

## ARTICLE 96

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## 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. In general, the structure of the present study follows that of the corresponding study in *Repertory Supplement No. 5*. The major headings of the study with their sub-headings have been retained, but another major heading dealing with particular as well as diverse issues has been added with respect to various actions to be noted in the practice followed during the period under review.

### I. GENERAL SURVEY

#### A. Authorizations to request advisory opinions

2. During the period under review, no organ of the United Nations and no specialized agency was authorized by the General Assembly to request advisory opinions of the International Court of Justice.

#### B. Requests for advisory opinions

3. During the period under review, three advisory opinions were requested of the International Court of Justice. As at 31 December 1984, two advisory opinions had been delivered; the third was still *pendente litis*.

#### 1. INTERPRETATION OF THE AGREEMENT OF 25 MARCH 1951 BETWEEN THE WHO AND EGYPT

4. On 20 May 1980, the World Health Assembly decided to request of the Court an advisory opinion on the questions arising from a possible transfer of the WHO Regional Office in Alexandria from the territory of Egypt, especially with respect to the negotiation and notice provisions embodied in section 37 of the Agreement of 25 March 1951 between WHO and Egypt,<sup>1</sup> which read:

“The present Agreement may be revised at the request of either party. In this event the two parties shall consult each other concerning the modifications to be made in its provisions. If the negotiations do not result in an understanding within one year, the present Agreement may be denounced by either party giving two years’ notice.”<sup>2</sup>

5. The World Health Assembly requested from the Court an opinion on whether section 37 was applicable in

the event of a transfer of the Regional Office from Egypt and, if so, what would be the legal responsibilities of both parties during the two-year period.<sup>3</sup> The questions submitted to the Court read as follows:<sup>4</sup>

“1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt?

“2. If so, what would be the legal responsibilities of both the World Health Organization, and Egypt, with regard to the Regional Office in Alexandria, during the two-year period between notice and termination of the Agreement?”

6. The Court delivered its advisory opinion on 20 December 1980.<sup>5</sup> It stated that: (a) in the event specified in the request, both parties had “to consult together in good faith”; (b) in the event of a final transfer of the Regional Office from Egypt, “mutual obligations of cooperation” place a duty upon WHO and Egypt to consult and to negotiate with a view towards effecting the transfer in an orderly manner and with a minimum of prejudice to the work of the organization and the interests of Egypt; and (c) the party desiring the transfer must give a reasonable period of notice to the other party.<sup>6</sup>

7. With respect to the legal responsibilities of both parties during the transitional period, the Court stated that they were “to fulfil in good faith the mutual obligations which the Court has set out in answering Question 1”.<sup>7</sup>

<sup>1</sup>*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, p. 73,*

<sup>2</sup>*Ibid.*

<sup>3</sup>*Ibid., p. 73.*

<sup>4</sup>*Ibid., p. 95-96, para. 49.*

<sup>5</sup>*Ibid., p. 96, para. 50.*

**2. APPLICATION FOR REVIEW OF JUDGEMENT NO. 273 OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL**

8. On 13 July 1981, the United Nations Committee on Applications for Review of Administrative Tribunal Judgements, to which an application had been presented by the Government of the United States of America, decided to request an advisory opinion of the Court on a case related to the payment to a former United Nations staff member on his retirement of what is known as the repatriation grant.<sup>8</sup>

9. Mr. Mortished had been refused that grant by the Secretary-General on the basis of General Assembly resolution 34/165 of 17 December 1979 which required, for the payment of repatriation grants, evidence of relocation to a country other than the country of the staff member's last duty station. Upon a request of Mr. Mortished, the Administrative Tribunal had decided on 15 May 1981<sup>9</sup> that General Assembly resolution 34/165 could not be given immediate effect since the General Assembly had at no time contemplated supplementing or amending the provisions relating to the repatriation grant contained in the Staff Regulations, nor had it examined the text of the Staff Rules in force since 1979, and it had never claimed that there was any defect in the provisions introduced on that date which diminished their validity.

