

ARTICLE 96

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TEXT OF ARTICLE 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

INTRODUCTORY NOTE

1. The structure of the present study follows that of previous Repertory studies of Article 96. Despite the fact that in the period covered by this study, no requests for advisory opinions were made by the General Assembly or the Security Council or any other organ or agency empowered to do so, the original major headings of the study have been retained in order to facilitate the use of this study in connexion with its predecessors; and the established framework has been maintained to permit review of developments in United Nations practice under Article 96.

2. In general, the original subheadings in the Repertory dealing with individual cases or subject-matter on which there was no further development in the period under review are omitted. Subheadings have been retained only under sections II A 2 and II B 5; a new one (II B 5 f) has been added under the latter. The new subheading deals with the scope of questions on which advisory opinions of the Court may be requested by the International Atomic Energy Agency (IAEA), which was authorized to make such requests by the General Assembly, under Article 96 (2).

3. In the present study, references are made to the records of the Conference on the Statute of the International Atomic Energy Agency (IAEA) and the first special session of the General Conference of IAEA (see paragraphs 24 and 28 below) which bear on the interpretation of Article 96. Such references are included as points of interest and should not be regarded as an extension of the scope of the Repertory beyond the practice of United Nations organs.

I. GENERAL SURVEY

A. Decisions bearing upon Article 96

4. During the period under review, the General Assembly adopted the the following resolutions which bear upon Article 96:

Resolution 1047 (XI) of 23 January 1957. Admissibility of hearings of petitioners by the Committee on South West Africa: Advisory opinion of the International Court of Justice

Resolution 1142 (XII) of 25 October 1957. Legal action to ensure the fulfilment of the obligations assumed by the Union of South Africa in respect of the Territory of South West Africa

Resolution 1146 (XII) of 14 November 1957. Authorization to the International Atomic Energy Agency to request an advisory opinion of the International Court of Justice.

5. In its resolution 1047 (XI), the General Assembly accepted and endorsed the advisory opinion of 1 June 1956 of the International Court of Justice in regard to the admissibility of oral hearings by the Committee on South West Africa. 1/

6. By its resolution 1142 B (XII), the General Assembly requested the Committee on South West Africa to consider further the question of securing advisory opinions from the International Court of Justice to help ensure the fulfilment of the obligations assumed by the Union of South Africa in respect of the Territory of South West Africa. By resolution 1247 (XIII), the General Assembly decided to resume further consideration of this question at its fourteenth session.

7. In its resolution 1146 (XII), the General Assembly authorized the International Atomic Energy Agency (IAEA), under the provisions of Article 96 of the Charter, to request advisory opinions of the Court.

1/ In the preambles of six resolutions - 1055 (XI), 1059 (XI), 1060 (XI), 1141 (XII), 1244 (XIII) and 1246 (XIII) - adopted by the General Assembly, relating to the question of South West Africa, reference was made to the acceptance by the General Assembly of the advisory opinion of 11 July 1950 of the International Court of Justice on the international status of South West Africa.

8. During the period under review, neither the General Assembly nor the Security Council, 2/ or any other organ 3/ empowered to do so, requested advisory opinions from the Court. At its 790th plenary meeting, on 13 December 1958, the General Assembly decided 4/ not to consider further at its thirteenth session a draft resolution 5/ which would have requested the Court to give an advisory opinion on certain points regarding the voting on questions relating to Non-Self-Governing Territories.

9. On 19 January 1959, in connexion with the election of members of the Maritime Safety Committee, the Inter-Governmental Maritime Consultative Organization (IMCO) adopted a resolution requesting the International Court of Justice to give an advisory opinion on the question whether the constitution of the said Committee was in accordance with the Convention for the Establishment of the Organization. 6/

10. During the period under review, the International Court of Justice delivered 7/ its advisory opinion of 23 October 1956 on the judgements of the Administrative

2/ On 13 November 1957, at the 801st meeting of the Security Council, the representative of Sweden indicated that certain legal aspects of the India-Pakistan question might usefully, and at an appropriate time, be referred to the International Court of Justice for an advisory opinion. He then continued,

"My Government has two questions in mind for an advisory opinion by the Court.

