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**Volume VI**

**Article 95**

*Paragraphs*

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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* No. 6, 7, and 8. 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 five resolutions concerning an item on its agenda entitled the “United Nations Decade of International Law”,<sup>1</sup> in which among others, the Assembly recalled the main purposes of the Decade, *inter alia*, the promotion of “means and methods of settlement of disputes between States, including resort to and full respect for the International Court of Justice.”

4. Moreover, in 1996, the General Assembly approved the program of activities of the Decade for the final term (1997-1999), in which the Assembly requested the Sixth Committee to consider, including *inter alia*, the following questions:

“(c) Ways and means of encouraging greater recognition of the role of the International Court of Justice and its wider use in peaceful settlement of disputes;”

“(e) Wider use of the Permanent Court of Arbitration.”<sup>2</sup>

5. The program of activities of the Decade for the final term, also noted the establishment of the International Tribunal for the Law of the Sea in October 1996, and encouraged States and other entities referred to in article 20 of annex VI of the United Nations Convention on the Law of the Sea “to consider making use of the Tribunal for peaceful settlement of disputes in accordance with article 21 of annex VI of the Convention.”<sup>3</sup>

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

6. During the period under review, the General Assembly adopted four international conventions, which contain provisions on the settlement of disputes, including, *inter alia*, resort to the International Court of Justice and other tribunals. They are as follows: Comprehensive Nuclear-Test-Ban Treaty;<sup>4</sup> Convention on the Law of the Non-Navigational Uses of International Watercourses;<sup>5</sup> International Convention for the Suppression of Terrorist Bombings;<sup>6</sup> and International Convention for the Suppression of the Financing of Terrorism.<sup>7</sup>

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

7. Two of the above conventions, namely the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression

<sup>1</sup> A/RES/50/44; A/RES/51/157; A/RES/52/153; A/RES/53/100; A/RES/54/28.

<sup>2</sup> Annex to GA resolution 51/157, paragraph 8.

<sup>3</sup> *Ibid.*, paragraph 7.

<sup>4</sup> A/RES/50/1027, 10 September 1996.

<sup>5</sup> A/RES/51, 21 May 1997.

<sup>6</sup> A/RES/52/164, 15 December 1997.

<sup>7</sup> A/RES/54/109, dated 9 December 1999.

of the Financing of Terrorism, contain identical provisions on the settlement of disputes between parties relating to the application or interpretation of the conventions through, *inter alia*, referral of disputes to the International Court of Justice. The relevant paragraph of the said 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 application, in conformity with the Statute of the Court.”<sup>8</sup>

8. The Comprehensive Nuclear-Test-Ban Treaty also contains a provision on the potential referral of disputes between its parties to the International Court of Justice. It stipulates that when a dispute arises between two or more States Parties, they shall consult together with a view to referral, by mutual consent, to the International Court of Justice in conformity with the Statute of the Court.<sup>9</sup>

9. Moreover, the Convention on the Law of the Non-Navigational Uses of the International Watercourses provides for the submission of disputes between its Parties to the International Court of Justice. Article 33 of the above Convention read, in part, as follows:

“10. When ratifying, accepting, approving or acceding to the present 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 not resolved in accordance with paragraph 2, 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;”

#### **(ii) Referral of disputes to arbitration<sup>10</sup>**

10. The Convention on the Law the Non-Navigational Uses of the International Watercourses provides for the submission of disputes to arbitration. Article 33 of the above Convention read, in part, as follows:

“10. When ratifying, accepting, approving or acceding to the present 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,

<sup>8</sup> The International Convention for the Suppression of Terrorist Bombings, Article 20, paragraph 1, and the International Convention for the Suppression of the Financing of Terrorism, Article 24, paragraph 1.

<sup>9</sup> The Comprehensive Nuclear-Test-Ban Treaty, article 6, paragraph 2.

<sup>10</sup> 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. Repertory Practice of the United Nations Organs, Supplement 8, Vol. VI, study on Article 95, paragraph 10.

in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory *ipso facto* and without special agreement in relation to any Party accepting the same obligation.”

“(b) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the Annex to the present Convention.”<sup>11</sup>

11. Moreover two of the said conventions, namely the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, contain identical provisions on the settlement of disputes through, including inter alia, referral of the disputes to arbitration. The relevant paragraph of the said provisions read, in part, as follows:

“Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration.”<sup>12</sup>

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

12. The Convention on the Law the Non-Navigational Uses of the International Watercourses stipulated that “[a] Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (b)” of Article 33 (10).<sup>13</sup>

### **C. International conventions adopted under the auspices<sup>14</sup> of the United Nations**

13. During the period under review, four international conventions adopted under the auspices of the United Nations and deposited with the Secretary-General, contain provisions on the settlement of disputes including resort to the International Court of Justice and referral to other tribunals. They are as follows: Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks;<sup>15</sup> Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea;<sup>16</sup> Rome Statute of the

<sup>11</sup> The Convention on the Law the Non-Navigational Uses of the International Watercourses, article 33, paragraph 2.