10. Recalling that it had ruled earlier that the Applicant's entitlement to the repatriation grant had been explicitly recognized at the time of his appointment together with the relationship between the amount of the grant and the length of service, the Tribunal had concluded that the Applicant had an acquired right to the repatriation grant without the need to produce evidence of the actual relocation.<sup>10</sup>

11. On 23 July 1981, the Committee requested an advisory opinion of the Court on the following question:<sup>11</sup>

"Is the judgement of the United Nations Administrative Tribunal in Judgement No. 273, *Mortished v. the Secretary-General*, warranted in determining that General Assembly resolution 34/165 of 17 December 1979 could not be given immediate effect in requiring, for the payment of repatriation grants, evidence of relocation to a country other than the country of the staff member's last duty station?"

12. The Court delivered its Advisory Opinion on 20 July 1982.<sup>12</sup> It interpreted the question put to it as requiring it to determine whether, with respect to the matters mentioned in the above question, the Administrative Tribunal had "erred on a question of law relating to the provisions of the Charter of the United Nations" or "exceeded its jurisdiction or competence"<sup>13</sup>; and it gave negative answers to both those questions.<sup>14</sup>

**3. APPLICATION FOR REVIEW OF JUDGEMENT NO. 333 OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL**

13. On 23 August 1984, the United Nations Committee on Applications for Review of Administrative Tribunal Judgements, at the request of the interested party, decided

to request an advisory opinion of the Court<sup>15</sup> on a case related to a decision made by the Secretary-General against the reappointment of a staff member whose fixed-term contract had expired.<sup>16</sup>

14. The questions put to the Court read as follows:<sup>17</sup>

"(1) In its Judgement No. 333 of 8 June 1984 (AT/DEC/333), did the United Nations Administrative Tribunal fail to exercise jurisdiction vested in it by not responding to the question whether a legal impediment existed to the further employment in the United Nations of the Applicant after the expiry of his contract on 26 December 1983?

"(2) Did the United Nations Administrative Tribunal, in the same Judgement No. 333, err on questions of law relating to provisions of the Charter of the United Nations?"

15. As at 31 December 1984, the Court had not yet delivered its advisory opinion. By an Order of 30 November 1984,<sup>18</sup> the Court had extended to 28 February 1985 the time limit within which written statements might be submitted in accordance with Article 66, paragraph 2, of the Statute of the Court.

### C. Miscellaneous

16. During the period under review, several actions were carried out which, without directly involving authorizations to request advisory opinions, nevertheless had a bearing upon Article 96.

#### 1. CONSTITUTION OF UNIDO

17. The Constitution of the United Nations Industrial Development Organization, adopted at Vienna on 8 April 1979, empowers the Conference and the Board of UNIDO to request advisory opinions of the Court, subject to authorization from the General Assembly of the United Nations.<sup>19</sup>

#### 2. MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

18. The Manila Declaration on the Peaceful Settlement of International Disputes, adopted by the General Assembly on 15 November 1982,<sup>20</sup> provides that the organs of the United Nations and the specialized agencies should study the advisability of using the possibility of requesting advisory opinions of the Court.

#### 3. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

19. The United Nations Convention on the Law of the Sea, adopted at Montego Bay, Jamaica, on 10 December 1982<sup>21</sup> empowers the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to give advisory opinions at the request of the Assembly or the Council of the International Seabed Authority.<sup>22</sup>

<sup>8</sup>Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, *Advisory Opinion*, I.C.J. Reports 1982, p. 325, p. 326, para. 1.

<sup>9</sup>Ibid., pp. 327-330, paras. 10-12.

<sup>10</sup>Ibid.

<sup>11</sup>Ibid., p. 326, para. 1.

<sup>12</sup>Ibid., p. 325.

<sup>13</sup>Ibid., p. 365, para. 79.

<sup>14</sup>Ibid.

<sup>15</sup>Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, Order of 19 September 1984, I.C.J. Reports 1984, p. 212.

<sup>16</sup>Ibid.

<sup>17</sup>Ibid., pp. 212-213.

<sup>18</sup>Ibid., p. 639.

<sup>19</sup>A/CONF.90/19, article 22.

<sup>20</sup>G A resolution 37/10, annex.

<sup>21</sup>Official Records of the Third United Nations Conference on the Law of the Sea, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

<sup>22</sup>Ibid., article 191.