"The first question deals with the legality of the accession and is divided into three parts: (1) Did the accession of the Princedom of Jammu and Kashmir to India become legally valid in virtue of the declaration of accession signed by the Maharaja in 1947? (2) If this declaration did not constitute a definite accession, did it have the import of a legally valid, conditional accession? (3) In the latter case, is the accession, as a result of the declaration by India on accepting the accession or for other reasons, conditioned by being confirmed through a plebiscite?

"The second question is the following: If a confirming plebiscite is a condition for the accession, to what extent have India and Pakistan assumed precise obligations in respect to the manner in which the plebiscite should be arranged and to the prerequisites for a plebiscite?" (S C, 12th yr., 801st mtg., paras. 110-113).

The above statement was not formulated in terms of a draft resolution, however, and the proposal was not pursued further.

3/ Five requests to seek advisory opinions of the Court with respect to judgements of the United Nations Administrative Tribunal were rejected by the Committee on Applications for Review of Administrative Tribunal Judgements.

4/ G A (XIV), Plen., 790th mtg., para. 93.

5/ G A (XIII), Annexes, a.i. 36, p. 48 (A/L.259 and Add.1), Cf. this Supplement, under Article 18.

6/ I C J, Reports 1959, pp. 267 and 268.

7/ I C J, Reports 1956, p. 77. See also Repertory, Supplement No. 1, vol. II, under Article 96, paras. 9, 67 and 76.

Tribunal of the International Labour Organisation (the ILO) upon complaints made against the United Nations Educational, Scientific and Cultural Organization (UNESCO). 8/

****B. Procedural matters relating to requests
for advisory opinions**

II. ANALYTICAL SUMMARY OF PRACTICE

A. Practice bearing upon Article 96 (1)

**1. Consideration of the question of the obligation to submit
legal questions to the International Court of Justice**

11. During the eleventh session of the General Assembly, the Fourth Committee had on its agenda an item 9/ concerning a study of legal action to ensure the fulfilment of the obligation assumed by the Mandatory Power under the Mandate for South West Africa. At the close of the session, the General Assembly adopted resolution 1060 (XI) of 26 February 1957, which requested the Committee on South West Africa to study the matter and to submit a special report "containing conclusions and recommendations on the question". In accordance with the request of the General Assembly, the Committee on South West Africa submitted its special report 10/ to the General Assembly at its twelfth session.

12. Within the context of its special report, the Committee on South West Africa considered the possibility of a request by the General Assembly for an advisory opinion from the Court. The Committee noted 11/ that:

"If an advisory opinion were requested regarding, for example, the status of the Territory or the relationship between clauses of the Mandate and acts of administration of the Territory, there would be the advantage that the Court, in reaching its opinion, would proceed by impartial judicial methods and on the basis of evidence produced to and weighed by the Court."

The Committee pointed out, however, that the Court might conceivably decline to give its opinion if it considered that the question presented to it went to the heart of the controversy, and that to answer it would amount to deciding the matter in dispute between the parties.

8/ At its forty-fifth session, held at New Delhi, 31 October-3 December 1956, the Executive Board of UNESCO adopted the following decision (UNESCO: 45 EX/Decisions, p. 14, item 11.1):

"The Executive Board,

"Takes note of the Advisory Opinion given by the International Court of Justice on 23 October 1956, upon request made by the Board at its 42nd session,

"Authorizes the Director-General to pay the awards granted by the Tribunal, amounting to \$39,083.38, to be drawn from the Working Capital Fund, and

"Invites him to submit to the Executive Board, before the end of its present session, proposals for transfers within the budget for 1955-1956 to reimburse the Working Capital Fund for these payments."

9/ G A (XI), Annexes, vol. I, a.i. 37, p. 4, A/3541, para. 34.

10/ G A (XII), Suppl. No. 12 A (A/3625).

11/ Ibid., para. 19.

