

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.

I. GENERAL SURVEY

1. During the period under review, no decision relating to Article 94 was taken by the organs of the United Nations. However, after the judgment of the International Court of Justice on the merits of the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*,¹ issues concerning Article 94, paragraph 2, arose before, and were considered by, certain of those organs.

¹ *I.C.J. Reports 1986*, p. 14.

2. Explicit reference was made to Article 94, paragraph 1, in the judgment of the Court concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*² and in the separate opinion of Judge Ruda in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*.³

² *Ibid.*, p. 649, para. 178.

³ *Ibid.*, p. 174, para. 5.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Frontier Dispute (*Burkina Faso/Republic of Mali*)

3. The Government of the Republic of Mali and the Government of Burkina Faso (previously Upper Volta) agreed in article IV of a Special Agreement to “accept the judgment of the Chamber given pursuant to the Special Agreement as final and binding upon them.”⁴ The Chamber, however, noted that “the Parties, having concluded a special agreement for the settlement of their dispute, did not merely by doing so undertake to comply with the Court’s decisions pursuant to Article 94, paragraph 1, of the Charter of the United Nations, but also declared expressly in that special agreement that they accept the judgment of the Chamber as final and binding upon them.”⁵ By explicitly referring to Article 94, paragraph 1, the Court stressed the binding character of its judgments, as well as the general obligation for the parties of a dispute to comply with them.

B. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*

4. On 27 June 1986, the International Court of Justice delivered its judgment on the merits of the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits*,

⁴ Special Agreement of 16 September 1983 between the Government of the Republic of the Upper Volta (later Burkina Faso) and the Government of the Republic of Mali; for the full text of the Agreement, see *I.C.J. Reports 1986*, p. 558, para. 2.

⁵ *I.C.J. Reports 1986*, p. 649, para. 178.

Judgment.⁶ It found the United States to have breached a number of its obligations under customary international law and its 1956 Treaty of Friendship, Commerce and Navigation with Nicaragua.⁷ It also held that “the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations ... [and] is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under customary international law ... [and] of the Treaty of Friendship, Commerce and Navigation....”⁸ The Court did not refer to Article 94 in its judgment.

5. Judge Ruda, however, referred in his separate opinion to a letter⁹ that informed the Court of the United States’ intent not to participate in any further proceedings following the judgment of the Court of 1984 on its jurisdiction in the case and its admissibility. He agreed fully with the statement of the Court in paragraph 27 that a State party to proceedings before the Court might not decide to participate in them. However, he stated that, in his opinion, “the Court should not pass over in silence a statement whereby a State reserves its rights in respect of a future decision of the

⁶ *Ibid.*, p. 14.

⁷ Signed at Managua on 21 January 1956; United Nations, *Treaty Series*, vol. 367, p. 4 (1960).

⁸ *I.C.J. Reports 1986*, p. 149, para. 292 (12)–(14).

⁹ The letter dated 18 January 1985 from the Agent of the United States states in its final part: “Accordingly, it is my duty to inform you that the United States intends not to participate in any further proceedings in connection with this case, and reserves its rights in respect of any decision by the Court regarding Nicaragua’s claims.” See Separate Opinion of Judge Ruda, *I.C.J. Reports 1986*, p. 174, para. 3.

Court.”¹⁰ In that connection, he expressed the following view:

“5. Article 94, paragraph 1, of the United Nations Charter says in a clear and simple way: ‘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.’