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. Authorizations to request advisory opinions

20. Although no organ of the United Nations or any specialized agency during the period under review was authorized by the General Assembly to request advisory opinions of the Court, it must be noted that the UNIDO Constitution, adopted on 8 April 1979, formally empowers the Conference and the Board to do so, subject to authorization from the General Assembly of the United Nations.<sup>23</sup>

#### 1. THE ORGANS TO BE AUTHORIZED TO REQUEST ADVISORY OPINIONS

21. For the first time since the creation of the Court, the World Health Organization in 1980 requested an advisory opinion of the Court in accordance with Article 96, paragraph 2, of the Charter of the United Nations, article 76 of the Constitution of the World Health Organization,<sup>24</sup> and article X, paragraph 2, of the Agreement between the United Nations and the World Health Organization,<sup>25</sup> as approved by the General Assembly of the United Nations on 15 November 1947.<sup>26</sup>

22. During the period under review, for the second time,<sup>27</sup> the United Nations Committee on Applications for Review of Administrative Tribunal Judgements in 1981<sup>28</sup> requested an advisory opinion of the Court under the terms of article 11, paragraphs 1 and 2, of the statute of the United Nations Administrative Tribunal. That was, however, the first such request to arise from the Committee's consideration of an application by a Member State,<sup>29</sup> whereas in 1973 the advisory proceedings had been set in train by a staff member's application to the Committee.<sup>30</sup>

23. On this occasion, the Court addressed once more<sup>31</sup> the compatibility of the review procedure with the Charter, more especially Article 96, and confirmed its earlier position that "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".<sup>32</sup> The Court also confirmed that the Committee on Applications for Review of Administrative Tribunal Judgements was indeed "an organ of the United Nations, duly constituted under Articles 7 and 22 of the Charter, and duly authorized under Article 96, paragraph 2, of the Charter to request advisory opinions of the Court for the purpose of article 11 of the statute of the United Nations Administrative Tribunal".<sup>33</sup> With respect to the part played by a Member State in submitting an application

<sup>23</sup>A/CONF.90/19, article 22.

<sup>24</sup>United Nations, *Treaty Series*, vol. 14, No. 221, p.185.

<sup>25</sup>Ibid., vol. 191, part II, No. 115, p. 193.

<sup>26</sup>G A resolution 124 (III).

<sup>27</sup>I.C.J. Reports 1982, p. 331, para. 16.

<sup>28</sup>Ibid., p. 326, para. 1.

<sup>29</sup>Ibid., p. 331, para. 16.

<sup>30</sup>Ibid., p. 332, para. 17; see also *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1973, p. 170, para. 10.

<sup>31</sup>I.C.J. Reports 1973, p. 172, para. 14.

<sup>32</sup>I.C.J. Reports 1982, p. 333, para. 20; I.C.J. Reports 1973, p. 172, para. 14.

<sup>33</sup>I.C.J. Reports 1982, p. 334, para. 21.

for review, the Court stated<sup>34</sup> that, "once the Committee has decided that there is a substantial basis for the application, the request for advisory opinion comes from the Committee and not from the Member State." The request therefore did not emanate from a Member State, nor did it constitute an intervention, at the review level, of a Member State and hence of a third person in relation to the original proceedings.<sup>35</sup>

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

24. In the case relating to *Administrative Tribunal Judgement No. 273*, the Court indicated<sup>36</sup> that it could be asked to consider whether the Tribunal might have "committed a fundamental error in procedure which has occasioned a failure of justice" as contemplated by article 11, paragraph 1, of the Tribunal's Statute. The Court, however, did not give further consideration to this point in that particular instance since it had not been asked to do so, nor did the matter appear on the face of it to disclose any failure of justice.<sup>37</sup>

25. In the same case, the Court held<sup>38</sup> that its jurisdiction under article 11 of the Tribunal's Statute was "limited to the four specific grounds of objection there specified", and therefore that in the present case:

"in order to respond to the request made by the Committee, it must determine whether each of the objections, for which the Committee found there was a 'substantial basis', is well-founded, despite the fact that neither of those objections is, in terms, stated in the request for the Court's opinion."<sup>39</sup>

### B. Requests for advisory opinions

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

##### (a) Purpose of the requests

26. In the case concerning the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, the Court addressed the allegedly political character of the request and stated:<sup>40</sup>

"Indeed, in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate, especially when these may include the interpretation of its constitution."

