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 of this Article in *Repertory Supplements Nos. 5* and *6.* The major headings of the study with their sub-headings have been retained. New sub-headings have been added where necessary.

I. GENERAL SURVEY

A. Authorization to request advisory opinions

2. During the period under the review, one specialized agency was authorized by the General Assembly to request an advisory opinion from the International Court of Justice (hereinafter "the Court"). By its resolution 40/180 of 17 December 1985, the General Assembly approved an Agreement between the United Nations and the United Nations Industrial Development Organization (UNIDO). The Agreement contained a provision authorizing UNIDO to request advisory opinions of the Court.[1]

B. Requests for advisory opinions

3. During the period under review, the General Assembly adopted two resolutions[2] concerning the possibility of requesting the Court to give advisory opinions for promoting the prevention and removal of disputes and requested one advisory opinion of the Court;[3] the Court delivered its opinion on 26 April 1988.[4] The Court also remained seized of a request for an advisory opinion made in 1984. The Court delivered its opinion in response to that request on 27 May 1987.[5]

4. The General Assembly, in its Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, approved in its resolution 42/22 of 18 November 1987, declared that:

> "32. States should take into consideration that legal disputes should, as a general rule, be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court as an important factor for strengthening the maintenance of international peace and security. The General Assembly and the Security Council should consider making use of the provisions of the Charter concerning the possibility of requesting the Court to give an advisory opinion on any legal question".

5. And in its Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, approved in its resolution 43/51 of 5 December 1988, the General Assembly declared that:

> "15. The Security Council, if it is appropriate for promoting the prevention and removal of disputes or situations, should, at an early stage, consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question.
>
> "…
>
> "19. The General Assembly, if it is appropriate for promoting the prevention and removal of disputes or situations, should consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question".

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[1] G A resolution 40/180, annex, article 12(b).

[2] G A resolutions 42/22 and 43/51.

[3] G A resolution 42/229 B.

[4] *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947: Advisory Opinion of the International Court of Justice*, transmitted by the Secretary-General on 29 April 1988 (A/42/952); *I.C.J. Reports, 1988*, p. 12 (hereinafter "*Headquarters Agreement Advisory Opinion*").

[5] *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, Advisory Opinion of 27 May 1988, I.C.J. Reports 1987,* p. 18 (hereinafter "*UNAT Review Advisory Opinion*").

1. Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947

6. On 2 March 1988, the General Assembly, by its resolution 42/229 B, requested the Court to give an advisory opinion on the question of whether the United States of America was under an obligation to enter into arbitration under section 21 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 26 June 1947.[6]

7. The events in question centred on the invitation by the General Assembly, in its resolution 3237 (XXIX) on 22 November 1974, to the Permanent Observer Mission of the Palestine Liberation Organization (PLO) to the United Nations in New York "to participate in the sessions and the work of the General Assembly in the capacity of observer".[7] The United States attempted to apply its domestic Anti-Terrorism Act of 1987 which, inter alia, declared illegal the establishment or maintenance of an office of the PLO within the jurisdiction of the United States. The law would have entailed the closure of the PLO Observer Mission to the United Nations.[8]

8. The following question was put to the Court:

> "In the light of facts reflected in the reports of the Secretary-General, is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 26 June 1947, under an obligation to enter into arbitration in accordance with section 21 of the Agreement?"[9]

9. The Court delivered its advisory opinion on 26 April 1988. The Court concluded that the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, was under an obligation to enter into arbitration in accordance with section 21 for the settlement of the dispute between itself and the United Nations.[10]

2. Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal

10. During the period under review, the Court delivered an advisory opinion in response to a request approved in 1984 by the United Nations Committee on Applications for Review of Administrative Tribunal Judgements, concerning a review of Judgement No. 333 of the United Nations Administrative Tribunal (UNAT).[11] The case was related to a decision made by the Secretary-General against the reappointment of a staff member whose fixed-term contract had expired.

