ARTICLE 95

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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. During the period under review, no decisions involving the interpretation of Article 95 were taken by United Nations organs. However, the following may be noted as having a bearing on that Article.

ANALYTICAL SUMMARY OF PRACTICE

A. Manila Declaration on the Peaceful Settlement of International Disputes

2. On 15 November 1982, the General Assembly adopted the Manila Declaration on the Peaceful Settlement of International Disputes, the text of which is annexed to resolution 37/10.

3. While recalling the importance of the role of the International Court for the settlement of legal disputes, the Declaration parallels Article 95 of the Charter in providing that:

"States may entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

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

4. During the period under review, the General Assembly adopted five international agreements: Agreement Governing the Activities of States on the Moon and Other Celestial Bodies; International Convention against the Taking of Hostages; Convention on the Elimination of All Forms of Discrimination against Women; International Agreement for the Establishment of the University for Peace and Charter of the University for Peace; and Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

5. Three of the above Conventions explicitly provide for possible referral to the International Court of Justice of any dispute between States parties concerning their interpretation or application: International Convention against the Taking of Hostages; Convention on the Elimination of All Forms of Discrimination against Women; and Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

6. The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies does not explicitly provide for judicial settlement of disputes between States parties, but calls upon them to resolve their disputes through "consultations" with a view towards "a mutually acceptable resolution". Failing to do so, States parties are invited "to settle the dispute by other peaceful means of their choice appropriate to the circumstances and the nature of the dispute".

7. The International Agreement for the Establishment of the University for Peace does not contain a specific provision on the settlement of disputes between States Parties. With respect to this particular issue, the most relevant provision is to be found in the Charter of the University for Peace, annexed to the Agreement, which entitles the University to "have the legal status necessary to enable it to fulfil its purposes and objectives".

8. During the period under review, the Economic and Social Commission for Asia and the Pacific (ESCAP) on 1 April 1982 adopted the Charter of the Asian and Pacific Development Centre. The Charter does not contain a specific provision on the judicial settlement of disputes between members of the Center, but does entitle the Centre to "have judicial personality" and to "have the capacity . . . (c) to institute legal proceedings".

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1See this Supplement, under Article 92, paras. 9-11.
2G A resolution 34/68 of 5 December 1979, annex.
3G A resolution 34/146 of 17 December 1979, annex.
4G A resolution 34/180 of 18 December 1979, annex.
5G A resolution 35/55 of 5 December 1980, annex.
7G A resolution 34/146, annex, article 16.
8G A resolution 34/180, annex, article 29.
9G A resolution 39/46, annex, article 30.
10G A resolution 34/68, annex, article 15, para. 2.
11Ibid., para. 3.
12G A resolution 35/55, annex.
13Ibid., annex to the Agreement, article 3.
15Ibid., p. 113, article IV.
C. International conventions adopted under the auspices of the United Nations

9. During the period under review, among the 18 international conventions adopted under the auspices of the United Nations and deposited with the Secretary-General,1 four instruments explicitly contain provisions to entrust to the International Court of Justice the solution of differences among Contracting Parties. They are: Constitution of the United Nations Industrial Development Organization;17 Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties;18 United Nations Convention on the Law of the Sea;19 and Vienna Convention on Succession of States in respect of State Property, Archives and Debts.20

10. The 1982 Convention on the Law of the Sea is the first multilateral treaty adopted under the auspices of the United Nations which has established a permanent "Tribunal" other than the International Court of Justice for the solution of differences between Contracting Parties. Whereas only States may be parties in cases before the International Court,21 the Tribunal shall be open to States parties,22 but also to entities other than States parties in any case expressly provided for in Part XI of the 1982 Convention or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.23

11. Annex VI to the Law of the Sea Convention provides for the Statute of the International Tribunal for the Law of the Sea. The seat of the Tribunal shall be Hamburg, Federal Republic of Germany.24 The Tribunal shall be composed of 21 independent elected members.25 Its jurisdiction comprises all disputes and all applications submitted to it in accordance with the Convention.26 The Tribunal may form "chambers" for dealing with particular categories of disputes,27 but a Seabed Disputes Chamber is now and henceforth established by section 4 of Annex VI.28 The Seabed Disputes Chamber shall have jurisdiction in disputes over activities in the Area, i.e., the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.29

12. The vast majority of the multilateral treaties adopted under the auspices of the United Nations during the reporting period include provisions for the peaceful settlement of disputes between Contracting Parties.30 With respect to the expression "other tribunals" as mentioned in Article 95, it must be noted that possible recourse to ad hoc arbitral tribunals in order to solve unsettled disputes between States parties to those conventions is explicitly provided in the following instruments: Constitution of the United Nations Industrial Development Organization;31 International Convention on the Harmonization of Frontier Controls of Goods;32 United Nations Convention on the Law of the Sea;33 and Vienna Convention on Succession of States in respect of State Property, Archives and Debts.34

13. During the period under review, an increasing number of international multilateral treaties adopted under the auspices of the United Nations opened international arbitration to entities other than States parties thereto. Such is the case, in particular, of the United Nations Convention on International Multimodal Transport of Goods,36 the Agreement establishing the Common Fund for Commodities37 and the United Nations Convention on the Law of the Sea.38

14. With respect to the practice followed by international commodities agreements in which States parties may entrust the solution of their disputes to a special "panel",39 some differences must be noted among the commodities agreements adopted during the reviewing period. Whereas the settlement of disputes by a special panel is formally provided for in the International Olive Oil Agreement,40 the International Natural Rubber Agreement,41 the International Cocoa Agreement, 1980,42 the Sixth International Tin Agreement,43 the International Coffee Agreement, 1983,44 and the International Sugar Agreement, 1984,45 there is no mention of such a possibility in either the International Agreement on Jute and Jute Products, 1982,46 or the International Tropical Timber Agreement, 1983.47

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1See Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 1984 (ST/LEG/SER.43), pp. 90, 330-331, 373, 476, 530-531, 623-641, 671, 716, 721 and 723.
2Concluded at Vienna on 8 April 1979; A/CONF.90/15, article 22.
3Concluded at Madrid on 13 December 1979; UNESCO/WIPO, CONF.1D (92/VT.2), article 17.
4Concluded at Montego Bay, Jamaica, on 10 December 1982, article 287 (1)(b).
6Statute of the International Court of Justice, article 34, para. 1.
8Ibid., article 20, para. 2.
9Ibid., article 1, para. 2. Following the entry into force of the Convention on 16 November 1994, the International Tribunal for the Law of the Sea was formally established in 1996.
10Ibid., article 2.
11Ibid., article 21.
12Ibid., article 15.
13Ibid., articles 35-40.
14Ibid., see also the 1982 Convention, articles 186-191.
15See note 16 above.