27. In the case concerning *Administrative Tribunal Judgement No. 273*, the Court, while reaffirming the discretionary character of its competence to render an advisory opinion under Article 65 of its Statute, underlined:<sup>41</sup>

<sup>34</sup>Ibid., p. 335, para. 24.

<sup>35</sup>Ibid., p. 336, para. 24.

<sup>36</sup>Ibid., p. 341, para. 35.

<sup>37</sup>Ibid., pp. 341-342, para. 35.

<sup>38</sup>Ibid., p. 349, para. 47.

<sup>39</sup>Ibid., p. 350, para. 48.

<sup>40</sup>I.C.J. Reports 1980, p. 87, para. 33.

<sup>41</sup>I.C.J. Reports 1982, p. 347, para. 45.

"The stability and efficiency of the international organizations, of which the United Nations is the supreme example, are however of such paramount importance to world order, that the Court should not fail to assist a subsidiary body of the United Nations General Assembly in putting its operation upon a firm and secure foundation."

28. At the same time, the Court warned<sup>42</sup> that it would be a compelling reason, making it appropriate for it to entertain a request, should its judicial role be endangered or discredited. The Court however did not consider that the various irregularities to be found in the present case should prevent it from rendering the advisory opinion requested, and did not therefore refuse its participation in the activities of the Organization, "so that the important legal principles involved may be disposed of".<sup>43</sup>

**\*\*(b) Existence of a contentious procedure**

**\*\*(c) Prior consent of the States concerned**

**\*\*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**

29. In the case concerning the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, the Court dealt with the question whether it ought to decline to reply to the request by reason of its allegedly political character.<sup>44</sup> It recalled that, in accordance with the "settled jurisprudence of the Court . . . the Court has not to deal with the motives which may have inspired the request".<sup>45</sup>

**(b) Difficult and important points of law**

30. In the case concerning the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, the Court, on the basis of its own jurisprudence as well as that of the Permanent Court of International Justice, emphasized that, in order to keep in line with its judicial character, it must ascertain what are "the legal questions really in issue in the questions posed in the request".<sup>46</sup> This duty of the Court was also justified by the need to avoid a reply which, "if incomplete, [would] be not only ineffectual but actually misleading as to the legal rules applicable to the matter under consideration by the requesting Organization".<sup>47</sup>

31. In the case concerning *Administrative Tribunal Judgement No. 273*, the Court indicated<sup>48</sup> that, when giving effect to a request by the Review Committee for an advisory opinion, it should, "in accordance with its established jurisprudence, seek to bring out what it conceives to be the real meaning of the Committee's request, and thereafter proceed to attempt to answer rationally and effectively 'the legal questions really in issue' (*I.C.J. Reports 1980*, p. 89, para. 35)."

**(c) Interpretation of the Charter of the United Nations**

32. In the case concerning *Administrative Tribunal Judgement No. 273*, the Court addressed<sup>49</sup> the ground of an error on a question of law relating to the provisions of the Charter of the United Nations. The Court indicated that, when asked for an advisory opinion in respect of this ground of objection, "the Court should not attempt . . . to fill the role of a court of appeal and to retry the issues on the merits of this case as they were presented to the Tribunal".<sup>50</sup> In said respect, the Court held:<sup>51</sup>

"While to that extent the Court has therefore to examine the Tribunal's decision on the merits, it is not the business of the Court, after making that examination, itself to get involved in the question of the proper interpretation of the Staff Regulations and Staff Rules, as such, further than is strictly necessary in order to judge whether the interpretation adopted by the Tribunal is in contradiction with the requirements of the provisions of the Charter of the United Nations."

33. This conclusion led the Court to underline that every question of the interpretation or application of the regulations and rules applied by the Administrative Tribunal was not necessarily "a question of law relating to the provisions of the Charter".<sup>52</sup> As a result, the Court refused to enter upon the question of the possibility of an "acquired right" which could derive from relevant provisions of the Staff Regulations and Staff Rules as established by the Tribunal in its Judgement No. 273.<sup>53</sup> The Court stated<sup>54</sup> that "the concept of an acquired right is . . . neither defined nor even mentioned in the Charter". Thus leaving within the jurisdiction of the Tribunal the proper interpretation of the relevant staff regulations and rules, the Court held:<sup>55</sup>

"the question—indeed, the only matter on which the Court can pass—is whether the Tribunal erred on a question of law relating to the provisions of the Charter of the United Nations. This it clearly did not do when it attempted only to apply to Mr. Mortished's case what it found to be the relevant staff regulations and rules made under the authority of the General Assembly."

