# 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 the *Repertory, Supplements Nos. 6 and 7*. 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 decision involving the interpretation of Article 95. However, the following may be noted as having bearing on that Article.

# II. Analytical summary of practice

## A. General Assembly resolutions

3. During the period under review, the General Assembly adopted a resolution[1] on the item entitled "Peaceful settlement of disputes between States",[2] in which it urged again[3] "all States to observe and promote in good faith the provisions of the Manila Declaration on the Peaceful Settlement of International Disputes in the settlement of their international disputes".[4]

4. During the same period, the General Assembly also adopted six resolutions[5] under its agenda item entitled "United Nations Decade of International Law",[6] in which it recalled the main purposes of the Decade, inter alia, the promotion of "means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice". Moreover, the General Assembly, at its forty-fifth, forty-seventh and forty-ninth sessions, approved the programme of activities of the Decade for the periods 1990-1992,[7] 1993-1994,[8] and 1995-1996,[9] in which the Assembly, without reference to Article 95, requested the Sixth Committee to consider, among others, "[p]rocedures for the peaceful settlement of disputes arising in specific areas of international law".[10]

5. Furthermore, the General Assembly adopted, in 1991, the declaration on fact-finding by the United Nations in the field of the maintenance of international peace and security,[11] which affirmed that "[t]he sending of a United Nations fact-finding mission is without prejudice to the use by the States concerned of

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[1] G A resolution 44/31.

[2] The General Assembly, in 1989, decided to consider the above item in conjunction with the item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization", in its subsequent sessions. Ibid., para. 5. See also G A resolution 44/37, para. 3 (b).

[3] See *Repertory s, Supplement No. 7*, vol. VI, study on Article 95, para. 2.

[4] Sect. 2, para. 5 of the Manila Declaration, while drawing the attention of States to the role of the International Court of Justice in the settlement of legal disputes, provides, in part, as follows: "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." See G A resolution 37/10.

[5] Namely G A resolutions 44/23, 45/40, 46/53, 47/32, 48/30, and 49/50.

[6] The General Assembly declared the period 1990-1999 the United Nations Decade of International Law. See G A resolution 44/23.

[7] Annex to G A resolution 45/40.

[8] Annex to G A resolution 47/32.

[9] Annex to G A resolution 49/50.

[10] See the programme of activities of the United Nations Decade of International Law, annexed to General Assembly resolutions 45/40, para. 3 (b), 47/32, para. 3 (b), 49/50, para. 2 (b).

[11] See annex to G A resolution 46/59.

[…] any means of peaceful settlement of disputes agreed by them."[12]

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

6. During the period under review, the General Assembly adopted four international instruments which contain provisions on the settlement of disputes including referral to the International Court of Justice and other Tribunals: International Convention against the Recruitment, Use, Financing and Training of Mercenaries;[13] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;[14] Convention on the Safety of United Nations and Associated Personnel;[15] and Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.[16]

7. Moreover, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, adopted by the Conference on Disarmament, in 1992,[17] also included provisions on the settlement of disputes by peaceful means, among which referral of differences to the International Court of Justice was prescribed.

### 1. Referral of disputes to the International Court of Justice

8. The three conventions referred to in paragraph 6 contain identical provisions on the settlement of disputes. Those provisions provide for the settlement of disputes between parties, relating to the interpretation or application of the conventions, through pacific means, including, inter alia, the possible referral of disputes to the International Court of Justice. The relevant provisions read, in part, as follows:

> "If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by a request in conformity with the Statute of the Court."[18]

9. The annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 contains a number of provisions[19] concerning the settlement of disputes in accordance with the procedures set out in the Convention,[20] which include possible referral of disputes to the International Court of Justice.

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[12] Ibid., para. 30.

[13] G A resolution 44/34.

[14] G A resolution 45/158.

[15] G A resolution 49/59.

[16] G A resolution 48/263.

[17] A/47/27, para. 73.

[18] International Convention against the Recruitment, Use, Financing and Training of Mercenaries**,** article 17; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 92; and Convention on the Safety of United Nations and Associated Personnel, article 22.

[19] Sect. 3 of the annex (on decision-making by the Authority) provided that disputes relating to the disapproval of a plan of work by the Council of the International Seabed Authority, "shall be submitted to the dispute settlement procedure set out in the Convention". Similarly, it stipulated that disputes concerning the interpretation or application of the rules and regulations based on the principles provided for in section 8 (financial terms of contract), "shall be subject to the dispute settlement procedure set out in the Convention". Moreover, section 6 of the annex (production policy of the Authority), has prescribed the following means for the settlement of disputes: (f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred in subparagraph (b):

> (i) Where States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedure of those agreements;
>
> (ii) Where one or more of the States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedure set out in the Convention."

[20] Article 287 of the United Nations Convention provides, inter alia, that: "1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

> "(a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
>
> "(b) the International Court of Justice;
>
> "(c) an arbitral tribunal constituted in accordance with Annex VII;
>
> "(d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein."

10. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction[21] provided for detailed procedures for the settlement of disputes between States parties to the Convention,[22] including resort to the International Court of Justice. In accordance with article 14 of the Convention, when a dispute arises between two or more States parties, they shall consult together with a view to the expeditious settlement of the dispute, including, "by mutual consent, referral to the International Court of Justice in conformity with the Statute of the Court."[23]

### 2. Referral of disputes to arbitration[24]

11. The three conventions referred to in paragraph 6 contain identical provisions on the settlement of disputes between parties, relating to the interpretation or application of the conventions, through pacific means, including, inter alia, referral of disputes to arbitration. The relevant provisions read, in part, as follows:

> "Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration."[25]

12. The annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 contains a number of provisions concerning the settlement of disputes in accordance with the procedures set out in the Convention, which among others, include possible referral of disputes to arbitration.[26]

### 3. Referral of disputes to the Law of the Sea Tribunal

13. The Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 provided for the settlement of disputes arising out of application or implementation of the Agreement in conformity with the procedures set out in the Convention, which also include the possible referral of disputes to the Law of the Sea Tribunal.[27]

## C. International conventions adopted under the auspices[28] of the United Nations

14. During the period under review, seven international conventions adopted under the auspices of the United Nations and deposited with the Secretary-General contain provisions on the settlement of disputes. The provisions in question have established a number of procedures for the settlement of disputes between the contracting parties, including, inter alia, resort to the International Court of Justice, and referral to other tribunals. They are as follows: Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;[29] United Nations Framework Convention on Climate Change;[30] Convention on Biological Diversity;[31] International Cocoa Agreement;[32] International Tropical Timber Agreement;[33] Lusaka Agreement on Cooperative Enforcement Operations Directed at

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[21] The 1992 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction was adopted by the Conference on Disarmament in Geneva on 3 September 1992, and opened for signature in Paris, on 13 January 1993.

[22] The Organization for the Prohibition of Chemical Weapons was established in accordance with the 1992 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, after its entry into force in 1997.

[23] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, article 14, para. 2.

[24] See *Repertory, Supplement No. 6*, vol. VI, study on Article 95, para. 12; *Supplement No. 7*, vol. VI, study on Article 95, para. 8.

[25] International Convention against the Recruitment, Use, Financing and Training of Mercenaries, article 17; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 92; and Convention on the Safety of United Nations and Associated Personnel, article 22.

[26] See footnote 20.

[27] See footnote 20.

[28] For the purpose of this study, the expression "conventions adopted under the auspices of the United Nations" covers treaties adopted by international conferences convened by the United Nations General Assembly, and treaties adopted by treaty bodies convened with the assistance of the United Nations.

[29] Adopted on 22 March 1989 at Basel, Switzerland.

[30] Adopted on 9 May 1992 at New York.

[31] Adopted on 5 June 1992 at Rio de Janeiro.

[32] Adopted on 16 July 1993 at Geneva.

[33] Adopted on 26 January 1994 at Geneva.

Illegal Trade in Wild Fauna and Flora;[34] and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.[35]

### 1. Referral of disputes to the International Court of Justice

15. Three of the above-cited conventions have explicitly provided for, among other procedures of dispute settlement, the possible referral to the International Court of Justice of differences that may arise between their States parties on the application or interpretation of the conventions.

16. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, provides that:

> "2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute, if the Parties to the dispute agree, shall be submitted to the International Court of Justice […]."[36]

17. The United Nations Framework Convention on Climate Change, provides that:

> "2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:
>
> (a) Submission of the dispute to the International Court of Justice".[37]

18. The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification stipulated that:

> "2. When ratifying, accepting, approving, or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:"
>
> […]
>
> "(b) submission of the dispute to the International Court of Justice."[38]

### 2. Referral of disputes to arbitration

19. Five of the said conventions have provided for, among other procedures, the settlement of disputes relating to the application or interpretation of the treaties in question through arbitration.

20. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal has prescribed that:

> "2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute, if the Parties to the dispute agree, shall be submitted to […] arbitration under the conditions set out in Annex VI on Arbitration."[39]

21. The United Nations Framework Convention on Climate Change provided as follows:

> "2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:"
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> […]

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[34] Adopted on 8 September 1994 at Lusaka.

[35] Adopted on 14 October 1994 at Paris.

[36] Article 20, para. 2, United Nations, *Treaty Series*, vol. 1673, p. 57.

[37] Article 14, United Nations, *Treaty Series*, vol. 1771, p. 107.

[38] Article 28, para. 2 (b), United Nations, *Treaty Series*, vol. 1954, p. 3.

[39] Article 20, para. 2, United Nations, *Treaty Series*, vol. 1673, p. 57.

"(b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration."[40]

22. The Convention on Biological Diversity stipulated in part that:

"3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

"(a) Arbitration in accordance with the procedure laid down in Part 1 of Annex II."[41]

23. The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification provides that:

"2. When ratifying, accepting, approving, or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

"(a) arbitration in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable."[42]

24. The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora provides that:

"2. Where the Parties fail to settle the dispute, the matter shall be submitted to an arbitral body."[43]

### 3. Referral of disputes to arbitration by entities other than States

25. In accordance with the provisions provided for in two of the above-mentioned conventions, namely, the United Nations Framework Convention on Climate Change, and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, regional economic integration organizations, which are parties to the said treaties, may make declarations accepting arbitration as a "means of dispute settlement as compulsory in relation to any Party accepting the same obligations".[44]

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[40] Article 14, para. 2 (b), United Nations, *Treaty Series*, vol. 1771, p. 107.

[41] Article 27, para. 3 (a), United Nations, *Treaty Series*, vol. 1700, p. 79.

[42] Article 28, para. 2 (a), United Nations, *Treaty Series*, vol. 1954, p. 3.

[43] Article 10, para. 2, United Nations, *Treaty Series*, vol. 1950, p. 35. Paragraphs 3 to 7 of the same article established a detailed procedure on the appointment of the arbitrators.

[44] Article 14, para. 2 (b), United Nations, *Treaty Series*, vol. 1771, p. 107; Article 28, para. 2 (a), United Nations, *Treaty Series*, vol. 1954, p. 3.