

ARTICLE 96

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Notes

ARTICLE 96

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 study is slightly different from that of the previous corresponding study on this Article. This is due to the fact that, during the period under review, for the first time, organs of the United Nations other than the General Assembly, namely, the Security Council and the Committee on Applications for Review of Administrative Tribunal Judgements, requested advisory opinions from the Court. Consequently the analysis, which previously focused only on the General Assembly, has required to be modified and expanded to encompass the actions taken by those other organs.

I. GENERAL SURVEY

A. Authorizations to request advisory opinions

2. During the period under review, two specialized agencies were authorized by the General Assembly to request advisory opinions from the International Court of Justice.

1. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

3. By resolution 3346 (XXIX) of 17 December 1974 the General Assembly approved the Agreement on the relationship between the United Nations and the World Intellectual Property Organization (WIPO). As a result of the Agreement, WIPO is authorized under the provisions of Article 96 of the Charter to request advisory opinions of the Court.

2. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD)

4. By resolution 32/107 of 15 December 1977, the General Assembly approved the Agreement on the relationship between the United Nations and the International Fund for Agricultural Development (IFAD). The relationship agreement contained a provision authorizing IFAD to request advisory opinions of the Court.

B. Requests for advisory opinions

5. During the period under review, the Security Council, the Committee on Applications for Review of Administrative Tribunal Judgements and the General Assembly requested advisory opinions of the Court.

1. NAMIBIA (SECURITY COUNCIL)

6. By its resolution 284 (1970) of 29 July 1970, the Security Council submitted a request to the International Court of Justice for an advisory opinion on the question of Namibia. The Court delivered its advisory opinion on

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970) on 26 January 1971.¹ By its resolution 301 (1971) of 20 October 1971, the Security Council "took note" of the advisory opinion of the Court.

2. ADMINISTRATIVE TRIBUNAL JUDGEMENT NO. 158 (COMMITTEE ON APPLICATIONS FOR REVIEW OF ADMINISTRATIVE TRIBUNAL JUDGEMENTS)

7. During the period under review, the Committee considered the application to review Administrative Tribunal Judgement No. 158 of 28 April 1972 and concluded that there was a substantial basis for the application. The Committee accordingly decided to submit two questions related to that Judgement to the Court for an advisory opinion. The International Court of Justice delivered its advisory opinion on the Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal on 2 February 1973.² Following the Court's advisory opinion, the Administrative Tribunal confirmed its Judgement No. 158 by part of its Judgement No. 177.

8. After the Committee had for the first time addressed questions to the Court in respect of Judgement No. 158, the Tribunal amended its rules by adding the following Article 26:

"The President shall determine the procedure to be followed by the Tribunal consequent on the rendering of an advisory opinion by the International Court of Justice pursuant to Article 11 of the Statute."

3. SPANISH/WESTERN SAHARA (GENERAL ASSEMBLY)

9. By its resolution 3292 (XXIX) of 13 December 1974 the General Assembly requested the International Court of Justice to give an advisory opinion on the following questions: (a) whether the Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain was a territory belonging to no one (*terra nullius*); (b) if

the answer to the first question was in the negative, what were the legal ties between the territory and the Kingdom of Morocco and the Mauritania entity. The International Court of Justice delivered its advisory opinion on the

Western Sahara on 3 January 1975.³ By its resolution 3458 (XXX) of 10 December 1975, the General Assembly "took note with appreciation" of the advisory opinion given by the Court.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Authorizations to request advisory opinions

1. THE ORGANS TO BE AUTHORIZED TO REQUEST ADVISORY OPINIONS

a. *World Intellectual Property Organization (WIPO)*

10. At its twenty-ninth session the General Assembly considered the draft agreement bringing the World Intellectual Property Organization (WIPO) into relationship with the United Nations in accordance with Articles 57 and 63 of the Charter of the United Nations and approved the Agreement between the United Nations and WIPO by its resolution 3346 (XXIX) of 17 December 1974. Under article 12 of the Agreement, the General Assembly authorizes WIPO to request advisory opinions of the International Court of Justice. Such requests may be addressed to the International Court of Justice by the General Assembly or by WIPO or by the Co-ordination Committee of WIPO. When requesting the International Court of Justice to give an advisory opinion, WIPO shall inform the Economic and Social Council thereof.