**\*\*(d) Interpretation of treaties**

**4. FORMULATION OF QUESTION SUBMITTED TO THE COURT**

34. In the case concerning the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, the Court noted that the principal question put in the request had been formulated in a "hypothetical way".<sup>56</sup> The Court stated that, whenever such was the case, it must first "ascertain the meaning and full implications of the question"<sup>57</sup> so that its reply might not be "incomplete", "ineffectual" or "even misleading".<sup>58</sup>

<sup>42</sup>Ibid., p. 355, para. 57.

<sup>43</sup>Ibid., p. 356, para. 58.

<sup>44</sup>Ibid., p. 358, para. 64.

<sup>45</sup>Ibid., para. 65.

<sup>46</sup>Ibid., p. 363, para. 74.

<sup>47</sup>Ibid., para. 75.

<sup>48</sup>Ibid., p. 364, para. 76.

<sup>49</sup>I.C.J. Reports 1980, p. 76, para. 10.

<sup>50</sup>Ibid.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid.

<sup>53</sup>Ibid.

<sup>54</sup>Ibid.

<sup>55</sup>Ibid.

<sup>56</sup>I.C.J. Reports 1982, p. 349, para. 47.

35. Accordingly, the Court began "by setting out the pertinent elements of fact and of law which, in its view, constitute the context in which the meaning and implications of the first question posed in the request have to be ascertained".<sup>59</sup> This led the Court to analyse the historical origins of a Regional Office of WHO located in Alexandria,<sup>60</sup> the circumstances at the root of the request put to it<sup>61</sup> and the "differing views" in the WHO Assembly regarding the transfer of the Regional Office from Egypt,<sup>62</sup> and eventually to come to the conclusion that the "true legal question" under consideration in the World Health Assembly, and consequently submitted to the Court by the request, was:<sup>63</sup>

"What are the legal principles and rules applicable to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected?"

36. In the case concerning *Administrative Tribunal Judgement No. 273*, the Court held<sup>64</sup> that the Review Committee "operates between the Administrative Tribunal and this Court by determining the legal question to be submitted by it to the Court under Article 96, paragraph 2, of the Charter". The Court noted that, in formulating the question laid before it for advisory opinion,<sup>65</sup> the Committee "in fact adopted exactly the question formulated by the United States in its application to the Committee".<sup>66</sup> The Court indicated that the question put to it was "infelicitously expressed and vague",<sup>67</sup> and it stated:<sup>68</sup>

"it might have been differently and more happily phrased in language which made it clear that the question was a legal question arising within the scope of the activities of the Committee, in accordance with Article 96, paragraph 2, of the United Nations Charter."

37. The Court therefore refused to confine itself to answering the question as it had been put to it and recalled that its jurisdiction under article 11 of the Tribunal's statute was "limited to the four specific grounds of objection there specified".<sup>69</sup> With respect to "the primacy of article 11 over the actual terms of the request",<sup>70</sup> the Court interpreted the question put to it as:

"Requiring it to determine whether, with respect to the matters mentioned in that question, the Administrative Tribunal 'erred on a question of law relating to the provisions of the Charter of the United Nations,' or 'exceeded its jurisdiction or competence'".<sup>71</sup>

<sup>59</sup>Ibid.

<sup>60</sup>Ibid., pp. 76-85, paras. 11-27.

<sup>61</sup>Ibid., pp. 85-87, paras. 28-32.

<sup>62</sup>Ibid., p. 88, para. 34.

<sup>63</sup>I.C.J. Reports 1980, p. 88, para. 35.

<sup>64</sup>I.C.J. Reports 1982, p. 346, para. 43; see also I.C.J. Reports 1973, pp. 174, 176.

<sup>65</sup>See para. 11 above.

<sup>66</sup>I.C.J. Reports 1982, p. 348, para. 46.

<sup>67</sup>Ibid.

<sup>68</sup>Ibid.

<sup>69</sup>Ibid., p. 349, para. 47.

<sup>70</sup>Ibid., para. 48.

<sup>71</sup>Ibid., p. 350, para. 48.

