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Volume VI

ARTICLE 96 (Supplement 9)

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ARTICLE 96 (Supplement 9)

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 Supplement* No. 8. The major headings of the study with their subheadings have been retained, except that some subheadings have been added or modified where necessary.

I. GENERAL SURVEY

2. During the period under review, the General Assembly abolished the procedure provided for in article 11 of the Statute of the Administrative Tribunal enabling the Committee on Applications for Review of Administrative Tribunal Judgements to request advisory opinions of the Court.¹
3. Also during the same period, the International Court of Justice decided not to give advisory opinion in response to a request made by the World Health Assembly², which was pending before the Court since 1993, and delivered two advisory opinions. The first opinion was delivered in response to a request that had been made by the General Assembly prior to this period. The second opinion was given in response to a request made by the Economic and Social Council, during the period under review.
4. The International Court of Justice, having considered the request made for an advisory opinion by the World Health Assembly in 1993, on *the legality of the use by a State of nuclear weapons in an armed conflict*, decided on 8 July 1996, not to deliver an advisory opinion on the ground that the question put to the Court was not related to the scope of activities of WHO.³

¹ See paragraph 9 below.

² The World Health Assembly is a principal organ of the World Health Organization.

³ See paragraphs 10-16, 33, 35-36, 38, 41-42, 45, 52 and 60-61 below.

5. On 8 July 1996, the International Court of Justice, in response to a request made by the General Assembly in 1994, delivered its advisory opinion on *the legality of the threat or use of nuclear weapons*.⁴

6. On 5 August 1998, the Economic and Social Council decided to request an advisory opinion from the International Court of Justice⁵, on a difference that had arisen between the United Nations and the Government of Malaysia relating to the immunity from legal process of a Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers. The Court delivered its advisory opinion on 29 April 1999.⁶

7. As at 31 December 1999, there was no request for advisory opinion pending before the Court.

⁴ See paragraphs 17, 20-21, 27-28, 34-35, 37-38, 43, 46-50, 53-57, 62-66, and 77-79 below.

⁵ Decision 1998/297.

⁶ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, pp. 63-122. See also paragraphs 18-19, 22-26, 29-32, 39-40, 44, 51, 58-59, 67-76, and 80-83 below.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Authorization to request advisory opinions

8. During the period under review no additional organ of the United Nations or specialized agency was authorized by the General Assembly to request advisory opinions of the Court.⁷

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

2. WITHDRAWAL OF AUTHORIZATION

9. In 1995, when the General Assembly concluded its consideration of the agenda item entitled “Review of the procedure provided for under article 11 of the Statute of the Administrative Tribunal of the United Nations”⁸, it decided in its resolution A/50/54 to delete article 11 of the Statute and thereby withdrew, “effective after 31 December 1995”, the authorization given to the Committee on the Review of Administrative Tribunal Judgements to request advisory opinions of the Court.⁹ Nevertheless, with respect to judgements rendered by the Tribunal “before 1 January 1996”, it decided that, “the Statute of the Tribunal shall continue to apply”¹⁰ as if the amendments to the Statute had not been made.

B. Requests for advisory opinions

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

(i) Legality of the use by a State of nuclear weapons in armed conflict¹¹

10. In the above advisory opinion, the Court observed that when a request for an advisory opinion was submitted by “a specialized agency”, the following three conditions must be met in order to ascertain the jurisdiction of the Court: the requesting specialized agency

⁷ See the lists of organs of the United Nations and specialized agencies authorized by the General Assembly to request advisory opinions of the Court as at 31 December 1994, and as at 31 December 1999, in the Yearbook of the International Court of Justice, 1994-1995, page 72, and in the Yearbook of the International Court of Justice, 1999-2000, p. 94.

⁸ See Repertory of the Practice of the United Nations Organs, Supplement No. 8, p ... See also documents: A/48/232, A/48/619, General Assembly Decision 48/415, Report of the Secretary-General contained in A/C. 6/49/2, dated 17 October 1994.

⁹ A/RES/957 (X) dated 8 November 1955, paragraph 1, Supplement No. 19 (A/3116) pp. 30-31.

¹⁰ A/RES/50/54, paragraph 2.

¹¹ For information concerning initiation and formulation of the question presented to the Court see supplement no. 8, volume VI, p. ...

must have the authorization from the General Assembly; the opinion requested must be a legal question; and it must be within the scope of activities of the requesting agency.¹²

11. In the opinion of the Court, there was no doubt that the WHO had been duly authorized to request advisory opinions in accordance with Article 96 paragraph 2 of the Charter.¹³

12. In the view of the Court, international organizations, unlike States, did not “possess a general competence”, but governed by the “principle of speciality”. In the opinion of the Court, their powers were limited to those that were “invested by States which create them”, and were restricted to “a function of the common interests whose promotion those States entrust to them.”¹⁴

13. As regards the powers of the WHO, the Court observed that, “to ascribe to the WHO the competence to address the legality of the use of nuclear weapons- even in the view of their health and environmental effects- would tantamount to disregarding the principle of speciality; for such competence could not be deemed a necessary implication of the Constitution of the Organization in the light of the purposes assigned to it by its member States.”¹⁵

14. Furthermore, The Court considered the questions of the validity of World Health Assembly resolution, and effect of reference to it in General Assembly resolution 49/75 K.