11. The following questions were put to the Court:

> "(1) In its Judgement No. 333 of 8 June 1984, 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?"[12]

12. The Court delivered its advisory opinion on 27 May 1987. It concluded that the United Nations Administrative Tribunal, in its Judgement No. 333 of 8 June 1984, had not failed to exercise its jurisdiction by not responding to the issue of whether there was legal impediment to the Applicant's further employment.[13] The Court further stated that the Tribunal, in the same Judgement No. 333, had not erred on any question of law relating to the provisions of the Charter of the United Nations.[14]

C. Settlement of disputes through advisory opinions

13. The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986[15] introduced a dispute-settlement mechanism for disputes concerning the interpretation or application of articles 53 and 64 on *jus cogens* through the means of a request for an advisory opinion to the Court.[16]

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[6] G A resolution 169 (II); United Nations, *Treaty Series*, vol. II, p. 11.

[7] *Headquarters Agreement Advisory Opinion*, para. 8.

[8] *Yearbook of the United Nations 1988*, p. 794.

[9] G A resolution 42/229 B, operative paragraph.

[10] *Headquarters Agreement Advisory Opinion*, para. 57.

[11] *UNAT Review Advisory Opinion*, para. 1; see also *Repertory, Supplement No. 6,* vol. VI, under Article 96, paras. 13-15.

[12] *I.C.J. Yearbook 1984-1985,* No. 39; see also *Repertory, Supplement No. 6*, vol. VI, under Article 96, para. 14.

[13] Ibid., para. 97.

[14] Ibid.

[15] A/CONF.129/15.

[16] Ibid., article 66, para. 2.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Authorization to request advisory opinions

1. Organs authorized to request advisory opinions

14. The Court confirmed that the competence of the Court to give advisory opinions at the request of the United Nations Committee on Applications for Review of Administrative Tribunal Judgements derives from article 11, paragraphs 1 and 2, of the UNAT statute.[17]

15. By its resolution 40/180 of 17 December 1985, the General Assembly approved an Agreement between the United Nations and the United Nations Industrial Development Organization (UNIDO).[18] The Agreement created a relationship between the United Nations and UNIDO in accordance with Articles 57 and 63 of the Charter of the United Nations. Article 12 of the Agreement authorized UNIDO to request advisory opinions of the Court on legal questions arising within the scope of UNIDO activities other than questions concerning the mutual relationship between UNIDO and the United Nations or other agencies within the United Nations system.[19] Such requests might be addressed to the Court by the General Conference or by the Industrial Development Board of UNIDO.[20] When requesting the Court to give an advisory opinion, UNIDO had to inform the Economic and Social Council of the request.[21]

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

16. In resolution 40/180, the General Assembly authorized UNIDO to request advisory opinions of the Court on legal questions arising within the scope of its activities, except for questions concerning the mutual relationship between UNIDO and the United Nations or other agencies within the United Nations system.[22]

17. In its advisory opinion regarding the *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal*, the Court stated that the Administrative Tribunal might request an advisory opinion provided:

> "that in any specific case the conditions laid down by the Charter, the Statute, and the Statute of the Administrative Tribunal are complied with, and in particular that the question on which the opinion of the Court is requested is a 'legal question' and one 'arising within the scope of [the] activities' of the requesting organ".[23]

B. Requests for advisory opinions

1. Scope of power of the organs to request advisory opinions of the Court

(a) Purpose of the request

18. In its advisory opinion regarding the obligation to arbitrate under the United Nations Headquarters Agreement, the Court pointed out that its sole task, as defined by the question put to it, was to determine whether the United States was obliged to enter into arbitration under section 21 of the United Nations Headquarters Agreement of 26 June 1947.[24] The Court stated:

> "In the present case, the Court is not called upon to decide whether the measures adopted by the United States in regard to the Observer Mission of the PLO to the United Nations do or do not run counter to the Headquarters Agreement".[25]

19. In its advisory opinion regarding the *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal*, the Court stated:

> "It is … well established that the reply of the Court to a request for opinion represents its participation in the activities of the United Nations and, in principle, should not be refused".[26]