b. *International Fund for Agricultural Development (IFAD)*

11. At its thirty-second session the General Assembly considered the draft agreement bringing the International Fund for Agricultural Development (IFAD) into relationship with the United Nations and approved the relationship agreement by its resolution 32/107 of 15 December 1977. Under article XIII of the Agreement, the General Assembly authorizes IFAD to request advisory opinions of the Court.

c. *Committee on Applications for Review of Administrative Tribunal Judgements*

12. The authority of the Committee on Applications for Review of Administrative Tribunal Judgements for requesting advisory opinions of the Court was mentioned in the *Repertory, Supplement No. 1* under Article 96. However, the question whether the Committee on Applications for Review of Administrative Tribunal Judgements was a body authorized under the Charter to initiate advisory proceedings before the Court was examined by the Court in the advisory opinion on the Applications for Review of Administrative Tribunal Judgement No. 158.

13. In response to the above question, the Court stated:⁴

"Article 7 of the Charter . . . provides in the most general terms in paragraph 2: 'Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.' Article 22 then expressly empowers the General Assembly to 'establish such subsidiary organs as it deems necessary for the performance of its functions'. The object of both those Articles is to enable the United Nations to accomplish its purposes and to function effectively. Accordingly,

to place a restrictive interpretation on the power of the General Assembly to establish subsidiary organs would run contrary to the clear intention of the Charter. Article 22, indeed, specifically leaves it to the General Assembly to appreciate the need for any particular organ, and the sole restriction placed by that Article on the General Assembly's power to establish subsidiary organs is that they should be 'necessary for the performance of its functions'.

"In its Opinion on the Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, it is true, the Court expressly held that the Charter does not confer judicial functions on the General Assembly and that, when it established the Administrative Tribunal, it was not delegating the performance of its own functions (I.C.J. *Reports 1954*, at p. 61). At the same time, however, the Court pointed out that under Article 101, paragraph 1, of the Charter the General Assembly is given power to regulate staff relations, and it held that this power included the power to establish a tribunal to do justice between the Organization and the staff members (*ibid.*, at p. 58). From the above reasoning it necessarily follows that the General Assembly's power to regulate staff relations also comprises the power to create an organ designed to provide machinery for initiating the review by the Court of judgements of such a tribunal.

"Nor does it appear to the Court that there is substance in the suggestion that the particular constitution of the Committee would preclude it from being considered an organ of the United Nations. As provided in paragraph 4 of Article 11, the Committee is composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. But this provision is no more than a convenient method of establishing the membership of the Committee, which was set up as a separate committee invested with its own functions distinct from those of the General Committee. Paragraph 4, indeed, underlined the independent character of the Committee by providing that it should establish its own rules. These it drew up at its first meeting, amending them at later meetings. Accordingly, the Court sees no reason to deny to the Committee the character of an organ of the United Nations which the General Assembly clearly intended it to possess.

"Article 96, paragraph 2, of the Charter, empowers the General Assembly to authorize organs of the United Nations to request advisory opinions of the Court on legal questions arising within the scope of their activities. In the present instance paragraph 4 of Article 11 of the Statute of the Administrative Tribunal expressly states that the Committee, for the purpose of this Article . . . is . . . authorized under paragraph 2 of Article 96 of the Charter to request advisory opinions of the Court. These two provisions, *prima facie*, suffice to establish the competence of the Committee to request advisory opinions of the Court."

