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Part Three. Judicial decisions on questions relating to the United Nations and related
intergovernmental organizations

Chapter VII. Decisions and advisory opinions of international tribunals



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Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

INTERNATIONAL COURT OF JUSTICE

INTERPRETATION OF THE AGREEMENT OF 25 MARCH 1951 BETWEEN WHO AND EGYPT¹ ADVISORY OPINION OF 20 DECEMBER 1980²

Determination by the Court of the meaning and implications of questions submitted for advisory opinion — Need for Court to ascertain and formulate legal questions really in issue.

International organizations and host States — Respective powers of the organization and the host State with regard to seat of headquarters or regional offices of organization — Mutual obligations of co-operation and good faith resulting from a State's membership of organization as well as from relations between organization and host State — Legal principles and rules applicable on transfer of office of organization from territory of host State concerning conditions and modalities for effecting transfer — Duty to consult — Consideration of provisions of host agreements and of Vienna Convention on the Law of Treaties — Application of principles and rules of general international law — Mutual obligation to co-operate in good faith to promote the objectives and purposes of the Organization.

On 20 May 1980 the World Health Assembly had decided to request of the Court an advisory opinion on the following questions:

“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?”

Pursuant to Article 65, paragraph 2, of the Statute, the Director-General of the World Health Organization had transmitted to the Court a set of documents likely to throw light upon these questions.

In accordance with Article 66, paragraph 2, of the Statute, the WHO and those of its member States entitled to appear before the Court had been informed that the Court was prepared to receive from them written or oral statements furnishing information on the questions put to it.

On 6 June 1980 the President of the Court had made an Order fixing 1 September 1980 as the time-limit for the submission of written statements (*I.C.J. Reports 1980*, p. 67). Written statements were received from the Governments of Bolivia, Egypt, Iraq, Jordan, Kuwait, the Syrian Arab Republic, the United Arab Emirates and the United States of America.

On 21, 22 and 23 October 1980 the Court held public sittings at which oral statements were made on behalf of Egypt, the Syrian Arab Republic, Tunisia, the United Arab Emirates and the United States of America, and the Director of the Legal Division of the WHO answered questions put to him by Members of the Court.

On 20 December 1980 the Court delivered at a public sitting the Advisory Opinion (*I.C.J. Reports 1980*, p. 73) which is summarized below:

Factual and legal background to the submission of the Request (paras. 1-32 of the Advisory Opinion)

After detailing the various stages of the proceedings (paras. 1-9), the Court recounted the antecedents of the WHO Regional Office at Alexandria, from the creation in that city of a general Board of Health in 1831 for the purpose of preventing epidemics up to the integration of the Alexandria Sanitary Bureau with the WHO in 1949 as a regional organ. The Eastern Mediterranean Regional Office had commenced operations on 1 July 1949, while negotiations were in progress between the WHO and Egypt for the conclusion of an agreement on the privileges, immunities and facilities to be granted to the Organization. This agreement had eventually been signed on 25 March 1951 and had entered into force on 8 August 1951 (paras. 10-27).

The Court next examined the events which had led to the submission of the request for an Advisory Opinion. It recapitulated proceedings within the WHO, from the recommendation by a Sub-Committee of the Regional Committee for the Eastern Mediterranean on 11 May 1979 that the Office be transferred to another State in the region, up to the recommendation by the same Sub-Committee on 9 May 1980 that the Regional Office be transferred as soon as possible to Amman (Jordan) and the adoption by the World Health Assembly on 20 May 1980 of resolution WHA33.16 by which, on account of differing views as to the applicability of Section 37 of the Agreement of 25 March 1951 to the transfer of the Regional Office, it had sought the Court's advisory opinion on two questions prior to taking any decision (paras. 28-32).

Competence to deliver an Opinion (para. 33 of the Advisory Opinion)

Before proceeding further, the Court considered whether it ought to decline to reply to the request for an Advisory Opinion by reason of its allegedly political character. It concluded that to do so would run counter to its settled jurisprudence. If a question submitted in a request were one that otherwise fell within the normal exercise of its judicial powers, the Court had not to deal with the motives which might have inspired the request.

