

ARTICLE 96

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TEXT OF ARTICLE 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

INTRODUCTORY NOTE

1. The present study concerns the practice of United Nations organs bearing upon Article 96.

2. Following the General Survey, the study deals first with the practice bearing upon Article 96 (1) under which the General Assembly and the Security Council are empowered to make requests of the International Court of Justice for advisory opinions on legal questions. The study then deals with Article 96 (2) and questions arising in connexion with the authorizations given by the General Assembly to other organs of the United Nations and to specialized agencies to request the International Court of Justice for advisory opinions on legal questions arising within the scope of their activities.

3. The study is based primarily on the practice of the General Assembly, the Security Council, and the International Court of Justice. The advisory opinions of the latter have been drawn on, as appropriate, for material illustrating the application and interpretation of Article 96.

4. Section A of the Analytical Summary presents the matters described below: (1) the question of the permissive or mandatory nature of Article 96 (1); (2) the problem of the nature and types of the questions concerning which the authorized organs may address a request to the Court for an advisory opinion; (3) questions arising in connexion with the formulation of requests; (4) the scope of the power granted by Article 96 (1) to request an advisory opinion; and (5) questions arising in connexion with the determination of the effect to be given to the advisory opinions. So far as possible, the endeavour has been made to present the material bearing on the foregoing questions in the context of the particular question which was under discussion.

5. Section B of the Analytical Summary presents the practice bearing upon Article 96 (2). The questions dealt with in that section relate to the following matters: (1) the grant by the General Assembly to other organs of general or ad hoc authorizations to make requests for advisory opinions; (2) the revocability of authorizations to request advisory opinions; (3) the question whether a prior request from the organ to be empowered is necessary before an authorization to request advisory opinions may be granted; (4) the organs which may be authorized to request advisory opinions; and (5) the scope of the questions on which advisory opinions may be requested under the provisions of Article 96 (2).

6. The question of the obligation of the International Court of Justice to comply with requests for advisory opinions is dealt with in this Repertory under Article 92.

7. Preceding the Analytical Summary of Practice is a General Survey which sets forth in brief the occasions on which decisions have been taken by United Nations organs concerning proposals to request advisory opinions, a list of the advisory opinions given by the International Court of Justice, and a list of authorizations given by the General Assembly to other organs of the United Nations and to specialized agencies to request advisory opinions.

8. The General Survey concludes with a brief description of the procedure employed in presenting requests for advisory opinions to the Court and in dealing with the opinions after they have been delivered.

I. GENERAL SURVEY

A. Decisions bearing upon Article 96

9. The General Assembly has requested advisory opinions of the International Court of Justice in the seven cases set forth below. In each case, the resolution under which the request was made and the designation of the question by the Court are shown.

- (1) Resolution 113 B (II) of 17 November 1947; Conditions of admission of a State to membership in the United Nations (Article 4 of the Charter);
- (2) Resolution 258 (III) of 3 December 1948; Reparation for injuries suffered in the service of the United Nations;
- (3) Resolution 294 (IV) of 22 October 1949; Interpretation of peace treaties with Bulgaria, Hungary and Romania;
- (4) Resolution 296 J (IV) of 22 November 1949; Competence of the General Assembly for the admission of a State to the United Nations;
- (5) Resolution 338 (IV) of 6 December 1949; International status of South West Africa;
- (6) Resolution 478 (V) of 16 November 1950; Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide;
- (7) Resolution 785 A (VIII) of 9 December 1953; Effect of awards of compensation made by the United Nations Administrative Tribunal.

10. Draft resolutions under the terms of which the International Court of Justice would have been requested to give an advisory opinion have been rejected by the General Assembly or its Main Committees in respect of the following matters:

- (1) The treatment of Indians in the Union of South Africa; 1/

1/ G A (I/2), Plen., 52nd mtg., p. 1061. A similar draft resolution in the Joint 1st and 6th Com. on the same subject was not brought to a vote. (Ibid., Plen., 50th mtg., p. 1006.)

- (2) Interpretation of Articles 11 and 12 of the Statute of the International Court of Justice; 2/
- (3) The Palestine question; 3/
- (4) Violation by the USSR of fundamental human rights, traditional diplomatic practices and other principles of the Charter. 4/

11. The Security Council has made no requests to the International Court for an advisory opinion. 5/

12. Proposals under the terms of which the International Court of Justice would have been requested to give an advisory opinion have been rejected in connexion with the following cases:

- (1) The Indonesian question (II); 6/
- (2) The Palestine question. 7/

13. Proposals under the terms of which advisory opinions would have been requested were formally submitted to the Council but were not voted upon in the following cases:

- (1) Complaint of armed invasion of Taiwan (Formosa); 8/
- (2) The Palestine question. 9/

14. Suggestions, not submitted as formal proposals, that advisory opinions be requested have been made in connexion with the following questions:

- (1) The Spanish question; 10/
- (2) Admission of new Members; 11/

2/ G A (I/2), Plen., p. 1487, annex 37 (A/191).

3/ G A (II), Ad Hoc Pol. Com., 34th mtg.; G A (III), 1st Com., 220th mtg.; G A (VII), Ad Hoc Pol. Com., 39th mtg., p. 237.

4/ G A (III), 6th Com., 139th mtg., pp. 768-781; G A (III/1), 6th Com., Annexes, p. 56, A/C.6/316.

5/ At its 9th meeting on 6 February 1946, the Security Council, in connexion with the first election of judges of the International Court, adopted without vote a motion submitted by the United Kingdom under the terms of which the Council would suggest to the Assembly that "we should ask, either as separate bodies, or that the Assembly should ask, for an advisory opinion of the Court, when it is established" on the interpretation of Articles 11 and 12 of the Statute of the Court. No request was made to the Court, however, because the Security Council concurred in a draft rule of procedure on the subject which had been adopted by the General Assembly on the recommendation of the Sixth Committee. S C, 1st yr., 1st Series, No. 1, 9th mtg., p. 160.

6/ S C, 2nd yr., No. 84, 195th mtg., p. 2224.

7/ S C, 3rd yr., No. 98, 340th mtg., pp. 33 and 34.

8/ S C, 5th yr., No. 49, 507th mtg., pp. 5-7; proposal submitted by China.

9/ S C, 6th yr., 555th mtg., p. 16; draft resolution submitted by Egypt.

10/ S C, 1st yr., 1st Series, No. 2, 46th mtg., United Kingdom, p. 347.

11/ S C, 1st yr., 2nd Series, No. 5, 56th mtg., Netherlands, pp. 95 and 96.

(3) The Hyderabad question; 12/

(4) The Anglo-Iranian Oil Company case. 13/

15. The General Assembly has authorized the Economic and Social Council, the Trusteeship Council and the Interim Committee of the General Assembly to request advisory opinions of the Court. It has authorized all the specialized agencies, with the exception of the Universal Postal Union, to request advisory opinions and, by resolution 171 A (II), has urged them to make use of their powers in this respect. Up to the present, no requests for advisory opinions have been addressed to the Court by the organs or agencies to which authorizations have been granted by the General Assembly. 14/

16. The International Court of Justice has given an advisory opinion in reply to each of the seven requests addressed to it by the General Assembly.

B. Procedural matters relating to requests for advisory opinions

1. *The question of the appropriate body to draft requests by the General Assembly for advisory opinions*

17. Of the seven requests for advisory opinions made by the General Assembly, one originated in the First Committee, 15/ two in the Ad Hoc Political Committee, 16/ one in the Fourth Committee, 17/ one in the Fifth Committee 18/ and two in the Sixth Committee. 19/ The procedure followed in the adoption of the draft resolutions containing requests for advisory opinions has not differed from that followed in the adoption of draft resolutions on other matters by the General Assembly.

18. At the sixth session of the General Assembly, the item entitled "Consideration of the General Assembly's methods and procedures for dealing with legal and drafting questions" was included in the agenda at the request of the United Kingdom. In the explanatory memorandum accompanying the request, the representative of the United Kingdom referred specifically to the drafting of requests for advisory opinions and stated: 20/

"The drafting of requests to the Court for advisory opinions is essentially a legal matter, but there is no regular practice of referring the text of such requests to the Sixth Committee or to some other appropriate legal body for drafting. This has been left to the political or technical committee in which the

12/ S C, 4th yr., No. 29, 426th mtg., Pakistan, p. 8.

13/ S C, 6th yr., 562nd mtg., Ecuador, pp. 156 and 160.

14/ The Trusteeship Council, when considering the petition entitled "Petition from the Marshallese people concerning the Trust Territory of the Pacific Islands" (T/PET.10/28), at its fourteenth session, rejected a draft resolution (T C (XIV), Annexes, a.i. 5, p. 63, T/L.498) submitted by India under the terms of which the Trusteeship Council would have requested the General Assembly to seek an advisory opinion from the International Court of Justice on the matter under consideration. (T C (XIV), 561st mtg.)

15/ G A resolution 113 B (II).

16/ G A resolutions 294 (IV) and 296 J (IV).

17/ G A resolution 338 (IV).

18/ G A resolution 795 A (VIII).

19/ G A resolutions 258 (III) and 478 (V).

20/ G A (VI), Annexes, a.i. 63, p. 2, A/1929.

request has originated. It is noteworthy that the Court has been obliged to edit or interpret several of the requests addressed to it, which have originated from political or technical committees, due to the faulty or defective drafting of these requests. The Court has, in fact, in more than one case, been obliged to determine what the request meant before it has been able to answer it. This is obviously undesirable, not only from the point of view of the Court but from the point of view of the Assembly itself, which must be in a position to ensure that the question answered by the Court is, in fact, the question which the Assembly wishes to address to it. This can only be done by careful and considered drafting which, in the case of questions of a legal character, should clearly be the task of a legal body. It would, of course, be for the Assembly to determine whether the final version of the question corresponded to its intentions."

19. The item was considered by the Sixth Committee. As a result of such consideration, the General Assembly, by resolution 597 (VI) recommended for adoption by the Sixth Committee, established a special committee for the consideration of the methods and procedures of the General Assembly for dealing with legal and drafting questions to consider the matter further and to report thereon to the General Assembly at its seventh session. The report of the Special Committee submitted at that session was discussed in the Sixth Committee; much of the discussion centred on methods for the handling by the General Assembly of requests for advisory opinions from the International Court of Justice.

20. In its report, 21/ the Special Committee proposed that whenever any Committee of the Assembly contemplated making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, the matter should, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee, or to an ad hoc sub-committee established by the Committee concerned for advice on the legal aspects and on the drafting of the request.

21. In the course of the discussion of the report of the Special Committee in the Sixth Committee, opinion was divided as to whether the reference to the Sixth Committee, or to a special ad hoc sub-committee, should be mandatory. Other suggestions were made, such as the establishing of joint committees of the Committee concerned and the Sixth Committee. Under the terms of a draft resolution recommended 22/ by the Sixth Committee for adoption by the General Assembly, whenever any Committee contemplated making a recommendation to the General Assembly to request an advisory opinion from the Court it would have been mandatory to refer the matter at an appropriate stage either to the Sixth Committee for advice on the legal aspects and on the drafting of the request or to a joint committee of the Committee concerned and the Sixth Committee.

22. When the draft resolution recommended by the Sixth Committee for adoption by the General Assembly was discussed in plenary meeting, an amendment was submitted under the terms of which reference to a body other than the Committee making the proposal would be made optional. The draft resolution with that amendment was adopted and became resolution 684 (VII). Under the terms of this resolution, the General Assembly recommended:

"(a) That, whenever any Committee contemplates making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, the matter may, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee for advice on the legal aspects and

21/ G A (VII), Annexes, a.i. 53, p. 2, A/2174.

22/ Ibid., p. 10, A/2247.

on the drafting of the request, or the Committee concerned may propose that the matter should be considered by a joint Committee of itself and the Sixth Committee;".

23. Only one request for an advisory opinion has been made by the General Assembly since the adoption of the above-mentioned resolution. In connexion with the consideration of General Assembly resolution 785 (VIII), entitled "Supplementary estimates for the financial year 1953", at its draft stage, approval for a request for an advisory opinion of the Court was given by the General Assembly upon the recommendation of the Fifth Committee without the matter having been referred to the Sixth Committee and without a joint committee having been established.

2. The forwarding of the request to the Court

24. The requests of the General Assembly for advisory opinions have been transmitted by the Secretary-General to the Registrar of the International Court of Justice with a covering letter stating the questions upon which the opinion of the Court was sought and enclosing certified English and French copies of the resolutions under which the opinion was requested.

25. In this connexion, it may be noted that Article 65 (2) of the Statute of the International Court of Justice reads as follows:

"Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question."

26. Under only one of the resolutions by which it requested an advisory opinion has the General Assembly specified the manner in which the request was to be forwarded to the Court and in particular the documents "likely to throw light upon the question" to which reference is made in Article 65 of the Statute of the Court. Thus, under resolution 338 (IV) on the question of South West Africa, the General Assembly requested

"The Secretary-General to transmit the present resolution to the International Court of Justice, in accordance with Article 65 of the Statute of the Court, accompanied by all documents likely to throw light upon the question.

"The Secretary-General shall include among these documents, the text of article 22 of the Covenant of the League of Nations; the text of the Mandate for German South West Africa, confirmed by the Council of the League on 17 December 1920; relevant documentation concerning the objectives and the functions of the Mandates System; the text of the resolution adopted by the League of Nations on the question of Mandates on 18 April 1946; the text of Articles 77 and 80 of the Charter and data on the discussion of these Articles in the San Francisco Conference and the General Assembly; the report of the Fourth Committee and the official records, including the annexes, of the consideration of the question of South West Africa at the fourth session of the General Assembly."

27. In the implementation of all other resolutions requesting advisory opinions, the documents to be transmitted to the Court have not been specified, and this matter has been left to the Secretary-General with a general instruction.

3. *Written and oral statements under the terms
of Article 66 of the Statute of the Court*

28. In each case of a request for an advisory opinion, the Secretary-General has submitted written statements to the Court under the provisions of Article 66 of the Statute of the Court. In connexion with all requests but one, 23/ he has, in addition, designated representatives to make oral statements to the Court. 24/

29. In their oral statements before the Court, the representatives of the Secretary-General have generally given a survey of the consideration by the United Nations organs of the question on which the advisory opinion was sought, and have drawn the attention of the Court to elements of law and of fact which might assist the Court in reaching its conclusions.

30. In connexion with the Reparation for injuries suffered in the service of the United Nations case, the representatives of the Secretary-General pointed out in their oral statements that the Secretary-General considered it to be his duty in this case not only to present the Court with information regarding the questions before it, but also to take a definite position on these questions. They outlined, therefore, not only the historical background of the case and an analysis of the questions presented, but they also developed the legal position taken by the Secretary-General.

31. In the request of the General Assembly for an advisory opinion on the question of the effect of awards of compensation made by the United Nations Administrative Tribunal, the representative of the Secretary-General appearing before the Court offered his assistance in respect of matters within the special knowledge and competence of the Secretariat. He also declared that, should the Court so desire, he was prepared to supply information on United Nations practices relating to aspects of the questions which concerned the Secretary-General as chief administrative officer of the Organization, as well as information relating to certain administrative considerations which might throw light on the questions before the Court. Upon the invitation of the President of the Court, the representative of the Secretary-General made a statement to the Court relating to these points. 25/

32. The relevant provisions guiding the Court in this connexion are set forth below. Article 34 (2) of the Statute of the International Court of Justice provides as follows:

"The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative."

33. Article 66 (2) of the Statute provides, in connexion with requests for advisory opinions, that the Registrar of the Court shall notify, inter alia, any international organization, considered by the Court as likely to be able to furnish information on a question, of the readiness of the Court to receive written statements or to hear oral statements.

23/ The exception was the request for an advisory opinion on the competence of the General Assembly for the admission of a State to the United Nations.

24/ The representatives of the Secretary-General were either the Assistant Secretary-General in charge of Legal Affairs or the Principal Director of the Department of Legal Affairs.

25/ Effect of awards of compensation made by United Nations Administrative Tribunal, I C J, Pleadings, Oral Arguments, Documents, p. 287.