\*\*5. THE EFFECT OF A REQUEST FOR AN ADVISORY OPINION UPON CONTINUED CONSIDERATION BY THE REQUESTING ORGAN UPON IMPLEMENTATION OF PRIOR DECISIONS IN THE CASE

#### 6. THE FORWARDING OF REQUESTS TO THE COURT

38. In the case concerning *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, the Director-General of the World Health Organization informed the Court, by a letter dated 21 May 1980, of resolution WHA33.16 adopted by the World Health Assembly on 20 May 1980, the text of which embodied the questions put forward to the Court.<sup>72</sup> The same resolution provided that the request for an advisory opinion had been made "prior to taking any decision on removal of the Regional Office".<sup>73</sup>

39. In the case concerning *Administrative Tribunal Judgement No. 273*, the question upon which the advisory opinion of the Court had been requested was laid before the Court by a letter dated 23 July 1981 from the Secretary-General.<sup>74</sup> By that letter the Secretary-General had transmitted to the Court the Committee's decision of 13 July 1981 to request an advisory opinion of the Court on Administrative Tribunal Judgement No. 273.<sup>75</sup>

#### 7. WRITTEN AND ORAL STATEMENTS

40. In the case concerning *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, written statements from eight States<sup>76</sup> were submitted to the Court within the time limit fixed by an Order of 6 June 1980.<sup>77</sup> However, neither a "written statement" nor "a synopsis of the case" nor "an index of the documents" was transmitted to the Court by the Director-General of WHO, who had only transmitted "a dossier of documents likely to throw light upon the questions".<sup>78</sup>

41. In the same case, oral statements were addressed to the Court by five States.<sup>79</sup> No oral statement was addressed to the Court by the Director of the Legal Division of WHO. In a reply to questions by the President of the Court, the Director of the Legal Division of WHO indeed stated that WHO did not intend to submit an argument to the Court on the questions put in the request for Opinion.<sup>80</sup>

42. In the proceedings concerning *Administrative Tribunal Judgement No. 273*, within the time limit fixed at 30 October 1981<sup>81</sup> and extended to 30 November 1981,<sup>82</sup> the Court received written statements from the Governments of France and the United States of America.<sup>83</sup> The Secretary-

<sup>72</sup>I.C.J. Reports 1980, pp. 73-74.

<sup>73</sup>Ibid., p. 74.

<sup>74</sup>I.C.J. Reports 1982, p. 326, para. 1.

<sup>75</sup>Ibid.

<sup>76</sup>Namely: Bolivia, Egypt, Iran, Jordan, Kuwait, Syrian Arab Republic, United Arab Emirates and United States of America, I.C.J. Reports 1980, p. 75, para. 4.

<sup>77</sup>I.C.J. Reports 1980, p. 67-68.

<sup>78</sup>Ibid., p. 75, para. 5.

<sup>79</sup>Namely: Egypt, Syrian Arab Republic, Tunisia, United Arab Emirates, United States of America; I.C.J. Reports 1980, p. 75, para. 8.

<sup>80</sup>Ibid., p. 75, para. 8.

<sup>81</sup>Order of 6 August 1981. I.C.J. Reports 1981, pp. 49-50.

<sup>82</sup>Ibid., pp. 52-53.

<sup>83</sup>I.C.J. Reports 1982, p. 327, para. 6.

General transmitted to the Court a statement setting forth the views of Mr. Ivor Peter Mortished, the former staff member to whom the judgement of the Administrative Tribunal related;<sup>84</sup> but the Secretary-General informed the Court that he would not be submitting a written statement to the Court other than formally transmitting the observation of Mr. Mortished.<sup>85</sup>

43. In the proceedings concerning the same case, the Court did not hold any sitting for the purpose of hearing oral statements or comments.<sup>86</sup>

#### 8. PRIOR DECISIONS CONCERNING THE BINDING EFFECTS OF ADVISORY OPINIONS

44. In the question concerning *Administrative Tribunal Judgement No. 273*, the Court confirmed its earlier position<sup>87</sup> 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".<sup>88</sup>

45. In the same case, the Court rejected an argument put forward by the Government of the United States to the effect that the binding effect to be given to an advisory opinion could jeopardize the Court's discretion to give or to refuse the opinion requested.<sup>89</sup> The Court considered that:<sup>90</sup>

"even if its giving of an advisory opinion were legally indispensable for a judgement of the Administrative Tribunal to become final—a point which it does not have to settle in relation to the present request — this consideration should not prevent it from maintaining unimpaired the discretionary character of its exercise of advisory jurisdiction."