2. THE SCOPE OF QUESTIONS ON WHICH ADVISORY OPINIONS MAY BE SOUGHT UNDER THE TERMS OF ARTICLE 96 (2)

a. *World Intellectual Property Organization (WIPO)*

14. Under article 12 of the Agreement between the United Nations and the World Intellectual Property Organization (WIPO) approved by General Assembly resolution 3346 (XXIX), the General Assembly authorizes WIPO to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its competence other than questions concerning the mutual relationship of WIPO and the United Nations or other specialized agencies.

b. *International Fund for Agricultural Development (IFAD)*

15. Under article XIII of the relationship agreement between the United Nations and the International Fund for Agricultural Development, the General Assembly authorizes IFAD to request advisory opinions of the Court on legal questions arising within the scope of its competence other than questions concerning the mutual relationship of IFAD and the United Nations and other specialized agencies.

c. *Committee on Applications for Review of Administrative Tribunal Judgements*

16. The question whether the Committee has any activities of its own which enable it to be considered as requesting advisory opinions on legal questions arising within the scope of its activities was examined by the Court. It was alleged that the Committee had no other activity than to request advisory opinions, and that the "legal questions" in regard to which Article 11 authorizes it to request an opinion did not arise within the scope of "its activities" but within those of another organ, namely the Administrative Tribunal.

17. In response to this allegation the Court stated:⁵

"The functions entrusted to the Committee by paragraphs 1 and 2 of Article 11 are: to receive applications which formulate objections to judgements of the Administrative Tribunal on one or more of the grounds set out in paragraph 1 and which ask the Committee to request an advisory opinion; to decide within 30 days whether or not there is a substantial basis for the application; and, if it so decides, to request an advisory opinion of the Court. The scope of the activities of the Committee which result from these functions is, admittedly, a narrow one. But the Committee's activities under Article 11 have to be viewed in the larger context of the General Assembly's function in the regulation of staff relations of which they form a part. This is not a delegation by the General Assembly of its own power to request an advisory opinion; it is the creation of a subsidiary organ having a particular task and invested with the power to request advisory opinions in the performance of that task. The mere fact that the Committee's activities serve a particular, limited, purpose in the General Assembly's performance of its function in the regulation of staff relations does not prevent the advisory jurisdiction of the Court from being exercised in regard to those activities; nor is there any indication in Article 96 of the Charter of any such restriction upon the General Assembly's power to authorize organs of the United Nations to request advisory opinions.

"In fact, the primary function of the Committee is not the requesting of advisory opinions, but the examination of objections to judgements in order to decide in each case whether there is a substantial basis for the application so as to call for a request for an advisory opinion. If it finds that there is not such a substantial basis for the application, the Committee rejects the application without requesting an opinion of the Court. When it does find that there is a substantial basis for the application, the legal questions which the Committee then submits to the Court clearly arise out of the performance of this primary function of screening the applications presented to it. They are therefore questions which, in the view of the Court, arise within the scope of the Committee's own activities; for they arise not out of the judgements of the Administrative Tribunal but out of objections to those judgements raised before the Committee itself."

B. Requests for advisory opinions

1. SCOPE OF POWER OF ORGANS TO REQUEST ADVISORY OPINIONS OF THE COURT

a. *Purpose of the request*

18. In its advisory opinion relating to the question of Western Sahara the Court stated:⁶

"An advisory opinion of the Court . . . may assist the General Assembly in the future decisions which it is called upon to take. The General Assembly has referred to its intention to 'continue its discussion of this question' in the light of the Court's advisory opinion. The Court, when considering the object of the questions in accordance with the text of resolution 3292 (XXIX), cannot fail to note this statement. . . . In general, an opinion given to the Court in the present proceedings will furnish the General Assembly with elements of a legal character relevant to its further treatment of the decolonization of Western Sahara.

"In any event, to what extent or degree its opinion will have an impact on the action of the General Assembly is not for the Court to decide. The function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect and, consequently, are not devoid of object or purpose."