15. Concerning the validity of resolution WHA 46.40, the Court observed that the mere fact that the resolution had been adopted in accordance with the rules of procedure of the Assembly, could not “in itself suffice to remedy any fundamental defects, such as acting *ultra vires*, with which the resolution might be afflicted.”¹⁶ In this respect, the Court acknowledged that it was “a matter for the World Health Assembly to decide on its competence”. However, the Court felt that it was also obliged “to satisfy itself that the conditions governing its own competence” were met. In interpreting Article 75 of WHO Constitution, the Court arrived at “different conclusions from those reached by the World Health Assembly when it adopted resolution WHA 46.40”¹⁷, and concluded that the question rose in the request for an advisory opinion submitted to it by the WHO, did not fall “within the scope of [the] activities of the organization as defined by its constitution.”¹⁸

16. As to the second question, the Court did not accept the argument that the General Assembly by welcoming the adoption of World Health Assembly resolution 46/40, in its

¹² Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, pp.71-72, paragraph 10.

¹³ Ibid., paragraph 12.

¹⁴ Ibid., p. 78, paragraph 25.

¹⁵ Ibid., p. 79.

¹⁶ Ibid., p. 82, paragraph 29.

¹⁷ Ibid. p. 83.

¹⁸ Ibid. p. 81.

resolution 49/75 K, had “confirmed the competence of that organization to request an opinion on the question submitted to the Court.”¹⁹ In the opinion of the Court, the General Assembly resolution reflected the “wish of a majority of States that the Assembly should lend its political support to the action taken by WHO”. In the view of the Court, the General Assembly did not mean by that action “to pass upon the competence of the WHO to request an opinion on the question raised.”²⁰ Moreover, it held that “the General Assembly could evidently not have intended to disregard the limits within which Article 96, paragraph 2, of the Charter allows it to authorize the specialized agencies to request opinions from the Court”.²¹

17. For the above reasons, the Court concluded that the request for an advisory opinion did not “relate to a question which arise ‘within the scope of [the] activities’ of that Organization”, which was an essential condition for exercising its jurisdiction.²²

(ii) Legality of the threat or use of nuclear weapons²³

18. In the above advisory opinion, the Court observed that, “[t]he question put to the Court has a relevance to many aspects of the activities and concerns of the General Assembly including those relating to the threat or use of force in international relations, the disarmament process, and the progressive development of international law.”²⁴

(iii) Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights

19. For the second time in its practice, the Economic and Social Council, an organ of the United Nations, in 1998, requested an advisory opinion of the Court in accordance with Article 96, paragraph 2 of the Charter of the United Nations, on the above question. The General Assembly by its resolution 89 (I) of 11 December 1946 had previously authorized the Council to request advisory opinions of the Court.²⁵

20. In the same advisory opinion, the Court recalled the provision in Article 96 paragraph 2, of the Charter that the subject matter of advisory opinions requested by the authorized organs of the United Nations and specialized agencies should be within “the scope of their activities”. In this respect, the Court came to the same conclusion that it had arrived in an earlier case,²⁶ namely, that “the legal questions submitted by the Council in its

¹⁹ Ibid., paragraph 30.

²⁰ The French version of the court’s view point is as follows: “La Cour ne considère pas toutefois que, ce faisant, l’Assemblée ait aussi entendu se prononcer sur la compétence de l’OMS pour demander un avis sur la question posée.” Ibid.

²¹ Ibid.

²² Ibid., p. 84, paragraph 31.

²³ For information concerning initiation and formulation of the question presented to the Court see supplement no. 8, volume VI, p. ...

²⁴ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 233, paragraph 12.

²⁵ Resolutions adopted by the General Assembly from 23 October to 15 December 1946, New York, 1947, p. 176.

²⁶ Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, ICJ Report, 1989, p. 187, paragraph 28.

request concern the activities of the Commission, since they relate to the mandate of its Special Rapporteur”, and that his performance were “within the scope of activities of the Council, since the Commission is one of its subsidiary organs.”²⁷

2. PUPOSE OF THE REQUESTS

21. In the advisory opinion concerning the *legality of the threat or use of nuclear weapons*, the Court confirmed the position it had taken earlier²⁸ that, “[t]he purpose of the advisory function is not to settle - at least directly - disputes between States, but to offer legal advice to the organs and institutions requesting the opinion.”²⁹

3. EFFECT OF DISPUTES BETWEEN PARTIES

(i) Legality of the threat or use of nuclear weapons

22. In the above advisory opinion, the Court considered the question of lack of specific dispute on the subject matter and observed that a distinction should be made between requirements governing contentious procedure and those applicable to advisory opinions.³⁰

(ii) Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights

23. In the above advisory opinion, the Court acknowledged that a difference existed between the United Nations and Malaysia within the meaning of the Convention on the Privileged and Immunities of the United Nations.³¹

24. In the same advisory opinion, the events in question centred on the entitlement of Mr. Dato’ Param Cumaraswamy as the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers to immunity from legal process.

25. The Court reaffirmed the view it had expressed earlier³² that the existence of a difference between the parties “does not change the advisory nature of the Court’s function, which is governed by the terms of the Charter and of the Statute.”³³

4. POSITIONS OF THE STATES CONCERNED

²⁷ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, pp. 77-78, paragraph 27.

²⁸ Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, ICJ Reports, 1950, p. 71.

²⁹ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 236.

³⁰ Ibid.

³¹ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p.76, paragraph 25.

³² Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports, 1973, p. 171, paragraph 14.

³³ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 76, paragraph 25.