34. All the agreements with the specialized agencies, except that with the Universal Postal Union (UPU), provide that the agencies shall furnish any information which may be requested by the Court in pursuance of Article 34 of its Statute.

35. Information has been provided to the Court by the International Labour Organisation (ILO) in connexion with the advisory opinion of the Court of 28 May 1951, entitled "Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide" and with the advisory opinion of the Court of 13 July 1954, entitled "Effect of awards of compensation made by the United Nations Administrative Tribunal". In both cases, the Director-General of ILO was notified by the Registrar of the Court that, in accordance with Article 66 of the Statute of the Court, ILO was considered by the President of the Court as likely to be able to furnish information on the matter.

4. *Forwarding of the advisory opinion of the Court*

36. In accordance with Article 67 of the Statute of the Court and Article 85 of the Rules of Court, notice is given to the Secretary-General and to the "representatives of Members of the United Nations, of other States and of international organizations immediately concerned" as to the date and hour fixed for the sitting to be held by the Court for the reading of the advisory opinion. After the advisory opinion is delivered, certified copies of the opinion are sent by the Registrar to Members of the United Nations and other States, specialized agencies and public international organizations directly concerned.

5. *Consideration of the advisory opinion by the General Assembly*

37. After delivery of an advisory opinion, an item relating to the consideration of the opinion has been included by the Secretary-General in the provisional agenda of the session of the General Assembly immediately following. In each case, the General Assembly has approved the inclusion of the item in the agenda of the session.

38. In three cases, the advisory opinions were presented in the agenda of the Assembly as separate items. 26/ In one case, the advisory opinion was presented as a separate sub-item in the agenda. 27/ In the other two cases, the advisory opinions were included as part of the relevant agenda item. 28/

26/ The items were: (1) "Question of South West Africa: advisory opinion of the International Court of Justice" included in the agenda at the fifth session; (2) "Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide: advisory opinion of the International Court of Justice". This item was included in the agenda of the sixth session of the General Assembly; (3) "Reservations to multilateral conventions". Under this item, the above-mentioned advisory opinion was referred to the Sixth Committee for consideration as a sub-item.

27/ "Admission of new Members:
"...."

(b) Advisory opinion of the International Court of Justice."
28/ "Admission of new Members to the United Nations, including the advisory opinion of the International Court of Justice"; "Reparation of injuries incurred in the service of the United Nations: advisory opinion of the International Court of Justice and the report of the Secretary-General."

39. Except in two instances, 29/ the advisory opinions were referred by the General Assembly, on the recommendation of the General Committee, to the Committee which had submitted the draft resolution under which the request for the opinion of the Court was made.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Practice bearing upon Article 96 (1)

1. *Consideration of the question of the obligation to submit legal questions to the International Court of Justice*

40. In connexion with the agenda items set forth below, proposals have been made to request advisory opinions of the Court. In the course of the discussions, the question arose whether the General Assembly had the obligation to make such a request.

41. In the course of the consideration of the agenda item entitled "Treatment of Indians in the Union of South Africa" in plenary meeting at the second part of the first session of the General Assembly, the representative of the Union of South Africa submitted an amendment 30/ to the draft resolution recommended for adoption by the Assembly by the Joint Committee of the First and Sixth Committees. Under the terms of the amendment, a request would have been made that the Court give an advisory opinion on the question whether the matter under discussion was, under Article 2 (7), essentially within the domestic jurisdiction of the Union of South Africa.

42. In support of this amendment, the representative of the Union of South Africa declared that, on the issue of law, South Africa had a clear right to go to the Court for its opinion, and the Assembly had a clear duty to assist it in securing such an opinion. The Court was the very organ established for the purpose of dealing with matters of that kind, and the Assembly should have the advisory opinion of the Court before it when it came to pass judgement on the facts. The right of a Member of the United Nations to have its international obligations determined by the Court and not by a mere political forum was fundamental and undeniable.

43. In support of the amendment, it was stated that the underlying question was whether international obligations existed under agreements concluded between the Union and India. This was clearly a disputed issue of international law and was basic to the draft resolution submitted by the Joint Committee. Similarly, there was a dispute whether, if the Union had not entered into international agreements with India, the matter was essentially within the domestic jurisdiction of the Union. If the draft resolution submitted by the Joint Committee were to be adopted, it would constitute a finding on the part of the General Assembly that international obligations did exist

29/ The request for an advisory opinion in the Conditions of admission of a State to membership in the United Nations case was made by the General Assembly at its second session on the report of the First Committee; the opinion rendered by the Court was referred by the General Assembly at its third session to the Ad Hoc Political Committee for consideration. The request for an advisory opinion in the Competence of the General Assembly for the admission of a State to the United Nations case was made by the General Assembly at its third session on the report of the Ad Hoc Political Committee; the opinion rendered by the Court was considered by the General Assembly at its fourth session without reference to a Main Committee.

30/ G A (I/2), Plen., 50th mtg., pp. 1009 and 1010, A/205/Add.1.

under agreements concluded between the two Governments concerned. The only proper course was to request an advisory opinion. The obligation to do so was all the clearer when one of the parties to the dispute proposed such a course. The method contemplated by the Charter for such a case was reference to the International Court of Justice, which was the principal judicial organ of the United Nations.

44. Arguing against the amendment, the view was expressed that it was for the Assembly to judge whether it was competent to pronounce on the question of violation of the principles of the Charter. It was further argued that, while the matter had a juridical as well as a political aspect, the one did not exclude the other and it did not follow that the General Assembly was not competent to solve the juridical question.

45. The amendment submitted by the Union of South Africa was rejected by the General Assembly by 31 votes to 21, with 2 abstentions.

46. At the second session of the General Assembly, the permissive nature of the provisions of Article 96 was stressed in the Sixth Committee in the course of the discussion, at its draft stage, of resolution 171 (II), entitled "Need for greater use by the United Nations and its organs of the International Court of Justice". It was pointed out 31/ that the terms of the draft resolution did not create an obligation to request advisory opinions, but merely recommended that the possibility provided by Article 96 of the Charter and Article 65 of the Statute of the Court should be made use of in appropriate cases.

47. At the fourth session of the General Assembly, in connexion with the discussion 32/ of the question of South West Africa, draft resolutions were submitted in the Fourth Committee under the terms of which certain questions would be submitted to the Court for an advisory opinion.

48. The views set forth below were among those expressed in support of the request for an advisory opinion. (1) An advisory opinion was absolutely necessary where contradictory interpretations were given to the provisions of the Charter. (2) The General Assembly could not settle questions of law by a mere majority decision of its Members. It was for this reason, among others, that the International Court of Justice had been created; it was the only body to which questions of that nature could be referred. In opposition to the request, the views set forth below were among those expressed. (1) It was not necessary to refer the legal aspects of the question of South West Africa to the Court, since no such step had been taken before the adoption of previous decisions on the same subject by the General Assembly. (2) It was more than ever necessary to reassert the authority of the General Assembly as the supreme organ of the United Nations. If the prestige of the General Assembly was to be restored, that objective would not be attained by referring the legal aspects of the question of South West Africa to the Court. (3) It was unnecessary to request an advisory opinion of the Court since the task and the obligations of the Assembly were quite clear.

49. In plenary meeting, it was further contended, 33/ on the one hand, that if there were doubts as to the legal position involved, the proper course would be to obtain a

31/ G A (II), Plen., vol. II, p. 1560, annex 18 (A/459).

32/ For texts of relevant statements, see G A (IV), 4th Com., 128th mtg.: Philippines, p. 207; 133rd mtg.: France, p. 230; 135th mtg.: United Kingdom, p. 246; 136th mtg.: Cuba, p. 252; 139th mtg.: Poland, p. 241; 140th mtg.: Liberia, p. 280.

33/ G A (IV), Plen., 269th mtg., Liberia, para. 87; United Kingdom, para. 113.

ruling from the Court. On the other hand, it was held that to request an opinion from the Court would throw doubt upon the legality of the previous action of the Assembly in the matter of the question of South West Africa.

*2. Consideration of the nature and types of questions
referred to in Article 96 (1)*

50. Neither in the practice of the General Assembly nor in that of the Security Council is a general definition of the term "legal questions" appearing in Article 96 (1) to be found. The term itself appears in only two resolutions (258 (III) and 758 A (VIII)) of the seven under which the General Assembly has made requests for advisory opinions. While the other five resolutions referred to the matters on which the advisory opinion of the International Court of Justice was sought simply as questions, one (resolution 338 (IV)), relating to the international status of South West Africa, referred to the legal aspects of the question and another (resolution 478 (V)), relating to the effects of reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, referred to the question as included in the law of treaties and contained a request for an opinion on the legal effect of certain action.

51. The request for an advisory opinion under resolution 294 (IV) related to the interpretation of treaties. The requests under resolutions 113 B (II) and 296 J (IV) related to the interpretation 34/ of the Charter.

52. In the course of consideration by the General Assembly of matters in connexion with which proposals have been made to request an advisory opinion, those supporting the proposals have frequently referred to the matter itself or to certain aspects of it as legal or as presenting issues of law, while those opposed have, in some cases, disputed the legal nature of the question or the existence of legal issues. These cases are examined in paragraphs 54-73 below.

53. The Court has, in several of its advisory opinions, adverted to the legal nature of the questions on which its opinion was sought. Its observations on this point are set forth in connexion with the cases examined below.

a. THE POLITICAL OR LEGAL NATURE OF THE QUESTION

1. The consideration of the question of treatment of Indians in the Union of South Africa at the second part of the first session of the General Assembly

54. The above-mentioned question, included in the agenda of the General Assembly at the second part of its first session at the request 35/ of the representative of India, was referred to the Joint Committee of the First and Sixth Committees for consideration. The representative of India submitted a draft resolution 36/ under the terms of which the General Assembly would have been requested to declare that it considered that the Government of the Union of South Africa should revise its general policy and its legislative and administrative measures affecting Asians in South Africa so as to

34/ In this connexion, it may be noted that General Assembly resolution 171 A (II), concerning the need for greater use by the United Nations and its organs of the International Court of Justice, referred to "points of law relating to the interpretation of the Charter".

35/ G A (I/2), Joint 1st and 6th Com., p. 52, annex 1 (A/149).

36/ Ibid., pp. 131 and 132, annex 1 d (A/C.1 and 6/3).

bring them into conformity with the Purposes and Principles of the Charter. Both the facts put forward by the Government of India and the legal basis for submission of the matter to the United Nations were challenged 37/ by the representative of the Union of South Africa on the grounds that the agreements referred to by the Government of India did not constitute international obligations and that the matter was within the jurisdiction of the Union of South Africa and hence not within the competence of the United Nations by reason of the terms of Article 2 (7).

55. In the Joint Committee, several draft resolutions were submitted under the terms of which certain questions would have been referred to the Court for an advisory opinion (see paragraphs 83-91 below). Part of the discussion 38/ centred on whether the item under consideration was of a legal or a political nature and, consequently, whether an advisory opinion was to be sought from the Court.

56. With regard to the component elements of the question, the views set forth below were among those expressed. The legal aspect of the question was far outweighed by its political aspect. The proposal to refer the matter to the Court did not take sufficient account of the political question involved in the deterioration of relations between two Member States. To deal with the question of the treatment of Indians in the Union of South Africa as a legal matter would tend to minimize its political importance and weaken the prestige of the United Nations. On the other hand, some representatives maintained that the legal side of the question was clearly predominant and that to consider the political aspect as being more important than the legal aspect would strike at the very roots of the rule of law which the United Nations was seeking to establish. A majority political decision would be open to grave doubts concerning its legal validity. Despite the preponderance of the political issues, the applicability of Article 2 (7) must be decided before a decision was taken on the substance of the issues. The parties would regard the conclusion reached by such a body as the International Court of Justice as being more authoritative than a decision by the General Assembly. The view was also expressed that it was difficult to draw a distinction between political and legal questions, and that even the gravest of political issues involved legal considerations.

ii. The consideration of the question of admission of new members
at the second and fourth sessions of the General Assembly

57. At the second session of the General Assembly, during the consideration, by the First Committee, of the above-mentioned question, several representatives opposed 39/ a draft resolution under the terms of which an advisory opinion would be requested from the Court because, in their view, the question was not of a legal nature. In support of this position, the arguments set forth below were among those advanced. (1) The matter did not lend itself to a juridical decision. (2) The matter was of a political nature. (3) Since the meaning of Article 4 was clear, the questions at issue were not legal formulae but political questions.

37/ Ibid., 1st mtg., pp. 3 and 4.

38/ For texts of relevant statements, see G A (I/2), Joint 1st and 6th Com., 1st mtg.: China, p. 7; Egypt, p. 7; 2nd mtg.: France, pp. 16 and 17; United Kingdom, pp. 14 and 15; United States, p. 16; 3rd mtg.: Ecuador, p. 30; Honduras, p. 38; Mexico, p. 23; Turkey, p. 22; USSR, p. 29; 4th mtg.: Australia, p. 34; Belgium, p. 32; 5th mtg.: United States, p. 41.

39/ G A (II), 1st Com., 100th mtg., pp. 364 and 370. Similar contentions were raised by certain representatives in their oral statements before the Court (Conditions of admission of a State to membership in the United Nations, I C J, Pleadings, Oral Arguments and Documents, 1948, pp. 84-86 and 105-110).

58. The General Assembly subsequently adopted resolution 113 B (II), under the terms of which certain questions relating to the admission of new Members to the United Nations were submitted to the Court.

59. In its advisory opinion on the question of the conditions of admission of a State to membership in the United Nations, rendered in pursuance of the above-mentioned resolution, the Court answered an objection to its jurisdiction based on the contention that the question must be regarded as a political one by stating 40/ that

"The Court cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision. It is not concerned with the motives which may have inspired this request, nor with the considerations which, in the concrete cases submitted for examination to the Security Council, formed the subject of the exchange of views which took place in that body. It is the duty of the Court to envisage the question submitted to it only in the abstract form which has been given to it; nothing which is said in the present opinion refers, either directly or indirectly, to concrete cases or to particular circumstances."

60. In its advisory opinion on the question of the competence of the General Assembly regarding the admission of a State to the United Nations, rendered in response to General Assembly resolution 296 J (IV), the Court answered an objection as to its competence on the ground of the alleged political character of the question as follows: 41/

"the Court notes that the General Assembly has requested it to give the legal interpretation of paragraph 2 of Article 4. As the Court stated in the same Opinion, it 'cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision'."

iii. The consideration of the question of South West Africa
at the fourth session of the General Assembly

61. By resolution 338 (IV), the General Assembly decided to submit the following questions to the Court with a request for an advisory opinion:

"What is the international status of the Territory of South West Africa and what are the international obligations of the Union of South Africa arising therefrom, in particular:

"(a) Does the Union of South Africa continue to have international obligations under the Mandate for South West Africa and, if so, what are those obligations?

"(b) Are the provisions of Chapter XII of the Charter applicable and, if so, in what manner, to the Territory of South West Africa?

"(c) Has the Union of South Africa the competence to modify the international status of the Territory of South West Africa, or, in the event of a negative reply, where does competence rest to determine and modify the international status of the Territory?"

40/ Admission of a State to the United Nations, I C J, Reports 1948, p. 61. For the views of Judges Alvarez, Zoricic, and Krylov, see ibid., pp. 70, 95 and 108.

41/ Competence of Assembly regarding admission to the United Nations, I C J, Reports 1950, p. 6.

62. In the course of the discussion of the resolution at its draft stage in the Fourth Committee, the views set forth below were among those expressed 42/ concerning the nature of the questions to be referred to the Court.

63. On the one hand, it was held that the question of placing the Mandated Territory of South West Africa under the International Trusteeship System was a political question and not a purely legal one. This point was raised in connexion with a draft resolution 43/ submitted by Denmark, India, Norway, Syria and Thailand under the terms of which several questions would be referred to the Court for an advisory opinion, including the question whether the Union of South Africa was under the obligation to negotiate and conclude a Trusteeship Agreement and, if not, whether South West Africa was a Territory to which the provisions of Chapter XI of the Charter applied. In regard to an amendment 44/ submitted by the Philippines under the terms of which the Court would have been asked to give its advisory opinion "in the light of the letter and spirit of the mandate system and of Chapters XI and XII of the Charter, and without prejudice to previous resolutions of the General Assembly on the matter", it was held that the Court could not take considerations of a moral nature into account or give an opinion on the moral obligations of the Union of South Africa.