#### 9. EFFECT GIVEN TO ADVISORY OPINIONS OF THE COURT

##### (a) *Advisory Opinion on the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*

46. On 18 May 1981, the World Health Assembly adopted by consensus a resolution<sup>91</sup> by which it thanked the Court for its advisory opinion of 20 December 1980 and accepted it. In the operative part of the same resolution,<sup>92</sup> the World Health Assembly:

"3. Requests the Director-General:

(a) to initiate action as contained in paragraph 51 of the advisory opinion and report the results to the sixtieth session of the Executive Board in January 1982 for consideration and recommendation to the Thirty-fifth World Health Assembly in May 1982;

(b) to continue to take whatever action he considers necessary to ensure the smooth operations of the techni-

cal, administrative and managerial programmes of the Regional Office for the Eastern Mediterranean Region during the period of consultation;

"4. Requests the Government of Egypt to hold consultations with the Director-General as mentioned above."

##### (b) *Advisory opinion on Administrative Tribunal Judgement No. 273*

47. Following the delivery by the Court of its advisory opinion on 20 July 1982, the Secretary-General transmitted to the Fifth Committee (Budgetary and Administrative) of the General Assembly a note dated 29 October 1982 on the repatriation grant.<sup>93</sup> The subject matter of Judgement No. 273 and the subsequent action by the Court were described briefly in paragraphs 2 to 4 of the Secretary-General's note. In paragraph 4, he informed the Assembly that "Mr. Mortished has been paid as ordered by the Tribunal". The Secretary-General stated that, "in order to avoid further prolonged litigation, it would be advisable as well as justifiable to treat similar claims in the same manner as decided by the Tribunal in the *Mortished* case." The Secretary-General also said that it was his intention "to act accordingly with respect to all claims for repatriation grant by staff members who had accrued qualifying service for the grant prior to 1 July 1979."

48. The United Nations Advisory Committee on Administrative and Budgetary Questions, after studying the Secretary-General's note, submitted to the Fifth Committee a report dated 26 November 1982, on the repatriation grant.<sup>94</sup> The Advisory Committee in its report<sup>95</sup> expressed its belief that correct action should be taken to ensure that, in the future, acquired rights would not be based on applications of the regulations which were contrary to the intent of the General Assembly. To that end, the Committee proposed a number of steps that should make it possible for the General Assembly to monitor more effectively how the Staff Regulations were being carried out.

49. These various steps were endorsed by the General Assembly in its resolution 37/235 of 21 December 1982, the annex to which sets forth the following amendments to the Staff Regulations of the United Nations:

"1. Article XII (General provisions of the Staff Regulations) shall read as follows"

*'Regulation 12.1:* These regulations may be supplemented or amended by the General Assembly, without prejudice to the acquired rights of staff members.

*'Regulation 12.2:* Such staff rules and amendments as the Secretary-General may make to implement these regulations shall be provisional until the requirements of regulations 12.3 and 12.4 below have been met.

*'Regulation 12.3:* The full text of provisional staff rules and amendments shall be reported annually to the General Assembly. Should the Assembly find that a provisional rule and/or amendment is inconsistent with the intent and purpose of the Regulations, it may direct

<sup>84</sup>Ibid.

<sup>85</sup>Ibid.

<sup>86</sup>Ibid., para. 9.

<sup>87</sup>I.C.J. Reports 1973, p. 183, para. 39.

<sup>88</sup>Ibid.; see also I.C.J. Reports 1982, p. 336, para. 25.

<sup>89</sup>I.C.J. Reports 1982, p. 336, para. 26.

<sup>90</sup>Ibid., p. 337, para. 26.  
<sup>91</sup>Resolution WHA34.11, reprinted in I.C.J. Yearbook 1980-1981, No. 35, pp. 139-140.

<sup>92</sup>Ibid.

<sup>93</sup>G A (37), 5th Comm., 26th mtg., reprinted in I.C.J. Yearbook 1982-1983, No. 37, pp. 128-129

<sup>94</sup>A/37/675; reprinted in I.C.J. Yearbook 1982-1983, No. 37, pp. 129-134.