13. At its twelfth session, the General Assembly allocated to the Fourth Committee, as agenda item 38 (b), consideration of the Special Report of the Committee on South West Africa. Upon the recommendation 12/ of the Fourth Committee, the General Assembly, at its 709th plenary meeting, on 25 October 1957, adopted 13/ resolution 1142 (XII) by 55 votes to 3, with 17 abstentions. Part B of this resolution reads, in part, as follows:

"The General Assembly,

"

"Noting also that, in its special report, the Committee on South West Africa has stated that questions may be put to the International Court of Justice for its advisory opinion as to whether specific acts of the Mandatory State are in conformity with the obligations assumed by it,

"Requests the Committee on South West Africa to consider further the question of securing from the International Court of Justice advisory opinions in regard to the administration of the Territory of South West Africa, and to make recommendations in its next report concerning acts of the administration on which a reference to the Court may usefully be made as to their compatibility or otherwise with Article 22 of the Covenant of the League of Nations, the Mandate for South West Africa and the Charter of the United Nations."

14. In its report to the General Assembly at its thirteenth session, the Committee on South West Africa stated that it did not feel that it was in a position to determine itself whether a reference might "usefully" be made to the Court. In the opinion of the Committee, 14/ two main aspects needed to be given consideration:

"... The Assembly may wish to consider whether it can be regarded as useful to refer to the International Court for further review matters on which the judgement of the Assembly has already been exercised, and, moreover, exercised under an authority which the Court, in the advisory opinions already given on questions of supervision, has recognized as belonging to the Assembly.

"The second main aspect of the problem involves consideration by the General Assembly whether it would wish to embark upon the advisory opinion procedure concurrently with the other and different courses of action which it is following towards a solution of the problem."

15. Upon the recommendation of the Fourth Committee, 15/ the General Assembly, by resolution 1247 (XIII), decided to resume further consideration at its fourteenth session of the question of securing advisory opinions from the Court in regard to the administration of South West Africa.

12/ G A (XII), Annexes, a.i. 38, p. 4, A/3701, paras. 25 and 26.

13/ G A (XII), Plen., 709th mtg., para. 42.

14/ G A (XIII), Suppl. No. 12 (A/3906), paras. 42-45.

15/ G A (XIII), Annexes, a.i. 39, p. 13, A/3959, paras. 33-36.

2. *Consideration of the nature and types of questions referred to in Article 96 (1)*

**a. THE POLITICAL OR LEGAL NATURE OF THE QUESTION

**b. DIFFICULT AND IMPORTANT POINTS OF LAW

C. INTERPRETATION OF THE UNITED NATIONS CHARTER

Voting procedures in matters concerning
Non-Self-Governing Territories

16. On 21 October 1957, at the 675th meeting of the Fourth Committee of the General Assembly, a draft resolution 16/ was submitted on voting procedures in matters concerning Non-Self-Governing Territories. At the 679th meeting, the six sponsors of the draft resolution, Costa Rica, Greece, Iraq, Mexico, Morocco and Yugoslavia, submitted a revised text, 17/ according to which the General Assembly would request an advisory opinion from the International Court of Justice on the following points:

"(a) Which is the voting majority that is applicable to resolutions of the General Assembly on matters concerning Non-Self-Governing Territories in accordance with Chapter XI of the Charter of the United Nations?

"(b) Considering that matters concerning Non-Self-Governing Territories are not included in the questions listed in Article 18 (2), would it be in accordance with the Charter to submit a resolution on Non-Self-Governing Territories to a two-thirds vote if an additional category to that effect has not been established beforehand for the Non-Self-Governing Territories in the terms of Article 18 (3)?"

17. At the ensuing meeting, Colombia submitted amendments 18/ which would replace the words "General Assembly" with "Fourth Committee" and which would address the request to the Sixth Committee rather than to the International Court of Justice. These amendments were accepted by the six sponsors and incorporated into their second revised text. 19/ The amended draft resolution was approved as a whole by the Fourth Committee at its 681st meeting, on 25 October 1957, by a roll-call vote of 32 votes to 29, with 12 abstentions. This resolution 20/ was transmitted 21/ to the Sixth Committee which, having noted that the item in connexion with which the Fourth Committee had requested its advice was no longer on the agenda of the General Assembly at its twelfth session, considered that it was not opportune to reply to the request of the Fourth Committee at that session. 22/

18. At the thirteenth session of the General Assembly, a draft resolution 23/ was submitted by Ghana, Iraq, Liberia, Mexico and Morocco requesting the Court to give an

16/ G A (XII), Annexes, a.i. 35, p. 16, A/C.4/L.497 and Add.1 and 2.

