

ARTICLE 95

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.

NOTE

1. No decisions involving interpretation of Article 95 were taken by United Nations organs during the period under review. However, a reference was made to Article 95 in the context of discussions concerning the formulation of the principle of peaceful settlement of disputes in the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States in 1966. The General Assembly approved in 1962 and 1965 two international conventions¹ containing provisions to entrust the solution of differences among States to the International Court of Justice, or to other modes of settlement, but no questions of interpretation of Article 95 arose.²

2. The 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States included arbitration among the various means available to States for the settlement of their international disputes. Without mentioning Article 95, the Special Committee provides in its recommendations that nothing therein derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes. The formulations adopted by the Committee and noted in General Assembly resolution 2181 (XXI), read:³

"1. Every State shall settle its international disputes with other States by peaceful means, in such manner that international peace and security, and justice, are not endangered;

"2. States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties

shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the disputes;

"3. The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them;

" . . .

"5. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by the parties shall not be regarded as incompatible with sovereign equality;

"6. Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes."

3. It should be noted that one proposal⁴ before the Special Committee would have provided for recourse to an arbitral tribunal as a means to settle disputes relating to the interpretation or application of general multilateral agreements. In referring to this proposal, the report of the Special Committee stated:⁵

"The sponsors of proposal A/AC.125/L.25 considered that, since the contents of general multilateral agreements resulted from efforts in which the entire international community participated, a State, if it acceded to those agreements, should not have the power to decide unilaterally on their interpretation or application; consequently, such agreements should include provisions on means of settlement such as arbitration, without prejudice to the provisions of Article 95 of the Charter, or recourse to the International Court of Justice. . ."

4. The reference to arbitral tribunals was considered appropriate by some representatives but no

¹ See G A resolutions 1763 A (XVII) of 7 November 1962, and 2106 A (XX) of 21 December 1965.

² Member States also agreed to similar provisions to entrust the solution of their differences to other tribunals in lieu of the International Court of Justice in the context of conventions adopted under the auspices of the United Nations.

³ G A (XXI), Annexes, a.i. 87, A/6230, para. 248, section I.

⁴ *Ibid.*, A/6230, para. 159.

⁵ *Ibid.*, para. 242.

consensus was reached on the above-mentioned proposal.⁶

5. Under the international conventions adopted by the General Assembly in 1962 and 1965, unsettled disputes concerning their interpretation and application can be solved by the parties thereto by recourse to the International Court of Justice or to other modes of settlement as agreed by the parties. The two conventions are: the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage;⁷ and the International Convention on the Elimination of All Forms of Racial Discrimination.⁸ Similar provisions for the peaceful settlement of dis-

⁶ *Ibid.*, para. 243.

⁷ See United Nations, *Treaty Series*, vol. 521, No. 7525, p. 236, article 8.

⁸ See G A resolution 2106 A (XX), annex, article 22.

putes have been included in the text of conventions adopted under the auspices of the United Nations during the period reviewed.⁹

⁹ See Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes, done at Vienna, on 18 April 1961; articles I-III (United Nations, *Treaty Series*, vol. 500, No. 7312, pp. 242 and 243); Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, done at Vienna, on 24 April 1963; articles I-III (*Ibid.*, vol. 596, No. 8640, pp. 488 and 489); Convention on the Reduction of Statelessness, done at New York on 30 August 1961; article 14 (A/CONF.9/15, 1961, (mimeographed)). See also United Nations Sales publication, No. 67.V.4, pp. 135-141); Single Convention on Narcotic Drugs, 1961, done at New York, on 8 July 1965; article 16 (*Ibid.*, vol. 597, No. 8641, p. 3). But see International Coffee Agreement, 1962, done at New York, on 28 September 1962; article 61 (*Ibid.*, vol. 469, No. 6791, p. 232) which provides for the settlement of disputes by a special panel, without any reference to the International Court of Justice.