**b. *Existence of a contentious procedure*

c. *Prior consent of the States concerned*

19. In the case of Western Sahara the Court, in response to Spain's assertion that the giving of an advisory opinion without the consent of the interested State would be incompatible with the Court's juridical character, referred to the case of International Peace Treaties with Bulgaria, Hungary and Romania⁷ and stated:

"The Court, it is true, affirmed in this pronouncement that its competence to give an opinion did not depend on the consent of the interested States, even when the case concerned a legal question actually pending between them. However, the Court proceeded not merely to stress its judicial character and the permissive nature of Article 65, paragraph 1, of the Statute but to examine, specifically in relation to the opposition of some of the interested States, the question of the judicial propriety of giving the opinion. Moreover, the

Court emphasized the circumstances differentiating the case then under consideration from the Status of Eastern Carelia case and explained the particular grounds which led it to conclude that there was no reason requiring the Court to refuse to reply to the request. Thus the Court recognized that lack of consent might constitute a ground for declining to give the opinion requested if, in the circumstances of a given case, considerations of judicial propriety should oblige the Court to refuse an opinion. In short the consent of an interested State continued to be relevant, not for the Court's competence, but for the appreciation of the propriety of giving an opinion.

"In certain circumstances, therefore, the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character. An instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its dispute to be submitted to judicial settlement without its consent. If such a situation should arise, the powers of the Court under the discretion given to it by Article 65, paragraph 1, of the Statute, would afford sufficient legal means to ensure respect for the fundamental principle of consent to jurisdiction.

"The situation existing in the present case is not, however, the one envisaged above. There is in this case a legal controversy, but one which arose during the proceedings of the General Assembly and in relation to matters with which it was dealing. It did not arise independently in bilateral relations. In a communication addressed on 10 November 1958 to the Secretary-General of the United Nations, the Spanish Government stated: 'Spain possesses no non-self-governing territories, since the territories subject to its sovereignty in Africa are, in accordance with the legislation now in force, considered to be and classified as provinces of Spain'. This gave rise to the 'most explicit reservations' of the Government of Morocco, which, in a communication to the Secretary-General of 20 November 1958, stated that it 'claim[ed] certain African territories at present under Spanish control as an integral part of Moroccan national territory'."8

**2. OBLIGATIONS TO SUBMIT LEGAL QUESTIONS TO THE COURT

3. CONSIDERATION OF THE NATURE AND TYPE OF QUESTIONS TO BE SUBMITTED TO THE COURT

a. *The political or legal nature of the question*

(i) *Question concerning Namibia*

20. In its preliminary remarks in the case concerning Namibia and in response to South Africa's contention that the Court was not competent to give the requested advisory opinion if it should have to make findings as to extensive factual issues, the Court stated that:

"... the contingency that there may be factual issues underlying the question posed does not alter its character as a 'legal question' as envisaged in Article 96 of the Charter. The reference in this provision to legal questions cannot be interpreted as opposing legal to factual issues. Normally, to enable a court to pronounce on legal questions, it must also be acquainted with, take into account and, if necessary, make findings as to the relevant factual issues. The limitation of the powers of the Court intended for

by the Government of South Africa has no basis in the Charter or the Statute."9

(ii) *Question concerning the Western Sahara*

21. The question whether the Court was competent to render an advisory opinion on the question of Spanish Sahara was raised during the twenty-ninth session of the General Assembly. Some representatives expressed the view that, because of the political character of the legal issue, it was not appropriate to request a legal opinion. They contended that the General Assembly, as before, should keep exclusive concern for the issues of decolonization and self-determination as raised by the Territory.¹⁰ Other representatives thought that the question was not a purely historical, factual or political one, but one as to which enlightenment was required on a point of law, namely, whether the Sahara had been *terra nullius* at the time of colonization.¹¹

22. In its advisory opinion, the Court answered the contention that the questions submitted to it were not legal, but either factual or of a purely historical or academic character, as follows:

