ARTICLE 92

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TEXT OF ARTICLE 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the Charter.

INTRODUCTORY NOTE

1. In this study of Article 92, the same structure has been maintained as in the corresponding study in the Supplement No. 9 of the Repertory.
GENERAL SURVEY

2. During the period under review, the General Assembly adopted ten resolutions in which it addressed, inter alia, the role of the International Court of Justice (hereinafter, the Court) in the peaceful resolution of disputes.\(^1\) Each of these resolutions recalled the important role of the Court as the principal judicial organ of the United Nations and re-affirmed the Court’s authority and independence.

3. The annual reports of the International Court of Justice to the General Assembly made references to the Court as the principal judicial organ of the United Nations at the outset of each report released from 2000 to 2009.\(^2\) These reports consistently emphasized the special role that the Court plays in facilitating inter-State dispute resolution.

4. The deliberations in the General Assembly and its subsidiary bodies during the period under review demonstrated significant support for the work of the International Court of Justice as the principal judicial organ of the United Nations. Various delegations referred to the Court as the principal judicial organ when pronouncing their support for the Court and its request for an increased allocation of financial resources.\(^3\)

5. During the period under review, the Court referred to its role as the principal

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\(^1\) GA resolutions: 64/115 (para. 8), 63/127 (para. 8), 62/69 (para. 7), 61/37 (para. 7), 60/23 (para. 7), 59/44 (para. 3), 58/248 (para. 3), 57/24 (para. 3), 56/86 (para. 3) and 55/156 (para. 3).

\(^2\) Reports of the International Court of Justice to the General Assembly: A/55/4 (p. 1), A/56/4 (p. 1), A/57/4 (p. 1), A/58/4 (pp. 1 and 72), A/59/4 (pp. 1, 16, 46 and 56), A/60/4 (pp. 1 and 8), A/61/4 (pp. 1, 45, 47 and 55), A/62/4 (pp. 1, 5, 43 and 52), A/63/4 (pp. 5 and 6) and A/64/4 (pp. 1 and 14).

II. ANALYTICAL SUMMARY OF PRACTICE

A. The role of the International Court of Justice as “the principal judicial organ of the United Nations”

6. The Court referred to its role as the principal judicial organ of the United Nations in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, rendered on 30 January 2004. Citing the specific language of Article 92 of the Charter, the Court stated that it should not refuse to give an advisory opinion absent compelling reasons to do so.

“Given its responsibilities as the principal judicial organ of the United Nations (Article 92 of the Charter), the Court should in principle not decline to give an advisory opinion. In accordance with its consistent jurisprudence, only “compelling reasons” should lead the Court to refuse its opinion.”

B. Judicial Character of the Court

7. During the period under review, the Court considered the implications of its judicial character on one occasion.

8. In its Advisory Opinion concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the Court made observations regarding its judicial character. Israel had argued that the Court should decline to respond to the question of the legality of the construction of the wall for reasons of judicial propriety. In particular, Israel indicated that it had never consented to the settlement of the Israeli-Palestinian dispute by the Court and, thus, that the Court should

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4 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion I.C.J. Reports 2004. See paragraph 6 below.
5 Ibid., para. 44.
6 Ibid.
decline to give the advisory opinion on that basis.\(^7\)

9. The Court referred to its 1975 Advisory Opinion on the Western Sahara, observing that a lack of consent might constitute a ground for declining to deliver an opinion if consideration of judicial propriety would oblige the Court to do so.\(^8\) It further observed that it would be judicially inappropriate to render an opinion where doing so would circumvent the principle that States are not obliged to allow disputes to be submitted to the Court for settlement without their consent.\(^9\)

“The consent of States parties to a dispute is the basis of the Court’s jurisdiction in contentious cases. The situation is different in regard to advisory proceedings even where the request for an opinion relates to a legal question actually pending between states. The Court’s reply is only of an advisory character: as such, it has no binding force. It follows that no State, whether a member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take.”\(^10\)

10. Applying that principle to the case at bar, the Court did not characterize the matter before it as an exclusively bilateral one between Israel and Palestine. Rather, the Court found that the construction of the wall was of direct concern to the United Nations and took on much broader relevance outside the bilateral dispute. Thus, the Court found that it was judicially appropriate to render an advisory opinion as it would not circumvent the principle of consent to judicial settlement.\(^11\)

C. Continuity of the Court with the Permanent Court of International Justice

\(^7\) Ibid., para. 46.
\(^8\) Ibid., para. 47.
\(^9\) Ibid.
\(^10\) Ibid.
\(^11\) Ibid., paras. 49 and 50.
11. During the period under review, the continuity of the Court with the Permanent Court of International Justice was invoked before the Court in connection with the following cases.

12. In its 1999 Application against the Netherlands, Serbia and Montenegro had invoked as a basis for the Court’s jurisdiction Article 36, paragraph 2, of the Statute of the Court, Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, as well as Article 4 of the Treaty of Judicial Settlement, Arbitration and Conciliation between the Kingdom of Yugoslavia and the Netherlands, signed in The Hague in 1931 (hereinafter the 1931 Treaty). Similarly, in its application against Belgium, Serbia and Montenegro had invoked as jurisdictional bases, in addition to Article 36, paragraph 2 of the Court’s Statute and Article IX of the Genocide Convention, Article 4 of the 1930 Convention of Conciliation, Judicial Settlement and Arbitration between the Kingdom of Yugoslavia and Belgium (hereinafter, the 1930 Convention).

