Text of Article 95

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TEXT OF ARTICLE 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

I.  NOTE

1. In general, the structure of the present study follows that of the corresponding study of this Article in Supplement No. 9 of the Repertory. The major headings of the study have been retained. However, subheadings have been modified or added as appropriate.

2. During the period under review, the organs of the United Nations did not take any decisions involving the interpretation of Article 95. However, the following may be noted as having a bearing on the Article.

II.  ANALYTICAL SUMMARY OF PRACTICE

A. General Assembly resolutions

3. During the period under review, the General Assembly adopted a resolution on the item entitled “Prevention and peaceful settlement of disputes”\(^1\), in which it recalled the Manila Declaration on the Peaceful Settlement of International Disputes of 15 November 2007\(^2\) and urged States to “[m]ake the most effective use of existing procedures and methods for the […] peaceful settlement of their disputes”\(^3\).

4. Also in the same period, the General Assembly adopted ten resolutions\(^4\) on its

\(^{1}\) See Footnote No.1.
\(^{2}\) G A resolution 57/26 of 19 November 2002.
\(^{3}\) G A resolution 55/156 of 12 December 2000; G A resolution 56/86 of 12 December 2001; G A resolution 57/24 of 19 November 2002; G A resolution 58/248 of 23 December 2003; G A resolution 59/44 of 2 December 2004; G A resolution 60/23 of 23 November 2005; G A resolution 61/38 of 4 December 2006; G A resolution 62/69 of 6 December 2007; G A resolution 63/127 of 11
agenda item entitled “Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organizations”. The General Assembly requested the Special Committee, inter alia, to “[c]ontinue its work on the question of the peaceful settlement of disputes between States and, in this context, to continue its consideration of proposals relating to the peaceful settlement of disputes between States, including the proposal on the establishment of a dispute settlement service offering or responding with its services early in disputes and those proposals relating to the enhancement of the role of the International Court of Justice”.

5. Furthermore, the General Assembly adopted a resolution on the item entitled “Prevention of armed conflict”, in which it urged Member States to effectively utilize the procedures for the peaceful settlement of their disputes, including “[a]rbitration, mediation and other treaty-based arrangements, and the International Court of Justice”.

6. In addition, in 2009, the General Assembly adopted a resolution concerning the item on its agenda entitled “Oceans and the law of the sea”. In this resolution, the General Assembly acknowledged that the States parties to an international agreement related to the United Nations Convention on the Law of the Sea may entrust the solution of the disputes to the Law of the Sea Tribunal or the International Court of Justice.

B. International conventions adopted by the organs of the United Nations

7. During the period under review, the General Assembly adopted seven international conventions, which contain provisions on the methods of settlement of disputes including referral to the International Court of Justice and arbitration. They are as follows: United Nations Convention against Transnational Organized Crime; Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition supplementing the UN Convention against Transnational Organized Crime; United Nations Convention against

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December 2008; and G A resolution 63/127 of 16 December 2009.
7 G A resolution 57/337 of 3 July 2003, annex.
8 G A resolution 63/111 of 12 February 2009.
9 Ibid.
10 G A resolution 55/2 of 15 November 2000.

(i) Referral of the disputes to the International Court of Justice

8. Five of the above conventions contain identical provisions entrusting the International Court of Justice with the solution of disputes between State parties concerning their interpretation or application: United Nations Convention against Transnational Organized Crime;\textsuperscript{17} Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition supplementing the UN Convention against Transnational Organized Crime;\textsuperscript{18} United Nations Convention against Corruption;\textsuperscript{19} International Convention for the Suppression of Acts of Nuclear Terrorism;\textsuperscript{20} and International Convention for the Protection of All Persons from Enforced Disappearance.\textsuperscript{21}

9. The relevant provisions of the said conventions read as follows:

“If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.” \textsuperscript{22}

10. The Convention on Cluster Munitions, adopted in 2008, contains a provision on the peaceful settlement of

\textsuperscript{12} G A resolution 58/466.2 of 31 October 2003.
\textsuperscript{13} G A resolution 59/290 of 13 April 2005.
\textsuperscript{14} G A resolution 61/177 of 20 December 2006.
\textsuperscript{15} G A resolution 63/71 of 2 December 2008.
\textsuperscript{16} G A resolution 63/122 of 11 December 2008.
\textsuperscript{17} See footnote No.10.
\textsuperscript{18} See footnote No.11.
\textsuperscript{19} See footnote No.12.
\textsuperscript{20} See footnote No.13.
\textsuperscript{21} See footnote No.14.
disputes, including, *inter alia*, a referral to the International Court of Justice.\(^{23}\)