64. On the other hand, it was maintained that the question whether the Union of South Africa had sovereignty over South West Africa was a legal question which involved the interpretation of Article 2 (7). In the case under consideration, a difference in the interpretation of the Charter was involved, since the General Assembly considered that the Territory of South West Africa was within its purview while the Government of the Union of South Africa took the opposite view. The question was therefore purely one of law. What was required from the Court was an opinion on the international status of the Territory.

65. The amendment submitted by the Philippines was rejected. 45/ The joint draft resolution was adopted, with amendments deleting the reference to Chapter XI, by the Fourth Committee 46/ and by the General Assembly in plenary meeting, and became resolution 338 (IV).

66. In its advisory opinion of 11 July 1950 on the international status of South West Africa, 47/ the Court, examining the question whether the Union of South Africa was under obligation to place South West Africa under the Trusteeship System, reviewed certain general considerations and declared:

"The Court is, however, unable to deduce from these general considerations any legal obligations for mandatory States to conclude or to negotiate such agreements. It is not for the Court to pronounce on the political or moral duties which these considerations may involve."

42/ For texts of relevant statements, see G A (IV), 4th Com., 128th mtg.: Philippines, para. 66; 133rd mtg.: France, para. 5; 134th mtg.: India, para. 23; 139th mtg.: Liberia, para. 22; 140th mtg.: Dominican Republic, para. 51; Mexico, para. 53; Philippines, para. 67.

43/ G A (IV), Plen., Annex, p. 103, A/1180, para. 35, A/C.4/L.64.

44/ G A (IV), 4th Com., 140th mtg., p. 274.

45/ Ibid., p. 281.

46/ Ibid., p. 282.

47/ International status of South West Africa, I C J, Reports 1950, p. 140.

iv. The consideration of the Indonesian question (II) in the Security Council

67. At the 194th and 195th meetings on 25 and 26 August 1947, in the course of the discussion of the Indonesian question (II), the Security Council considered a draft resolution 48/ submitted by Belgium under the terms of which the International Court of Justice would have been requested, under Article 96, to give an advisory opinion on whether the Security Council was competent to deal with the question.

68. In support of the draft resolution, it was stated 49/ that its subject fell within the competence of the Court. The contentions set forth below were among those advanced 50/ in opposition to the draft resolution. (1) The draft resolution dealt with a question which was not of a purely legal nature; it had grave political implications and affected world security. (2) Adoption of the draft resolution would divert attention from the substance of the question to legal considerations of secondary importance. (3) It was doubtful whether a legal question was involved. (4) Article 96, invoked under the terms of the draft resolution, stated that the General Assembly or the Security Council might request the Court to give an advisory opinion on any legal question. The question of competence, however, was not a legal question; it was a political question and one on which a decision could be taken only by the Security Council.

69. The draft resolution submitted by Belgium, as amended, was rejected.

v. The consideration of the Palestine question in the Security Council

70. At the 334th meeting of the Security Council on 13 July 1948, in the course of the consideration of the Palestine question, the representative of Syria submitted a draft resolution 51/ under the terms of which the Council would have requested the Court, pursuant to Article 96, to give an advisory opinion as to the international status of Palestine after the termination of the Mandate.

71. In the course of the discussion on the above-mentioned draft resolution, some representatives contended that the question to be submitted to the Court was of a political nature. In support of this contention, the views set forth below were among those expressed. 52/ (1) The Palestine question had become too complex and was "obviously much too political in character" to permit hope that it could be settled by judges bound only by law. (2) The Court could only be asked legal questions and it was certain that the existence of a State was a question of fact and not of law.

72. In support of the draft resolution, its sponsor stated 53/ that if the Court were to decide that the request referred to a political question and that the Court should not deal with it, it might do so and return the question as not being within the competence of the Court. He further asserted that the request to the Court was not to be made under the provisions of Article 36 (3) concerning the settlement of legal disputes, but under the provisions of Article 96, which, he contended, covered "any legal aspect of any question that comes before the Security Council at any time".

48/ S C, 2nd yr., No. 83, 194th mtg., S/517, in footnote 1 to p. 2193.

49/ S C, 2nd yr., No. 83, 194th mtg., Belgium, pp. 2193 and 2194.

50/ For texts of relevant statements, see S C, 2nd yr., No. 83, 194th mtg.: USSR, pp. 2210 and 2211; No. 84, 195th mtg.: Australia, pp. 2215-2217; India, pp. 2219 and 2220; Poland, p. 2220.

51/ G A (III), Suppl. No. 2 (A/620), p. 106, S/894.

52/ For texts of relevant statements, see S C, 3rd yr., No. 96, 336th mtg.: France, p. 24; No. 98, 340th mtg.: Israel, p. 29.

53/ S C, 3rd yr., No. 98, 339th mtg., Syria, pp. 2-9.

73. The draft resolution submitted by Syria, as amended, was rejected.

b. DIFFICULT AND IMPORTANT POINTS OF LAW 54/

74. At its second session, the General Assembly considered the agenda item entitled "Need for greater use by the United Nations and its organs of the International Court of Justice ...". One of the resolutions adopted in this connexion, resolution 171 A (II), contained a recommendation that "organs of the United Nations and the specialized agencies should, from time to time, review the difficult and important points of law within the jurisdiction of the International Court of Justice which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled, including points of law relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies, and, if duly authorized according to Article 96, paragraph 2, of the Charter, should refer them to the International Court of Justice for an advisory opinion".

75. The representative of Australia, who was the author of the draft resolution containing this recommendation, stated 55/ in the course of the discussion in the Sixth Committee that the legal questions selected for reference to the Court could be carefully formulated in order to meet the following requirements: (1) They should be difficult and of general importance; (2) they should be of such a character as would be likely to arise from time to time in the course of the affairs of the organ or agency; and (3) matters selected by that process for reference to the Court should not relate to special and particular problems and issues which were being currently dealt with by political bodies.

76. The report of the Sixth Committee, presented to the General Assembly after a full debate on the question had taken place in the Sixth Committee and in an ad hoc sub-committee thereof, noted 56/ the following points which the Rapporteur of the ad hoc sub-committee had been instructed to make clear:

(a) "The points of law upon which advisory opinions may be requested are points of law arising from concrete cases dealt with by the said organs [of the United Nations] and [the specialized] agencies within the scope of their competence." 57/

(b) "The organs of the United Nations and the specialized agencies are, of course, in no way relieved of the task of interpreting provisions on which their activity depends. The sole object of the Court's advisory opinions is to enlighten and guide them in the accomplishment of that task. The recommendation is, moreover, limited to cases the interpretation of which involves questions of principle. It does not therefore propose that all points of law should be referred to the Court indiscriminately. There is no question of the Court's

54/ For the discussion of points of law relating to the interpretation of the United Nations Charter, see paras. 77-99 below.

55/ G A (II), 6th Com., 44th mtg., p. 46.

56/ G A (II), Plen., vol. II, p. 1560, annex 18 (A/459).

57/ In this connexion, it was further pointed out in the report that "In order to avoid the risk of conflicts between the attitude adopted by an organ of the United Nations in a concrete case and an advisory opinion of the Court which might be subsequently requested, it is desirable that requests for opinions should, as far as possible, be submitted while the matter is still pending, and preferably at an early stage". (G A (II), Plen., vol. II, p. 1560, annex 18 (A/459).)

being flooded with futile or hypothetical questions. The aim is to recommend a limited but perfected use of machinery for requesting advisory opinions from the Court to constructive ends in conformity with the objects of the Charter."

C. INTERPRETATION OF THE UNITED NATIONS CHARTER 58/

- i. The consideration of the question of need for greater use by the United Nations and its organs of the International Court of Justice at the second session of the General Assembly

77. At the second session of the General Assembly, in the course of the debate in the Sixth Committee on the above-mentioned question, the question arose whether requests for advisory opinions might relate to points of interpretation of the Charter. An amendment 59/ to a draft resolution recommended by an ad hoc sub-committee of the Sixth Committee for adoption by the Committee, was submitted by the representative of Poland. Under the terms of that amendment, all references to constitutional interpretation and the interpretation of the Charter would have been deleted from the draft resolution.

58/ According to Article 92 of the Charter, the Statute of the International Court of Justice forms an integral part of the Charter. At the first part of the first session of the General Assembly, the representatives of El Salvador, France and the United Kingdom addressed a request that the following resolution be included in the agenda of the Assembly:

"The General Assembly resolves that:

"The International Court of Justice is requested to give an advisory opinion on the meaning of the word 'meeting' in Articles 11 and 12 of the Statute of the Court." (See G A (I/1), Plen., p. 666, annex 26 (A/59).)

The item was included in the agenda of the General Assembly but was later withdrawn by the General Committee (G A (I/1), Plen., 33rd mtg., pp. 499 and 500).

At the second part of the first session of the General Assembly, the following two items were included in the agenda:

"Interpretation of Articles 11 and 12 of the Statute of the International Court of Justice (item proposed by the United States of America)", and

"Request for an advisory opinion from the International Court of Justice on the meaning of the word 'meeting' in Articles 11 and 12 of the Statute of the Court (item proposed by the United Kingdom)".

When these items were discussed together in the Sixth Committee, the representative of the United States submitted a proposal (G A (I/2), 6th Com., annex 9 (A/C.6/44), pp. 201 and 202), under which an interpretation of the meaning of the word "meeting" in Articles 11 and 12 of the Statute of the Court was offered. In the course of the ensuing discussion it was pointed out that the Committee should first decide upon the proposal offered by the United States because, if a satisfactory agreement could be reached on that point, it would not be necessary to ask for the advice of the Court (G A (I/2), 6th Com., 17th mtg., p. 79). After the proposal submitted by the United States had been adopted by the Committee, the Sixth Committee, in its report to the General Assembly, made the following observation:

"At the present stage the Sixth Committee does not recommend that any action should be taken to request an advisory opinion on this matter from the International Court of Justice." (G A (I/2), Plen., pp. 1487 and 1488, annex 37 (A/191).)

By resolution 88 (I), the General Assembly approved the report of the Sixth Committee.

59/ G A (II), 6th Com., 52nd mtg., p. 99.

This amendment was rejected 60/ by the Sixth Committee. When the draft resolution was put to the vote, one representative requested 61/ the insertion in the Summary Record of his dissenting view, the substance of which was that the International Court of Justice had no jurisdiction for interpreting the Charter. In particular, he expressed 62/ the opinion that the recommendation contained in the draft resolution would be contrary to the Charter and therefore illegal, inasmuch as it would amount to adding to the Charter a provision which it did not contain and which, in fact, had been rejected at San Francisco when a proposal, submitted by Belgium, under the terms of which differences between United Nations organs regarding the interpretation of the Charter would have been referred to the International Court, was not adopted by Committee 5.

78. The views of other representatives regarding the question of whether an advisory opinion might be sought from the Court on the interpretation of the Charter were summarized in the report of the Sixth Committee to the General Assembly as follows: 63/

"It was explained that the question here was not, as in the Belgian proposal at San Francisco, to make the Court the constitutional organ for interpreting the Charter. The only question involved was rather whether the Charter or the Statute of the Court prevents consultative opinions from being requested or given because they relate to a point of interpretation of the Charter. Clearly, neither the Charter nor the Statute of the Court contains any restriction of that kind. On the contrary, the final report of Committee IV (2) of San Francisco on the interpretation of the Charter (document 750), expressly records that if two Member States are at variance concerning the correct interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice, as in the case of any other treaty. Similarly, it should always be open to the General Assembly or to the Security Council, in appropriate circumstances, to ask the International Court of Justice for an advisory opinion concerning the meaning of a provision of the Charter. Hence on points of interpretation of the Charter, as on other legal points, organs of the United Nations may request advisory opinions; just as specialized agencies may consult the Court on the interpretation of their organic provisions in accordance with such provisions."

79. In plenary meeting of the General Assembly, the Rapporteur, in introducing the report of the Sixth Committee, observed 64/ that the majority of the members of the Committee had held that the provisions authorizing requests for advisory opinions on points of law did not exclude points of law concerning the interpretation of the Charter. He further stated that the terms of the relevant draft resolution submitted by the Sixth Committee would not tend to turn the Court into an organ which could make its interpretation of the Charter binding upon other organs of the United Nations.

80. In plenary meeting, the representative of Poland again submitted 65/ an amendment under the terms of which the provision concerning points of law relating to the interpretation of the Charter or the constitutions of the specialized agencies would have been deleted from the draft resolution submitted by the Sixth Committee. In submitting this amendment, the sponsor stated 66/ that he was unable to concur in the

60/ Ibid., p. 105.

61/ Ibid., pp. 96-99.

62/ G A (II), Plen., vol. II, pp. 1563 and 1564, annex 18 a (A/474).

63/ Ibid., p. 1559, annex 18 (A/459), para. 8.

64/ G A (II), Plen., vol. II, 113th mtg., p. 860.

65/ Ibid., p. 863.

66/ Ibid., pp. 863-865.

extensive interpretation of the words "any legal questions" as including questions concerning the interpretation of the Charter. In his view, the context in which these words appeared in various provisions of the Charter and the Statute of the Court signified that the words referred to specific legal disputes brought before the Court either by the disputing States or by organs of the United Nations. In the absence of an explicit grant of power to the Court to interpret the Charter, the provision concerning advisory opinions was to be construed restrictively. The consequence of adopting a more extensive interpretation would be to place the Court in a superordinate position to the other organs.

81. Commenting on the amendment submitted by Poland, one representative declared 67/ that there was no restriction whatever on the legal questions referred to in Article 96. He cited Article 103 of the Charter and Article 36 of the Statute of the Court to show that the Charter was not only the legal measure of the obligations of Members but the supreme law, and that the jurisdiction of the Court in legal disputes covered such matters as the interpretation of a treaty. The most obvious example of a multilateral treaty was the Charter and the interpretation of the Charter was clearly a question of law.

82. The amendment submitted by Poland was rejected by the General Assembly. The draft resolution recommended by the Sixth Committee was then adopted by the Assembly and became resolution 171 A (II), under the terms of which the General Assembly recommended that "points of law relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies" should also be referred to the Court for an advisory opinion (see paragraph 77 above).

11. The consideration of the question of treatment of Indians in the Union of South Africa at the second part of the first session of the General Assembly

83. In the course of the discussion of the above-mentioned question in the Joint Committee of the First and Sixth Committees, the representative of the Union of South Africa submitted a draft resolution 68/ under the terms of which the Joint Committee would have recommended that the General Assembly seek an advisory opinion from the International Court of Justice upon the question whether the matters set forth by the Government of India and replied to by the Government of the Union of South Africa were, under the terms of Article 2 (7), matters essentially within the domestic jurisdiction of the Union of South Africa.

84. Subsequently, the representative of Colombia submitted a draft resolution 69/ under the terms of which, after referring to resolution 103 (I), entitled "Persecution and Discrimination", and to the request for action submitted by India (see paragraph 54 above), the General Assembly would have requested the Court to give an advisory opinion on the following legal questions:

"(a) Whether the Members of the United Nations, in accordance with the Preamble and Article 1, paragraph 3, of the Charter, are under obligation to amend immediately their internal legislation when it establishes racial discrimination incompatible with the text of the Charter?

67/ Ibid., pp. 866 and 867.

68/ G A (I/2), Joint 1st and 6th Com., p. 132, annex 1 e (A/C.1 and 6/8); see also 1st mtg., p. 4.

69/ G A (I/2), Joint 1st and 6th Com., 4th mtg., pp. 33 and 34, A/C.1 and 6/14.

"(b) Whether the Members of the United Nations are entitled in the future to enact internal legislation embodying racial discrimination?

"(c) Whether laws of racial discrimination constitute, or may be alleged by States to constitute, matters of internal jurisdiction on which the General Assembly is debarred from making recommendations to the State or States concerned, to the Security Council or to the Economic and Social Council?"

