

# ARTICLE 92

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## ARTICLE 92

### 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 present Charter.

### INTRODUCTORY NOTE

1. In this study of Article 92, the same structure has been maintained as in the corresponding study in *Repertory Supplement No. 3*.

### I. GENERAL SURVEY

2. Reference to the role played by the International Court of Justice was made in the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, in 1967 and, in the Sixth Committee, at the twenty-second session of the General Assembly in connexion with the consideration of the principle of the peaceful settlement of disputes.

3. During the period under review, the question of the judicial function of the International Court of Justice was referred to in connexion with the North Sea Continental Shelf cases.

### II. ANALYTICAL SUMMARY OF PRACTICE

#### A. The role of the International Court of Justice as "the principal judicial organ of the United Nations"

4. At its second session, held from 17 July to 19 August 1967, the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States considered the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered. Some representatives referred to the desirability of including in the formulation of that principle an appropriate reference to the International Court of Justice and expressed the view that it would be difficult to contemplate the omission of such a reference in that formulation. They pointed out that the Court was one of the principal organs of the United Nations, that Member States were *ipso facto* parties to its Statute and that the Court's role in the settlement of legal disputes was recognized in many provisions of the Charter itself. Some other representatives who were opposed to such reference considered that, although the Court was one of the principle organs of the United Nations and Member States were *ipso facto* parties to its Statute, only one third of the States members of the United Nations had accepted the compulsory jurisdiction of the Court and in some cases this acceptance had been so restricted by reservations as to make it almost meaningless.<sup>1</sup> Similar views were expressed in the Sixth Committee at the twenty-second session of the General Assembly when the question of the formulation of the principles of the peaceful settlement of disputes was considered.<sup>2</sup>

5. No agreement on the inclusion of a specific reference to the settlement of international disputes through the Court was reached either in the Special Committee or in the Sixth Committee.

#### B. The judicial character of the Court

##### 1. THE NORTH SEA CONTINENTAL SHELF CASES

6. In one of the dissenting opinions<sup>3</sup> delivered in the North Sea Continental Shelf cases, it was stated:

"The Court, rejecting the application of the equidistance method in these cases and observing that there is no other single method of delimitation the use of which is in all circumstances obligatory, has found that 'delimitation is to be effected by agreement in accordance with equitable principles' (Judgment, paragraph 101 (C) (1)) thus envisaging new negotiations (even though, before they requested the Court to decide the dispute between them, the Parties had already carried on somewhat protracted but unsuccessful negotiations).

"At the same time, the Court has considered it necessary to indicate 'the factors to be taken into account' by the Parties in their negotiations (paragraph 101 (D)). The factors which have been specified could hardly, in my opinion, be considered among the principles and rules of international law which have to be applied in these cases. The word 'factor' indicates something of a non-juridical character that does not come 'within the domain of law'. The Court has put forward considerations that are, rather,

<sup>1</sup>See G A (XXII), Annexes, a.i. 87, A/6799, paras. 384-392.

<sup>2</sup>*Ibid.*, A/6955.

<sup>3</sup>Dissenting opinion of Vice-President Koretsky. Judgement of 20 February 1969. ICJ, *Reports 1969*, pp. 168-169.

economico-political in nature, and has given some kind of advice or even instructions; but it has not given what I personally conceive to be a judicial decision consonant with the proper function of the International Court."

"It may be appropriate to recall in this connection the observation made by Judge Kellogg in the *Free Zones* case to the effect that the Court could not 'decide questions upon grounds of political and economic expediency' (*P.C.I.J., Series A, No. 24, 1930, p. 34*). Interpreting Article 38 of the Statute, he noted that 'it is deemed impossible to avoid the conclusion that this Court is competent to decide only such questions as are susceptible of solution by

the application of rules and principles of law' (*ibid.*, p. 38); and he cited the statement which was made by James Brown Scott in his address at The Hague Peace Conference of 1907: 'A court is not a branch of the Foreign Office, nor is it a Chancellery. Questions of a political nature should . . . be excluded, for a court is neither a deliberative nor a legislative assembly. It neither makes laws nor determines a policy. Its supreme function is to interpret and apply the law to a concrete case . . . If special interests be introduced, if political questions be involved, the judgment of a court must be as involved and confused as the special interests and political questions.' "