**(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

20. In its advisory opinion regarding the obligation to arbitrate under the United Nations Headquarters Agreement of 26 June 1947, the Court stated:

> "The request for an opinion is here directed solely to the determination whether under section 21 of the Headquarters Agreement the United Nations was entitled to call for arbitration, and the United States was obliged to enter into this procedure. Hence the request for an opinion concerns solely the applicability to the alleged dispute of the arbitration procedure provided

[17] *UNAT Review Advisory Opinion*, para. 23.
[18] G A resolution 40/180, annex.
[19] Ibid., art. 12.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] *UNAT Review Advisory Opinion*, para. 24.
[24] *Headquarters Agreement Advisory Opinion*, para. 33.
[25] Ibid.
[26] *UNAT Review Advisory Opinion*, para. 25.

for by the Headquarters Agreement. It is a legal question within the meaning of Article 65, paragraph 1, of the Statute. There is in this case no reason why the Court should not answer that question".[27]

21. In its advisory opinion regarding the *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal*, the Court stated:

> "The question whether a judicial body failed to exercise jurisdiction is clearly a legal question, as is also the question whether it erred on a question of law".[28]

(b) Difficult and important points of law

22. At the conclusion of its advisory opinion regarding the obligation to arbitrate under the United Nations Headquarters Agreement of 26 June 1947, the Court again recalled its statement:

> "… it is a generally accepted principle of international law that in the relations between Powers who are Contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty".[29]

23. In a separate opinion to the advisory opinion, Judge Schwebel wrote:

> "It is axiomatic that, on the international legal plane, national law cannot derogate from international law, that a State cannot avoid its international responsibility by the enactment of domestic legislation which conflicts with its international obligations. It is evident that a party to an agreement containing an obligation to arbitrate any dispute over its interpretation or application cannot legally avoid that obligation by denying the existence of a dispute or by maintaining that arbitration of it would not serve a useful purpose".[30]

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

(d) Interpretation of treaties

24. The Headquarters Agreement of 26 June 1947 came into force on 21 November 1947 and was registered the same day with the United Nations Secretariat.[31] There was no question that the Headquarters Agreement was a treaty in force binding the parties thereto.[32] Section 21, paragraph (a), of the Agreement provides:

> "Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice".[33]

25. Regarding section 21, paragraph (a), of the Agreement, the Court stated:

> "In order to answer the question put to it, the Court has to determine whether there exists a dispute between the United Nations and the United States, and if so whether or not that dispute is one 'concerning the interpretation or application of' the Headquarters Agreement within the meaning of section 21 thereof. If it finds that there is such a dispute it must also, pursuant to that section, satisfy itself that it is one 'not settled by negotiation or other agreed mode of settlement.'"[34]

26. Regarding the definition of the word "dispute", the Court explained:

> "the Permanent Court of International Justice, in the case concerning Mavrommatis Palestine Concessions (P.C.I.J., Series A, No. 2, p. 11), defined a dispute as 'a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.' This definition has since been applied and clarified on a number of occasions. In the advisory opinion of 30 March 1950 the Court … noted that 'the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations' and concluded that 'international disputes have arisen' (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, *I.C.J. Reports 1950*, p. 74). Furthermore, in its judgment of 21 December 1962 in the *South West Africa* case, the Court made it clear that in order to prove the existence of a dispute 'it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more then a mere denial of the existence of the dispute proves its non-existence. Nor is it adequate to show that the interests of the two parties to such a case are in conflict. It must be shown that the claim of one party is posi-

[27] *Headquarters Agreement Advisory Opinion*, para. 33.

[28] *UNAT Review Advisory Opinion*, para. 24.

[29] *Headquarters Agreement Advisory Opinion*, para. 57.

[30] Ibid., p. 34.

[31] *Yearbook of the United Nations, 1947-48,* p. 199; G A resolution 169 (II).

[32] *Headquarters Agreement Advisory Opinion*, para. 7.

