

**Repertory of Practice of United Nations Organs  
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**Volume VI**

**ARTICLE 94 (Supplement IX)**

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## 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, Article 94 was explicitly invoked in relation to the judgments rendered by the International Court of Justice, on 27 February 1998, on the admissibility of the two identical cases concerning *Questions of Interpretation and Application of 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America, and Libyan Arab Jamahiriya v. United Kingdom)*.<sup>1</sup>

2. Also during the same period, in 1997, Guatemala proposed an amendment to Article 94 of the Charter, as a consequence of a series of amendments proposed by it to the Statute of the International Court of Justice.<sup>2</sup>

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<sup>1</sup> See paragraphs 3-6 below.

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<sup>2</sup> See paragraphs 7-8 below.

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. Cases concerning Questions of Interpretation and Application of 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America, and Libyan Arab Jamahiriya v. United Kingdom)

3. Following the judgments rendered by the International Court of Justice on the admissibility of the cases concerning *Questions of Interpretation and Application of 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America, and Libyan Arab Jamahiriya v. United Kingdom)*, Libyan Arab Jamahiriya in a letter addressed to the Security Council, with express reference to Article 94, paragraph 2, of the Charter, called on the Council to “take the necessary measures to give effect to the two judgments rendered by the International Court of Justice on 27 February 1998”.<sup>3</sup>

4. The United Kingdom and the United States of America in a joint letter addressed to the Security Council, argued that the “decision by the International Court of Justice on Preliminary Objections lodged with it has a purely procedural character affecting future proceedings in the case”. In their opinion the ruling of the Court did not and could not “constitute a final ‘judgment’ of the kind referred to in Article 94, paragraph 2, of the Charter of the United Nations.” In their view the Court’s decision in that case required no enforcement.<sup>4</sup>

5. Upon Libya’s request, the Security Council held a public meeting on 20 March 1998, during which the parties repeated their positions as referred to in paragraphs 5 and 6 above.<sup>5</sup>

6. The Council did not take any decision on this matter.<sup>6</sup>

<sup>3</sup> S/1998/192, p. 5, paragraph 11 (a).

<sup>4</sup> S/1999/239, p. 2, paragraph 7.

<sup>5</sup> S/ pv. 3864, pp.10, 12, 31 and 32.

<sup>6</sup> Ibid., p. 78.

**B. Proposal aimed at amending  
Article 94**

7. In 1997 session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of Organization, Guatemala submitted a number of amendments to the Statute of the International Court of Justice, to extend the competence of the Court “with respect to contentious matters to disputes between States and intergovernmental organizations”.<sup>7</sup> As a consequence of the proposed amendments, it suggested to modify Article 94, paragraph 2, of the Charter in order to exclude international organizations of a right to resort to the Security Council in cases of failure of a party to a dispute to comply with the judgments of the Court.<sup>8</sup> Guatemala proposed the addition of the following phrase after the first word in Article 94, paragraph 2, of the Charter:

“,where the parties are  
exclusively States,”<sup>9</sup>

8. Guatemala withdrew its proposal in 1999 session of the Committee.<sup>10</sup>

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<sup>7</sup> A/54/33, p. 18.

<sup>8</sup> Ibid., p. 3.

<sup>9</sup> Ibid.

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<sup>10</sup> Ibid. p. 20, paragraph 116. See also Vol. VI, study on Article 108, paragraph ....