85. At the fifth meeting of the Joint Committee, the representatives of the United States, the United Kingdom and Sweden submitted 70/ an amendment to the draft resolution offered by India worded as follows:

"The General Assembly,

"Having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa and having considered the matter, is of the opinion that, since the jurisdiction of the United Nations to deal with the matter is denied and since the questions involved are consequently of a legal as well as of a factual nature, a decision based on authoritatively declared juridical foundations is the one most likely to promote realization of those purposes of the Charter to the fulfilment of which all Members of the United Nations are pledged, as well as to secure a lasting and mutually acceptable solution of the complaints which have been made.

"Resolves that:

"The International Court of Justice be requested to give an advisory opinion on the question whether the matters referred to in the Indian application are, under Article 2, paragraph 7 of the Charter, essentially within the domestic jurisdiction of the Union."

86. Under the terms of an amendment 71/ to the draft resolution offered by India, submitted by France and Mexico in the form of a draft resolution, the General Assembly, after referring to the request for action made by India, would express the opinion that the treatment of Indians in the Union of South Africa should be in conformity with the international obligations under the agreements concluded between the two Governments, and the relevant provisions of the Charter, and would request the two Governments to report at the next session of the Assembly on the measures adopted to this effect.

87. Before the Committee proceeded to a vote, the representative of South Africa withdrew his draft resolution in favour of the amendment submitted by the United States, the United Kingdom and Sweden to the draft resolution offered by India. The representative of India similarly withdrew his draft resolution in favour of the amendment offered by France and Mexico.

88. The draft resolution submitted by France and Mexico, was adopted 72/ by the Joint Committee by 24 votes to 19, with 6 abstentions, and was recommended for adoption by the General Assembly. The other proposals were not voted upon.

70/ Ibid., 5th mtg., pp. 43 and 44, A/C.1 and 6/20. The joint amendment embodied the substance of a draft resolution submitted by Sweden (ibid., 3rd mtg., p. 27, A/C.1 and 6/10).

71/ G A (I/2), Joint 1st and 6th Com., 6th mtg., p. 47. For the text of the amendment submitted by France and Mexico, see ibid., p. 133, annex 1 f (A/C.1 and 6/12).

72/ Ibid., 6th mtg., p. 51.

89. In plenary meeting of the General Assembly, the representative of South Africa proposed 73/ an amendment to the draft resolution recommended for adoption by the Joint Committee. This amendment was identical with that submitted by the United States, the United Kingdom and Sweden quoted in paragraph 85 above. The amendment submitted by South Africa was rejected 74/ by the General Assembly by 31 votes to 21, with 2 abstentions. The General Assembly then adopted, by 32 votes to 15, with 7 abstentions, the draft resolution recommended for adoption by the Joint Committee which became resolution 44 (I).

90. In the course of the above-mentioned discussions in the Joint Committee and in plenary meeting, there was debate on those provisions of the various proposals submitted which related to the submission to the Court for an advisory opinion of questions arising from the provisions of the Charter relating to domestic jurisdiction and human rights. The views set forth below were among those advanced 75/ by representatives who proposed or supported the submission to the Court.

(1) In the present case, there was an important issue of law, that is to say, the application of the rule of domestic jurisdiction and the competence of the General Assembly to pass on the facts disclosed in the complaint submitted by India and the reply of South Africa thereto, which should be determined by the Court.

(2) When there was doubt in regard to the interpretation of Articles of the Charter, as was the case in the instance under consideration, the question should be referred to the Court. The General Assembly could ask the Court whether an international obligation had arisen in the present case or whether there had been any infringement of fundamental human rights.

(3) A legal question had arisen which must first be decided, and the correct procedure would be to request the Court for an advisory opinion which might also extend to the general scope and meaning of Article 2 (7). 76/

(4) The present preliminary question of jurisdiction was not unlike the constitutional questions which arose from time to time in federal States concerning the division of powers between central and local authorities. Difficult constitutional issues were customarily resolved by reference to the appropriate judicial body which examined the facts in relation to the law. In such constitutional cases, as in the present case, a proper determination of the facts, an authoritative exposition of the law, and a judicial application of the law to the facts so determined were obviously required. It appeared from Article 96 that the International Court of Justice was competent to settle authoritatively the various questions involved. Reference to the Court would demonstrate the confidence of the Assembly that the Court could effectively exercise, in international jurisdictional issues, judicial functions of the same kind as were exercised by national courts in federal States.

73/ G A (I/2), Plen., 50th mtg., pp. 1009 and 1010, A/205/Add.1.

74/ G A (I/2), Plen., 52nd mtg., p. 1040.

75/ For texts of relevant statements, see G A (I/2), Joint 1st and 6th Com., 2nd mtg.: Canada, pp. 11 and 12; 3rd mtg.: United Kingdom, p. 14; 4th mtg.: New Zealand, p. 34. G A (I/2), Plen., 50th mtg., South Africa, p. 1008.

76/ On this point, the view was also expressed that the question to be put to the Court should be limited to the specific case before the General Assembly and without reference to a general interpretation of Article 2 (7). (G A (I/2), Joint 1st and 6th Com., 5th mtg., p. 39.)

91. On the other hand, the contentions set forth below were among those made 77/ by other representatives.

(1) The use of the word "essentially" in Article 2 (7) signified that it was a question of degree whether the United Nations could intervene in a particular matter. The International Court of Justice was not qualified to express an opinion on this question. Moreover, under Articles 95 and 96, it was optional for the General Assembly to request an advisory opinion of the Court.

(2) The application by India was an official complaint of a breach of Article 1 (3) brought by one Member of the United Nations against another. A violation of the principles of the Charter was involved and the matter was one to be resolved by the General Assembly.

(3) The question was of international importance inasmuch as it concerned the adherence by Members to their obligations under the Charter; it was not a matter of domestic jurisdiction and should not be referred to the Court. The Charter and the Statute both stated that the Court was to consider legal questions. To deal with the question of the treatment of Indians in the Union of South Africa as a legal matter would tend to minimize the political importance and weaken the prestige of the United Nations.

iii. The consideration of the question of admission of new Members at the second and fourth sessions of the General Assembly

92. At the second session of the General Assembly, the above-mentioned question was allocated to the First Committee for consideration and report. As a result of discussion in the First Committee and in plenary meeting, the General Assembly adopted resolution 113 B (II), which reads as follows:

"The General Assembly,

"Considering Article 4 of the Charter of the United Nations;

"Considering the exchange of views which has taken place in the Security Council at its two hundred and fourth, two hundred and fifth and two hundred and sixth meetings, relating to the admission of certain States to membership in the United Nations;

"Considering Article 96 of the Charter,

"Requests the International Court of Justice to give an advisory opinion on the following question:

Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its

77/ For texts of relevant statements, see Joint 1st and 6th Com., 2nd mtg.: India, p. 10; 3rd mtg.: Haiti, p. 27; Philippines, pp. 29 and 30; USSR, pp. 28 and 29; 4th mtg.: Ethiopia, p. 37.

affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?

"Instructs the Secretary-General to place at the disposal of the Court the records of the above-mentioned meetings of the Security Council."

93. In the course of the debate in the First Committee and in plenary meeting on the resolution at its draft stage, the question was raised 78/ whether a request for an advisory opinion might relate to the interpretation of the Charter.

94. The views set forth below were among those expressed by representatives who opposed the proposal to request an advisory opinion on the ground that the powers of the Court did not extend to the interpretation of the Charter. (1) The Court's interpretation of the Charter could not be set above that of the Security Council or of the General Assembly. (2) It was not proper to ask the Court for an interpretation of the Charter. (3) The General Assembly was the only body authorized to interpret the Charter, a right to be safeguarded if the Organization was to survive.

95. The views set forth below were among those expressed by representatives who favoured the proposal to request an advisory opinion from the Court. (1) Cases of conflicting interpretations of the Charter were appropriately to be referred to the Court for consultation under Article 96. (2) The Court should be consulted more frequently.

96. In its advisory opinion delivered on 28 May 1948, in pursuance of the request made under resolution 113 B (II), on the question of conditions of admission of a State to membership in the United Nations, the Court made the following observation: 79/

"The question put is in effect confined to the following point only: are the conditions stated in paragraph I of Article 4 exhaustive in character in the sense that an affirmative reply would lead to the conclusion that a Member is not legally entitled to make admission dependent on conditions not expressly provided for in that Article, while a negative reply would, on the contrary, authorize a Member to make admission dependent also on other conditions.

"Understood in this light, the question, in its two parts, is and can only be a purely legal one. To determine the meaning of a treaty provision - to determine, as in this case, the character (exhaustive or otherwise) of the conditions for admission stated therein - is a problem of interpretation and consequently a legal question.

".....

"Lastly, it has also been maintained that the Court cannot reply to the question put because it involves an interpretation of the Charter. Nowhere is any provision to be found forbidding the Court, 'the principal judicial organ of the United Nations', to exercise in regard to Article 4 of the Charter, a multilateral treaty, an interpretative function which falls within the normal exercise of its judicial powers."

78/ For texts of relevant statements, see G A (II), 1st Com., 99th mtg.: USSR, p. 360; 100th mtg.: Argentina, p. 379; India, p. 364; 101st mtg.: United Kingdom, p. 378; 102nd mtg.: Greece, p. 382. G A (II), Plen., vol. II, 117th mtg.: United Kingdom, p. 1071; 118th mtg.: Argentina, p. 1071.

79/ Admission of a State to the United Nations, I C J, Reports 1948, p. 61.

97. At the fourth session of the General Assembly, in connexion with the agenda item entitled "Admission of new Members: reports of the Security Council", the General Assembly adopted a series of resolutions. One of these, resolution 296 J (IV), reads as follows:

"The General Assembly,

"Keeping in mind the discussion concerning the admission of new Members in the Ad Hoc Political Committee at its fourth regular session,

"Requests the International Court of Justice to give an advisory opinion on the following question:

'Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent member upon a resolution so to recommend?'"

98. During the discussion of the resolution at its draft stage in the Ad Hoc Political Committee, arguments similar to those put forward at the second session of the General Assembly in the debate on the competence of the Court to interpret an Article of the Charter were again advanced.

99. In its advisory opinion delivered on 3 March 1950, in pursuance of the request made under resolution 296 J (IV), on the question of the competence of the General Assembly regarding the admission of a State to the United Nations, the Court stated: 80/

"The Request for an Opinion calls upon the Court to interpret Article 4, paragraph 2, of the Charter. Before examining the merits of the question submitted to it, the Court must first consider the objections that have been made to its doing so, either on the ground that it is not competent to interpret the provisions of the Charter, or on the ground of the alleged political character of the question.

"So far as concerns its competence, the Court will simply recall that, in a previous Opinion which dealt with the interpretation of Article 4, paragraph 1, it declared that, according to Article 96 of the Charter and Article 65 of the Statute, it may give an Opinion on any legal question and that there is no provision which prohibits it from exercising, in regard to Article 4 of the Charter, a multilateral treaty, an interpretative function falling within the normal exercise of its judicial powers (I.C.J. Reports 1947-1948, p. 61).

"With regard to the second objection, the Court notes that the General Assembly has requested it to give the legal interpretation of paragraph 2 of Article 4. As the Court stated in the same Opinion, it 'cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision'."

80/ Competence of Assembly regarding admission to the United Nations, I C J, Reports 1950, p. 6.

d. INTERPRETATION OF TREATIES 81/i. The consideration of the question of treatment of Indians in the Union of South Africa at the second part of the first session of the General Assembly

100. In the course of the discussion of the above-mentioned question in the Joint Committee of the First and the Sixth Committees and in plenary meeting, proposals were submitted under the terms of which an advisory opinion, regarding the international obligations of the Union of South Africa under the Charter and under the Cape Town Agreements between South Africa and India would have been requested of the Court.

101. The representative of the Union of South Africa, asserting that the matter under consideration by the General Assembly fell within the domestic jurisdiction of the Union, stated 82/ that, while an exception to the rule of non-interference in domestic affairs was to be found in treaty obligations, the so-called Cape Town Agreement of 1927 between the Government of India and the Government of the Union of South Africa, and the joint communiqué issued by those Governments in 1932, were not instruments giving rise to treaty obligations.

102. In the course of the discussion of the matter in the Joint Committee, the opinion was expressed that the question whether the Union of South Africa was under a treaty obligation should be referred to the International Court of Justice for an advisory opinion. After the Union of South Africa had submitted a draft resolution (see paragraph 83 above) under the terms of which the Court would have been asked for an advisory opinion relating to the invocation of Article 2 (7) by the Union, the representative of the United Kingdom moved an amendment 83/ under the terms of which the Court would have been asked whether the Union had neglected to observe any (and, if so, which) international obligations. In plenary, the view that the Court should have been consulted on the question of international obligations under agreements concluded was again advanced 84/ by another representative in the course of his observations on the amendment (see paragraph 90 above) submitted by the Union of South Africa to the draft resolution recommended by the Joint Committee. Under the terms of that amendment, the request to the Court would have related to the applicability of Article 2 (7) to the matter under consideration. In his observations, the above-mentioned representative voiced the view that the question for the Court would have been better stated in terms of the narrower issue of international obligations under agreements concluded between the Governments of India and the Union of South Africa than in terms of domestic jurisdiction. For details of the action taken by the General Assembly, see paragraphs 83-89 above.

ii. The consideration of the question of observance of human rights and fundamental freedoms in Bulgaria, Hungary and Romania at the fourth session of the General Assembly

103. At its third session, the General Assembly adopted resolution 272 (III), entitled "Observance in Bulgaria and Hungary of human rights and fundamental freedoms",

81/ For the competence of the Court to interpret the Charter as a multilateral treaty, see para. 81 above. For the contention that, in the case of the interpretation of a provision of a treaty, the contentious procedure provided in the treaty should be used instead of the advisory procedure of Article 96, see paras. 130 and 131 below.

82/ G A (I/2), Joint 1st and 6th Com., 1st mtg., p. 3.

83/ Ibid., 4th mtg., p. 36.

84/ G A (I/2), Plen., 50th mtg., p. 1014.

under which it drew the attention of the two Governments concerned to their obligations under the peace treaties and decided to retain the question on the agenda of the fourth session of the General Assembly.

104. By a letter dated 20 August 1949, 85/ the representative of Australia proposed that the question of the observance of fundamental freedoms and human rights in Romania, including the question of civil and religious liberty, be added to the agenda of the fourth session in conjunction with the original question. By 38 votes to 5, with 11 abstentions, 86/ the Assembly decided to include both questions in the agenda of its fourth session as one combined item entitled "Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms".

105. On the recommendation of the Ad Hoc Political Committee, to which the item had been referred, the General Assembly adopted resolution 294 (IV), the operative part of which reads as follows:

"The General Assembly

"1. Expresses its continuing interest in and its increased concern at the grave accusations made against Bulgaria, Hungary and Romania;

"2. Records its opinion that the refusal of the Governments of Bulgaria, Hungary and Romania to co-operate in its efforts to examine the grave charges with regard to the observance of human rights and fundamental freedoms justifies this concern of the General Assembly about the state of affairs prevailing in Bulgaria, Hungary and Romania in this respect;

"3. Decides to submit the following questions to the International Court of Justice for an advisory opinion:

"'I. Do the diplomatic exchanges between Bulgaria, Hungary and Romania on the one hand and certain Allied and Associated Powers signatories to the Treaties of Peace on the other, concerning the implementation of article 2 of the Treaties with Bulgaria and Hungary and article 3 of the Treaty with Romania, disclose disputes subject to the provisions for the settlement of disputes contained in article 36 of the Treaty of Peace with Bulgaria, article 40 of the Treaty of Peace with Hungary, and article 38 of the Treaty of Peace with Romania?'

"In the event of an affirmative reply to question I:

"'II. Are the Governments of Bulgaria, Hungary and Romania obligated to carry out the provisions of the articles referred to in question I, including the provisions for the appointment of their representatives to the Treaty Commissions?'

