

## 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 outline has been maintained as in the corresponding study in *Repertory Supplement No. 6*.

### I. GENERAL SURVEY

2. The International Court of Justice delivered four judgments<sup>1</sup> and two advisory opinions<sup>2</sup> in the period under review, but in no case did it explicitly invoke its role as the principal judicial organ of the United Nations as set down in Article 92. The provision, however, was mentioned in two dissenting opinions in the case concerning *Military and*

<sup>1</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, *I.C.J. Reports 1985*, p. 13; *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*Tunisia v. Libyan Arab Jamahiriya*), Judgment, *I.C.J. Reports 1985*, p. 192; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, *I.C.J. Reports 1986*, p. 14; *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, *I.C.J. Reports 1986*, p. 554.

<sup>2</sup> *Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal, Advisory Opinion*, *I.C.J. Reports 1987*, p. 18; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion*, *I.C.J. Reports 1988*, p. 12. See also the present Supplement, under Article 96.

*Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment.<sup>3</sup>

3. The General Assembly adopted seven resolutions<sup>4</sup> stressing the importance of the peaceful settlement of disputes between States and explicitly, in one resolution, called upon States to take into consideration that legal disputes should be referred to the International Court of Justice in accordance with the provisions of the Statute of the Court.<sup>5</sup>

4. No decisions were taken by other organs of the United Nations concerning Article 92 during the period under review.

<sup>3</sup> *Military and Paramilitary Activities in and against Nicaragua*, Dissenting Opinion of Judge Oda, *I.C.J. Reports 1986*, p. 212, para. 39, and Dissenting Opinion of Judge Schwebel, *I.C.J. Reports 1986*, p. 259, para. 51.

<sup>4</sup> G A resolutions 40/68, 41/74, 42/22, annex, para. 32, 42/92, 42/150 and 43/51, annex.

<sup>5</sup> G A resolution 42/22, annex, para. 32.

### II. ANALYTICAL SUMMARY OF PRACTICE

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

5. The role of the Court as the principal judicial organ of the United Nations was underlined in several resolutions adopted by the General Assembly,<sup>6</sup> notably in the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, which in its paragraph 32 declares that:

“States should take into consideration that legal disputes should, as a general rule, be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court as an important factor for strengthening the maintenance of international peace and security. The General Assembly and the Security Council should consider

<sup>6</sup> G A resolutions 40/68, 41/31, 41/74, 42/92, 42/150, 43/51, annex, and 43/163.

making use of the provisions of the Charter concerning the possibility of requesting the Court to give an advisory opinion on any legal question.”<sup>7</sup>

6. In its resolutions 40/68, 41/74, 42/150 and 43/163, the General Assembly recalled the Manila Declaration on the Peaceful Settlement of International Disputes of 15 November 1982. In each of those resolutions, the Assembly urged all States to observe and promote in good faith the provisions of the Manila Declaration in the settlement of their international disputes.<sup>8</sup>

7. During the period under review, the General Assembly adopted three resolutions<sup>9</sup> urgently calling for the full and immediate compliance of the United States of America

<sup>7</sup> G A resolution 42/22, annex, para. 32; see also G A resolution 43/51 of 5 December 1988, paras. 15 and 19, for similar formulation.

<sup>8</sup> See G A resolution 37/10, annex, sect. II, para. 5; see also *Repertory, Supplement No. 6*, vol. VI, under Article 92, paras. 9 and 10.

<sup>9</sup> G A resolutions 41/31, 42/18 and 43/11.

with the judgment of the International Court of Justice in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*.<sup>10</sup> The preambles to those resolutions contained an identical paragraph, reading:

“Aware that, under the Charter of the United Nations, the International Court of Justice is the principal judicial organ of the United Nations and that each Member undertakes to comply with the decision of the Court in any case to which it is a party”.

### B. The judicial character of the Court

8. In the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, the International Court of Justice dealt with the preliminary matter of the justiciability of the dispute submitted by Nicaragua.<sup>11</sup> In its Counter-Memorial on jurisdiction and admissibility, the United States argued that the questions of the use of force and collective self-defence raised in the case were of a political or military, rather than of a legal nature, and that:

“a claim of unlawful use of armed force is a matter committed by the United Nations Charter and by practice to the exclusive competence of other organs, in particular the Security Council; and that an ‘ongoing armed conflict’ involving the use of armed force contrary to the Charter is one with which a court can not deal effectively without overstepping proper judicial bounds.”<sup>12</sup>

9. The Court recalled its ruling from its judgment of 26 November 1984 on jurisdiction and admissibility<sup>13</sup> and held that “in the circumstances of the present case, the issues raised of collective self-defence are issues which it has competence, and is equipped, to determine.”<sup>14</sup> The main arguments of the Court were that, on the one hand, there was no indication whatsoever that, even in the view of the United States, the matter in question fell outside the category of “legal disputes” to which article 36, paragraph 2, of the Statute applied, and that, on the other hand, the case did not necessarily involve the Court in the evaluation of political or military matters, which would be to overstep proper judicial bounds.

10. Judge Schwebel, in his dissenting opinion, took the position that the issue of the use of force in self-defence was a political question, which no court, including the In-

ternational Court of Justice, should adjudge.<sup>15</sup> He maintained that exclusive competence to deal with such matters lay with the Security Council. Thus, he stated:

“there is no inherent reason why States could not have reconstructed a contemporary international organization, of which the Court is a principal organ, so as to have placed that judgmental authority only in the hands of the Security Council, or of it and other political organs such as the General Assembly and regional organizations acting under the authority of the Security Council.”<sup>16</sup>

11. In his dissenting opinion, Judge Oda stressed the distinction between “legal disputes” as referred to in Article 36, paragraph 3, of the Charter of the United Nations, on the one hand, and political or military disputes between States, on the other. In particular, he stated that:

“The United Nations set up the International Court of Justice as the principal judicial organ of the United Nations to function in accordance with the annexed Statute (Charter, Article 92). But the principal responsibility for the maintenance of international peace and security is entrusted to the Security Council, which should as a final resort handle a dispute the continuation of which is likely to endanger the maintenance of international peace and security, while taking cognizance of the consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice (Charter, Article 36, para. 3).”<sup>17</sup>

Judge Oda went on to conclude that the current dispute before the Court did not meet the definition of a “legal dispute”, as required by Article 36, paragraph 3, therefore:

“The judicial propriety dictates that the correct manner for dealing with the dispute would have been, and still may prove to be, a conciliation procedure through the political organs of the United Nations or a regional arrangement such as the Contadora Group, and not reference to the International Court of Justice, whose function, which is limited to the purely legal aspect of disputes, has heretofore not been exceeded.”<sup>18</sup>

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

12. The Court did not at any time in the period under review refer to its continuity with the Permanent Court of International Justice, nor did any other organ of the United Nations.

<sup>10</sup> See also the present *Supplement*, under Article 94, paras. 11-12.

<sup>11</sup> *I.C.J. Reports* 1986, p. 26, paras. 32-35.

<sup>12</sup> *Ibid.*, para 32.

<sup>13</sup> See *I.C.J. Reports* 1984, p. 436; see also *Repertory, Supplement No. 6*, vol. VI, under Article 92, paras. 12, 13 and 15.

<sup>14</sup> *I.C.J. Reports* 1986, p. 28, para. 35.

<sup>15</sup> *Ibid.*, p. 285, para. 47.

<sup>16</sup> *Ibid.*, p. 287, para. 51.

<sup>17</sup> *Ibid.*, p. 233, para. 39.

<sup>18</sup> *Ibid.*, p. 246, para. 72.