26. In the advisory opinion concerning the *difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights*, the Government of Malaysia had acknowledged “the organization’s right to refer the matter to the Council” to request advisory opinion from the Court, in accordance with Section 30 of the Convention on the Privileges and Immunities of the United Nations, and had advised the special envoy of the Secretary-General that “the United Nations should proceed to do so”, and that it did not “oppose the submission of the matter to that Court through the Council.”³⁴

5. OBLIGATION TO SUBMIT LEGAL QUESTIONS TO THE COURT

27. In the advisory opinion concerning the *difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights*, the United Nations and Malaysia were under obligation, in accordance with Article VIII, Section 30, of the Convention on the Privileges and Immunities of the United Nations, to request advisory opinion of the Court in case of a dispute concerning the interpretation or application of the Convention, which read, in part, as follows:

“If a difference arises between the United Nations on the one hand and a member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court.”³⁵

6. FORMULATION OF QUESTIONS SUBMITTED TO THE COURT

(i) Legality of the threat or use of nuclear weapons

28. As the question on the above advisory opinion was formulated and presented to the Court prior to the period under review, therefore, pertinent information on the formulation of the question put to the Court could be found in *Supplement No. 8* of the *Repertory of Practice of United Nations Organs*.³⁶

29. In the same advisory opinion, the Court considered the question put to it and held that the real objective of the question posed was “to determine the legality or illegality of the threat or use of nuclear weapons.”³⁷

(ii) Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights

30. In the above advisory opinion, the Secretary-General had proposed two questions to be submitted to the Court for advisory opinion, which read as follows:

³⁴ E/1999/94, p.3, paragraph 15.

³⁵ United Nations, Treaty Series, 1946-1947, p. 31.

³⁶ See *Supplement No. 8*, under this Article.

³⁷ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 238, paragraph 20.

“1. Subject only to Section 30 of the Convention on the Privileges and Immunities of the United Nations, does the Secretary-General of the United Nations have exclusive authority to determine whether words were spoken in the course of the performance of a mission for the United Nations within the meaning of Section 22 (b) of the Convention?”

“2. In accordance with Section 34 of the Convention, once the Secretary-General has determined that such words were spoken in the course of the performance of a mission and has decided to maintain, or not to waive, the immunity from legal process, does the Government of a Member State party to the Convention have an obligation to give effect to that immunity in its national courts and, if failing to do so, to assume responsibility for, and any cost, expense and damages arising from, any legal proceedings brought in respect of such words?”³⁸

31. On 5 August 1998, the Economic and Social Council considered and adopted, without a vote, a draft decision that had been presented by its Vice-President. The decision requested the Court to give an advisory opinion on the following question:

“1. Requests on a priority basis, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I), an advisory opinion from the International Court of Justice on the legal question of the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato’ Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General, and on the legal obligations of Malaysia on this case.”³⁹

32. The Court noted that the wording of the question submitted by the Council was different from that proposed by the Secretary-General.⁴⁰ It was clear for the Court that the Council was the organ entitled to request the advisory opinion. Therefore, it decided to answer the question as formulated by the Council.⁴¹

7. FORWARDING OF REQUESTS TO THE COURT

33. In the advisory opinion concerning the *difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights*, the Secretary-General of the United Nations communicated to the Registrar of the Court, by a letter dated 7 August 1998, the decision 1998/297 of the Economic and Social Council,

³⁸ E/1998/94, pp. 4-5.

³⁹ E/1998/297

⁴⁰ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 81, paragraph 35.

⁴¹ Ibid, paragraph 37.

adopted on 5 August 1998, the text of which embodied the question put forward to the Court.⁴²

8. WRITTEN AND ORAL STATEMENTS

(i) Legality of the use by a State of nuclear weapons in armed conflict

34. In the above advisory opinion, during the period under review, nine States⁴³ presented written comments on written statements submitted to the Court prior to the period under consideration.⁴⁴

(ii) Legality of the threat or use of nuclear weapons

35. In the above advisory opinion, 28 States⁴⁵ submitted written statements to the Court, within the time limit fixed by its order of 1 February 1995. Three States⁴⁶ also submitted written comments to the Court on the statements submitted by other States, within the relevant time limit. The Secretary-General of the United Nations communicated to the Court a dossier of documents, which in his view was likely to shed light on the question, put to the Court.⁴⁷

(iii) Joint hearings of the Court

36. The Court held a series of public sittings, from 30 October to 15 November 1995, and decided to hear, during the same public sittings, oral statements relating to the request for an advisory opinion made by the World Health Assembly on the question of the *legality of the use by a State of nuclear weapons in armed conflict* as well as oral statements concerning the request for an advisory opinion made by the General Assembly of the United Nations on the question of the *legality of the threat or use of nuclear weapons*.

37. In the advisory opinion concerning the *legality of the use by a State of nuclear weapons in armed conflict*,⁴⁸ eighteen States⁴⁹ and the Legal Council of WHO made oral statements in the public sittings.⁵⁰

⁴² Ibid., p.63.

⁴³ Namely: Costa Rica, France, India, Malaysia Nauru, Russian Federation, Solomon Islands, United Kingdom of Great Britain and Northern Ireland, and United States of America. ICJ Reports, 1996, p. 68, paragraph 6.

⁴⁴ See also *Supplement No. 8*, under this Article, p.

⁴⁵ Namely: Bosnia and Herzegovina, Burundi, Democratic People's Republic of Korea, Ecuador, Egypt, Finland, France, Germany, India, Ireland, Islamic Republic of Iran, Italy, Japan, Lesotho, Malaysia, Marshall Islands, Mexico, Nauru, Netherlands, New Zealand, Qatar, Russian Federation, Samoa, San Marino, Solomon Islands, Sweden, United Kingdom of Great Britain and Northern Ireland, and United States of America. ICJ Reports, 1996, p. 229, paragraph 5.

⁴⁶ Namely: Egypt, Nauru and Solomon Islands, Ibid.