<sup>95</sup>Ibid., para. 5.

that the rule and/or amendment be withdrawn or modified.

*Regulation 12.4:* The provisional rules and amendments reported by the Secretary-General, taking into account such modifications and/or deletions which may be directed by the General Assembly, shall enter into full force and effect on 1 January following the year in which the report is made to the Assembly.

*Regulation 12.5:* Staff rules shall not give rise to acquired rights within the meaning of regulation 12.1 while they are provisional.'

"2. The introductory paragraph of annex IV (Repatriation grant) of the Staff Regulations shall be amended to read:

'In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate. The repatriation grant shall not, however, be paid to a staff member who is summarily dismissed. Staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General. The amount of the grant shall be proportional to the length of service with the United Nations, as follows:.'

"..."

### C. Miscellaneous

50. During the period under review, with reservation of the request for advisory opinions of the International Court of Justice, United Nations organs and related bodies took three different actions, the scope of which may be noted as having a bearing on Article 92.

#### 1. CONSTITUTION OF UNIDO

51. The United Nations Conference on the Establishment of the United Nations Industrial Development Organization as a Specialized Agency adopted on 8 April 1979 the Constitution of the United Nations Industrial Development Organization.<sup>96</sup> Article 22 of the UNIDO Constitution, which deals with "settlement of disputes and requests for advisory opinions", provides in paragraph 2:<sup>97</sup>

"The Conference and the Board 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 Organization's activities."

#### 2. MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

52. On 15 November 1982, the General Assembly adopted the Manila Declaration on the Peaceful Settlement

of Disputes, the text of which is annexed to resolution 37/10.<sup>98</sup> With respect to the advisory jurisdiction of the International Court of Justice, the Declaration provides:

"The organs of the United Nations and the specialized agencies should study the advisability of making use of the possibility of requesting advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities, provided that they are duly authorized to do so."

53. During the debates which took place in the Sixth Committee,<sup>99</sup> several representatives<sup>100</sup> referred to the advisory function of the Court and welcomed the suggestion that greater use should be made by the United Nations and the specialized agencies of the Court's capacity to give advisory opinions on any legal question arising within the scope of their activities. The representative of Australia,<sup>101</sup> in particular, recalled that, between 1920 and 1945, the Permanent Court of International Justice had given 27 advisory opinions, whereas its successor had not been requested to give advisory opinions to anything like the same extent, although there had been a great increase in the number of bodies entitled to request advisory opinions without even having to do so on the basis of a unanimous decision. The same representative furthermore underlined that, while Governments obviously preferred to keep the law-creating and law-interpreting processes firmly within their control, it could be worthwhile to examine better procedures for the formulation and submission of requests for advisory opinions.

#### 3. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

54. The 1982 United Nations Convention on the Law of the Sea<sup>102</sup> has established the International Tribunal for the Law of the Sea,<sup>103</sup> which may form "chambers" for dealing with particular categories of disputes.<sup>104</sup> With respect to the Seabed Disputes Chamber of the Tribunal, which has already been established by section 5, Part XI, of the Convention, it must be observed that article 191 of the Convention provides:

"The Sea-Bed Disputes Chamber shall give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities. Such opinions shall be given as a matter of urgency."

<sup>98</sup>See the present *Supplement*, under Article 92, paras. 9-11.

<sup>99</sup>G A (37), 6th Comm., 20th-30th mtgs.

<sup>100</sup>See, in particular, G A (37), 6th Comm., 24th mtg., A/C.6/37/SR.24, para. 44; 26th mtg., A/C.6/37/SR.26, para. 9; 27th mtg., A/C.6/37/SR.27, para. 21; 29th mtg., A/C.6/37/SR.29, para. 52.

<sup>101</sup>Ibid., 24th mtg., A/C.6/37/SR.24, para. 44.

<sup>102</sup>Concluded at Montego Bay, Jamaica, on 10 December 1982; *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

<sup>103</sup>See article 287(1)(a) of the Convention, together with Annex VI, and the present *Supplement*, under Article 95, para. 10.

<sup>104</sup>See Annex VI of the Convention, article 15.

<sup>96</sup>A/CONF.90/19.

<sup>97</sup>Ibid., article 22.

**Chapter XV**  
**THE SECRETARIAT**