"In the event of an affirmative reply to question II and if within thirty days from the date when the Court delivers its opinion the Governments concerned have not notified the Secretary-General that they have appointed their representatives to the Treaty Commissions, and the Secretary-General has so advised the International Court of Justice:

85/ A/948.

86/ For objections to the inclusion of this item in the agenda on the ground of intervention in the internal affairs of a State, see in this Repertory under Article 2 (7), paras. 399, 400, 413 and 415.

"'III. If one party fails to appoint a representative to a Treaty Commission under the Treaties of Peace with Bulgaria, Hungary and Romania where that party is obligated to appoint a representative to the Treaty Commission, is the Secretary-General of the United Nations authorized to appoint the third member of the Commission upon the request of the other party to a dispute according to the provisions of the respective Treaties?'

"In the event of an affirmative reply to question III:

"'IV. Would a Treaty Commission composed of a representative of one party and a third member appointed by the Secretary-General of the United Nations constitute a Commission, within the meaning of the relevant Treaty articles, competent to make a definitive and binding decision in settlement of a dispute?'

"4. Requests the Secretary-General to make available to the International Court of Justice the relevant exchanges of diplomatic correspondence communicated to the Secretary-General for circulation to the Members of the United Nations and the records of the General Assembly proceedings on this question;

"5. Decides to retain on the agenda of the fifth regular session of the General Assembly the question of the observance of human rights and fundamental freedoms in Bulgaria, Hungary and Romania, with a view to ensuring that the charges are appropriately examined and dealt with." 87/

106. During the discussion of the resolution at its draft stage in the Ad Hoc Political Committee, the views set forth below were among those expressed 88/ by some representatives. (1) The interpretation of treaties was exclusively within the competence of the contracting parties. (2) The peace treaties with Bulgaria, Hungary and Romania contained specific provisions concerning interpretation and execution, and the United Nations had no competence in the matter. (3) Since there was no dispute in the present case, the attempt to apply the machinery of the peace treaties was obviously a violation of the Charter and there was no reason to apply to the International Court of Justice for an advisory opinion.

107. On the other hand, the views set forth below were among those expressed 89/ by those representatives who favoured a request for an advisory opinion. (1) The question was not one of human rights but of treaty machinery. (2) The observance of a treaty between a number of States was not a matter that fell under the domestic jurisdiction of any single State. (3) The United Nations was clearly competent to use the International Court of Justice to obtain an authoritative opinion on whether any action

87/ Questions I and II submitted by the General Assembly were dealt with by the Court in its advisory opinion of 30 March 1950. By telegram dated 1 May 1950, confirmed by letter of the same date, the Secretary-General notified the Court that he had not received information, within thirty days of the date of the delivery of the advisory opinion of the Court of 30 March 1950, that any of the three Governments concerned had appointed its representative to the treaty commissions. The Court, accordingly, took steps to deal with the remaining two questions submitted by the General Assembly and, on 18 July 1950, gave its advisory opinion under the title of "Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (second phase)" (I C J, Reports 1950, p. 221).

88/ G A (IV), Ad Hoc Pol. Com., 8th mtg.: Poland, p. 32; 12th mtg.: USSR, p. 49.

89/ Ibid., 9th mtg.: Belgium, p. 36; United Kingdom, p. 36; 10th mtg.: China, p. 41; India, p. 40; Sweden, p. 37.

could be taken under the provisions regarding treaty machinery. (4) Under Article 96, the General Assembly was fully competent to request an advisory opinion of the Court regarding the mandatory nature of the treaty procedure. (5) Since the procedure for preventing infringement of human rights and for settling the disputes among the signatories to the peace treaties must be followed, it was appropriate to ask the Court for an advisory opinion.

108. In the advisory opinion which it delivered on 30 March 1950, in the Interpretation of peace treaties with Bulgaria, Hungary and Romania case, the International Court of Justice declared:

"The object of the Request is much more limited. It is directed solely to obtaining from the Court certain clarifications of a legal nature regarding the applicability of the procedure for the settlement of disputes by the Commissions provided for in the express terms of Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary and Article 38 of the Treaty with Romania. The interpretation of the terms of a treaty for this purpose could not be considered as a question essentially within the domestic jurisdiction of a State. It is a question of international law which, by its very nature, lies within the competence of the Court."

iii. The consideration of the question of reservations to multilateral conventions at the fifth session of the General Assembly

109. In its advisory opinion of 28 May 1951, in the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide case, rendered in response to the request under General Assembly resolution 478 (V), the Court indicated as follows that the request for an advisory opinion on the effects of reservations related to a legal question:

"It is indeed beyond dispute that the General Assembly, which drafted and adopted the Genocide Convention, and the Secretary-General, who is the depositary of the instruments of ratification and accession, have an interest in knowing the legal effects of reservations to that Convention and more particularly the legal effects of objections to such reservations."

3. *The formulation of legal questions*

110. There have been several instances in which there has been discussion or comment on the formulation of legal questions. Some of these instances have occurred in the General Assembly, in the course of debates on draft resolutions under the terms of which the Court would be requested to render an advisory opinion; in other instances, the Court itself has commented upon the formulation of the questions put to it in connexion with requests for advisory opinions. The specific instances set forth below concern comment by the Court on abstract questions, a statement before the Court on abstract and general questions, and discussion in the General Assembly on the formulation of general questions and questions of principle.

111. In its advisory opinion 90/ in the Conditions of admission of a State to membership in the United Nations case, delivered on 28 May 1948, in pursuance of General Assembly resolution 113 B (II), the International Court of Justice, having stated that the Court could not attribute a political character to a question which,

90/ Admission of a State to the United Nations, I C J, Reports 1948, p. 57.

framed in abstract terms, invited it to undertake an essentially judicial task, 91/ made the following observation: 92/

"It has also been contended that the Court should not deal with a question couched in abstract terms. That is a mere affirmation devoid of any justification. According to Article 96 of the Charter and Article 65 of the Statute, the Court may give an advisory opinion on any legal question, abstract or otherwise."

112. Regarding the request, under the terms of General Assembly resolution 258 (III), for an advisory opinion in the Reparation for injuries suffered in the service of the United Nations case, the representative of the Secretary-General pointed out 93/ in an oral statement before the Court that the questions asked by the General Assembly were abstract and general questions. The Court did not comment on this matter in its opinion.

113. In the advisory opinion in the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide case, requested by the General Assembly under the terms of resolution 478 (V), the Court recognized that the three questions put by the General Assembly were "purely abstract in character". 94/ The Court answered all the three questions referred to.

114. At the first part of the third session of the General Assembly, during the discussion in the Sixth Committee of the agenda item entitled "Violation by the Union of Soviet Socialist Republics of fundamental human rights, traditional diplomatic practices and other principles of the Charter", the representative of Australia submitted a draft resolution 95/ under the terms of which the General Assembly would have submitted the following two questions to the International Court of Justice for an advisory opinion:

"1. To what degree do the privileges and immunities granted to the head of a foreign mission in accordance with diplomatic practices traditionally established by international law extend to his family and to his establishment?

"2. In particular, is the action of a State in preventing one of its nationals, who is the wife of a member of a foreign diplomatic mission or of a member of his family or of his establishment, from leaving its territory with her husband, or in order to join her husband, a breach of international law?"

91/ This point was reiterated by the Court in its advisory opinion of 3 March 1950 (Competence of Assembly regarding admission to the United Nations, I C J, Reports 1950, pp. 6 and 7).

92/ Admission of a State to the United Nations, I C J, Reports 1948, p. 61. Referring to the clause "Considering the exchange of views which has taken place" contained in the preamble of General Assembly resolution 113 B (II), the Court stated that the clause was not understood as an invitation to the Court to say whether the views thus referred to were well founded or otherwise. In the words of the Court "The abstract form in which the question is stated" precluded such an interpretation (*ibid.*).

93/ Reparation for injuries suffered in the service of the United Nations, I C J, Pleadings, Oral Arguments, Documents, 1949, p. 64.

94/ Reservations to the Convention on Genocide, I C J, Reports 1951, p. 21.

95/ G A (III/1), 6th Com., Annexes, p. 56, A/C.6/316.

115. Before proceeding to consider the draft resolution submitted by Australia, the Sixth Committee had adopted 96/ another draft resolution under the terms of which the General Assembly would have declared that the actions complained of were not in conformity with the Charter and also contrary to courtesy, diplomatic practices and the principle of reciprocity.

116. In support of his draft resolution, the representative of Australia stated 97/ that the differences of opinion and doubts concerning the legal aspects of the question should be dispelled. It was, however, objected 98/ that the question for the Court was not put properly, that is to say, it was not put on the basis of general principle. The United Nations could not deal with a specific case. The draft resolution just adopted (see paragraph 115 above) by the Committee had dealt with the question of principle. The United Nations could only put before the Court questions of principle concerning either the United Nations itself or the international community as a whole.

117. When put to the vote, the draft resolution submitted by Australia was rejected 99/ by 13 votes to 9, with 12 abstentions.

118. During the consideration of the agenda item entitled "Supplementary estimates for the financial year 1953" in the Fifth Committee at the eighth session of the General Assembly, a draft resolution 100/ was submitted under the terms of which the opinion of the Court on certain legal questions relating to the power of the General Assembly to give effect to an award of compensation made by the United Nations Administrative Tribunal would be requested. In the ensuing discussion, the views set forth below were among those expressed. 101/

119. In a statement made before the Fifth Committee, the Secretary-General observed that whether a request for an advisory opinion was wise would depend upon the nature of the questions to be put to the Court. The Court should not be turned into a kind of court of appeal for cases heard before the Administrative Tribunal, nor should it be requested to examine individual cases or enter into their substance. There remained then the possibility of asking the Court for guidance on some relevant questions of principle, to be decided on the basis of the Charter.

120. The representative of the United Kingdom explained that his delegation had, in co-operation with the delegations of Canada and Colombia and after consultation with a number of other delegations, drafted "specific legal questions" for submission to the Court. Those questions "were of a general character, strictly legal in nature and limited in scope and were designed to elicit the maximum guidance from the Court without calling upon it actually to retry the cases which had been adjudicated by the Administrative Tribunal".

121. Another representative held that, while the opinion of the Court could be sought on the legal question of the power of the General Assembly in relation to the awards made by the Administrative Tribunal, the opinion of the Court could not dispose of the problem of awards which confronted the General Assembly. In its advisory opinion of

96/ G A (III/1), 6th Com., 139th mtg., p. 777.

97/ Ibid., p. 778.

98/ Ibid., Egypt, p. 779; France, p. 780; Syria, p. 779.

99/ Ibid., p. 781.

100/ G A (VIII), Annexes, a.i. 38, p. 13, A/C.5/L.263.

101/ G A (VIII), 5th Com., 423rd mtg.: Australia, para. 24; 425th mtg.: Secretary-General, para. 10; 426th mtg.: United States, paras. 78-82.

13 July 1954, on the effect of awards of compensation made by the United Nations Administrative Tribunal, the Court observed 102/ that it was requested to consider a "general and abstract question".

4. *Questions relating to the scope of the power of the General Assembly to request an advisory opinion*

122. The present sub-section deals with the practice of the General Assembly and of the International Court of Justice bearing upon the question of the scope of the power of the General Assembly to request an advisory opinion. 103/

123. The questions dealt with relate to the bearing on the power of the General Assembly to request an advisory opinion of (1) the purpose of the request, (2) the existence of a contentious procedure for the resolving of a question, and (3) the claim of States concerned to require that their consent be first obtained.

a. PURPOSE OF THE REQUEST

124. The General Assembly, at its fifth session, considered an agenda item entitled "Reservations to multilateral conventions". In the course of the discussion of the item in the Sixth Committee, there was an exchange of views 104/ concerning the competence of the Assembly to request an advisory opinion from the Court on questions relating to the Convention on the Prevention and Punishment of the Crime of Genocide.

125. The views set forth below were among those expressed by representatives who objected to the submission of the question to the Court. (1) It should be left to the contracting parties themselves to submit to the Court a dispute as to the interpretation or application of the Convention as provided for in its article IX. (2) It was not for the General Assembly but for the parties directly involved to formulate the questions to be submitted to the judgement of the Court. (3) The request to the Court amounted to an attempt to revise a document drafted and approved by the United Nations, because the procedure provided for in the resolution was not laid down in the text of the Convention itself. (4) The right to interpret a treaty or to ask for an interpretation was reserved solely to the parties which had signed and ratified the treaty.

126. In support of the competence of the General Assembly, the opinion was expressed that, since the only question to be determined was the procedure to be followed by the Secretary-General as depositary of multilateral conventions, the General Assembly was competent to give him instructions on the manner in which he should fulfil that function.

127. In its advisory opinion of 28 May 1951, delivered in pursuance of the request of the General Assembly under resolution 478 (V), the International Court of Justice, in dealing with the objections to its competence to exercise its advisory functions, expressed 105/ the following view concerning the related objections to the competence of the General Assembly to make the request:

102/ Effect of awards of compensation made by the U.N. Administrative Tribunal, I C J, Reports 1954, p. 51.

103/ Concerning the bearing of Article 2 (7) on the power of the General Assembly to request advisory opinions, see in this Repertory under Article 2 (7), paras. 334 and 335, and in the present study, paras. 106 and 107 above.

104/ G A (V), 6th Com., 217th-225th mtgs.

105/ Reservations to the Convention on Genocide, I C J, Reports 1951, pp. 19 and 20.

"The object of this request for an Opinion is to guide the United Nations in respect of its own action. It is indeed beyond dispute that the General Assembly, which drafted and adopted the Genocide Convention, and the Secretary-General, who is the depositary of the instruments of ratification and accession, have an interest in knowing the legal effects of reservations to that Convention and more particularly the legal effects of objections to such reservations.

"Following a similar line of argument, it has been contended that the request for an opinion would constitute an inadmissible interference by the General Assembly and by States hitherto strangers to the Convention in the interpretation of that Convention, as only States which are parties to the Convention are entitled to interpret it or to seek an interpretation of it. It must be pointed out in this connection that, not only did the General Assembly take the initiative in respect of the Genocide Convention, draw up its terms and open it for signature and accession by States, but that express provisions of the Convention (Articles XI and XVI) associate the General Assembly with the life of the Convention; and finally, that the General Assembly actually associated itself with it by endeavouring to secure the adoption of the Convention by as great a number of States as possible. In these circumstances, there can be no doubt that the precise determination of the conditions for participation in the Convention constitutes a permanent interest of direct concern to the United Nations which has not disappeared with the entry into force of the Convention. Moreover, the power of the General Assembly to request an Advisory Opinion from the Court in no way impairs the inherent right of States parties to the Convention in the matter of its interpretation. This right is independent of the General Assembly's power and is exercisable in a parallel direction. Furthermore, States which are parties to the Convention enjoy the faculty of referring the matter to the Court in the manner provided in Article IX of the Convention."

128. In the course of the discussion in the Ad Hoc Political Committee, at the fourth session of the General Assembly, of the agenda item entitled "Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms", some representatives questioned the legality of the draft resolution under the terms of which the General Assembly would request an advisory opinion of the Court on questions relating to the interpretation of certain provisions of the peace treaties between the "Allied and Associated Powers and those three States". These representatives argued that the observance of human rights and fundamental freedoms was a matter essentially within the domestic jurisdiction of each country and, in view of the provisions of Article 2 (7), the Assembly was not competent to make such a request and the Court, as an organ of the United Nations, was also bound to observe the provisions of the Charter, including Article 2 (7). 106/

129. The Court disposed of the contention in this particular case in the following manner:

"The terms of the General Assembly's Resolution of October 22nd, 1949, considered as a whole and in its separate parts, show that this argument is based on a misunderstanding. When the vote was taken on this Resolution, the General Assembly was faced with a situation arising out of the charges made by certain Allied and Associated Powers, against the Governments of Bulgaria, Hungary and Romania of having violated the provisions of the Peace Treaties concerning the observance of human rights and fundamental freedoms. For the purposes of the present Opinion, it suffices to note that the General Assembly justified the

106/ G A (IV), Ad Hoc Pol. Com., pp. 32, 42, 43, 45, 48, 49, 52 and 53.

adoption of its Resolution by stating that 'the United Nations, pursuant to Article 55 of the Charter, shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.