[33] Ibid.

[34] Ibid., para. 34.

tively opposed by the other.' (*I.C.J. Reports 1962*, p. 328)".[35]

27. In the case under consideration, the Secretary-General informed the Court that, in his opinion, a dispute within the meaning of section 21 of the Headquarters Agreement had existed between the United Nations and the United States from the moment the Anti-Terrorism Act was signed into law.[36] On the other hand, "the United States has never expressly contradicted the view expounded by the Secretary-General and endorsed by the General Assembly regarding the sense of the Headquarters Agreement."[37] Therefore, the Court explained,

> "where one party to a treaty protests against the behaviour or a decision of another party, and claims that such behaviour or decision constitutes a breach of the treaty, the mere fact that the party accused does not advance any argument to justify its conduct under international law does not prevent the opposing attitudes of the parties from giving rise to a dispute concerning the interpretation or application on the treaty".[38]

4. Formulation of question submitted to the Court

28. In the case of the advisory opinion regarding the applicability of the obligation to arbitrate under section 21 of the United Nations Headquarters Agreement of 26 June 1947, the question that was put to the Court was formulated in terms of whether the United States was under a particular obligation "in the light of facts reflected in the reports of the Secretary-General [A/42/915 and Add.1]". The Court, however, stated:

> "The Court does not … consider that the General Assembly, in employing this form of words, has requested it to reply to the question put on the basis solely of these facts, and to close its eyes to subsequent events of possible relevance to, or capable of throwing light on, that question. The Court will therefore set out … the developments in the affair subsequent to the adoption of resolution 42/229 B".[39]

**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

(a) Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947

29. The question answered by the Court's advisory opinion on the applicability of the obligation to arbitrate under Section 21 of the United Nations Headquarters Agreement was contained in resolution 42/229 B of the United Nations General Assembly, adopted on 2 March 1988. On the same day, the United Nations Legal Counsel transmitted the text of that resolution in English and French by facsimile, to the Court. The Court's Registry acknowledged receipt of the resolution on 3 March 1988.[40] At the same time, by a letter dated 2 March 1988, the Secretary-General formally communicated to the Court the decision of the General Assembly to submit to the Court a request for advisory opinion.[41] The letter and the facsimile enclosed certified true copies of the English and French texts of the resolution.[42]

(b) Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal

30. The forwarding of the request for an advisory opinion on the *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal* falls within the time period of the previous *Supplement*. Since it was not described in the previous *Supplement*, the following paragraphs are included in the present *Supplement* for the sake of completeness.

31. On 21 June 1984, the Applicant presented an application for review of the judgement to the Committee on Applications for Review of Administrative Tribunal Judgements, in which he requested the Committee to request an advisory opinion of the Court on all four of the grounds set out in article 11 of the Tribunal's statute.[43] At a public meeting held on 28 August 1984, the Committee announced its decisions, in which it stated that there was a substantial basis for the application only on two grounds set out in article 11 of the Tribunal's statute. It therefore decided to submit two questions to the Court for an advisory opinion.[44]

32. The questions asked of the Court were laid before the Court by a letter from the Secretary-General dated 28 August 1984. This letter was filed in the Registry on 10 September 1984. In the letter, the Secretary-General informed the Court that the Committee on Applications for Review of Administrative Tribunal Judgements had, pursuant to article 11 of the UNAT statute, decided on

[35] Ibid., para. 35.
[36] Ibid., para. 36.
[37] Ibid., para. 37.
[38] Ibid., para. 38.
[39] Ibid., para. 23.
[40] A/42/915/Add.2, para. 7.
[41] *Headquarters Agreement Advisory Opinion*, G A (42), Suppl. No. 26, para. 1.
[42] Ibid.
[43] *UNAT Review Advisory Opinion*, para. 22.
[44] Ibid.