13. In both judgments, the Court held that Serbia and Montenegro could have access to the Court, under Article 35, paragraph 1, of the Statute, only if it was a party to the Statute at the time of the institution of the present proceedings.

“[…] the question whether Serbia and Montenegro was or was not a party to the Statute of the Court at the time of the institution of the present proceedings is fundamental.”

14. The Court proceeded to analyze the status of the Federal Republic of Yugoslavia, which joined the United

14 Enter into force on 2 April 1932.
15 Entered into force on 3 September 1930.
Nations by General Assembly resolution 55/12 in 2000. It held that this membership did not extend to Serbia and Montenegro upon the disintegration of the Socialist Federal Republic of Yugoslavia.

“… [f]rom the vantage point from which the Court now looks at the legal situation, and in light of the legal consequences of the new development since 1 November 2000, the Court is led to the conclusion that Serbia and Montenegro was not a Member of the United Nations, and in that capacity a State party to the Statute of the International Court of Justice, at the time of filing its Application to institute the present proceedings before the Court on 29 April 1999.”17

15. The Court thus concluded that at the time the proceedings were instituted, Serbia and Montenegro was not a member of the United Nations and thus was not a State party to the Statute of the Court. Therefore, the Court was not open to Serbia and Montenegro under Article 35, paragraph 1, of the Statute.18

16. The Court then considered whether Article 35, paragraph 2 of the Statute granted Serbia and Montenegro access to Court. The fundamental purpose of this paragraph was to define the conditions of and regulate access to the Court. The Court recalled the text of paragraph 2 of Article 35, which provides:

“The conditions under which the Court shall be open to other States [i.e. States not parties to the Statute] shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.”19

17. The Court held that the text of Article 35, paragraph 2, was intended to

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17 Legality of Use of Force (Serbia and Montenegro v. Belgium), para. 79; and Legality of Use of Force (Serbia and Montenegro v. Netherlands), para. 78.

18 Legality of Use of Force (Serbia and Montenegro v. Belgium), para. 91; and Legality of Use of Force (Serbia and Montenegro v. Netherlands), para. 90.

19 See Legality of Use of Force (Serbia and Montenegro v. Belgium), para. 92; and Legality of Use of Force (Serbia and Montenegro v. Netherlands), para. 91.
refer to treaties in force at the date of the entry into force of the new Statute. Article IX of the Genocide Convention could not have granted access to the Court to Serbia and Montenegro because that convention entered into force only on 12 January 1951, *i.e.* after the entry into force of the Statute.20

18. The Court then proceeded to examine whether the 1931 Treaty or, respectively, the 1930 Convention could have constituted a basis for its jurisdiction.

19. Article 4 of the 1930 Convention of Conciliation, Judicial Settlement and Arbitration between the Kingdom of Yugoslavia and Belgium stipulates:

“**All disputes with regard to which the Parties are in conflict as to their respective rights shall be submitted for decision to the Permanent Court of International Justice unless the Parties agree in the manner hereinafter provided,**

to resort to an arbitral tribunal. It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice.”21

20. Article 4 of the 1931 Treaty of Judicial Settlement, Arbitration and Conciliation between the Kingdom of Yugoslavia and the Netherlands stipulates:

“If, in the case of one of the disputes referred to in Article 2, the two Parties have not had recourse to the Permanent Conciliation Commission, or if that Commission has not succeeded in bringing about a settlement between them, the dispute shall be submitted jointly under a special agreement, either to the Permanent Court of International Justice, which shall deal with the dispute subject to the conditions and in accordance with the procedure laid down in its Statute, or to an arbitral tribunal which shall deal with it subject to the conditions and in accordance with the procedure laid down by the

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20 See *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, paras. 113-114; *Legality of Use of Force (Serbia and Montenegro v. Netherlands)*, paras. 112-113.

21 See *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, para. 118.
Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

If the Parties fail to agree as to the choice of a Court, the terms of the special agreement, or in the case of arbitral procedure, the appointment of arbitrators, either Party shall be at liberty, after giving one month’s notice, to bring the dispute, by an application, direct before the Permanent Court of International Justice.”

21. The Court held that, neither Article 4 of the 1930 Convention, nor Article 4 of the 1931 Treaty, could have given Serbia and Montenegro access to the Court under Article 35, para. 2 of the Statute, as the latter provision did not refer to treaties recognizing the jurisdiction of the Permanent Court of International Justice, but only to treaties recognizing the jurisdiction of the present Court and which entered into force before the entry into force of the Court’s Statute. Nor could have Article 37 of the Statute, which was only applicable as between States Parties to the Statute, provided Serbia and Montenegro access to the Court on the basis of Article 4 of the 1930 Convention or the 1931 Treaty. In this regard, the Court recalled its findings in the Barcelona Traction case (I.C.J. Reports 1964, p. 32) according to which

“three conditions are actually stated in […] Article [37]. They are that there should be a treaty or convention in force; that it should provide (i.e., make provision) for the reference of a ‘matter’ (i.e., the matter in litigation) to the Permanent Court; and that the dispute should be between States both or all of which are parties to the Statute.”

22 See Legality of Use of Force (Serbia and Montenegro v. Netherlands), para. 117.

23 See Legality of Use of Force (Serbia and Montenegro v. Belgium), paras. 123-126; and Legality of Use of Force (Serbia and Montenegro v. Netherlands), paras. 122-125.

24 See Legality of Use of Force (Serbia and Montenegro v. Belgium), para. 125; and Legality of Use of Force (Serbia and Montenegro v. Netherlands), para. 124.