup>1</sup> in which it recalled the Manila Declaration on the Settlement on International Disputes of 15 November 1982.<sup>2</sup> In those resolutions, the General Assembly urged all States to observe and promote in good faith the provisions of the Manila Declaration, which, in its section II, paragraph 5, after drawing attention to facilities offered by the International Court of Justice for the peaceful settlement of international legal disputes, provides that “States may entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.”<sup>3</sup>

### B. International conventions adopted by the organs of the United Nations

3. The General Assembly adopted a number of conventions during the reporting period, among them the International Convention against Apartheid in Sports<sup>4</sup> and the United Nations Convention on International Bills of Exchange and International Promissory Notes.<sup>5</sup>

4. Only the International Convention against Apartheid in Sports provides for the possible referral to the International Court of Justice for the settlement of disputes concerning its interpretation or application.<sup>6</sup> The other instruments do not contain any provision on the settlement of disputes.

### C. International conventions adopted under the auspices of the United Nations

5. During the period under review, among the 10 international agreements adopted under the auspices of the United Nations,<sup>7</sup> three instruments explicitly contain provisions entrusting to the International Court of Justice the solution of disputes between parties. They are: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,<sup>8</sup> Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations<sup>9</sup> and Vienna Convention for the Protection of the Ozone Layer.<sup>10</sup>

<sup>7</sup> Vienna Convention on the Law of Treaties between States and International Organizations or International Organizations; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; United Nations Convention on Conditions for Registration of Ships; Vienna Convention for the Protection of the Ozone Layer; European Agreement on Main International Railway Lines; International Wheat Agreement, 1986: (a) Wheat Trade Convention; International Wheat Agreement, 1986: (b) Food Aid Convention; Terms of Reference of the Nickel Study Group, Geneva; International Agreement on Olive Oil and Table Olives; International Cocoa Agreement; Regulation No. 63. Uniform provisions concerning the approval of mopeds with regard to noise of 15 August 1985, United Nations, *Treaty Series*, vol. 1367, p. 244; Regulation No. 64. Uniform provisions concerning the approval of vehicles equipped with temporary-use spare wheels/tires of 1 October 1985, United Nations, *Treaty Series*, vol. 1408, p. 274; Regulation No. 65. Uniform provisions concerning the approval of special warning lamps for motor vehicles of 15 June 1986, United Nations, *Treaty Series*, vol. 1428, p. 335; Regulation No. 66. Uniform provisions concerning the approval of large passenger vehicles with regard to the strength of their superstructure of 1 December 1986, United Nations, *Treaty Series*, vol. 1443, p. 314. All these instruments were adopted by the Transport Division of the Economic Commission for Europe as addenda to the Agreement concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts of 20 March 1958.

<sup>8</sup> Concluded at Vienna on 20 December 1988; E/CONF.82/15 and Corr.2, article 32.

<sup>9</sup> Concluded at Vienna on 21 March 1986, A/CONF.129/15, article 66, para. 2.

<sup>10</sup> Concluded at Vienna on 22 March 1985, United Nations, *Treaty Series*, vol. 1513, p. 293, article 11, paragraph 3.

<sup>1</sup> G A resolutions 40/68, 41/74, 42/150 and 43/163.

<sup>2</sup> G A resolution 37/10, annex.

<sup>3</sup> Ibid., sect. II, para. 5.

<sup>4</sup> G A resolution 40/64, annex; see also United Nations, *Treaty Series*, vol. 1500, p. 161.

<sup>5</sup> G A resolution 43/165, annex.

<sup>6</sup> G A resolution 40/64, annex, article 19.

6. Article 66 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations provides for disputes between two States concerning the application or the interpretation of its articles 53 or 64<sup>11</sup> on *jus cogens* to be submitted to the International Court of Justice by means of a written application.<sup>12</sup> In the event of a dispute concerning those provisions between a State and an international organization, article 66, paragraph 2(b), provides:

“(b) If a State is a party to the dispute to which one or more international organizations are parties, the State may, through a Member State of the United Nations if necessary, request the General Assembly or the Security Council or, where appropriate, the competent organ of an international organization which is a party to the dispute and is authorized in accordance with Article 96 of the Charter of the United Nations, to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court”.<sup>13</sup>

7. The International Agreement on Olive Oil and Table Olives<sup>14</sup> and the International Cocoa Agreement,<sup>15</sup> as well as the two International Wheat Agreements<sup>16</sup> establish a council or committee, which as an institutionalized organ has the task of resolving disputes over the interpretation and application of the provisions of the Agreements. Referral to the International Court of Justice for disputes concerning those Agreements is not provided. The Olive Oil Agreement is an exception. It provides that, in case of failure to resolve the dispute through the Council, States have “the right of recourse in the final instance to the International Court of Justice”.