28 August 1984 that there was substantial basis for the application requesting a review of Administrative Tribunal Judgement No. 333, and accordingly had decided to request an advisory opinion of the Court.[45] The Committee's decision was set out in extenso in the Secretary-General's letter, and certified copies of the decision in English and French were enclosed with the letter.[46]

33. In accordance with Article 66, paragraph 1, of the Statute of the Court, the Deputy Registrar, by a letter dated 28 September 1984, supplied notice of the request for an advisory opinion to all States entitled to appear before the Court. A copy of the Secretary-General's letter setting out the decision of the Committee on Applications for Review of Administrative Tribunal Judgements was also transmitted to those States.[47]

34. Pursuant to Article 65, paragraph 2, of the ICJ Statute and to Article 104 of the Rules of the Court, the Secretary-General of the United Nations submitted to the Court a dossier of documents likely to throw light upon the question before the Court. These documents reached the Registry in English on 20 December 1984 and in French on 3 January 1985. On 6 March 1985, the Registrar, as instructed by the Court, requested the Secretary-General to supply certain background information to supplement the dossier; that information was supplied on 27 April 1987.[48]

7. Written and oral statements

(a) Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947

35. After it received the request for an advisory opinion, the Court determined that the United Nations and the United States of America were likely to be able to furnish information on the question, in accordance with Article 66, paragraph 2, of the Statute of the Court.[49] In an Order dated 9 March 1988, the Court fixed 25 March 1988 as the time limit within which the Court would be prepared to receive written statements. The statements could be from the United Nations and the United States or from any other State party to the Statute that desired to submit a written statement on the question.[50]

36. The Court received submissions of written statements within the time limit from the Secretary-General of the United Nations, the United States, the German Democratic Republic and the Syrian Arab Republic.[51]

37. By the same Order, the Court decided further to hold hearings, scheduled to open on 11 April 1988, at which oral comments on written statements could be made to the Court by the United Nations, the United States and such other States as should have presented written statements.[52]

38. At a public sitting held on 11 April 1988, the United Nations Legal Counsel, Carl-August Fleischhauer, made an oral statement to the Court on behalf of the Secretary-General. None of the States that had submitted written statements expressed a desire to be heard. Certain members of the Court put questions to Mr. Fleischhauer, which were answered at a further public sitting held on 12 April 1988.[53]

(b) Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal

39. After it received the request for an advisory opinion, the Court decided on 13 September 1984 that the United Nations and its Member States were likely able to furnish information on the question. Accordingly, in an Order dated 13 September 1984, the Court fixed 14 December 1984 as the time limit within which the Court would be prepared to receive written statements, pursuant to Article 66, paragraph 2 of the Statute of the Court. The Deputy Registrar notified the Organization and its Member States of the contents of the Order in a letter dated 28 September 1984.[54]

40. The Court received submissions of written statements within the time limit from the Secretary-General of the United Nations and from the Governments of Canada, Italy, the Union of Soviet Socialist Republics and the United States of America. In addition, the Secretary-General transmitted to the Court, pursuant to article 11, paragraph 2, of the UNAT statute, a statement setting forth the views of Vladimir Victorovich Yakimetz, the former staff member to whom the Administrative Tribunal Judgement related.[55]

41. The Registrar sent a letter dated 5 March 1985 to the Secretary-General of the United Nations and to the States that had presented statements including copies of the statements, in accordance with Article 66, paragraph 4, of the Statute.[56] In the same letter, the Court informed the States and the United Nations that the President of the Court had decided to permit any State or organization that had presented or transmitted a written statement to submit comments in writing on a statement presented or transmitted by any other, pursuant to Article 66, paragraph 4, of the ICJ Statute. The Court fixed 31 May 1985 as the time limit for

[45] Ibid., para. 1.
[46] Ibid.
[47] Ibid., para. 2.
[48] Ibid., para. 3.
[49] *Headquarters Agreement Advisory Opinion*, para. 3.
[50] Ibid.
[51] Ibid.
[52] Ibid., para. 4.
[53] Ibid., para. 6.
[54] *UNAT Review Advisory Opinion*, para. 4.
[55] Ibid., para. 6.
[56] Ibid., para. 7.

the submission of such documents.[57] This time limit was later extended to 1 July 1985.