**(ii) Referral of disputes to arbitration**


The relevant paragraphs of the provisions read as follows:

> “Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration.”\(^{29}\)

12. Furthermore, Article 75 of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea entrusts the solution of disputes between States parties to arbitration.\(^{30}\)

C. **International conventions adopted under the auspices\(^{31}\) of the United Nations**

13. During the period under review, eleven international conventions were adopted under the auspices of the United Nations and deposited with the Secretary-

\(^{23}\) See footnotes No.10.
\(^{24}\) See footnotes No.11.
\(^{25}\) See footnotes No.12.
\(^{26}\) See footnotes No.13.
\(^{27}\) See footnotes No.14.

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For the purpose of this study, “conventions adopted under the auspices of the United Nations” means the treaties adopted by international conferences convened by the General Assembly, and the treaties adopted by treaty bodies convened with the assistance of the United Nations.
General, which contain provisions on the settlement of disputes. They are as follows:

(i) Referral of disputes to the International Court of Justice


32 Adopted on 22 May 2001 in Stockholm.
33 Adopted on 9 September 2002 in New York.
34 Adopted on 29 June 2001 in Vienna.
35 Adopted on 21 May 2003 in Kiev.
36 Adopted on 21 May 2003 in Kiev.
37 Adopted on 21 May 2003 in Kiev.
38 Adopted on 28 November 2003 in Geneva.
39 Adopted on 1 February 2006 in Geneva.
40 Adopted on 2 March 2001 in Geneva.
41 Adopted on 7 July 2010 in Geneva.
42 Adopted on 29 October 2010 in Nagoya.
43 See footnote No. 35.
44 See footnote No. 36.
“2. When signing, ratifying, accepting, approving or acceding to the Protocol, or at any time thereafter, a Party may declare in writing to the Depositary that [ …] , it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice.

3. If the parties to the dispute have accepted both means of dispute settlements referred to in paragraph 2, the dispute may be submitted only to the International Court of Justice, unless the parties to the dispute agree otherwise.”

15. In addition, Article 18 of the Stockholm Convention on Persistent Organic Pollutants entrusts to the International Court of Justice of the solution of disputes regarding its interpretation and application.46

(iii) Referal of disputes to arbitration


“2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter,


47 See footnote No.35.

48 See footnote No. 36.

49 See footnote No. 32.
a Party that is not a regional economic integration organization may declare in a written instrument submitted to the depositary that [...] it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

[...]

Arbitration in accordance with the procedure set out in annex."50

17. Furthermore, Article 32 of the Agreement on the Privileges and Immunities of the International Criminal Court entrusts to an arbitral tribunal the settlement of differences on its interpretation or application.51

18. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity encourages the settlement of dispute through arbitration in the following provision:

“[...] each Party shall encourage providers and users of genetic resources and/or traditional knowledge associated with genetic resources to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

[...]

“(c) Options for alternative dispute resolution, such as mediation or arbitration."52

19. Article 27 of WHO Framework Convention on Tobacco Control prescribes the settlement of dispute through “[g]ood offices, mediation, or conciliation”53

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51 Agreement on the Privileges and Immunities of the International Criminal Court, Article 32, paragraph 2, adopted on 9 September 2002.

52 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, Article 18, paragraph 1(c), adopted on 29 October 2010.

53 WHO Framework Convention on Tobacco Control, Article 27, paragraph 1, adopted on 21 May 2003.
20. Three of the international commodities agreements entrust the solution of their disputes between States parties to a separate Committee or Commission: International Cocoa Agreements of 2001\textsuperscript{54} and of 2010\textsuperscript{55}; International Tropical Timber Agreement of 2006.\textsuperscript{56}

21. The Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol V) encourages the State Parties, in the settlement of disputes concerning the interpretation and application of the Convention, to co-operate with each other through the Secretary-General of the United Nations.\textsuperscript{57}

22. Article 5 of the Agreement on Succession Issues stipulates that the dispute arising over the interpretation and application of the Agreement shall be referred to, \textit{inter alia}, an independent person of their choice or to the Standing Joint Committee established by Article 4 of the Agreement.\textsuperscript{58}

\textsuperscript{55} International Cocoa Agreement 2010, Article 50, adopted on 7 July 2010.
\textsuperscript{56} International Tropical Timber Agreement 2006, Article 31, adopted on 1 February 2006.
\textsuperscript{57} Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol V), Article 11, paragraph 2, adopted on 28 November 2003.

\textsuperscript{58} Agreement on Succession Issues, Article 5, paragraph (2), adopted on 29 June 2001.