8. The European Agreement on Main International Railway Lines, which was adopted under the auspices of the Economic Commission for Europe, contains a clause referring to dispute settlement by submitting the dispute to

one or more arbitrators selected by mutual agreement between the parties.<sup>17</sup>

9. During the period under review, the United Nations issued an administrative instruction on 8 May 1987 providing guidelines to Secretariat officials responsible for preparing and finalizing agreements with Governments hosting United Nations conferences. The guidelines contained a model provision for the settlement of disputes in article XII, which provides:

“Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two; if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. However, any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with section 30 of that Convention.”<sup>18</sup>

Following the issuance of the administrative instruction, the model provision on the settlement of disputes was used in two of the nine agreements concluded between the United Nations and Governments hosting United Nations conferences during the period under review.<sup>19</sup>

10. During the period under review, the Standard Basic Assistance Agreements concluded by the United Nations

<sup>11</sup> Articles 53 and 64 of the 1986 Vienna Convention parallel the same provisions of the 1969 Vienna Convention on the Law of Treaties concerning questions of *jus cogens*.

<sup>12</sup> See 1986 Vienna Convention, article 66, para. 2(a). The Convention did not enter into force during the period under review.

<sup>13</sup> See also the present *Supplement*, under Article 96.

<sup>14</sup> Concluded at Geneva on 1 July 1986; United Nations, *Treaty Series*, vol. 1445, p. 13, article 50.

<sup>15</sup> Concluded at Geneva on 25 July 1986; United Nations, *Treaty Series*, vol. 1466, p. 103, article 63.

<sup>16</sup> International Wheat Agreement, 1986: (a) Wheat Trade Convention, 14 March 1986, United Nations, *Treaty Series*, vol. 1388, p. 3, article 8; and International Wheat Agreement, 1986: (b) Food Aid Convention, United Nations, *Treaty Series*, vol. 1388, p. 168, article XV.

<sup>17</sup> Concluded at Geneva on 31 May 1985; United Nations, *Treaty Series*, vol. 1530, p. 65, article 8.

<sup>18</sup> ST/AI/342, annex, sect. A, p. 16. A similar formulation was issued in relation to agreements concluded by an exchange of letters; *ibid.*, sect. B, para. (d), p. 19.

<sup>19</sup> Agreement between the United Nations and the Government of Lesotho regarding the arrangements for the Regional Seminar on the United Nations Commission on International Trade Law Texts and International Trade Law, to be held at Maseru from 25 to 30 July 1988 (signed at New York on 14 July 1988); and Agreement between the United Nations and the Government of Peru on a United Nations workshop on regional space information systems to be hosted by the Government of Peru from 24 to 28 October 1988 (signed at New York on 20 October 1988). See also this *Supplement*, under Articles 104 and 105, annex II, for a list of agreements concluded by the United Nations with Governments hosting United Nations conferences during the period under review.

Development Programme<sup>20</sup> (UNDP) with host countries contained a settlement of disputes provision in article XII of the agreements. The article provides:

“1. Any dispute between UNDP and the Government arising out of or relating to this Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

“2. Any dispute between the Government and an operational expert arising out of or relating to the conditions of his service with the Government may be

referred to the Executing Agency providing the operational expert by either the Government or the operational expert involved, and the Executing Agency concerned shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence or by other agreed mode of settlement, the matter shall at the request of either Party be submitted to arbitration following the same provisions as are laid down in paragraph 1 of this article, except that the arbitrator not appointed by either Party or by the arbitrators of the Parties shall be appointed by the Secretary-General of the Permanent Court of Arbitration.”

11. By contrast, only one agreement relating to the United Nations Children’s Fund (UNICEF) concerning the activities of UNICEF in host countries during the period under review had a provision for the settlement of disputes.<sup>21</sup>

<sup>20</sup> Standard Basic Agreement between the United Nations Development Programme and the Government of: Saint Christopher and Nevis (signed at Saint Christopher and Nevis on 30 January 1985); Lebanon (signed at Beirut on 10 February 1986); Bangladesh (signed at Dhaka on 25 November 1986); Egypt (signed at Cairo on 19 January 1987); Kiribati (signed at Tarawa on 5 May 1987); Burma (signed at Rangoon on 17 September 1987); and Nigeria (signed at Lagos on 12 April 1988).

<sup>21</sup> Basic Agreement between the United Nations (United Nations Children’s Fund) and the Government of Djibouti concerning the activities of the United Nations Children’s Fund in Djibouti. Signed at Djibouti on 2 November 1988, *United Nations Juridical Yearbook*, 1988, p. 25, article 8.