"The Court is not called upon to deal with the charges brought before the General Assembly since the Questions put to the Court relate neither to the alleged violations of the provisions of the Treaties concerning human rights and fundamental freedoms nor to the interpretation of the articles relating to these matters. The object of the Request is much more limited. It is directed solely to obtaining from the Court certain clarifications of a legal nature regarding the applicability of the procedure for the settlement of disputes by the Commissions provided for in the express terms of Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary, and Article 38 of the Treaty with Romania. The interpretation of the terms of a treaty for this purpose could not be considered as a question essentially within the domestic jurisdiction of a State. It is a question of international law which, by its very nature, lies within the competence of the Court.

"These considerations also suffice to dispose of the objection based on the principle of domestic jurisdiction and directed specifically against the competence of the Court, namely, that the Court, as an organ of the United Nations, is bound to observe the provisions of the Charter, including Article 2, paragraph 7." 107/

b. EXISTENCE OF A CONTENTIOUS PROCEDURE 108/

130. At the fourth session of the General Assembly, in the course of the consideration 109/ by the Ad Hoc Political Committee of the draft resolution under the terms of which the General Assembly would request an advisory opinion on the question of the interpretation of peace treaties with Bulgaria, Hungary and Romania, some representatives expressed the opinion that the three peace treaties contained satisfactory provisions concerning their interpretation and execution; consequently, the advisory procedure of the Court should not be used since such a procedure would replace the contentious procedure laid down in the treaties.

131. In its advisory opinion delivered on 30 March 1950, in pursuance of a request under General Assembly resolution 294 (IV), the Court, referring to the objections raised by certain Governments to the power of the Court to exercise its advisory function, stated 110/ that the interpretation of a treaty could not be considered as a question essentially within the domestic jurisdiction of a State, and that it was a

107/ Interpretation of Peace Treaties, I C J, Reports 1950, pp. 70 and 71. For the Dissenting Opinion by Judge Krylov on this question, see ibid., pp. 112 and 113.

108/ During the consideration of the agenda item "Violation by the Union of Soviet Socialist Republics of fundamental human rights, traditional diplomatic practices and other principles of the Charter" by the Sixth Committee at the third session of the General Assembly, in connexion with a proposal to request an advisory opinion from the Court, the contention was made that the question concerned two States which could, if they wished, bring their dispute before the Court, but the Organization itself could not request an advisory opinion on it (see G A (III/1), 6th Com., 139th mtg., p. 779).

109/ G A (IV), Ad Hoc Pol. Com., 7th-15th mtgs.

110/ Interpretation of Peace Treaties, I C J, Reports 1950, pp. 70 and 71.

question of international law which, by its very nature, lay within the competence of the Court. The Court went on to say: 111/

"The same considerations furnish an answer to the objection that the advisory procedure before the Court would take the place of the procedure instituted by the Peace Treaties for the settlement of disputes. So far from placing an obstacle in the way of the latter procedure, the object of this Request is to facilitate it by seeking information for the General Assembly as to its applicability to the circumstances of the present case."

C. PRIOR CONSENT OF THE STATES CONCERNED

132. During the consideration of the agenda item entitled "Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms" in the Ad Hoc Political Committee at the fourth session of the General Assembly, after adoption of the draft resolution under the terms of which the General Assembly would request an advisory opinion from the Court, some representatives objected on the grounds set forth below. They argued that, since Bulgaria, Hungary and Romania had refused to participate in the discussions in the Assembly which had led to the adoption of the request for an advisory opinion, and since they had also challenged the competence of the Assembly to make such a request to the International Court of Justice, the Court should not accede to the request. The same objections having been presented to the Court, the Court, in its advisory opinion, expressed 112/ the following view:

"no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take.

".....

"... the present Request for an Opinion is solely concerned with the applicability to certain disputes of the procedure for settlement instituted by the Peace Treaties, and it is justifiable to conclude that it in no way touches the merits of those disputes. Furthermore, the settlement of these disputes is entrusted solely to the Commissions provided for by the Peace Treaties. Consequently, it is for these Commissions to decide upon any objections which may be raised to their jurisdiction in respect of any of these disputes, and the present Opinion in no way prejudices the decisions that may be taken on those objections. It follows that the legal position of the parties to these disputes cannot be in any way compromised by the answers that the Court may give to the Questions put to it."

111/ Ibid., p. 71.

112/ Ibid., pp. 71 and 72. Judges Azevedo, Winiarski, Zoricic and Krylov dissented from the majority on this question. For a discussion on "the consent of the parties", see Separate Opinion by Judge Azevedo (ibid., pp. 80-84). For a detailed analysis of the character of the advisory functions of the Court, see Dissenting Opinion of Judge Winiarski (ibid., pp. 90-92), Dissenting Opinion by Judge Zoricic (ibid., pp. 98-100), and Dissenting Opinion by Judge Krylov (ibid., pp. 105-108).

5. The effect of a request for an advisory opinion upon continued consideration by the requesting organ and upon implementation of prior decisions in the case

a. THE CONSIDERATION OF THE INDONESIAN QUESTION (II)
BY THE SECURITY COUNCIL

133. In connexion with the consideration of the Indonesian question (II), the Security Council, at its 194th and 195th meetings on 25 and 26 August 1947, discussed a draft resolution 113/ submitted by Belgium, under the terms of which the Council would have requested the International Court of Justice, under Article 96, to give an advisory opinion on whether the Council was competent to deal with the question.

134. In the course of the discussion, the views set forth below were among those expressed 114/ in support of the draft resolution. (1) Reference to the Court could not, in the circumstances, in any way retard or embarrass such decisions as the Council might take subsequently. (2) If the Council requested an advisory opinion, it would not have to cease all action in the matter since its request would be for an opinion, not for a judgement.

135. On the other hand, it was contended that adoption of the draft resolution would cast doubt on the decision taken by the Council at its 173rd meeting. It was further asserted that the Council would have a continuing responsibility after the Court had given an opinion. 115/

136. After the sponsor had accepted an amendment to the draft resolution, the latter was rejected.

b. THE CONSIDERATION OF THE PALESTINE QUESTION
BY THE SECURITY COUNCIL

137. At the 334th meeting on 13 July 1948, in connexion with the consideration by the Security Council of the Palestine question, the representative of Syria submitted a draft resolution, 116/ under the terms of which the Court would have been requested, pursuant to Article 96, to give an advisory opinion as to the international status of Palestine after the termination of the Mandate.

138. In submitting the draft resolution, the sponsor observed that the terms of a draft resolution pending before the Council, submitted by the United States, raised the question of the international status of Palestine. 117/ He referred to the

113/ S C, 2nd yr., No. 83, 194th mtg., S/517, in footnote 1 to p. 2193.

114/ S C, 2nd yr., No. 84, 195th mtg., China, p. 2217; France, p. 2215.

115/ S C, 2nd yr., No. 83, 194th mtg., USSR, pp. 2210 and 2211; S C, 2nd yr., No. 84, 195th mtg., India, p. 2220.

116/ S C, 3rd yr., No. 95, 334th mtg., S/894, pp. 52 and 53.

117/ Under the terms of the draft resolution submitted by the United States, as amended, the Security Council would determine that the situation in Palestine constituted a threat to the peace within the meaning of Article 39, would order the Governments and authorities concerned, pursuant to Article 40, to desist from further military action and to this end to issue cease-fire orders to their forces, and would declare that failure by any of the Governments or authorities concerned to comply with the above-mentioned order would demonstrate the existence of a breach of the peace within the meaning of Article 39. (For the text of the resolution, as adopted, see S C, 3rd yr., Suppl. for July, p. 76, S/902.)

relation of this question to the action which was contemplated under the provisions of Chapter VII, and suggested several questions to be submitted to the Court, mentioning the possibility of establishing a sub-committee to draft these questions. The representative of Syria recalled that, under the terms of resolution 171 (II), the General Assembly had recommended that greater use be made of the International Court of Justice by United Nations organs.

139. Consideration of the draft resolution submitted by Syria continued after the adoption, at the 338th meeting, of the draft resolution submitted by the United States, as amended.

140. In the course of the discussion preceding the adoption of the United States draft resolution, the considerations urged in support of, and against, the draft resolution submitted by Syria turned on judgements 118/ concerning whether a request to the Court for an advisory opinion would delay the cessation of hostilities or would impede the settlement of the question. Following the adoption of the United States draft resolution, differing views were also expressed 119/ on the question whether a request for an advisory opinion should not be made before and not after a decision had been taken, since it might affect the implementation of that decision.

141. Under the terms of an amendment 120/ submitted by Colombia, the following sentence would have been added to the draft resolution offered by Syria:

"This request should be made provided it will not delay or impair the normal process of mediation."

142. The draft resolution submitted by Syria, as amended, was rejected.

C. THE CONSIDERATION OF THE QUESTION OF SOUTH WEST AFRICA
BY THE GENERAL ASSEMBLY

143. At the fourth session of the General Assembly, prior to the adoption of the resolution under which an advisory opinion on the question of South West Africa was requested from the International Court of Justice, the question of the interim effect of the request for the advisory opinion to be given by the Court was raised. 121/ The views set forth below were among those expressed in the Fourth Committee. (1) If a certain view voiced by a representative at the fourth session were to be sustained by the Court, the General Assembly would surely give it serious consideration, but until

118/ For texts of relevant statements preceding the adoption of the draft resolution submitted by the United States, see S C, 3rd yr., No. 96, 335th mtg.: Belgium, pp. 4 and 5; China, pp. 6 and 34; 336th mtg.: Colombia, p. 26; France, p. 24.

119/ For texts of relevant statements following the adoption of the draft resolution submitted by the United States, see S C, 3rd yr., No. 97, 338th mtg.: Syria, p. 67, USSR, p. 67; No. 98, 339th mtg.: Argentina, pp. 12 and 13; Canada, pp. 11 and 12; China, p. 14; Colombia, p. 10; USSR, p. 15; United Kingdom, p. 13; United States, pp. 14 and 15.

120/ G A (IV), Suppl. No. 2 (A/945), p. 38, S/921.

121/ For texts of relevant statements, see G A (IV), 4th Com., 128th mtg.: Philippines, p. 207; 132nd mtg.: Canada, p. 229; Guatemala, p. 229; 133rd mtg.: France, p. 230; 134th mtg.: India, p. 237; 135th mtg.: United Kingdom, p. 246; 139th mtg.: India, p. 269; 140th mtg.: France, p. 279; Guatemala, p. 273; India, p. 277; Thailand, p. 275; United States, p. 276.

that time an interpretation offered in Committee could not be accepted as having binding force. (2) As long as the Court had not given an opinion regarding the status of South West Africa, it would be premature to invite the Union of South Africa to present reports to the Trusteeship Council, since it was precisely the opinion of the Court which would make it possible to determine whether that country must again present such reports concerning South West Africa.

144. Opinion was also divided as to the possible effect of the opinion of the Court upon previous decisions taken by the General Assembly in connexion with the question on South West Africa. On the one hand, it was stated that the opinion to be given by the Court might nullify the will of the General Assembly, as expressed in its earlier resolutions. On the other hand, it was contended that if the Court should give an opinion contrary to the view of the Assembly on the question of South West Africa, the Assembly would then be absolutely free to modify its previous decision.

145. In the course of the discussion of the question in plenary meeting, the views set forth below were among those expressed. 122/ (1) If the question were to be submitted to the Court, the General Assembly would, at its fifth session, have before it an authoritative opinion on the legal aspects of the question of South West Africa and would thus be in a better position to arrive at a solution, the weight of which would be the greater as a result of having been based upon a legal study by the principal judicial organ of the United Nations. (2) It was advisable to ask the Court for an advisory opinion, if only to dispel the doubts of certain representatives and to settle the matter once and for all. On the other hand, the arguments set forth below were among those advanced. (1) The need for an authoritative opinion on the exact legal position of South West Africa could not affect the moral obligation to promote the well-being of the local population and its progress towards self-government. (2) It was the moral obligation of the General Assembly to protect the rights of the individual, as stated in the Universal Declaration of Human Rights, and no legal interpretation should undermine that principle.

6. *Prior decisions concerning the binding effect of advisory opinions*

a. SUPPLEMENTARY ESTIMATES (AWARDS OF COMPENSATION BY THE ADMINISTRATIVE TRIBUNAL)

146. During the consideration of the above-mentioned question by the Fifth Committee at the eighth session of the General Assembly, the representative of France submitted an amendment 123/ to a draft resolution 124/ contained in the draft report of the Fifth Committee on the budget estimates for the financial year 1954. Under the terms of that amendment, the following items would have been included among the commitments which the Secretary-General would be authorized to undertake to meet unforeseen and extraordinary expenses:

"(g) The disbursements required for the payment of the indemnities awarded by the Administrative Tribunal and mentioned in the General Assembly's request to the International Court of Justice for an advisory opinion, in the event of the Court's finding that the General Assembly is not entitled to refuse to give effect to the said awards."

122/ For texts of relevant statements, see G A (IV), Plen., 269th mtg.: Brazil, para. 57; Denmark, para. 51; India, para. 75; Liberia, para. 88.

123/ G A (VIII), Annexes, a.i. 38, p. 14, A/C.5/L.268/Rev.1.

124/ *Ibid.*, p. 13, A/C.5/L.264.

147. The above-quoted amendment was put to the vote after the Committee had adopted a draft resolution 125/ under the terms of which the Court would be requested to give an advisory opinion concerning the right of the General Assembly to refuse to give effect to an award of compensation made by the United Nations Administrative Tribunal. In this connexion it may be noted that in the course of the discussion, a suggestion 126/ was made to vote first on the amendment submitted by France on the ground that the attitude of delegations towards the request for an advisory opinion would depend on the assurance that the Secretary-General would be authorized to pay the indemnities should the Court be of the opinion that the Assembly was not competent to set aside the decisions of the Administrative Tribunal. In opposition to this suggestion, it was held 127/ that it would be illogical for the Committee to have to decide on the action to be taken as a result of an advisory opinion before it had decided whether the Court should be consulted.

148. The representative of France explained 128/ that he had submitted the amendment in order that the Secretary-General might be in a position to make payment of the compensation awarded by the Administrative Tribunal immediately after the Court had given its advisory opinion, if that was the action recommended by the Court. The question of paying the compensation, he said, should not be considered again at the ninth session of the General Assembly. In support of the amendment submitted by France, it was further stated 129/ that, as a general rule, advisory opinions should not be considered to be binding; it was, however, sometimes useful to make an exception to that rule.

149. In opposition to the amendment submitted by France, it was contended 130/ that the opinion of the Court would be only advisory; it could not be treated as a decision. The decision should be taken by the General Assembly in the light of the advisory opinion of the Court; it would be improper to anticipate that decision.

150. The amendment submitted by France was rejected by the Committee by 28 votes to 20, with 9 abstentions.

b. VARIOUS AGREEMENTS CONCERNING PRIVILEGES AND IMMUNITIES OF THE
UNITED NATIONS AND THE SPECIALIZED AGENCIES

151. References to the binding effect of advisory opinions of the International Court of Justice with regard to any questions which may be submitted to the Court in connexion with the agreements in question are contained in a number of conventions concluded by the United Nations and the specialized agencies.

152. Section 30 of the Convention on the Privileges and Immunities of the United Nations provides as follows:

"All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on

125/ Ibid., p. 13, A/C.5/L.263.

126/ G A (VIII), 5th Com., 426th mtg., para. 106.

127/ Ibid., para. 107.

128/ Ibid., para. 49.

129/ Ibid., paras. 103 and 104. See also 427th mtg., paras. 10 and 12.

130/ Ibid., 426th mtg., para. 82.

the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

153. Section 21 (b) of the Headquarters Agreement between the United Nations and the United States of 26 June 1947 provides as follows:

"The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court."

154. Section 32 of the Convention on the Privileges and Immunities of the Specialized Agencies provides as follows:

"All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between one of the specialized agencies on the one hand, and a member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court and the relevant provisions of the agreements concluded between the United Nations and the specialized agency concerned. The opinion given by the Court shall be accepted as decisive by the parties."