⁴⁷ ICJ Reports, 1996, p. 229, paragraph 2.

⁴⁸ In the above case the Court did not give an advisory opinion (see paragraph 16 above). However, the Court refers to its proceedings on this case as an advisory opinion. See ICJ Reports, 1996, p. 66.

38. In the advisory opinion concerning the *legality of the threat or use of nuclear weapons*, twenty-two States submitted oral Statements in the public sittings.⁵¹

39. During the hearings, members of the Court put a number of questions to particular participants, and also some questions of general nature addressed to all participants in the oral hearings. Several of the participants presented replies within the time limit prescribed by the Court.⁵²

(iv) Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights

40. In the above advisory opinion, the Secretary-General of the United Nations and eight States⁵³ submitted written Statements to the Court within the time limit fixed by an order of 10 August 1998. A relevant letter was also submitted by one State.⁵⁴ In addition, the Secretary-General of the United Nations and three States⁵⁵ submitted written comments on the statements presented by other States, within the relevant time limit. Moreover, the Secretary-General transmitted to the Court, in October 1998, a dossier of documents, which in his opinion was likely to shed light upon the question before the Court.⁵⁶

41. In the same case, oral statements made before the Court by three States,⁵⁷ and by the Legal Counsel of the United Nations, in the first round of oral hearings held on 7 and 8 December 1998. In the second round of hearings, held on 10 December 1998, statements were made on behalf of the United Nations, and by two States.⁵⁸

9. CONSIDERATION OF THE NATURE AND TYPE OF QUESTIONS SUBMITTED TO THE COURT

⁴⁹ Namely: Australia, Egypt, France, Germany, Indonesia, Mexico, Islamic Republic of Iran, Italy, Japan, Malaysia, New Zealand, the Philippines, Russian Federations, Samoa, Marshall Islands, Solomon Islands, Costa Rica, United Kingdom of Great Britain and Northern Island, United States of America and Zimbabwe.

⁵⁰ ICJ Reports, 1996, pp. 69-71, paragraph 9.

⁵¹ Namely: Australia, Egypt, France, Germany, Indonesia, Mexico, Islamic Republic of Iran, Italy, Japan, Malaysia, New Zealand, Philippines, Qatar, Russian Federation, San Marino, Samoa, Marshall Islands, Solomon Island, Costa Rica, United Kingdom of Great Britain and Northern Ireland, United States of America and Zimbabwe, Ibid., p.232.

⁵² ICJ Reports do not contain any further information on the questions posed by the Judges to the participants in the proceedings. Ibid., p. 232.

⁵³ Namely: Costa Rica, Germany, Italy, Malaysia, Sweden, the United Kingdom, the United States of America and Greece, Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 65, paragraph 6.

⁵⁴ Namely: Luxembourg, Ibid.

⁵⁵ Namely: Costa Rica, Malaysia, and the United States of America, Ibid.

⁵⁶ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999 p. 64, paragraph 5, and p. 71, paragraphs 11-12.

⁵⁷ Namely: Costa Rica, Italy and Malaysia, Ibid, paragraph 9.

⁵⁸ Namely: Costa Rica and Malaysia, Ibid.

(a) The political or legal nature of the question

(i) Legality of the use by a State of nuclear weapons in armed conflict

42. In the above advisory opinion, the Court observed that “[t]he question put to the Court by the World Health Assembly does in fact constitute a legal question”.⁵⁹ In this respect, the Court reaffirmed its earlier position⁶⁰ that “[t]he fact that this question also has political aspects”, “does not suffice to deprive it of its character as a ‘legal question’ and to ‘deprive the Court of a competence expressly conferred on it by its Statute’”.⁶¹

43. In the same advisory opinion, the Court also found that “the political nature of the motives which may be said to have inspired the request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion.”⁶²

(ii) Legality of the threat or use of nuclear weapons

44. In the above advisory opinion, the Court held that the question put to it by the General Assembly was a legal one, because it was asked to adjudicate on the “compatibility of the threat or use of nuclear weapons with the relevant principles and rules of international law”.⁶³ Moreover, the Court confirmed the view it had expressed on earlier occasions that, “[t]he fact that this question has also political aspects”, “does not suffice to deprive it of its character as a ‘legal question’ and to ‘deprive the Court of a competence expressly conferred on it by its Statute’”.⁶⁴ Furthermore, it held that “the political nature of the motives which may be said to have inspired the request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion.”⁶⁵

(iii) Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights

45. In the above advisory opinion, the Court observed that the relevant provisions of the Charter and the Statute required that, “the subject-matter of the request should be a ‘legal question’”. In the opinion of the Court, that condition was satisfied in the above case, because the advisory opinion requested related to “the interpretation of the General Convention and to its application to the circumstances of the case of the Special Rapporteur, Dato’ Param Cumaraswamy.”⁶⁶ In this respect, the Court reaffirmed the

⁵⁹ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 73, paragraph 16.

⁶⁰ Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, Reports of Judgements, Advisory Opinions and Orders of ICJ, 1973, p. 172, paragraph 14.

⁶¹ ICJ Reports, 1996, p. 73, paragraph 16.

⁶² Ibid., p. 74, paragraph 17.

⁶³ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 234, paragraph 13.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 77.

opinion it had delivered on 28 May 1948, “[t]o determine the meaning of a treaty provision ... is a problem of interpretation and consequently a legal question”.⁶⁷

(b) Important points of law

(i) Legality of the use by a State of nuclear weapons in armed conflict

46. In the above advisory opinion, the Court considered the competences of international organizations in general, and powers of WHO, in particular.⁶⁸ These questions are discussed in paragraphs 10 through 17 above.