"The questions submitted by the General Assembly have been framed in terms of law and raise problems of international law: whether a territory was *terra nullius* at the time of its colonization; what legal ties there were between that territory and the Kingdom of Morocco and the Mauritanian entity. These questions are by their very nature susceptible of a reply based on law; indeed, they are scarcely susceptible of a reply otherwise than on the basis of law. In principle, therefore, they appear to the Court to be questions of a legal character. It may be added that none of the States which have appeared before it have contended that the questions are not legal questions within the meaning of Article 96, paragraph 1, of the Charter and Article 65, paragraph 1, of the Statute. It is necessary, however, to consider the matter further, because doubts have been raised concerning the legal character of the questions in the particular circumstances of this case."¹²

23. The Court added that:

"... a mixed question of law and fact is none the less a legal question within the meaning of Article 96, paragraph 1, of the Charter and Article 65, paragraph 1, of the Statute.

"...

"Thus, to assert that an advisory opinion deals with a legal question within the meaning of the Statute only when it pronounces directly upon the rights and obligations of the States or parties concerned, or upon the conditions which, if fulfilled, would result in the coming into existence, modification or termination of such a right or obligation, would be to take too restrictive a view of the scope of the Court's advisory jurisdiction. It has undoubtedly been the usual situation for an advisory opinion of the Court to pronounce on existing rights and obligations, or on their coming into existence, modification or termination, or on the powers of international organs. However, the Court may also be requested to give its opinion on questions of law which do not call for any pronouncement of that kind, though they may have their place within a wider problem the solution of which could involve such matters. This does not signify that the Court is any the less competent to entertain the request if it is satisfied that the questions are in fact legal ones, and to give an opinion once it is satisfied that there is no compelling reason for declining to do so.

"The Court accordingly finds that it is competent under Article 65, paragraph 1, of its Statute to entertain the present request, by which the General Assembly has referred to it questions embodying such concepts of law as *terra nullius* and legal ties, regardless of the fact that the Assembly has not requested the determination of existing rights and obligations. At the same time it appears from resolution 3292 (XXIX) that the opinion is sought for a practical and contemporary purpose, namely, in order that the General Assembly should be in a better position to decide at its thirtieth session on the policy to be followed for the decolonization of Western Sahara. However, the issue of the relevance and practical interest of the questions posed concerns, not the competence of the Court, but the propriety of its exercise. It is therefore in considering the subject of judicial propriety that the Court will examine the objection which has been raised in this connection, alleging that the questions are devoid of any useful object."¹³

(iii) *Question concerning Administrative Tribunal Judgement No. 158*

24. In its advisory opinion on Administrative Tribunal Judgement No. 158, the Court answered the question whether the advisory jurisdiction may be used for the judicial review of contentious proceedings which have taken place before other tribunals and to which individuals were parties, as follows:

"... the existence, in the background, of a dispute the parties to which may be affected as a consequence of the Court's opinion, does not change the advisory nature of the Court's task, which is to answer the questions put to it with regard to a judgment. Thus, in its Opinion concerning Judgements of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO (I.C.J. Reports 1956, p. 77), the Court upheld its competence to entertain a request for an advisory opinion for the purpose of reviewing judicial proceedings involving individuals. Moreover, in the earlier advisory proceedings concerning the Effect of Awards of Compensation Made by the United Nations Administrative Tribunal (I.C.J. Reports 1954, p. 47), the Court replied to the General Assembly's request for an opinion notwithstanding the fact that the questions submitted to it closely concerned the rights of individuals. The Court sees no reason to depart from the position which it adopted in these cases. If a request for advisory opinion emanates from a body duly authorized in accordance with the Charter to make it, the Court is competent under Article 65 of its Statute to give such opinion on any legal question arising within the scope of the activities of that body. The mere fact that it is not the rights of States which are in issue in the proceedings cannot suffice to deprive the Court of a competence expressly conferred on it by its Statute."¹⁴

