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 outline has been maintained as in the corresponding study in the Repertory Supplement No. 8.

I. GENERAL SURVEY

2. During the period under review, the Court referred to its role as the principal judicial organ of the United Nations in one Advisory Opinion and referred to its judicial character in two Judgments. In addition, the continuity of the Court with the Permanent Court of International Justice was invoked in two proceedings before the Court.
3. Moreover, during this period, the General Assembly adopted 11 resolutions addressing the Court’s role in the peaceful resolution of disputes.¹

II. ANALYTICAL SUMMARY OF PRACTICE

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

4. The Court referred to its role as the principal judicial organ of the United Nations in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, rendered on 8 July 1996.² In particular, the Court recalled that, as the principal judicial organ of the United Nations, it should not, in principle, refuse to give an advisory opinion, unless “compelling reasons” existed for such a refusal.³

5. During the period under consideration, the role of the Court as the principal judicial organ of the United Nations was also invoked before the Security Council in connection with the parallel Judgments on preliminary objections in the case concerning Questions of the Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)⁴ and the case concerning Questions of the Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States).⁵ After the rendering of the two Judgments on preliminary objections on 27 February 1998,⁶ Libya submitted two letters⁷ to the Security Council, in advance of the review of the sanctions regime against it. It contended, inter alia, that “[t]he Judgments confirm that the case is legal in nature and that it is the International Court of Justice, and not the Security Council, which has jurisdiction, in accordance with the relevant provisions of the Montreal Convention of 1971.”⁸

³ Id., at p. 235, para. 14. Although it did not specifically cite language from Article 92, the Court, in the Advisory Opinion concerning the Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights, dated 29 April 1999, again cited its jurisprudence stating that Advisory Opinions should be given in the absence of compelling reasons for their refusal. I.C.J. Reports 1999, p. 62, at para. 29. See also study on Article 96, contained in Repertory of Practice, Volume 6, Supplement No. 9.
⁶ The question of whether the Court, as the principal judicial organ of the United Nations, can review the legality of Security Council resolutions was addressed in the separate or dissenting opinions of individual judges in each of the Judgments. See Separate Opinion of Judge Rezek, the Dissenting Opinion of Judge Schwebel, and the Dissenting Opinion of Judge Jennings. The same question was also addressed, albeit in less detail, in two dissenting opinions to the Judgment of 30 June 1995 in the case concerning East Timor. See Dissenting Opinion of Judge Weeramantry, I.C.J. Reports 1995, at p. 155, and the Dissenting Opinion of Judge Skubiszewski. Id., at p. 251.
6. Although at the sanctions review held on 6 March 1998, the sanctions regime was maintained, the United Kingdom and the United States submitted a joint letter disputing Libya’s interpretation of the significance of the Judgments. The issue was further discussed at a meeting of the Security Council held on 20 March 1998, during which the role of the Court as the principal judicial organ of the United Nations was repeatedly invoked by delegates. On 28 August 1998, the Security Council adopted resolution 1192, in which it reaffirmed the validity of the sanctions regime against Libya.

7. In addition, the role of the Court as the principal judicial organ of the United Nations was referred to in five resolutions of the General Assembly during the period under consideration. Of particular note, the annex to resolution 51/241 states, in pertinent part:

“The General Assembly shall continue to support the role of the International Court of Justice as the principal judicial organ of the Organization, in accordance with the Charter of the United Nations.”

Moreover, the General Assembly recalled the general role of the Court in the peaceful settlement of disputes in 6 resolutions.

B. The judicial character of the Court

8. During the period under review, the Court considered the implications of its judicial character on two separate occasions.

9. In the case concerning the Land and Maritime Boundary between Cameroon and Nigeria, Nigeria contended that the Court should decline to rule on the merits of Cameroon’s Application seeking a demarcation of the border between the two States on the ground of judicial propriety, since a demarcation had already been completed by the Lake Chad Basin Commission. In its Judgment on preliminary objections, dated 11 June 1998, the Court dismissed Nigeria’s contention that judicial propriety required that it not render a decision on the merits in view of the previously issued demarcation. In reaching this conclusion, the Court noted that Nigeria itself did not consider the demarcation of the Lake Chad Basin Commission binding on the parties since it had not yet ratified the instrument containing it, and therefore could not argue that the demarcation should preclude the Court from ruling on the merits of Cameroon’s claims.

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9 S/1998/239. The letter states, inter alia, that “the Libyan letter is highly misleading when it suggests that anything in the judgments affects the resolutions of the Security Council. The resolutions remain in full force and effect.”
10 See S/PV.3864.
12 The General Assembly, in the body of resolution 51/241, explicitly adopts the text of the annex for implementation.
15 Id. at para.72. This conclusion was disputed in the dissenting opinion of Ad Hoc Judge Ajibola.
10. In the *Fisheries Jurisdiction (Spain v. Canada)* case, the Court reiterated that one of the attributes of its judicial functions is that it may “determine on an objective basis the dispute dividing the parties” by interpreting their submissions.\(^{16}\)

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

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 two cases.

12. In the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Bosnia-Herzegovina claimed as an additional basis of jurisdiction the Treaty between the Allied and Associated Powers (the United States of America, the British Empire, France, Italy and Japan) and the Kingdom of the Serbs, Croats and Slovenes, signed at Saint-Germain-en-Laye on 10 September 1919 (“the 1919 Treaty”), which allowed parties to refer disputes arising out of the treaty to the Permanent Court of International Justice. It was argued that, by virtue of Article 37 of the Statute of the Court,\(^{17}\) jurisdiction could now be asserted by the International Court of Justice over any dispute between Bosnia-Herzegovina and Yugoslavia relating to the application of the 1919 Treaty. The Court, however, declined to address the validity of Bosnia-Herzegovina’s argument, reasoning instead that the dispute between the Parties, as framed in the Application, could not arise out of the application of the 1919 Treaty.\(^{18}\)

13. The continuity of the Court with the Permanent Court of International Justice was also implicitly invoked in the case concerning the *Legality of Use of Force (Yugoslavia v. Belgium)*, wherein Yugoslavia sought to establish jurisdiction based on Article 4 of the Convention of Conciliation, Judicial Settlement and Arbitration, between Belgium and the Kingdom of Yugoslavia, signed in Belgrade on 25 March 1930.\(^{19}\) Since Yugoslavia invoked this additional basis of jurisdiction belatedly during the second round of oral argument, however, the Court decided not to consider it.\(^{20}\)

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\(^{17}\) Article 37 of the Statute of the Court states “Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.” In the jurisprudence of the Court, the application of this Article embodies the continuity of the Court with the Permanent Court of International Justice. See, e.g., *Repertory of Practice*, Supplement no. 2, Vol. 3, under the present Article.

\(^{18}\) It was noted that the 1919 Treaty, if applicable, would only apply to the treatment of individuals within the borders of the Federal Republic of Yugoslavia, while the dispute between the parties pertained to the treatment of individuals outside the borders of Yugoslavia. *See I.C.J. Reports 1996 (II)*, pp. 619-20, para. 38.

\(^{19}\) It was alleged that this provision conferred jurisdiction over the dispute on the Permanent Court of International Justice, and therefore, to the Court as a result of Article 37 of the Statute.