(ii) Legality of the threat or use of nuclear weapons

47. In the above advisory opinion, the Court first observed that, “State practice shows that the illegality of the use of certain weapons as such does not result from the absence of authorization but, on the contrary, is formulated in terms of prohibition.”⁶⁹

48. As far as the prohibition of the nuclear weapons in the customary international law was concerned, the Court primarily studied “actual practice and *opinio juris* of States”. In this respect, the Court observed that, “[t]he emergence, as *lex lata*, of a customary rule specifically prohibiting the use of nuclear weapons” was hampered “by the continuing tension between the nascent *opinio juris* on the one hand, and the still strong adherence to the practice of deterrence on the other.”⁷⁰

49. In this regard, the Court also considered several General Assembly resolutions, which were referred to in its proceedings, and observed: “the General Assembly resolutions put before the Court declare that the use of nuclear weapons would be ‘a direct violation of the Charter of the United Nations’; and in certain formulation that such use ‘should be prohibited’”. However, in the opinion of the Court, “they still fall short of establishing the existence of an *opinio juris* on the illegality of the use of such weapons.”⁷¹ Thus, the Court concluded that, there was no specific rule of customary law, which prohibited the use of nuclear weapons.⁷²

50. Finally, the Court turned its attention to the consideration of the question put to it in the light of the principles and rules of international humanitarian law.⁷³ In this respect, the Court observed that the principles and rules of international humanitarian law apply to nuclear weapons.⁷⁴ The unanimous conclusion of the Court in this regard reads as follows:

⁶⁷ Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, ICJ Reports 1947-48, p.61.

⁶⁸ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, pp. 78-79.

⁶⁹ Ibid., p. 247, paragraph 52.

⁷⁰ Ibid., paragraph 73.

⁷¹ Ibid., paragraph 71.

⁷² Ibid.

⁷³ Ibid., paragraphs 74-87.

⁷⁴ Ibid., paragraph 87.

“A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons”.⁷⁵

51. However, the Court did not have “sufficient elements to conclude with certainty that the use of nuclear weapons would necessarily be at variance with the principles and rules of law applicable in armed conflict in any circumstances.”⁷⁶ In addition, the Court was attentive to the fundamental right of every State to resort to self-defence under Article 51 of the Charter. Consequently, it held:

“[...] the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;”

“However, in the view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”.⁷⁷

(iii) Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights

52. In the above advisory opinion, the Court considered the role of the Secretary-General in determining the entitlement of experts on mission to the immunity from legal process as well as his responsibility and authority in protecting the interests of the Organization and its agents. Moreover, it addressed the obligations of Malaysia under the Convention. Finally, the Court made distinction between immunity from legal process on the one hand and the issue of compensation for any damages incurred as result of acts performed by the United Nations and its agents on the other.

(c) Interpretation of the Charter of the United Nations

(i) Legality of the use by a State of nuclear weapons in armed conflict

53. In the above advisory opinion, the Court examined the relationship between the United Nations and specialized agencies in the light of Charter provisions,⁷⁸ and observed: “the Charter of the United Nations laid the basis of a ‘system’ designed to organize international cooperation in a coherent fashion by bringing the United Nations,

⁷⁵ Ibid., p. 266.

⁷⁶ Ibid., p. 263, paragraph 95.

⁷⁷ Ibid., p. 266.

⁷⁸ Articles 57, 58 and 63 of the Charter.

invested with powers of general scope, into relationship with various autonomous and complementary organizations, invested with sectorial powers.”⁷⁹ In the opinion of the Court, the responsibilities of WHO by virtue of Article 57 of the Charter, were restricted “to the sphere of ‘public health’ and cannot encroach on the responsibilities of other parts of the United Nations system.”⁸⁰ The Court further observed that, there was “no doubt that questions concerning the use of force, the regulation of armaments and disarmament” were within the competence of the United Nations and lied outside that of the specialized agencies.⁸¹ In the opinion of the Court, the authorization of various specialized agencies to request opinion from the Court under Article 96, paragraph 2, of the Charter, did not mean that the General Assembly “intended to allow them to seise the Court of questions belonging within the competence of the United Nations.”⁸²

(ii) Legality of the threat or use of nuclear weapons

• Article 96 (1)

54. In the above advisory opinion, the Court observed that, Article 96, paragraph 1, of the Charter could not be read “as limiting the ability of the Assembly to request an opinion only on those circumstances in which it can make binding decisions.”⁸³ In the view of the Court, the fact that the activities of the Assembly on the areas under consideration have culminated only in making of recommendations had no bearing on its “competence to put to the Court the question” of which it was seised.⁸⁴

55. In the same advisory opinion, the Court considered the provisions of the Charter relating to the threat or use of force (Article 2, paragraph 4, Article 42, and Article 51), and observed that these provisions did not “refer to specific weapons,” and applied to “any use of force, regardless of the weapons employed.”⁸⁵ The Court further held:

“The Charter neither expressly prohibits, nor permits, the use of any specific weapon, including nuclear weapons. A weapon that is already unlawful *per se*, whether by treaty or by custom, does not become lawful by reason of its being used for a legitimate purpose under the Charter.”⁸⁶

• Article 51

⁷⁹ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 80, paragraph 26.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid, p. 81.

⁸³ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 233, paragraph 12.

⁸⁴ Ibid.

⁸⁵ Ibid., p. 244, paragraph 39.

⁸⁶ Ibid.