**b. *Difficult and important points of law*

**c. *Interpretation of the United Nations Charter*

**d. *Interpretation of treaties*

4. FORMULATION OF QUESTION SUBMITTED TO THE COURT

25. During the proceedings leading to the adoption of General Assembly resolution 3292 (XXIX) of 13 December 1974, by which the General Assembly requested an

advisory opinion on the question of Spanish Sahara, some representatives considered that the terms of a request for advice and the way in which it was drafted were very important since the Court would make its pronouncement in accordance with the terms in which the advice was requested. They recalled that annex II to the rules of procedure of the General Assembly, concerning methods and procedures of the General Assembly for dealing with legal and drafting questions, recommended "(a) that, whenever any Committee contemplates making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, the matter may, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee for advice on the legal aspects and on the drafting of the request, or the Committee concerned may propose that the matter should be considered by a joint Committee of itself and the Sixth Committee."¹⁵ In response to a request for a legal opinion on the meaning of these provisions, the Legal Counsel stated that annex II, paragraph 1 (a) of the rules of procedure of the General Assembly was not obligatory but optional; it was merely a recommendation and it was within the discretion of the Fourth Committee to make a decision or not. Since the Sixth Committee had concluded its work, he felt that it would be extremely difficult, if not impossible, to reconvene it to consider that question. However, should the Fourth Committee decide to request the opinion of a legal body, a small joint committee of the Fourth and Sixth Committees, possibly consisting of officers as well as a few members of both Committees, might be established in order to examine the legal aspects of the contemplated request to the International Court of Justice.¹⁶ In the light of this explanation the Fourth Committee decided to refer the matter directly to the General Assembly although one representative regretted that the procedure envisaged in annex II to the rules of procedure had not been followed.

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

26. During the discussion of the question of the Spanish Sahara by the Fourth Committee, some representatives were of the view that the opinion rendered by the Court could influence the decision to be taken by the General Assembly and enhance the process of decolonization in the Sahara.¹⁷

27. During the debate at the 1550th meeting of the Security Council on the question of the situation in Namibia, some representatives raised doubt concerning the effect of an opinion whose effect would only be advisory. They feared that the opinion would only delay the solution of the Namibian problem and create false delusions as to the possibility of solving it by legal means rather than by serious political action on the part of the Security Council. Other representatives felt that the request for an advisory opinion from the Court was to elicit the scope of legal means at the disposal of States, which might erect a wall of legal opposition to the occupation of Namibia by the Government of South Africa.

6. THE FORWARDING OF REQUESTS TO THE COURT

28. In its resolution 284 (1970), the Security Council requested the Secretary-General to transmit to the Court, in accordance with Article 65 of its Statute, the resolution "accompanied by all documents likely to throw light upon the question". Accordingly, the Secretary-General

transmitted to the Court, with a covering letter, two certified true copies of the English and French texts of the resolution and a dossier of documents likely to throw light upon the question, together with an introductory note.¹⁸

29. The request for an advisory opinion concerning Administrative Tribunal Judgement No. 158 made by the Committee on Applications for Review of Administrative Tribunal Judgements was transmitted by the Secretary-General to the Court. The decision of the Committee was set out *in extenso* in the Secretary-General's letter and certified copies thereof in English and French were enclosed.¹⁹ Later the Secretary-General transmitted the dossier under Article 65 (2) of the International Court of Justice Statute.²⁰

30. In the Western Sahara case, the Secretary-General informed the Court by letter that, in its resolution 3292 (XXIX), adopted on 13 December 1974, the General Assembly had decided to request an advisory opinion at an early date on the questions concerning Spanish Sahara.²¹ Paragraph 2 of the resolution called upon States either in the capacity as administering Power, or in their capacity as interested parties, to submit to the Court all such information and documents that might be needed to clarify the issue. Accordingly, the Government of Spain submitted six volumes entitled "Information and Documents presented by the Spanish Government to the Court in accordance with paragraph 2 of resolution 3292 (XXIX) of the United Nations General Assembly", and two volumes of "Further Documents" submitted on the same basis.²² Morocco similarly submitted a large number of documents "in support of its written statement and in accordance with paragraph 2 of resolution 3292 (XXIX)".²³ Mauritania likewise appended documentary annexes to its written statement.²⁴ All these included cartographical information. The Secretary-General, pursuant to Article 65 (2) of the Statute and Article 88 of the Rules of the Court, transmitted to the Court a dossier of documents likely to throw light upon the question, together with an introductory note.²⁵