17/ *Ibid.*, p. 28, A/3733, paras. 7 and 9 (A/C.4/L.497/Rev.1).

18/ G A (XII), Annexes, a.i. 35, p. 28, A/3733, para. 10 (A/C.4/L.499).

19/ *Ibid.*, p. 17 (A/C.4/L.497/Rev.2).

20/ *Ibid.*, p. 28, A/3733, para. 14 (A/C.4/L.501).

21/ A/C.6/355 (mimeographed).

22/ G A (XII), Annexes, a.i. 35, p. 28, A/C.6/L.417.

23/ G A (XIII), Annexes, a.i. 36, p. 48, A/L.259 and Add.1.

advisory opinion on the same points as those quoted in paragraph 16 above. At its 790th plenary meeting, on 13 December 1958, the General Assembly decided 24/ that the draft resolution should not be considered further at that session.

d. INTERPRETATION OF TREATIES

The question of South West Africa

19. In its special report submitted to the General Assembly at its twelfth session (see paragraphs 11 and 12 above), the Committee on South West Africa noted 25/ that a request by the General Assembly for an advisory opinion from the International Court of Justice could relate not only to the supervision procedure,

"... but that questions may also be put as to whether specific acts of the Mandatory State are in conformity with the obligations assumed by it under the Mandate, including, for example, whether the status of the Territory has been modified in a manner or to a degree incompatible with the obligations of the Mandate."

20. As stated in paragraph 13 above, the General Assembly requested the Committee to make recommendations concerning acts of the administration on which reference might usefully be made to the International Court of Justice. Pursuant to this request, the Committee reported 26/ that it considered the following two main categories of acts would serve to indicate the subjects of questions on which advisory opinions could be sought from the Court: (a) acts relating to the international status of the Territory and (b) acts relating to the moral and material well-being and social progress of the inhabitants of the Territory. According to the Committee, these were acts on which legal doubts had been expressly stated, or the conclusion or suggestion had been put forward that they were inconsistent with, or questionable under, the Mandate or the Charter.

3. The formulation of legal questions

21. In its report 27/ to the General Assembly at its thirteenth session, the Committee on South West Africa, having recapitulated the wider context within which questions that might give rise to requests for advisory opinions had been examined and appraised in the Committee's previous report, stated:

"In these circumstances, the General Assembly, if it contemplated the formulation of a request for an advisory opinion or opinions, might find it desirable to consider whether the majority of the individual acts of the administration which have been listed above should not be treated as subsidiary parts of a general question to be asked regarding the fundamental policy of the Mandatory Power. A general question on the fundamental policy might also refer to the two aspects suggested by the two main categories into which the acts listed above have fallen - namely, that of the status of the Territory and that of the material and moral well-being and social progress of the inhabitants; the subsidiary parts of the question might then refer to some or all of the acts listed. It might be thought that by this method the proper context could be determined in which the specific acts of the administration should be considered by the Court. While some of the acts set out above - for example, the question of the South African Native Trust -

24/ G A (XIII), Plen., 790th mtg., para. 93.

25/ G A (XII), Suppl. No. 12 A (A/3625), para. 18.

26/ G A (XIII), Suppl. No. 12 (A/3906), paras. 38 and 39. For the decision of the General Assembly, see para. 15 above.

27/ G A (XIII), Suppl. No. 12 (A/3906), para. 41.

might be considered as the subjects of separate requests to the Court, the manner in which the Committee on South West Africa has appraised them suggests that the majority of the acts might be referred to the Court, if at all, in the context of the general policy of the Mandatory Power."