7. Consideration of the effect to be given to the advisory opinions of the Court

155. In a number of cases, considerable discussion took place in the General Assembly, in plenary meeting or in Committee, concerning the question of the effect to be given to advisory opinions. Such discussion occurred either at the time when a draft resolution, under the terms of which an advisory opinion would be requested from the Court, was under consideration, or when the opinion delivered by the Court was included in the agenda of the General Assembly.

156. The General Assembly has in no case recommended action contrary to the advisory opinion rendered by the Court. In two cases, the General Assembly adopted resolutions 131/ by which it "took note" of the advisory opinions of the Court, and, in one of those two cases, recommended 132/ that each Member of the Assembly and of the Security Council "should act in accordance with" the opinion. In one case, the Assembly, under the terms of the relevant resolution, 133/ "accepted" the advisory opinion of the Court and "urged" the Government concerned to take the necessary steps to give effect to the opinion. In another case, the Assembly adopted a resolution 134/

131/ G A resolution 197 B (III), relating to admission of new Members, and G A resolution 385 (V), relating to observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms.

132/ G A resolution 197 A (III).

133/ G A resolution 449 (V), relating to the international status of South West Africa.

134/ G A resolution 365 (IV), relating to reparation for injuries incurred in the service of the United Nations.

by which, having regard to the advisory opinion of the Court, it authorized the Secretary-General to take action which implied compliance with the opinion of the Court. In still another case, the Assembly adopted a resolution 135/ by which it recommended to all States that they be guided in regard to the Genocide Convention by the advisory opinion of the Court and requested the Secretary-General to conform his practice in respect of reservations to that Convention to the advisory opinion. In one instance, the advisory opinion was not mentioned in the text of the resolution 136/ which the General Assembly adopted following its consideration of the opinion.

157. In most cases, the General Assembly, in addition to making express and specific reference to the advisory opinions of the Court in its relevant resolutions, made recommendations relating to the substance of the question under consideration to which the advisory opinion related.

158. The advisory opinions of the Court were generally referred to in both the preambles and the operative parts of the resolutions of the General Assembly. Such references ranged from quoting or paraphrasing the essential points of the advisory opinions 137/ to the mere mentioning of them. 138/ In one case, the text of the resolution made no mention of the advisory opinion. 139/ In no case, however, has an advisory opinion been mentioned in the title of the resolution adopted by the General Assembly as a result of the discussion of the item relating to the question on which the advisory opinion had been given.

a. THE CONSIDERATION OF THE QUESTION OF ADMISSION OF NEW MEMBERS
IN RELATION TO THE ADVISORY OPINION OF THE INTERNATIONAL COURT
OF JUSTICE AT THE THIRD SESSION OF THE GENERAL ASSEMBLY

159. At the first part of its third session, the General Assembly adopted a series of resolutions on the question of the admission of new Members.

(1) Under the terms of resolution 197 A (III), the General Assembly, after citing passages of the advisory opinion of the International Court of Justice in the Admission of a State to the United Nations case, recommended that each member of the Security Council and of the General Assembly, in exercising its vote on the admission of new Members, should act in accordance with the above-mentioned opinion of the Court.

(2) Under the terms of resolution 197 B (III), the General Assembly, having noted the special reports of the Security Council on the question of the admission of new Members, and having noted the advisory opinion of the Court in the Admission of a State to the United Nations case, asked the Security Council to reconsider, taking into account the circumstances in each particular case, the applications for membership in the United Nations of the States mentioned in the special reports referred to in the preamble.

(3) Under the terms of resolutions 197 C - I (III), the General Assembly reaffirmed its view that the opposition to the applications of the States listed below was based on grounds not included in Article 4, determined that these States were, in its

135/ G A resolution 598 (VI).

136/ G A resolution 495 (V).

137/ G A resolutions 197 (III), 385 (V) and 449 (V).

138/ G A resolutions 365 (IV) and 598 (VI).

139/ G A resolution 495 (V).

judgement, peace-loving States within the meaning of Article 4, were able and willing to carry out the obligations of the Charter, and should therefore be admitted to membership in the United Nations, and requested the Security Council to reconsider the applications of the States in question in the light of this determination of the General Assembly and of the advisory opinion of the Court in the Admission of a State to the United Nations case.

The States named in the respective resolutions were: Portugal, Transjordan, Italy, Finland, Ireland, Austria and Ceylon.

160. In connexion with the consideration of the above-mentioned resolutions, it may be noted that, after the Court had delivered its advisory opinion 140/ in the Admission of a State to the United Nations case, the agenda item entitled "Admission of new Members: ... (b) Advisory opinion of the International Court of Justice" was included in the agenda of the third session of the General Assembly and was allocated to the Ad Hoc Political Committee for consideration.

161. In the course of the discussion, 141/ a number of draft resolutions, and amendments thereto, were submitted, among which those set forth below made reference to the advisory opinion of the Court.

(1) The representative of Australia submitted seven draft resolutions. Under the terms of the first 142/ of these, the General Assembly would recommend that each Member of the Security Council and of the General Assembly, in exercising its vote on the admission of new Members, should act in accordance with the advisory opinion of the Court of 28 May 1948. The draft resolution was adopted 143/ by the Committee.

Under the terms of five further draft resolutions, 144/ the General Assembly would determine that Portugal, Transjordan, Italy, Finland and Ireland respectively fulfilled the requirements of Article 4, and would request the Security Council to reconsider their applications in the light of that determination and of the advisory opinion of the Court. The General Assembly would also reaffirm its view that the opposition to the applications of these States "was based on grounds not included in Article 4". The seventh draft resolution submitted by Australia related to the application of Ceylon for membership in the United Nations; its wording was identical with that of the five draft texts mentioned above.

Under the terms of an amendment 145/ submitted by Burma and the Ukrainian SSR to the draft resolution relating to Ceylon, any reference to the advisory opinion of the Court would have been deleted. The representative of Burma subsequently withdrew his amendment with the reservation that he would resubmit it to the General Assembly if he deemed it expedient.

(2) Under the terms of a draft resolution 146/ submitted by Belgium, the General Assembly would have called the attention of the Security Council to the advisory

140/ Admission of a State to the United Nations, I C J, Reports 1948, p. 57.

141/ G A (III/1), Ad Hoc Pol. Com., 6th-16th mtgs., 22nd and 23rd mtgs.

142/ G A (III/1), Plen., Annexes, p. 504, A/761, para. 19, resolution A.

143/ G A (III/1), Ad Hoc Pol. Com., 14th mtg.

144/ G A (III/1), Ad Hoc Pol. Com., Annexes, p. 4, A/AC.24/7; p. 5, A/AC.24/8; p. 5, A/AC.24/9; p. 6, A/AC.24/10; p. 7, A/AC.24/11 and p. 8, A/AC.24/14.

145/ Ibid., p. 14, A/AC.24/32.

146/ Ibid., p. 7, A/AC.24/12.

opinion of the Court of 28 May 1948, and would have requested the Council to re-examine, in the light of this opinion, the question of the admission of Italy and Finland to membership in the United Nations.

(3) Under the terms of a draft resolution 147/ submitted by the United States, the General Assembly would reiterate its opinion that Austria was a peace-loving State within the meaning of Article 4, and would request the Security Council to reconsider the application of Austria in the light of this expression of opinion and of the advisory opinion of the Court.

(4) Under the terms of a draft resolution 148/ submitted by Sweden, the General Assembly would take note of the advisory opinion of the Court and would ask the Security Council to reconsider, in the light of the principle of universality and taking into account the circumstances in each particular case, the applications for membership in the United Nations of all States mentioned in the Special Report of the Security Council on the Admission of new Members. Under the terms of an amendment 149/ submitted by India to the draft resolution offered by Sweden, a reference to the advisory opinion of the Court would have been substituted for the reference to the principle of universality. The representative of India subsequently withdrew his amendment; an identical text was, however, later submitted by the representative of the United Kingdom and failed of adoption in the Committee by a vote of 18 to 18, with 9 abstentions.

The ten draft resolutions set forth above were recommended by the Committee for adoption by the General Assembly.

162. When the report of the Ad Hoc Political Committee was considered 150/ by the General Assembly in plenary meeting, the representative of Belgium stated that the draft resolution submitted by his delegation in Committee was no longer necessary in view of the adoption by the Committee of the draft resolutions offered by Australia dealing with the same subject, and that he would vote against it. The draft resolution submitted by Belgium was rejected. There were 11 votes in favour and 15 against, with 17 abstentions. The other draft resolutions recommended by the Ad Hoc Political Committee were adopted and became resolutions 197 A - I (III).

163. Both in Committee and in plenary meeting there was an exchange of views 151/ concerning the authority of the advisory opinion of the Court. The views set forth below were among those expressed by representatives who held that the advisory opinion was of an authoritative nature. (1) While the advisory opinion would admittedly not have the binding force of a decision, it should be treated with equal respect and accepted as an "authoritative exposition" of Article 4. (2) Article 4 had been given an "official and authentic" or "authoritative" interpretation by the Court. (3) Opinions of the Court should be treated as having equal force with decisions. (4) The advisory opinion of the Court should serve as a guide to the United Nations, since it emanated from the highest international tribunal and was therefore of the greatest value.

147/ Ibid., p. 8, A/AC.24/13.

148/ Ibid., p. 9, A/AC.24/17. Under the terms of an amendment submitted by Bolivia and accepted by the representative of Sweden, the reference to the Principle of universality would have been transferred from the operative part to the preamble of the draft text.

149/ Ibid., p. 10, A/AC.24/19.

150/ G A (III/1), Plen., 175th-177th mtgs.

151/ For texts of relevant statements, see G A (III/1), Ad Hoc Pol. Com., 6th-16th, 22nd and 23rd mtgs.; G A (III/1), Plen., 175th-177th mtgs.

164. In his statement in connexion with his submission to the Committee of seven draft resolutions (see paragraph 161 above), the representative of Australia quoted the individual opinion by Judge Azevedo who had stated 152/ that

"we should make a purely theoretical study of the question, so as to enable the Court without the assistance of any individual or State, to give an opinion of which the effects would be applicable to all Members of the Organization."

That reference, the representative of Australia said, obviously applied to the Members of the Security Council as well as to those of the General Assembly. By adopting the first of the draft resolutions which he had submitted, the General Assembly would ratify the interpretation of the Court which would thus become authoritative in the future.

165. The views set forth below were among those expressed by two representatives who were of the opinion that the Committee should limit its action to taking note of the advisory opinion of the Court. (1) While the opinion of the Court seemed to have been divided, the Committee was not required to decide which judge had presented the best argument. The question at issue did not relate to a concrete dispute between two parties in which the General Assembly had to consider a specific opinion of the Court, but a matter of the general interpretation of Article 4. Moreover, the Charter did not endow the General Assembly with legislative power to give a binding interpretation of any point of the Charter. All Members had the incontestable right to hold views not in accordance with those of the majority. The advisory opinion of the Court had no binding force. Bearing in mind the dissenting opinions of some of the judges, the Committee should limit itself to taking note of the opinion of the Court, without passing judgement on the various opinions expressed. (2) Members of the Committee had the right to criticize the opinion of the Court, which was not binding. Political considerations should be taken into account in conjunction with the requirements of Article 4, if they derived from the provisions of the Charter. The Assembly should take no decision concerning the opinion of the Court, but should merely take note of it and request the Security Council to study it together with other relevant documents.

166. In opposition to the inclusion in the draft resolution submitted by Australia of any reference to the advisory opinion, it was contended that, in view of the division in the Court and the divergencies even among the majority who had voted for the advisory opinion, there did not exist an advisory opinion of the Court, but only a collection of opinions on the basis of which no action should be taken. It was also argued that the Court had said that nothing contained in its advisory opinion referred directly or indirectly to concrete or particular circumstances; the Ad Hoc Political Committee should therefore consider the opinion as an abstract statement.

b. THE CONSIDERATION OF THE QUESTION OF REPARATIONS FOR INJURIES
INCURRED IN THE SERVICE OF THE UNITED NATIONS AT THE FOURTH
SESSION OF THE GENERAL ASSEMBLY

167. The General Assembly, under the terms of resolution 365 (IV), having regard to the advisory opinion of the Court and considering that the Secretary-General had submitted in his report a number of proposals relating to the advisory opinion, authorized the Secretary-General

152/ Admission of a State to the United Nations, I C J, Reports 1948, p. 75.

"in accordance with his proposals, to bring an international claim against the Government of a State, Member or non-member of the United Nations, alleged to be responsible, with a view to obtaining the reparation due in respect of the damage caused to the United Nations and in respect of the damage caused to the victim or to persons entitled through him and, if necessary, to submit to arbitration, under appropriate procedures, such claims as cannot be settled by negotiation".

The Secretary-General was further authorized to negotiate agreements necessary to reconcile actions by the United Nations with the rights of the State of which the victim was a national. The substance of these provisions of the resolution closely followed the opinion of the Court.

168. In the course of the discussion of the above-mentioned resolution at its draft stage, there was extensive consideration of the weight to be given to an advisory opinion of the Court. Under the terms of the resolution by which the General Assembly had requested the advisory opinion, it had also instructed the Secretary-General, after the Court had given its opinion, to prepare proposals in the light of that opinion and to submit them to the Assembly at its fourth session. The report of the Secretary-General submitted in pursuance of this instruction contained the following proposal: 153/

"The Secretary-General proposes that the General Assembly should accept the advisory opinion of the Court as an authoritative expression of international law on the questions considered." 154/

169. In the Sixth Committee, to which this question was referred, a draft resolution 155/ was submitted by Brazil, India, Iran and the United States under the terms of which it would have been proposed that the General Assembly accept the advisory opinion of the Court "as an authoritative expression of international law on the questions considered". Under the terms of an amendment 156/ submitted by the representative of Belgium the General Assembly would have limited itself to an expression of agreement with the replies given in the advisory opinion of the Court to the questions submitted to it by the General Assembly. The representative of France submitted a draft resolution 157/ under the terms of which the above-quoted provision would be replaced by a preambular paragraph reading as follows: "Having regard to the advisory opinion rendered by the International Court of Justice on 11 April 1949".

170. In the course of the ensuing discussion 158/ the views set forth below were among those expressed concerning the authority of the advisory opinion of the Court.

(1) It was not enough to mention the opinion of the Court in the text of the draft resolution; it was essential to take the opinion into consideration and thus to acknowledge it to be an expression of existing international law.

153/ G A (IV), 6th Com., Annex, p. 18, A/955, para. 15.

154/ It may be noted here that when the General Assembly, at its fifth session, discussed the advisory opinion of the Court in the Interpretation of peace treaties case, it was also suggested that the findings of the Court should be regarded as authoritative pronouncements of law (G A (V), Ad Hoc Pol. Com., 4th mtg., para. 14).

155/ G A (IV), 6th Com., Annex, p. 20, A/C.6/L.51.

156/ G A (IV), 6th Com., 183rd mtg., para. 30, A/C.6/L.57.

157/ Ibid., para. 43, A/C.6/L.68.

158/ For texts of relevant statements, see G A (IV), 6th Com., 183rd mtg.: Belgium, para. 32; France, paras. 41 and 42; United States, para. 53; USSR, para. 62; 184th mtg.: Poland, para. 4; United Kingdom, paras. 25-28.

(2) It was not the duty of the General Assembly to express an opinion on the decision of the Court or to say to what extent the decision of the Court was authoritative. The opinions and the judgements of the Court derived their legal validity from their intrinsic qualities, and their conformity with international law could not be proclaimed by the Assembly which did not have international legislative power.

(3) The General Assembly was in the same situation as an individual who had consulted a jurist on a legal matter and who, on the strength of his opinion and without discussing it, acted in conformity with that expert's conclusions. It would be preferable for the General Assembly not to pass judgement on the substantive value of the advisory opinion of the Court but to take note of that opinion and to determine the measures to be taken by the Secretary-General in accordance with the conclusions reached by the Court.