42. Within the extended time limit, the Registry of the Court received comments from the United States of America and from the Secretary-General of the United Nations, who also transmitted comments from Mr. Yakimetz.[58] On 8 July 1985, copies of those comments were sent to the United Nations and to the States that had presented written statements containing those comments. On 3 November 1986, the Registrar sent a letter to the same parties informing them that the Court did not intend to hold a public sitting to hear oral statements in the case.[59]

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

9. EFFECT GIVEN TO ADVISORY OPINIONS OF THE COURT

(a) Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947

43. On 13 May 1988, in its resolution 42/232, the General Assembly "took note" of and endorsed the advisory opinion of the Court of 26 April 1988 concerning the applicability of the obligation to arbitrate under section 21 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 26 June 1947.[60]

44. In the same resolution, the General Assembly urged the host country to abide by its international legal obligations and act consistently with the advisory opinion of the Court, and accordingly to name its arbitrator to the arbitral tribunal provided for under section 21 of the Headquarters Agreement.[61] The Assembly also requested the Secretary-General to continue his efforts to ensure the constitution of the arbitral tribunal and to report to the General Assembly without delay on developments in the matter.[62] The Assembly furthermore decided to keep the matter under active review.[63]

45. At the same time, the United States initiated legal proceedings in a domestic court to obtain judicial authorization to close the PLO Observer Mission as required by the Anti-Terrorism Act. On 29 July 1988, the United States District Court for the Southern District of New York rejected the authorization sought by the United States.[64]

46. In his report of 13 September 1988, the Secretary-General welcomed the decision by the United States not to appeal the case, thus bringing an end to the dispute between the United Nations and its host country.[65]

(b) Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal

47. In this case, since the Court upheld the ruling of the Administrative Tribunal and found that it had acted within its jurisdiction, no further action was required on the part of any organ of the United Nations.

C. Settlement of disputes through advisory opinions

48. Article 66, paragraph 2, of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations[66] provides for the settlement of disputes concerning the application or interpretation of articles 53 or 64,[67] which both refer to peremptory norms of general international law (*jus cogens*). Specifically, that provision provides in relevant parts as follows:

> "(b) If a State is a party to [a] dispute [concerning article 53 or article 64] to which one or more international organizations are parties, the State may, through a Member State of the United Nations if necessary, request the General Assembly or the Security Council or, where appropriate, the competent organ of an international organization which is a party to the dispute and is authorized in accordance with Article 96 of the Charter of the United Nations, to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court;
>
> "(c) If the United Nations or an international organization that is authorized in accordance with Article 96 of the Charter of the United Nations is a party to the dispute, it may request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statue of the Court;
>
> "(d) If an international organization other than those referred to in subparagraph (c) is a party to the dispute, it may, through a Member State of the United Nations, follow the procedure specified in subparagraph (b);

[57] Ibid., para. 8.
[58] Ibid.
[59] Ibid., para. 9.
[60] G A resolution 42/232, para. 2.
[61] Ibid., para. 3.
[62] Ibid., paras. 4-5.
[63] Ibid., para. 6.
[64] *Yearbook of the United Nations 1987*, pp. 794-795.
[65] Ibid., p. 795.
[66] A/CONF.129/15.
[67] Articles 53 and 64 of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations parallel the same provisions of the 1969 Vienna Convention on the Law of Treaties. Both contain provisions concerning situations of conflict between obligations stemming from a treaty with peremptory norms of general international law (*jus cogens*).

"(e) The advisory opinion given pursuant to subparagraph (b), (c) or (d) shall be accepted as decisive by all the parties to the dispute concerned;

"(f) If the request under subparagraph (b), (c) or (d) for an advisory opinion of the Court is not granted, any one of the parties to the dispute may, by written notification to the other party or parties, submit it to arbitration in accordance with the provisions of the Annex to the present Convention".