56. Concerning resort to self-defence under Article 51 of the Charter, the Court reiterated its earlier position⁸⁷ that self-defence is subject to the conditions of necessity and proportionality, which were the rules of customary international law. In the view of the Court, these conditions were applicable to Article 51 of the Charter, irrespective of “the means of force employed.”⁸⁸

57. As regards other requirements contained in Article 51 of the Charter, namely, immediate report to the Security Council by the States exercising their rights of self-defence, and the authority and responsibility of the Security Council under the Charter “to take any time such action as it deems necessary” for the maintenance or restoration of international peace and security”, the Court observed that, the requirements of article 51 were applicable regardless of “the means of force used in self-defence.”⁸⁹

- Article 2 (4)

58. In the same advisory opinion, the Court further considered the notions of “threat” and “use of force”, contained in Articles 4, paragraph 2 of the Charter, and stated:

“The notions of ‘threat’ and ‘use of force’ under Article 2, paragraph 4, of the Charter stand together in the sense that if the use of force itself in a given case is illegal – for whatever reason – the threat to use such force will likewise be illegal.”⁹⁰

The Court concluded in this regard:

“A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful”⁹¹

(iii) Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights

- Article 105

59. In the above advisory opinion, the Court confirmed its earlier position⁹² that the General Assembly had acted in conformity with article 105 of the Charter, in approving the Convention on the Privileges and Immunities of the United Nations on 13 February 1946, and proposing it for ratification by the Member States of the United Nations.⁹³

⁸⁷ Case concerning Military and Paramilitary activities in and against Nicaragua, Reports of Judgements, Advisory Opinions and Orders of ICJ, 1986, p. 94, paragraph 176.

⁸⁸ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 245, paragraph 41.

⁸⁹ Ibid., paragraph 44.

⁹⁰ Ibid. p. 246, paragraph 47.

⁹¹ Ibid., p. 266.

⁹² Reports of Judgements, Advisory Opinions and Orders of ICJ, 1989, p. 192, paragraph 42.

⁹³ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 82, paragraph 40.

60. In the same advisory opinion, the Court held that, “the Government of Malaysia had an obligation, under Article 105 of the Charter [...], to inform its courts of the position taken by the Secretary-General”⁹⁴

(d) Interpretation of treaties

(i) Legality of the use by a State of nuclear weapons in armed conflict

61. In the above advisory opinion, the Court reaffirmed its earlier position that “the constituent instruments of international organizations are multilateral treaties to which the well-established rules of treaty interpretation apply.”⁹⁵ Accordingly, the Court, as in the past,⁹⁶ interpreted the relevant provisions of the treaty in question in accordance with the customary rules of interpretation as codified in Article 31 of 1969 Vienna Convention on the Law of Treaties.⁹⁷

62. In the same advisory opinion, the Court examined relevant provisions of the WHO constitution⁹⁸ and observed that, “the provisions of its Article 2 may be read as authorizing the Organization to deal with the effects on health of the use of nuclear weapons, or of any other hazardous activity, and to take preventive measures aimed at protecting the health of populations in the event of such weapons being used or such activities engaged in.” However, in the opinion of the Court, the question put to it was not related “*to the effects* of the use of nuclear weapons on health, but to the legality of the use of such weapons *in view of their health and environmental effects*.” Accordingly, the Court concluded that the constitution of the WHO did not seem to confer “upon the Organization a competence to address the legality of the use of nuclear weapons, and thus in turn a competence to ask the Court about that.”⁹⁹

(ii) Legality of the threat or use of nuclear weapons

63. In the above advisory opinion, the Court examined the existing instruments on the prohibition of weapons of mass destruction,¹⁰⁰ and did not find “any specific prohibition of recourse to nuclear weapons in treaties expressly prohibiting the use of certain weapons of mass destruction.”¹⁰¹

⁹⁴ Ibid., paragraph 62.

⁹⁵ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 74, paragraph 19.

⁹⁶ The list of cases, in which the Court had applied this rule of interpretation, is contained in: ICJ Reports, Ibid, page 75.

⁹⁷ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 74, paragraph 19.

⁹⁸ Namely: preamble, Articles 1 and 2 of the Constitution of the World Health Organization, New York, 22 July 1946.

⁹⁹ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 76, paragraph 21.

¹⁰⁰ Ibid., pp. 248-253, paragraphs 53-56.

¹⁰¹ Ibid., pp. 248-253, paragraph 57.

64. The court after examination of the treaties, which limit the “acquisition, manufacture and possession of nuclear weapons”,¹⁰² “the deployment of nuclear weapons”,¹⁰³ and the “testing of nuclear weapons”,¹⁰⁴ concluded that, “they have not resulted in a treaty of general prohibition of the same kind as for bacteriological and chemical weapons.”¹⁰⁵

65. The Court, in particular, considered two treaties, namely, the Treaty of Tlatelolco¹⁰⁶ and the Treaty of Rarotonga,¹⁰⁷ which have directly addressed the issue of prohibition of recourse to nuclear weapons. Furthermore, it examined the question of indefinite extension of the Treaty on the Non-Proliferation of Nuclear Weapons, in 1995, and summarized its findings as follows:

“(a) a number of States have undertaken not to use nuclear weapons in specific zones (Latin America; South Pacific) or against certain other States (non-nuclear weapon States which are parties to the Treaty on the Non-Proliferation of Nuclear Weapons);”

“(b) nevertheless, even within this framework, the nuclear-weapon States have reserved the right to use nuclear weapons in certain circumstances; and”

“(c) these reservations met with no objection from the parties to the Tlatelolco or Rarotonga Treaties or from the Security Council.”¹⁰⁸

66. For the reasons stated above, the Court did not view “these elements as amounting to a comprehensive and universal conventional prohibition on the use, or the threat of use” of nuclear weapons.¹⁰⁹

67. In the same advisory opinion, the Court also considered the obligation of the parties to the Treaty on the Non-Proliferation of Nuclear Weapons, under its Article VI, and observed that: “the legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result – nuclear disarmament in all its aspects – by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith.”¹¹⁰ Therefore, the Court unanimously concluded:

“There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”¹¹¹

¹⁰² Ibid., paragraph 58(a).

