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.

I. NOTE

1. In general, the structure of the present study follows that of the corresponding study of this article in the Repertory Supplements No. 6 and No. 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. Also at the same period, the General Assembly adopted six resolutions\(^5\) on its agenda item entitled the “United Nations Decade of International Law”\(^6\), in which it recalled the main purposes of the Decade, \textit{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, in its forty-five, forty-seven, 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 […] any means of peaceful settlement of disputes agreed by them.”\(^12\)

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

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\(^1\) A/RES/44/31 dated 4 December 1989.
\(^2\) 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., paragraph 5. See also A/RES/44/37, paragraph 3 (b).
\(^3\) See Repertory Practice of the United Nations Organs, Supplement VII, Vol. VI, study on Article 95, paragraph 2.
\(^4\) Section 2, paragraph 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 A/RES/37/10.
\(^7\) Annex to GR resolution 45/40.
\(^8\) Annex to GR resolution 47/32.
\(^9\) Annex to GR resolution 49/50.
\(^10\) See the programme of activities of the United Nations Decade of International Law, annexed to General Assembly resolutions A/RES/45/40, paragraph 3 (b), A/RES/47/32, paragraph 3 (b), A/RES/49/50, paragraph 2 (b).
\(^11\) See annex to GA resolution 46/51.
\(^12\) Ibid., paragraph 30.
6. During the period under review, the General Assembly adopted four international conventions, which contain provisions on the settlement of disputes including referral to the International Court of Justice and other Tribunals. They are as follows: International Convention against the Recruitment, Use, Financing and Training of Mercenaries;\textsuperscript{13} International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;\textsuperscript{14} Convention on the Safety of the United Nations and Associated Personnel;\textsuperscript{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.\textsuperscript{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 United Nations Conference on Disarmament, in 1992,\textsuperscript{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.

\textbf{(i) Referral of disputes to the International Court of Justice}

8. Three of the conventions, referred to in paragraph 6, contain identical provisions on the settlement of disputes. These provisions provide for the settlement of disputes between parties, relating to the interpretation or application of the conventions, through pacific means, including \textit{inter alia}, the possible referral of disputes to the International Court of Justice. The relevant provisions of the said conventions 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.”\textsuperscript{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, contain a number of provisions\textsuperscript{19} concerning the settlement of disputes in accordance with the procedures set

\textsuperscript{13} GA resolution 44/34 dated 4 December 1989.
\textsuperscript{14} GA resolution 45/158 dated 18 December 1990.
\textsuperscript{15} GA resolution 49/59 dated 9 December 1994.
\textsuperscript{16} GA resolution 48/263 dated 28 July 1994.
\textsuperscript{17} A/47/27, p. 24, paragraph 73.
\textsuperscript{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 the United Nations and Associated Personnel, Article 22.
\textsuperscript{19}Section 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: (i) 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.”
out in the Convention, which include possible referral of disputes to the International Court of Justice.

10. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provided for detailed procedure for the settlement of disputes between States Parties to the Convention, 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.”

(ii) Referral of disputes to arbitration

11. Three of the 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 referral of disputes to arbitration. The relevant provisions read, in part, as follows:

1. 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.

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20 Article 287 of the United Nations Convention provide for, inter alia, as follows: “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.”


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, paragraph 2.

24 See Repertory Practice of the United Nations Organs, Supplement 6, Vol. VI, study on Article 95, paragraph 12; Repertory Practice of the United Nations Organs, Supplement 7, Vol. VI, study on Article 95, paragraph 8.

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

(iii) 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 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 auspices28 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, which 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 Co-operative Enforcement Operations Directed at 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

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

15. Three of the above 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.

26 See footnote No. 20.
27 See footnote No. 20.
28 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.
29 Adopted on 22 March 1989 at Basel, Switzerland.
31 Adopted on 5 June 1992 at Rio de Janeiro.
34 Adopted on 8 September 1994 at Lusaka.
16. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, provides:

   “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:

   “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:

   “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

(ii) 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:

36 Article 20, paragraph 2, United Nations Treaty Series, vol. 1673, p.57;
“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.”

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:”

 […]

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

22. The Convention on Biological Diversity stipulated in part:

“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.”

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

“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:”

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39 Article 20, paragraph 2, United Nations Treaty Series, vol. 1673, p.57;
40 Article 14, paragraph 2 (b).
41 Article 27, paragraph 3 (a).
“(a) arbitration in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable.”

24. The Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora provides:

“2. Where the Parties fail to settle the dispute, the matter shall be submitted to an arbitral body”

(iii) Referral of disputes to arbitration by entities other than States

25. In accordance with the provisions provided for in two of the above 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.”

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42 Article 28, paragraph 2 (a).
43 Article 10, paragraph 2. Paragraphs 3 through 7 of the same article established a detailed procedure on the appointment of the arbitrators.
44 United Nations Framework Convention on Climate Change, Article 14, paragraph 2 (b); United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, paragraph 3.