****4. Questions relating to the scope of the power of the General Assembly to request an advisory opinion**

****5. The effect of a request for an advisory opinion upon continued consideration by the requesting organ and upon implementation of prior decisions in the case**

****6. Prior decisions concerning the binding effect of advisory opinions**

7. Consideration of the effect to be given to the advisory opinions of the Court

22. On 3 December 1955, the General Assembly had adopted resolution 942 (X) requesting an advisory opinion from the International Court of Justice in regard to the admissibility of oral hearings by the Committee on South West Africa. 28/ In its advisory opinion of 1 June 1956, 29/ the Court had held that the grant of oral hearings to petitioners by the Committee would be in conformity with its advisory opinion of 11 July 1950. 30/ At its 643rd plenary meeting, on 23 January 1957, the General Assembly, by 60 votes to none, with 9 abstentions, adopted 31/ resolution 1047 (XI), which reads in part:

"The General Assembly

".....

"1. Accepts and endorses the advisory opinion of 1 June 1956 of the International Court of Justice on the question of the admissibility of hearings by the Committee on South West Africa;

"2. Therefore authorizes the Committee on South West Africa to grant hearings to petitioners."

B. Practice bearing upon Article 96 (2)

1. The question whether the authorization under Article 96 (2) should be a general authorization or an ad hoc authorization

23. Pursuant to General Assembly resolution 912 (X), the Secretary-General, in consultation with the Advisory Committee on the Peaceful Uses of Atomic Energy, on 20 April 1956 had prepared and circulated a study of the question of the relationship of the International Atomic Energy Agency (IAEA) to the United Nations. This study was presented in the form of a set of basic principles, one 32/ of which states:

28/ See Repertory, Supplement No. 1, vol. II, under Article 96, paras. 41-43.

29/ Admissibility of hearings of petitioners by the Committee on South West Africa, ICJ, Reports 1956, p. 23.

30/ International status of South West Africa, I C J, Reports 1950, p. 128.

31/ G A (XI), Plen., vol. II, 643rd mtg., para. 106.

32/ G A (XI), Annexes, vol. II, a.i. 69, p. 1, A/3122, para. 15.

"The General Assembly should take action in each case to enable a legal question arising within the scope of the activities of the Agency to be submitted, at the request of the Board of Governors of the Agency in accordance with its statute, to the International Court of Justice for an advisory opinion." 33/

24. Paragraph B of article XVII of the Statute of the International Atomic Energy Agency provides that: 34/

"The General Conference and the Board of Governors are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the Agency's activities." 35/

25. At the Conference on the Statute of the International Atomic Energy Agency in October 1956, several representatives expressed 36/ the view that article XVII B contemplated an arrangement under which the General Assembly would give a blanket authorization in advance for all advisory opinion requests that IAEA might want to make and that it would not be practical for the General Assembly to take action in each case, as envisaged in the Secretary-General's study. By resolution 1146 (XII), the General Assembly authorized IAEA to request advisory opinions of the Court (see paragraphs 29-33 below).

***2. The question of the revocability of the authorization by the General Assembly*

***3. The question whether a prior request of the organ concerned is necessary*

4. The question of the organs which may be authorized to request advisory opinions

26. The question whether an organization which is neither an organ of the United Nations nor a specialized agency may be authorized by the General Assembly to request advisory opinions of the International Court of Justice arose in connexion with the International Atomic Energy Agency. 37/

27. By resolution 1115 (XI), the General Assembly authorized its Advisory Committee on the Peaceful Uses of Atomic Energy to negotiate with the Preparatory Commission of the International Atomic Energy Agency and to draw up a draft relationship agreement between the United Nations and IAEA. Article X of the draft agreement provided in part that "the United Nations will take the necessary action to enable the General Conference or the Board of Governors of the Agency to seek an advisory opinion of the International Court of Justice". 38/

33/ Underscoring supplied.

34/ IAEA/CS/13.

35/ Underscoring supplied.

36/ IAEA/CS/OR.33, p. 73; IAEA/CS/OR.34, pp. 3-4 and 12.

37/ For relevant discussions at the Conference on the Statute of IAEA regarding article XVII B of the draft statute (cf. paras. 23-25 above), see IAEA/CS/OR.33, pp. 47, 62-65, 73-75; IAEA/CS/OR.34, pp. 3 and 27.

38/ For text, see G A resolution 1145 (XII), annex.