¹⁰³ Ibid. paragraph 58 (b).

¹⁰⁴ Ibid. paragraph 58 (c).

¹⁰⁵ Ibid., paragraph 58.

¹⁰⁶ The Treaty of Tlatelolco of 14 February 1967 for the Prohibition of Nuclear Weapons in Latin America prohibits, in Article I, the use of nuclear weapons by the contracting parties.

¹⁰⁷ The Treaty of Rarotonga of 6 August 1985 establishes a South Pacific Nuclear Free Zone, and parties to which have undertaken not to manufacture, acquire or possess any nuclear explosive device.

¹⁰⁸ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 253, paragraph 62.

¹⁰⁹ Ibid., paragraph 63.

¹¹⁰ Ibid., p. 264, paragraph 99.

¹¹¹ Ibid., p. 267.

(iii) Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights

68. In the above advisory opinion, the Court, with reference to section 22 (b) of the Convention on the Immunities and Privileges of the United Nations, which “explicitly states that experts on mission shall be accorded immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of performance of their mission”,¹¹² held that, “the immunity from legal process” includes being “financially harmless for costs imposed by Malaysian courts, in particular taxed costs.”¹¹³

69. Finally, the Court pointed out that, “the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts performed by the United Nations or by its agents acting under that capacity.”¹¹⁴ In the Court’s view, “the United Nations may be required to bear responsibility for damages arising from such acts.”¹¹⁵

70. Concerning the role of the Secretary-General in determining whether a particular expert on Mission is entitled to the immunity provided for in Section 22 (b) of the Convention on the Privileges and Immunities of the United Nations, the Court held that “the Secretary-General of the United Nations has a pivotal role to play.”¹¹⁶ Because, as the Court had earlier recognized,¹¹⁷ the Secretary-General, as the chief administrative officer of the Organization, had “the authority and responsibility to exercise the necessary protection” to its agents, where required.¹¹⁸

71. In the same advisory opinion, the Court further observed that, in shielding the United Nations experts, the Secretary-General was “protecting the mission with which the expert is entrusted”, and that the Secretary-General had “the primary responsibility and authority to protect the interests of the Organization and its agents, including experts on mission.”¹¹⁹

72. In the view of the Court, it was up to the Secretary-General “to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity.”¹²⁰ In addition,

¹¹² Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 88, paragraph 63.

¹¹³ Ibid., paragraph 64.

¹¹⁴ Ibid., paragraph 66.

¹¹⁵ Ibid.

¹¹⁶ Ibid, p. 84, paragraph 50.

¹¹⁷ Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949, p. 184.

¹¹⁸ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 84, paragraph 50.

¹¹⁹ Ibid, paragraph 51.

¹²⁰ Ibid. Paragraph 60.

the Secretary-General had “the authority and responsibility to inform the Government of a member State of his finding”¹²¹

73. As regards the obligation of the parties under the Convention, the Court held that the governmental authorities of a party to the Convention were “under an obligation to convey such information to the national courts concerned, since a proper application of the Convention by them is dependent on such information”,¹²² and ruled that the Government of Malaysia has the obligation “to communicate this advisory opinion to the Malaysian courts”.¹²³

10. EFFECT OF REQUESTS FOR ADVISORY OPINIONS

74. In its decision relating to the advisory opinion on the *difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights*, the Economic and Social Council called upon “the Government of Malaysia to ensure that all judgements and proceedings in this matter in the Malaysian courts are stayed pending receipt of the advisory opinion of the International Court of Justice, which shall be accepted as decisive by the parties.”¹²⁴

75. Following the submission of the request for an advisory opinion from the International Court of Justice, Malaysia transmitted to the Court the following information concerning the proceedings that were pending before the Malaysian Courts:

“the hearings on the question of stay in respect of three of the four cases have been deferred until 9 February 1999 when they are due again to be mentioned in court, and when the plaintiff will join in requesting further postponements until this Court’s advisory opinion has been rendered, and sufficient time has been given to all concerned to consider its implications.”¹²⁵

“The position in the first of the four cases is the same, although it is fixed for mention on 16 December [1998]. However, it will then be treated in the same way as the other cases. As to cost, the requirement for the payment of costs by the defendant also has been delayed, and that aspect of the case will be deferred and considered in the same way.”¹²⁶

11. PRIOR REFERENCES TO THE BINDING EFFECTS OF ADVISORY OPINIONS

76. In its decision concerning request for an advisory opinion on the *difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights*, the Economic and Social Council repeated the obligation contained in Article

¹²¹ Ibid.

¹²² Ibid., paragraph 61.

¹²³ Ibid., paragraph 67.

¹²⁴ Decision No. 1998/297.

¹²⁵ Reports of Judgements, Advisory Opinions and Orders of ICJ, 1999, p. 17, paragraph 21.

¹²⁶ Ibid.