7. WRITTEN AND ORAL STATEMENTS

31. After having received the request for an advisory opinion on the question relating to Namibia, the President of the Court decided that Member States of the United Nations were likely to provide information on the question. By an Order dated 5 August 1970, he fixed 23 September 1970 as the time-limit within which the Court would be prepared to receive written statements from them. On 21 August 1970 the President decided that, in addition to the Member States of the United Nations, the non-member States entitled to appear before the Court were also likely to be able to furnish information on the question.²⁶

32. In the proceedings relating to the review of Administrative Tribunal Judgement No. 158, the court decided that the United Nations and its Member States were likely to be able to furnish information on the question. Accordingly, the Registrar notified the Organization and its Member States, pursuant to Article 66 (2) of the Statute of the Court, that the Court would be prepared to receive written statements from them.²⁷

33. The only written statement filed was the one by the Secretary-General, comprising a statement on his own views as well as, pursuant to paragraph 2 of Article 11 of the Statute of the Administrative Tribunal, a statement, submitted by the counsel of the former staff member to whom the Judgement of the Tribunal related. Copies of the entire statement were transmitted by the Registrar to the States to which the communication provided for in Article 66 (2) of the Statute had been

addressed. At the same time these States and the Secretary-General were informed that public hearings for the submission of oral statements would not be held in the case.²⁸ On the basis of communications from the former staff member concerned, transmitted to the Registrar by the Secretary-General, it subsequently appeared to the President of the Court that there was doubt whether the statement furnished to the Secretary-General and transmitted to the Court accurately represented the staff member's view. A corrected statement of the views of the staff member was later filed through the Secretary-General and copies thereof were communicated to States. Written statements on those statements were subsequently filed on behalf of the United Nations, comprising comments of the Secretary-General on the corrected version of the statement of the staff member and comments of the latter on the original statement of the Secretary-General. Copies of the comments were communicated to States.

34. In the proceedings relating to the Western Sahara, the Court decided that the Member States of the United Nations were likely to be able to furnish information on the question. Accordingly, the President, by an order dated 3 January 1975,²⁹ fixed 27 March 1975 as the time-limit within which the Court would be prepared to receive written statements from them.³⁰ On 23 April 1975 the Registrar transmitted to the Member States of the United Nations the introductory note and the list of the documents comprised in the dossier.

35. In the course of twenty-seven public sittings held between 25 June and 3 July 1975 oral statements were made to the Court by Morocco, Mauritania, Zaire, Algeria and Spain.³¹

8. PRIOR DECISIONS CONCERNING THE BINDING EFFECTS OF ADVISORY OPINIONS

36. In its advisory opinion on Application for Review of Judgement No. 158 the Court refused to consider a previously decided conclusive effect with respect to the matters in litigation as an obstacle to the Court's replying to the request for an opinion. The Court stated that:

"... the special effect to be attributed to the Court's opinion by Article 11 of the Statute of the United Nations Administrative Tribunal furnishes no reason for refusing to comply with the request for an opinion in the present instance."³²

Although the Court did not consider the review procedure provided by Article 11 as free from difficulty it had no doubt that, as in the 1956 proceedings concerning the ILO Administrative Tribunal, it should not "adopt in this matter a negative attitude which would imperil the working of the régime established by the Statute of the Administrative Tribunal for the judicial protection of officials" (I.C.J. Reports 1956, p. 86).³³