Significance and scope of the questions put to the Court (paras. 34 f. of the Advisory Opinion)

The Court next considered the meaning and implications of the hypothetical questions on which it had been asked to advise. Section 37 of the Agreement of 25 March 1951, to which the first question referred, 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.”

The Court pointed out that, if it was to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction, it must ascertain what were the legal questions really in issue in questions formulated in a request. That it had had occasion to do in the past, as had also the Permanent Court of International Justice. The Court also noted that a reply to questions of the kind posed in the request submitted to it might, if incomplete, be not only ineffectual but actually misleading as to the legal rules applicable to the matter under consideration by the WHO.

Having regard to the differing views expressed in the World Health Assembly on a number of points, it appeared that the true legal question under consideration in the World Health Assembly, which must also be considered to be the legal question submitted to the Court in the WHO's request was: 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?

The differing views advanced (paras. 37-42)

In answering the question thus formulated, the Court first noted that the right of an international organization to choose the location of its headquarters or regional office was not contested. It then turned to the differing views expressed in the World Health Assembly and, before the Court, in the written and oral statements, regarding the relevance of the Agreement of 25 March 1951 and the applicability of Section 37 to a transfer of the Regional Office from Egypt.

With respect to the *relevance of the 1951 Agreement*, one of the views advanced had been that that agreement was a separate transaction, subsequent to the establishment of the Regional Office, and that, although it might contain references to the seat of the Regional Office in Alexandria, it did not provide for the Office's location there. It would follow that it had no bearing on the Organization's right to remove the Regional Office from Egypt. The Agreement, it had been claimed, concerned the immunities and privileges granted to the Office within the larger context of the immunities and privileges granted by Egypt to the WHO.

According to the opposing view, the establishment of the Regional Office and its integration with the WHO had not been completed in 1949; they had been accomplished by a series of acts in a composite process, the final and definitive step in which had been the conclusion of the 1951 host agreement. It had been contended, *inter alia*, that the absence of a specific provision regarding the establishment of the WHO Office in Alexandria was due to the fact that the Agreement was dealing with a pre-existing Sanitary Bureau already established there. Moreover, it had been stated, the Agreement was constantly referred to as a host agreement in the records of the WHO and in official acts of the Egyptian State (paras. 37-39).

So far as the applicability of Section 37 to the transfer of the Office from Egypt was concerned, the differences of view had resulted essentially from the meaning attributed to the word "revise" in the first sentence. According to one view, a transfer of the seat would not constitute a revision and would thus not be covered by Section 37, which would not apply to the denunciation of the Agreement which a transfer of the Office from Egypt would involve. Upholders of that view concluded therefrom that since there was no provision in the Agreement for denunciation, the general rules of international law which provided for the possibility of denunciation and the need for a period of notice in respect of such agreements applied in the present case. According to the opposite view, the word "revise" might also signify a general revision of an agreement, including its termination, and was so used in the 1951 Agreement. According to the proponents of that view, even if that interpretation were rejected, Egypt would still be entitled to receive notice under the general rules of international law.

Whatever view might be taken of the arguments advanced concerning the relevance and applicability of the 1951 Agreement, the Court found that certain legal principles and rules were applicable in the case of such a transfer (paras. 40-42).

Mutual obligations of co-operation and good faith (paras. 43-47)

Whether the mutual understandings reached between Egypt and the WHO from 1949 to 1951 were regarded as distinct agreements or as separate parts of a single transaction, a contractual legal régime had been created between Egypt and the Organization which remained the basis of their legal relations. Those relations remained those of a host State and an international organization, the very essence of which was a body of mutual obligations of co-operation and good faith. Having regard to the practical problems which a transfer would cause, the WHO and Egypt must co-operate closely to avoid any risk of serious disruption to the work of the Regional Office. In particular, a reasonable period of time should be allowed for the process (paras. 43 f.).

In the Court's view, certain pointers to the implications of those mutual obligations to co-operate in good faith in a situation like the one with which it was concerned might be found in numerous host agreements, as well as in Article 56, paragraph 2, of the Vienna Convention on the Law of Treaties and the corresponding provision in the International Law Commission's draft articles on treaties between States and international organizations or between international organizations (paras. 45-47).