<sup>12</sup> The International Convention for the Suppression of Terrorist Bombings, Article 20, paragraph 1, and the International Convention for the Suppression of the Financing of Terrorism, Article 24, paragraph 1.

<sup>13</sup> Ibid.

<sup>14</sup> 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.

<sup>15</sup> Adopted on 4 August 1995 in New York.

<sup>16</sup> Adopted on 23 May 1997 in New York.

International Criminal Court;<sup>17</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change.<sup>18</sup>

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

14. Three of the above conventions have provided for, including among others, the settlement of disputes between their parties, concerning the interpretation or application of the conventions, by way of resort to the International Court of Justice.

15. The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, provide for, among others, the possible referral of disputes between its States Parties to the International Court of Justice. Article 30 of the said Agreement read, in part, as follows:

“1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.”<sup>19</sup>

16. The Kyoto Protocol to the United Nations Framework Convention on Climate Change stipulated that, “[t]he provisions of Article 14 of the Convention on the settlement of disputes shall apply *mutatis mutandis* to this Protocol.”<sup>20</sup> The said instrument explicitly provided for, among other procedures of dispute settlement, the possible referral to the International Court of Justice of disputes that may arise between its States Parties on the application or interpretation of the instrument.<sup>21</sup>

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<sup>17</sup> Adopted by the United Nations diplomatic conference of plenipotentiaries on the establishment of an international criminal court, Rome, 17 July 1998, A/CONF. 183/9.

<sup>18</sup> Adopted on 11 December 1997 in Kyoto, Japan.

<sup>19</sup> 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.”

<sup>20</sup> The Kyoto Protocol to the United Nations Framework Convention on Climate Change, article 19.

<sup>21</sup> See Repertory Practice of the United Nations Organs, Supplement 8, Vol. VI, study on Article 95, paragraph 17.

17. In accordance with the Rome Statute of the International Criminal Court,<sup>22</sup> the Assembly of States Parties may make recommendations on further means of settlement of disputes, which are not settled through negotiations, “including referral to the International Court of Justice in conformity with the Statute of that Court.”<sup>23</sup>

### (ii) Referral of disputes to arbitration

18. Three of the above conventions contain provisions, which among others, concern the settlement of disputes between their parties through arbitration.

19. The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, provided for, among others, the possible referral of disputes between its States Parties to arbitration.<sup>24</sup>

20. The Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea provided that, “All disputes arising out of the interpretation or application of this Agreement shall be referred to an arbitral tribunal unless the parties have agreed to another mode of settlement.”<sup>25</sup>

21. The Kyoto Protocol to the United Nations Framework Convention on Climate Change stipulated that, “[t]he provisions of Article 14 of the Convention on the settlement of disputes shall apply *mutatis mutandis* to this Protocol.”<sup>26</sup> The said instrument has explicitly provided for, among other procedures of dispute settlement, the possible referral to the arbitration of disputes that may arise between its States Parties on the application or interpretation of the instrument.<sup>27</sup>

### (iii) Settlement of disputes by the Law of the Sea Tribunal

22. The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks prescribed, among others, the possible referral of disputes between its States Parties, pertaining to the implementation and application of the said agreement, to the Law of the Sea Tribunal.<sup>28</sup>

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<sup>22</sup> Adopted by the United Nations diplomatic conference of plenipotentiaries on the establishment of an international criminal court, Rome, 17 July 1998, A/CONF. 183/9.

<sup>23</sup> The Rome Statute of the International Criminal Court, article 119.

<sup>24</sup> Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, article 27.

<sup>25</sup> *Ibid.*, Article 26, paragraph 2.

<sup>26</sup> The Kyoto Protocol to the United Nations Framework Convention on Climate Change, article 19.

<sup>27</sup> See Repertory Practice of the United Nations Organs, Supplement 8, Vol. VI, study on Article 95, paragraph 21.

<sup>28</sup> See footnote 19.

23. The Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea has also prescribed the settlement of all disputes arising out of the interpretation or application of the said Agreement by way of their referral to the Law of the Sea Tribunal. Moreover, it further stipulated that the Tribunal shall make suitable provisions for the settlement of the following disputes:

“(a) disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party;

“(b) disputes involving any person referred to in this Agreement who by reason of his official position enjoys immunity, if such immunity has not been waived.<sup>29</sup>

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<sup>29</sup> The Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, New York, 23 May 1997, Article 26, paragraph 1.