9. EFFECT GIVEN TO ADVISORY OPINIONS OF THE COURT

a. Advisory opinion on Namibia

37. In its resolution 301 (1971) adopted on 20 October 1971 the Security Council "took note" of the advisory opinion of the International Court of Justice and "agreed" with the Court's opinion on Namibia. The Security Council later referred to the opinion in its resolution 323 (1972) of 6 December 1972. In resolution 366 (1974) of 17 December 1974, the Security Council demanded that South Africa make a solemn declaration that it would comply with the opinion.

b. *Advisory opinion on Spanish Sahara*

38. By resolution 3458 A (XXX), the General Assembly "took note" of the advisory opinion given by the Court.

c. *Advisory opinion on Administrative Tribunal Judgement No. 158*

39. After the Court decided its advisory opinion in response to the request addressed to it by the Committee on Applications for Review of Administrative Tribunal Judgements in the case of Administrative Tribunal Judgement No. 158, the Secretary-General transmitted the Court's opinion to the Administrative Tribunal pursuant to Article 11 (3) of its Statute. By part of its Judgement No. 177, the Tribunal confirmed its Judgement No. 158.

NOTES

- ¹ICJ Reports 1971, p. 16.
²Ibid., 1973, p. 166.
³Ibid., 1975, p. 12.
⁴Ibid., 1973, pp. 172-173, paras. 16-19.
⁵Ibid., 1973, p. 174, paras. 20-21.
⁶Ibid., 1975, pp. 36-37, paras. 72-73.
⁷Ibid., 1950, p. 65.
⁸Ibid., 1975, pp. 24-25, paras. 32-34.
⁹Ibid., 1971, p. 27, para. 40.
¹⁰G A (29), 4th Com., 2130th mtg., paras. 43-48.
¹¹Ibid., 2117th mtg., paras. 11-59.
¹²ICJ Reports 1975, p. 18, para. 15.
¹³Ibid., 1975, p. 19, para. 17; p. 20, paras. 19-20.
¹⁴Ibid., 1973, pp. 171-172, para. 14.
¹⁵Rules of Procedure of the General Assembly, A/520/Rev.11, annex II, part I, 1 (a).

- ¹⁶G A (29), 4th Com., 2130th mtg., Legal Counsel, para. 79.
¹⁷Ibid., 2117th, 2124th and 2125th mtgs. Egypt and Iran.
¹⁸ICJ Pleadings, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), vol. I, pp. 3 *et seq.*
¹⁹ICJ Pleadings, Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, p. 3.
²⁰Ibid., pp. 5-23.
²¹ICJ Pleadings, Western Sahara, vol. I, p. 3.
²²Ibid., vol. I, pp. 224-425 and vol. II, pp. 3-468.
²³Ibid., vol. III, pp. 125-497.
²⁴Ibid., vol. III, pp. 3-124.
²⁵Ibid., vol. I, pp. 11-60.
²⁶The following States submitted to the Court written statements or letters setting forth their views: Czechoslovakia, Finland, France, Hungary, India, the Netherlands, Nigeria, Pakistan, Poland, South Africa, the United States of America, Yugoslavia. Copies of these communications were transmitted to all States entitled to appear before the Court, and to the Secretary-General of the United Nations. Twenty-three public sittings were held by the Court between 8 February and 17 March 1971. Oral statements were made to the Court on behalf of the following States and Organizations: United Nations, Finland, Organization of Arab Unity, India, Netherlands, Nigeria, Pakistan, South Africa, Viet Nam and United States of America.
²⁷ICJ Pleadings, Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, pp. 183-184.
²⁸Ibid., p. 187.
²⁹ICJ Reports 1975, p. 3.
³⁰The following States submitted written statements or letters to the Court in response to the Registrar's communications: Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, France, Guatemala, Mauritania, Morocco, Nicaragua, Panama and Spain.
³¹ICJ Pleadings, Western Sahara, vols. IV and V.
³²ICJ Reports 1973, p. 183, para. 39.
³³Ibid., para. 40.



Chapter XV
THE SECRETARIAT