28. When the draft agreement was considered by the Administrative and Legal Committee at the first special session of the General Conference of IAEA, the representative of the Secretariat, in reply to a query by the representative of the Netherlands regarding the use of the word "seek" rather than the word "request", explained:

"... one of the legal difficulties which had arisen was the doubt whether the Agency could be regarded as a specialized agency for the purposes of Article 96 (2) of the United Nations Charter. There might accordingly be some difficulty about authorizing the Agency to go directly to the International Court of Justice. The wording of article X of the Relationship Agreement took account of that point. The word 'seek' had been used rather than 'request' in order to leave the provision as flexible as possible." 39/

29. After its approval by the General Conference of IAEA, the draft agreement was submitted to the General Assembly of the United Nations. At its 715th plenary meeting, the General Assembly had before it two draft resolutions: (a) a draft resolution 40/ submitted by eighteen Powers to approve the relationship agreement and (b) a draft resolution 41/ submitted by the United States, reading as follows:

"The General Assembly,

"Recalling the provisions of Article 96 of the Charter of the United Nations,

"Noting the provisions of article XVII of the statute of the International Atomic Energy Agency and of article X of the Agreement governing the relationship between the United Nations and the Agency,

"Authorizes the International Atomic Energy Agency to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities other than questions concerning the relationship between the Agency and the United Nations or any specialized agency."

30. The representative of the United States advanced 42/ the following as the reason for his draft resolution:

"... It will be recalled that article XVII of the Statute of the International Atomic Energy Agency and article X of the relationship agreement both bear on the subject of the right of the agency to request advisory opinions of the International Court of Justice. In order to make article X of the agreement we are about to adopt meaningful, this draft resolution has been introduced. It will be found that article X provides that the United Nations General Assembly shall take such action as is necessary to make it possible for the new agency to ask for such opinions. That is the only reason for the introduction of this second draft resolution. ..."

31. Although doubt was expressed on the applicability of Article 96 (2) of the Charter to IAEA, several representatives nevertheless gave their support 43/ to the United States draft resolution on the ground that there were practical difficulties in any alternative procedure or that it was a necessary means of implementation of

39/ IAEA, GC. 1(S)/COM.2/OR.6, para. 32.

40/ G A (XII), Annexes, a.i. 18, p. 2 (A/L.228 and Add.1).

41/ A/L.229 (mimeographed); adopted without change as G A resolution 1146 (XII).

42/ G A (XII), Plen., 715th mtg., para. 10; cf. IAEA/CS/OR.33, p. 73.

43/ Ibid., paras. 23-25, 38, 53 and 54.

the Statute of IAEA. It was thought that, having regard to the close relationship between IAEA and the United Nations, the draft resolution submitted by the United States was within the spirit, if not actually within the letter, of Article 96 (2). The view was also expressed that the point of interpretation was one that might properly be left to the International Court of Justice itself.

32. Both the eighteen-Power draft resolution and the United States draft resolution were adopted 44/ unanimously by the General Assembly, as resolutions 1145 (XII) and 1146 (XII).

5. The scope of questions on which advisory opinions may be sought under the terms of Article 96 (2)

****a.** THE ECONOMIC AND SOCIAL COUNCIL

****b.** THE TRUSTEESHIP COUNCIL

****c.** THE SPECIALIZED AGENCIES

****d.** THE INTERIM COMMITTEE OF THE GENERAL ASSEMBLY

****e.** THE COMMITTEE ON APPLICATIONS FOR REVIEW OF ADMINISTRATIVE TRIBUNAL JUDGEMENTS

f. THE INTERNATIONAL ATOMIC ENERGY AGENCY

33. By resolution 1146 (XII) of 14 November 1957, the General Assembly authorized the International Atomic Energy Agency to request advisory opinions of the Court "on legal questions arising within the scope of its activities other than questions concerning the relationship between the Agency and the United Nations or any specialized agency". 45/

***6. The question of prior decision concerning the binding effect of an advisory opinion of the Court*

44/ G A (XII), Plen., 715th mtg., paras. 58 and 59.

45/ See paras. 29 and 32 above.

Chapter XV

THE SECRETARIAT