“6. No reservation made by a State, at any stage of the proceedings, could derogate from this solemn obligation, freely entered into, which is, moreover, the cornerstone of the system, centred upon the Court, for the judicial settlement of international disputes. The United States, like any other party to the Statute, is bound by the decisions taken by the Court and there is no right to be reserved but the right to have them complied with by such other parties as they may bind.”¹¹

6. Judge Jennings, in his dissenting opinion, agreed with the Court that:

“the United States remains a party to the case and is bound by the judgment of the Court; just as is also Nicaragua.”¹²

1. CONSIDERATION OF THE CASE IN THE SECURITY COUNCIL

7. The Permanent Representative of Nicaragua to the United Nations addressed two letters to the President of the Security Council¹³ in which the Permanent Representative stated that the United States of America had failed to comply with its obligations stemming from the judgment of the Court and requested “the convening of a meeting of the Security Council ... for the purpose of considering the dispute between the United States of America and Nicaragua ..., which threatens international peace and security.” Nicaragua did not explicitly invoke Article 94, paragraph 2.

8. At its meeting of 31 July 1986, the Council proceeded to vote on a draft resolution submitted by Congo, Ghana, Madagascar, Trinidad and Tobago and the United Arab Emirates, by which it would have made an “urgent and solemn call for full compliance with the judgment of the International Court of Justice.”¹⁴ Eleven members of the Council voted in favour, but the resolution failed of adoption because of the negative vote of a permanent member.¹⁵

¹⁰ *I.C.J. Reports 1986*, p. 174, para. 4.

¹¹ *Ibid.*, paras. 5-6.

¹² *Ibid.*, p. 528.

¹³ S/18187 and S/18230.

¹⁴ S/18250.

¹⁵ The affirmative votes were cast by Australia, Bulgaria, China, Congo, Denmark, Ghana, Madagascar, Trinidad and Tobago, the Union of Soviet Socialist Republics, the United Arab Emirates and Venezuela. France, the United Kingdom of Great Britain and Northern Ireland and Thailand abstained from the voting. The United States voted against the resolution. S/PV.2704.

9. In a letter dated 17 October 1986,¹⁶ Nicaragua again requested a meeting of the Security Council. This time, it explicitly stated that it was requesting the meeting “in accordance with the provisions of Article 94 of the Charter, to consider the non-compliance with the judgment of the International Court of Justice dated 27 June 1986.” A draft resolution was again submitted by Congo, Ghana, Madagascar, Trinidad and Tobago and the United Arab Emirates.¹⁷ The Council again failed to adopt the draft resolution as a result of the negative vote of a permanent member.¹⁸

2. CONSIDERATION OF THE CASE IN THE GENERAL ASSEMBLY

10. On 3 November 1986, the General Assembly adopted resolution 41/31, in which it recalled that, “under the Charter of the United Nations, the International Court of Justice is the principal judicial organ of the United Nations and ... each Member undertakes to comply with the decision of the Court in any case to which it is a party.” The operative part of the resolution reads as follows:

“*The General Assembly,*

“... ”

“1. *Urgently calls* for full and immediate compliance with the Judgment of the International Court of Justice of 27 June 1986 in the case of Military and Paramilitary Activities in and against Nicaragua in conformity with the relevant provisions of the Charter of the United Nations;

“2. *Requests* the Secretary-General to keep the General Assembly informed on the implementation of this resolution.”¹⁹

11. During the period under review, the General Assembly adopted two additional resolutions with similar content.²⁰ The resolutions did not explicitly refer to Article 94, but implicitly called for compliance with the obligation stemming from Article 94(1).

¹⁶ S/18415.

¹⁷ S/18428.

¹⁸ The affirmative votes were cast by Australia, Bulgaria, China, Congo, Denmark, Ghana, Madagascar, Trinidad and Tobago, the Union of Soviet Socialist Republics, the United Arab Emirates and Venezuela. France, Thailand and the United Kingdom abstained from the voting. The United States voted against the resolution.

¹⁹ See also the report of the Secretary-General on the item to the General Assembly at its 43rd session (A/43/728). The Secretary-General reported no new developments in the situation. The International Court of Justice was in the process of deciding the form and amount of reparation owed by the United States to Nicaragua. The United States had not participated in those proceedings as it maintained its view that the Court was without jurisdiction to entertain the dispute.

²⁰ G A resolutions 42/18 and 43/11.