Applicable legal principles and rules (paras. 48 f.)

The Court thus found the applicable legal principles and rules, and the consequent obligations, to consist in:

— consultation in good faith as to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt might be effected;

— if a transfer were decided upon, consultation and negotiation regarding the arrangements needed to effect the transfer in an orderly manner and with a minimum of prejudice to the work of the organization and the interests of Egypt;

— the giving of reasonable notice by the party desiring the transfer.

Precisely what periods of time might be involved in the observance of the duties to consult and negotiate, and what period of notice should be given, were matters which necessarily varied according to the requirements of the particular case. In principle, therefore, it was for the parties in each case to determine them. Some indications as to the possible periods involved could be seen in provisions of host agreements, including Section 37 of the Agreement of 25 March 1951, as well as in Article 56 of the Vienna Convention on the Law of Treaties and in the corresponding article of the International Law Commission's draft articles on treaties between States and international organizations or between international organizations. The paramount consideration both for the WHO and the host State in every case must be their obligation to co-operate in good faith to promote the objectives and purposes of the WHO.

Second question submitted to the Court (para. 50)

It followed from the foregoing that the Court's reply to the second question was that the legal responsibilities of the Organization and Egypt during the transitional period between notification of the proposed transfer and the accomplishment thereof would be to fulfil in good faith the mutual obligations set out above.

*

For those reasons, the Court delivered the following Advisory Opinion:

“The Court,

“1. By twelve votes to one,

“*Decides* to comply with the request for an advisory opinion;

“IN FAVOUR: *President* Sir Humphrey Waldock; *Vice-President* Elias; *Judges* Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara;

“AGAINST: *Judge* Morozov;

“2. With regard to Question 1,

“By twelve votes to one,

“*Is of the opinion* that in the event specified in the request, the legal principles and rules, and the mutual obligations which they imply, regarding consultation, negotiation and notice, applicable as between the World Health Organization and Egypt are those which have been set out in paragraph 49 of this Advisory Opinion and in particular that:

“(a) their mutual obligations under those legal principles and rules place a duty both upon the Organization and upon Egypt to consult together in good faith as to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected;

“(b) in the event of its being finally decided that the Regional Office shall be transferred from Egypt, their mutual obligations of co-operation place a duty upon the Organization and Egypt to consult together and to negotiate regarding the various arrangements needed to effect the transfer from the existing to the new site in an orderly manner and with a minimum of prejudice to the work of the Organization and the interests of Egypt;

“(c) their mutual obligations under those legal principles and rules place a duty upon the party which wishes to effect the transfer to give a reasonable period of notice to the other party for the termination of the existing situation regarding the Regional Office at Alexandria, taking due account of all the practical arrangements needed to effect an orderly and equitable transfer of the Office to its new site;

“IN FAVOUR: *President* Sir Humphrey Waldock; *Vice-President* Elias; *Judges* Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara;

“AGAINST: *Judge* Morozov;

“3. With regard to Question 2,

“By eleven votes to two,

“*Is of the opinion* that, in the event of a decision that the Regional Office shall be transferred from Egypt, the legal responsibilities of the World Health Organization and Egypt during the transitional period between the notification of the proposed transfer of the Office and the accomplishment thereof are to fulfil in good faith the mutual obligations which the Court has set out in answering Question 1;

“IN FAVOUR: *President* Sir Humphrey Waldock; *Vice-President* Elias; *Judges* Forster, Gros, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara;

“AGAINST: *Judges Lachs and Morozov.*”

*

Judges Gros, Lachs, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara appended separate opinions to the Advisory Opinion (*I.C.J. Reports 1980*, pp. 99, 108, 114, 125, 131, 155, 163 and 178).

Judge Morozov appended a dissenting opinion (*ibid.*, p. 190).

Notes

¹ United Nations, *Treaty Series*, vol. 223, p. 87.

² *I.C.J. Reports 1980*, p. 72. The above summary is reproduced from the *I.C.J. Yearbook 1980-1981*, pp. 126-133.