VIII, Section 30, of the Convention on the Privileges and Immunities of the United Nations that, the Court's opinion "shall be accepted as decisive by the parties".¹²⁷

77. The Solicitor-General of Malaysia in his oral statement before the Court, on 10 December 1998, explicitly assured the Court that, "Malaysia fully recognizes the provisions of Section 30 of the General Convention, which accords binding quality to the advisory opinion of the Court".¹²⁸

12. EFFECT GIVEN TO THE ADVISORY OPINIONS OF THE COURT

(i) Legality of the threat or use of nuclear weapons

78. In the above advisory opinion, the General Assembly adopted a resolution, on 10 December 1996,¹²⁹ by which it expressed its appreciation to the Court for responding to the request made by the Assembly, and took note of the opinion of the Court on the legality of the threat or use of nuclear weapons.

79. In the same resolution, the Assembly emphasized the obligation of States to follow the negotiations on nuclear disarmament and bring it to a conclusion. Relevant paragraphs of the resolution read as follows:

"3. Underlines the unanimous conclusion of the Court that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control;"

"4. Calls upon all States to fulfil that obligation immediately by a nuclear-weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination".¹³⁰

80. In its subsequent sessions, the General Assembly, on the basis of the conclusion of the Court, repeated its call for conclusion of negotiations on a nuclear-weapons convention.¹³¹

(ii) Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights

81. In the above advisory opinion, the Court observed that a distinction should be drawn "between the advisory nature of the Court's task and the particular effects that parties to

¹²⁷ E/1998/297, paragraph 2.

¹²⁸ E/1999/121.

¹²⁹ A/RES/51/45 M.

¹³⁰ A/RES/51/45 M.

¹³¹ A/RES/52/38 O; A/RES/53/77 W; A/RES/54/54Q; A/RES/55/33; A/RES/56/24; A/RES/57/85.

an existing dispute may wish to attribute, in their mutual relations, to an advisory opinion of the Court, which ‘as such, ... has no binding force’”.¹³²

82. In the same advisory opinion, on 30 July 1999, the Economic and Social Council adopted a resolution, by which the Council expressed its appreciation to the Court for giving the advisory opinion,¹³³ and took note of stated commitment of Malaysia to abide by the opinion.¹³⁴

83. In the same resolution the Council stressed the obligation of Malaysia as a State party to the Convention on the Privileges and Immunities of the United Nations and urged the Government of Malaysia “to make further efforts, in order that its international obligations thereunder be given effect and Dato’ Param Kumaraswamy’s immunity be respected, in accordance with the advisory opinion of the International Court of Justice.”¹³⁵

84. As at 31 December 1999, the four civil law suits against Mr. Kumaraswamy, was pending before Malaysian courts.

C. Miscellaneous

1. PROPOSALS AIMED AT REQUESTS FOR ADVISORY OPINIONS FROM THE INTERNATIONAL COURT OF JUSTICE

85. During the period under review, the Special Committee on the Charter of the United Nations and on the Strengthening of the Organization, considered a proposal presented by a member State, containing a request for an advisory opinion from the International Court of Justice.¹³⁶

¹³² Reports of Judgements, Advisory Opinions and Orders of ICJ, 1996, p. 76, paragraph 25.

¹³³ Resolution 1999/64, E/1999/INF/2/Add.2, pp. 152-153.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ The working paper submitted by the Russian Federation (A/AC.182/L.104), which was revised and jointly submitted by Belarus and the Russian Federation (A/AC.182/L.104/Rev.1), embodied the following questions to be forwarded to the Court for an advisory opinion: “3. As matter of urgency and pursuant to Article 96, paragraph 1, of the Charter of the United Nations, *requests* the International Court of Justice to give an advisory opinion on the following legal questions:

-Under contemporary international law, does a State or group of States have the right to make use of armed forces without a decision of the Security Council taken pursuant to Chapter VII of the Charter of the United Nations, except in exercise of the right to individual or collective self-defence pursuant to Article 51 of the Charter?

-Is such use of armed force a violation of the obligation of that State or group of States under the Charter of the United Nations?

-Do States which are not the object of the use of armed force have a right to compensation for damages which they sustained as a consequence of such use of armed force inasmuch as they were unable fully to enjoy their rights under contemporary international law, particularly the Charter of the United Nations?”

See document A/54/33, p.15.

86. The Committee considered, in its 1999 session, the proposal to request an advisory opinion from the Court and reported to the General Assembly in its fifty-fourth session, without any recommendation.¹³⁷ As at 31 December 1999, the Assembly had not made any decision on this proposal.

2. REFERENCES IN CONSTITUENT INSTRUMENTS OF INTERNATIONAL ORGANIZATIONS TO REQUESTS FOR ADVISORY OPINIONS

87. The 1996 Comprehensive Nuclear-Test-Ban Treaty stipulated that the Conference of the States Parties and the Executive Council could separately request advisory opinions of the Court on “any legal question arising within the scope of the activities of the Organization”, subject to authorization from the General Assembly of the United Nations.¹³⁸ Article VI, paragraph 5, of the Treaty provides as follows:

5. The Conference and the Executive Council 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 activities of the Organization. An agreement between the Organization and the United Nations shall be concluded for this purpose in accordance with Article II, paragraph 38 (h).

88. As of 31 December 1999, the Comprehensive Nuclear-Test-Ban Treaty Organization had not been established, and consequently, the agreement to regulate the relationship between the United Nations and that organization had not been concluded. Therefore, effect had not been given to the above provision of the Treaty in question in the light of Article 96 of the Charter.

¹³⁷ A/C.6/54/SR.18, A/C.6/54/SR.19, A/C.6/54/SR. 23, A/C.6/54/SR. 27, A/C.6/54/SR. 33.

¹³⁸ Paragraph 5, Article VI, Comprehensive Nuclear-Test-Ban Treaty, New York, 10 September 1996.