

ARTICLE 94

TEXT OF ARTICLE 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

NOTE

1. During the period under review, no decision relating to Article 94¹ was taken by the organs of the United Nations. In one of its judgements, the International Court of Justice made a pronouncement bearing on Article 94.² The Article was also discussed in a number of dissenting opinions.

2. In the case concerning the Northern Cameroons,³ the Court referred as follows to the applicability of Article 94 as a normal consequence of its decisions:

“The claim of the Republic of Cameroon is solely for a finding of a breach of the law. No further action is asked of the Court or can be added. Normally when the Court pronounces a judicial condemnation there is room for the application of Article 94 of the Charter. That is not the case here.”

3. In a dissenting opinion in the 1962 South West Africa Cases a comparison was made between Article 94 of the Charter and Article 13 (4) of the Covenant of the League of Nations. Under the Covenant, it was only for the Council, which was bound by the unanimity vote, to initiate what action, if any, it would propose with respect to a judgement of the Permanent Court, “. . . whereas the effect of Article 94 (2) of the Charter is to invest the judgements of the present Court with a backing of possible sanctions or enforcement action at the instance of a State in whose favour judgment has been pronounced”.⁴

4. The view was also expressed by a dissenting judge⁵ that “the Security Council’s decisions have a coercitive or (that is almost the same) enforcement character. (This is borne out by Article 25 and by the whole of Chapter VII itself; mention may also be made of Article 94 (2) of the Charter)”.

5. In the 1966 South West Africa Cases, several references were made by a dissenting judge to Article 94 (1) of the Charter as the basis for attributing final and binding character to the judgement of 21 December 1962 relating to preliminary objection in those cases.⁶

6. Some aspects of the scope and meaning of Article 94 were also dealt with by the same dissenting judge in connexion with the 1966 South West Africa Cases. The point was made that Article 94 could not be construed as applying only to judgements ordering a State to desist from certain conduct or to judgements calling for some affirmative steps. Nor could the words “decision” or “judgement” therein be interpreted so as to exclude the Court’s rulings on preliminary objections as opposed to rulings on the substance of a particular case. The prohibitions and directives implied or resulting from the decisions of the Court ought to be complied with or acquiesced in by the parties to a case as a binding obligation regardless of the manner in which the decision was rendered or the stage or phase of the proceedings to which the decision referred.

7. In accordance with that view, nothing in the Court’s Statute or in general juridical principles would prevent the Court from ordering a State to desist from certain conduct, although the Permanent Court and the

¹ For a discussion of the difference in effect of a decision or judgement and an advisory opinion, see this *Supplement* under Article 96.

² Case concerning the Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment of 2 December 1963: ICJ, *Reports 1963*, p. 15.

³ *Ibid.*, p. 34.

⁴ South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962: ICJ, *Reports 1962*, Joint Dissenting Opinion of Judges Spender and Fitzmaurice, p. 511. See also, *ibid.*, pp. 521, 546 and 552.

⁵ Certain expenses of the United Nations (Article 17, paragraph 2 of the Charter), Advisory Opinion of 20 July 1962: ICJ, *Reports 1962*, Dissenting Opinion of Judge Koretsky, p. 274.

⁶ South West Africa, Second Phase, Judgment: ICJ, *Reports 1966*, Dissenting Opinion of Judge Jessup, pp. 328, 329, 331, 332 and 337.

International Court had not usually framed their judgments in such a fashion. It was contended in that dissenting opinion that:

"If the Court in its judgment holds that a certain line of conduct is in violation of a State's legal obligations, that State is under a duty to comply with the decision by desisting from the illegal conduct. The Court should not act upon an assumption that a State Member of the United Nations would violate its obligation under Article 94. It may be recalled that in the very first judgment rendered by the Permanent Court of International Justice, it refused Applicants' request that it award 'interim interest at a higher rate in the event of the judgment not being complied with at the expiration of the time fixed for compliance. The Court neither can nor should contemplate such a contingency'. (*S.S. Wimbledon, P.C.I.J., Series A, No. 1* (1923), p. 32)."⁷

8. Some previous decisions of the Court were recalled to disprove that Article 94 (1) of the Charter and, for that matter, Article 60 of the Statute of the Court could be interpreted as applying only to judgements calling for some affirmative step. References were made to the following cases thus:

"In *Corfu Channel (I.C.J. Reports 1949, at p. 35)*, the Court *decided* 'that the action of the British Navy constituted a violation of Albanian sovereignty'. This was a final judgment or decision and Article 94 (1) applies to it although no action in implementation was required.

"In *United States Nationals in Morocco (I.C.J. Reports 1952, at p. 213)* the Court *decided* that American nationals were not exempt from certain taxes. This was a final decision and required no action in implementation except acquiescence which is similarly required for judgments upholding jurisdiction.

"The decision of the Court in *Northern Cameroons* was final (*I.C.J. Reports 1963, p. 38*) but required no implementation except acquiescence. In any case, indeed, when preliminary objections are sustained (as in *Norwegian Loans (I.C.J. Reports 1957, p. 27)*) no implementation by the parties is required. But there is no basis for saying that Article 94 (1) excludes all of these cases."⁸

9. Accordingly, it was argued by a dissenting judge that the judgement of 21 December 1962 in the South West Africa Cases and compliance by the Respondent ought to be viewed, in the light of previous practice, as follows:

"The Respondent's duty of compliance under Article 94 (1) of the Charter with respect to the judgment of 21 December 1962, was a duty to acquiesce in the findings of the Court, and to conduct itself accordingly. By pleading to the merits, Res-

pondent recognized and fulfilled its duty. When the Court decides that it has jurisdiction, a State which denied the correctness of the Court's decision, failed to plead to the merits and maintained that a subsequent adverse judgment on the merits was invalid, would violate its obligations under Article 94. It may be arguable that Respondent's first submission 'that the whole Mandate for South West Africa lapsed on the dissolution of the League of Nations', was inconsistent with the Judgment of 21 December 1962, but this could be a matter of interpretation on which argument was justifiable."⁹

10. As a question of terminology, the use of the words "decision" and "judgment" was also reviewed in a dissenting opinion to indicate that both words were identical or at least interchangeable within the meaning of Article 94 of the Charter, in the relevant provisions of the Statute of the Court and in the Rules of Court:

"To dispel the fallacy that no decision on a preliminary objection can have finality, and as a preliminary matter of clarifying terminology, one may note that Article 94 (1) of the United Nations Charter uses the word 'decision' in English and '*décision*' in French. In Article 94 (2) the terms are 'judgment' and '*arrêt*'. In Article 63 (2) of the Court's Statute one finds 'judgment' rendered in French as '*sentence*' and in Article 41 (2) of the Statute, 'decision' is '*arrêt*' in French. In the Rules of Court, No. 64 (6) speaks of a 'decision... in the form of a judgment' (*la Cour statue sur la requête par un arrêt*). The same expressions in both languages are found in Article 81 of the Rules. In Rule 62 (5), dealing with preliminary objections, the English text speaks of a 'decision' and the French text again uses '*statue*'.

The 'decision' (to use the term in Article 26 (5) of the Rules) of 21 December 1962 is labelled a 'judgment' and recites at the outset (p. 321) that the Court '*delivers the following Judgment*' ('*arrêt*'). This use of the term 'judgment' ('*arrêt*') is found in every ruling of the Court on a preliminary objection, beginning with the *Corfu Channel Case (I.C.J. Reports 1947-1948, p. 15)* down through *Barcelona Traction (I.C.J. Reports 1964, p. 6)*. After analysing passages in the *Asylum* case, Rosenne writes (*The Law and Practice of the International Court, 1965, Vol. II, p. 627*):

'This, it is submitted, leads to the conclusion that the word 'decision' (*decision*) appearing in Article 59 of the Statute is identical in meaning with the word 'judgment' (*arrêt*) appearing in Article 60, and refers not merely to the operative clause (*dispositif*) of the judgment, but to its reasons as well. This is clearly the case as regards the meaning of the word 'judgment' (*sentence*) appearing in Article 63'.¹⁰

⁷ *Ibid.*, pp. 329 and 330.

⁸ *Ibid.*, p. 337.

⁹ *Ibid.*,

¹⁰ *Ibid.*, pp. 331 and 332.