(4) The opinion really created new law; although it was not binding, it was authoritative as a statement of law. The Committee could neither approve nor disapprove of the findings of the Court on a point of law; it could only welcome them or not welcome them. Although there was no doubt as to the authoritative nature of the opinion of the Court on questions of international law, a distinction should be made between the binding character and the authoritative nature of those opinions. Advisory opinions were not binding in the same sense as judgements of the Court because, in the case of advisory opinions, the General Assembly was not bound to act in accordance with those opinions. The Assembly could take other factors into consideration; it was also free to accept or reject the opinions. It could not be said, however, that the opinion of the Court was wrong from the legal point of view or that the Assembly did not agree with the Court in its findings because the Assembly had no competence in a legal matter to agree or disagree with the Court on a point of law. The Court was the highest authority on matters of international law and its findings were necessarily authoritative. It was doubtful, however, whether the phrase "as an authoritative expression of international law on the questions considered" should be retained in the joint draft resolution, since those words might suggest that the authoritative nature of the opinion was derived from its acceptance as such by the General Assembly and not from its intrinsic nature and the inherent status of the Court.

171. The views set forth below were among those expressed by those representatives who particularly stressed the non-binding character of advisory opinions.

(1) Respect for the authority of the Court should not be placed above the interests of the States forming the community of nations. The Court was composed of men no less fallible than others. However exceptional their competence, the General Assembly still had the incontestable right not to follow their advice. The advisory opinion should be considered strictly according to the validity of the motives on which it was based.

(2) Advisory opinions, unlike judgements, were not binding and could have moral value and persuasive authority only if they were unanimous, leaving no doubt on the question involved. An advisory opinion given only by some members of the Court was bound to carry less weight than one given unanimously.

(3) An advisory opinion could not create new law and could never become lex inter partes binding upon the parties; if it did, the force of the opinion would have much greater scope than a judgement since, if accepted, it would be binding upon all Member States. If the Court could create law and the General Assembly could not even discuss the substance of the opinion, it would mean that all organs of the United Nations would have to submit blindly to all changes of law the Court might suggest. Such a theory of the creation of law without the consent of Member States might affect the very

existence of States and was unacceptable. Moreover, if an advisory opinion were considered binding, a political problem with legal aspects would be considered from only one point of view. This was inadmissible.

172. The draft resolution submitted by France was adopted by the Sixth Committee and contained the following provision in its preamble:

"Having regard to the advisory opinion rendered by the International Court of Justice on 11 April 1949".

173. At the request of the representatives of France and Cuba, the report of the Sixth Committee to the General Assembly on the question under consideration included the following observation: 159/

"With regard to the draft resolution proposed by France it was stated that, in omitting the paragraph reading 'Resolves that it accepts the advisory opinion of the International Court of Justice, delivered on 11 April 1949, as an authoritative expression of international law on the questions considered' which had appeared in the joint draft resolution, it was not intended to cast doubt upon the authority of the Court's opinion; however, in view of the procedure followed previously by the General Assembly with regard to advisory opinions, it was considered that a statement to that effect in the resolution was unnecessary. It was specifically requested that the report to the General Assembly should make it clear that, in accepting the French draft resolution, those who had supported the text of the joint draft resolution had not changed their view, but had merely considered that the authoritative nature of the advisory opinion should be taken for granted."

174. The draft resolution recommended by the Sixth Committee was adopted by the General Assembly and became resolution 365 (IV).

C. THE CONSIDERATION OF THE QUESTION OF SOUTH WEST AFRICA
AT THE FIFTH SESSION OF THE GENERAL ASSEMBLY

175. The preamble of General Assembly resolution 449 A (V) set forth some of the conclusions contained in the advisory opinion of the Court in the International status of South West Africa case and, in particular, the conclusion referring to the obligation of the Union of South Africa to continue to administer the Territory in accordance with the obligations assumed under the Mandate. Under the operative part of the resolution, the General Assembly stated that it

"1. Accepts the advisory opinion of the International Court of Justice with respect to South West Africa;

"2. Urges the Government of the Union of South Africa to take the necessary steps to give effect to the opinion of the International Court of Justice, including the transmission of reports ... and of petitions ...;

"3. Establishes a Committee ... to confer with the Union of South Africa concerning the procedural measures necessary for implementing the advisory opinion of the International Court of Justice and to submit a report thereon ...;

159/ G A (IV), Plen., Annex, p. 200, A/1101 and Corr.1, para. 7.

"4. Authorizes the Committee, as an interim measure, ... to examine the report on the administration of the Territory of South West Africa covering the period since the last report, as well as petitions and any other matters relating to the Territory that may be transmitted to the Secretary-General, and to submit a report thereon to the next regular session of the General Assembly."

176. The preamble of resolution 449 B (V) made specific reference to the opinion of the Court that "the Territory of South West Africa is under the international Mandate assumed by the Union of South Africa on 17 December 1920"; and to the fact that "the Trusteeship System has been applied to all mandated territories which have not achieved independence, with the sole exception of the Territory of South West Africa". The operative part of the resolution reiterated earlier resolutions to the effect that South West Africa should be placed under the Trusteeship System, and that the normal way of modifying the status of the Territory would be to place it under the Trusteeship System.

177. When the advisory opinion delivered by the Court on the question of the international status of South West Africa was considered by the Fourth Committee at the fifth session of the General Assembly, the representative of the Union of South Africa stated. ^{160/} during the discussion on the above-mentioned resolution at its draft stage, that the opinion of the Court did not constitute a judgement binding upon the parties concerned, although the greatest respect should be shown to it. The views of contrary tendency set forth below were among those expressed ^{161/} by other representatives. (1) The advisory opinion of the Court was an authoritative and precise statement of the legal situation and the Committee should endeavour to agree on measures designed to give effect to that opinion. (2) It was true that the opinion of the Court was not an enforceable judgement, but the Court itself had stated that its opinion was addressed to the party which had requested it, namely, the General Assembly; the opinion was definitive so far as the General Assembly was concerned. (3) Although some delegations felt that the advisory opinion was merely an opinion and not a judicial decision, the fact remained that it had been handed down by the highest international judicial authority; it could not, therefore, be disregarded nor could study of the question be begun all over again. (4) In the legal field, the International Court of Justice was the supreme authority, hence the legal views expressed in the Committee were of lesser value than the opinion of the Court. That opinion was, in fact, tantamount to a decision of a court of arbitration on the controversy between the General Assembly on the one hand and the Union of South Africa on the other, and the General Assembly, having asked for that opinion, must now abide by it. The task of the Committee was to find means of implementing it.

d. THE CONSIDERATION OF THE QUESTION OF OBSERVANCE IN BULGARIA, HUNGARY
AND ROMANIA OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AT THE FIFTH
SESSION OF THE GENERAL ASSEMBLY

178. The General Assembly, under resolution 385 (V), took note of the replies contained in the advisory opinions of the Court in the Interpretation of peace treaties and condemned the wilful refusal of the three Governments concerned to fulfil their obligations under the peace treaties, "which obligation has been confirmed by the International Court of Justice".

^{160/} G A (V), 4th Com., 191st mtg., para. 1; 196th mtg., para. 42. See also 192nd mtg., para. 4.

^{161/} Ibid., 191st mtg.: Denmark, para. 51; Philippines, para. 127; United States, para. 47; 193rd mtg.: Argentina, para. 3; 194th mtg.: Peru, para. 17.

179. In the course of the discussion 162/ on the above-mentioned resolution at its draft stage in the Ad Hoc Political Committee, the criticisms set forth below were among those expressed on the subject of the advisory opinion of the Court. (1) The second phase of the opinion 163/ containing the answer of the Court to the third question put by the General Assembly raised "very serious questions involving the fate of the entire system of treaties for arbitration and the peaceful settlement of disputes". The majority opinion of the Court might result in making most treaties, which in effect called for conciliation, arbitration and other methods of peaceful settlement, optional in character. (2) All existing systems of international arbitration would be jeopardized by "the excessively literal interpretation given by the Court". (3) The General Assembly was bound by the provisions of the Charter concerning human rights to condemn the systematic attacks on individual freedoms which available evidence imputed to the three States concerned. The ruling of the Court made it difficult, if not impossible, for the United Nations to prevent such attacks, or to assist the victims of oppression. (4) One representative stated that, while his Government would abide by the opinions of the Court in letter and spirit, it did not share the view of the Court on question III 164/ and hoped that the opinion of the dissenting judges in the second phase would ultimately become the law of nations. (5) Another representative declared that his Government was "ready to bow to the opinion of the Court", but expressed regret that the Court had been "so circumspect in its search for agreement between the parties", for such an over-cautious attitude would stultify the whole system of collective negotiation.

e. THE CONSIDERATION OF THE QUESTION OF RESERVATIONS TO MULTILATERAL
CONVENTIONS AT THE SIXTH SESSION OF THE GENERAL ASSEMBLY

180. Under the terms of resolution 598 (VI), the General Assembly noted the advisory opinion of the Court in the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide case and the report of the International Law Commission on the question of reservations to multilateral conventions. The following provisions of the operative part of the resolution referred specifically to the opinion of the Court: (1) the General Assembly recommended to all States that they be guided in regard to the Genocide Convention by the advisory opinion of the Court; and (2) it requested the Secretary-General, in relation to reservations to the Convention on Genocide, to conform his practice to the advisory opinion.

181. In the course of the discussion of the above-mentioned resolution at its draft stage in the Sixth Committee, a number of draft resolutions expressive of divergent attitudes towards the advisory opinion of the Court and the report of the International Law Commission were submitted.

182. Under the terms of a draft resolution 165/ submitted by the United States, the General Assembly would have commended the advisory opinion of the Court to all States and would have recommended to all organs of the United Nations that they be guided in their work by the advisory opinion of the Court in so far as it might be applicable.

183. Under the terms of an amendment 166/ submitted by the representative of the United Kingdom to the above-mentioned draft resolution, the commendation of the

162/ For texts of relevant statements, see G A (V), Ad Hoc Pol. Com., 2nd-6th mtgs.

163/ See footnote 87 above.

164/ See para. 105 above.

165/ G A (VI), Annexes, a.i. 49, p. 2, A/C.6/L.188.

166/ Ibid., p. 3, A/C.6/L.190.

advisory opinion to all States would have been deleted (paragraph 1 of the amendment) and the recommendation to all organs of the United Nations would have been modified (paragraph 2 of the amendment) to provide that all organs of the United Nations, specialized agencies and States be guided by the report 167/ of the International Law Commission. The Secretary-General would have been requested (paragraph 4 a of the amendment) to conform his practice, in relation to reservations to the Convention on Genocide, to the advisory opinion (paragraph 4 b of the amendment) and, in relation to other multilateral conventions, to the report of the International Law Commission.

184. Under the terms of a further amendment 168/ submitted by Argentina, Bolivia, Colombia, Cuba, the Dominican Republic, Ecuador, El Salvador and Honduras to the draft resolution submitted by the United States, both paragraphs containing references to the advisory opinion of the Court would have been deleted and replaced by a recommendation that the General Assembly adopt certain rules concerning reservations to multilateral conventions laid down in the text of the amendment.

185. Under the terms of a draft resolution 169/ submitted by the representative of Israel, the General Assembly would have recommended to all States that they be guided in regard to the Convention on Genocide by the advisory opinion of the Court and would have instructed the Secretary-General to conform his practice in relation to reservations to the Convention to that opinion. A second draft resolution, 170/ submitted by the same representative and relating to reservations to multilateral conventions in general, would have deferred their consideration until the whole report of the International Law Commission on the law of treaties had been submitted to the General Assembly.

186. Under the terms of an amendment 171/ submitted by the representative of Venezuela to the draft resolution submitted by Israel, the General Assembly would have recommended to all States that they be guided, in regard to the Convention on Genocide and in framing other multilateral conventions of a humanitarian nature, by the advisory opinion of the Court.

167/ In its report (G A (VI), Suppl. No. 9 (A/1858), para. 24), the International Law Commission, having had before it the advisory opinion of the Court, expressed the belief that "the criterion of the compatibility of a reservation with the object and purpose of a multilateral convention, applied by the [Court] ... to the Convention on Genocide, is not suitable for application to multilateral conventions in general". The Commission noted that, under the terms of G A resolution 478 (V), its task had differed from that of the Court in that the Commission had been invited to study the question of reservations to multilateral conventions in general, whereas the question submitted to the Court had related solely to the Convention on Genocide, and further, while the opinion of the Court was based on its interpretation of existing law, the Commission had been asked to study the question from the point of view of codification and from that of the progressive development of international law.

168/ G A (VI), Annexes, a.i. 49, pp. 3 and 4, A/C.6/L.191.

169/ Ibid., p. 4, A/C.6/L.193.

170/ Ibid., p. 5, A/C.6/L.194. Cf. the joint draft resolution submitted by Denmark, India, Iran, Israel, Mexico, Netherlands, Peru and Sweden. Ibid., p. 6, A/C.6/L.198.

171/ This was later transferred to apply to the revised text of the draft resolution submitted by the United States.

187. The draft resolution submitted by the representative of the United States was revised 172/ to delete the first two operative paragraphs recommending the advisory opinion to all States and to the organs of the United Nations. After this revision the first two paragraphs of the United Kingdom amendment were withdrawn.

188. Paragraph 4 a of the amendment submitted by the United Kingdom was adopted and paragraph 4 b was rejected by the Committee. That part of the amendment submitted by Venezuela described above was rejected by the Committee. The Committee also rejected an amendment 173/ submitted by Argentina, Belgium and Egypt, under the terms of which it would have been provided that the Secretary-General "shall not ... regard the decision of any one State as being able to debar States formulating reservations" from participation in further conventions in relation to States which had not objected thereto.

189. The draft resolution adopted by the Commission by a vote of 23 to 18, with 7 abstentions, and recommended for adoption by the General Assembly read as follows:

"The General Assembly,

"Bearing in mind the provisions of its resolution 476 (V) of 16 November 1950, which (1) requested the International Court of Justice to give an advisory opinion regarding reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and (2) invited the International Law Commission to study the question of reservations to multilateral conventions,

"Noting the Court's advisory opinion of 28 May 1951 and the Commission's report, both rendered pursuant to the said resolution,

"1. Recommends that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them;

"2. Recommends to all States that they be guided in regard to the Convention on the Prevention and Punishment of the Crime of Genocide by the advisory opinion of the International Court of Justice of 28 May 1951;

"3. Requests the Secretary-General:

(a) In relation to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, to conform his practice to the advisory opinion of the Court of 28 May 1951;

(b) In respect of future conventions concluded under the auspices of the United Nations of which he is the depositary:

(i) To continue to act as depositary in connexion with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and

172/ G A (VI), Annexes, a.i. 49, p. 3, A/C.1/L.188/Rev.1.
173/ Ibid., p. 8, A/C.6/L.202.

(ii) To communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each State to draw legal consequences from such communications."

The draft resolution was adopted 174/ by the General Assembly in plenary meeting by a vote of 32 to 17, with 5 abstentions, and became resolution 598 (VI).

B. Practice bearing upon Article 96 (2)

190. Under the terms of Article 96 (2), organs of the United Nations other than the General Assembly and the Security Council, and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities.

1. The question whether the authorization under Article 96 (2) should be a general authorization or an ad hoc authorization

191. At the second part of its first session, the General Assembly had before it a request of the Economic and Social Council that the latter be authorized to request advisory opinions of the Court. In the course of the discussion of the request in the Sixth Committee, it was contended 175/ by one representative, on the basis of a comparison of the provisions of Articles 96 (1) and 96 (2), that the authorization referred to in Article 96 (2) was required for each individual request, after the Assembly had determined that all prerequisite conditions had been duly met. It was added that this interpretation was borne out by the use of the words "any legal question" in Article 96 (1) and "legal questions" in Article 96 (2). In opposition to this view, it was maintained 176/ that the actual wording of Article 96 made no provision for separate authorizations. Moreover, long delays might arise if United Nations organs would have to await special authorizations by the General Assembly in each case. In endorsing the latter view on the basis of the terms of Article 65 of the Statute of the Court, one representative expressed 177/ readiness to favour the general authorization subject to two reservations: firstly, that the Committee would not create a precedent by agreeing to give an authorization to request opinions to all the bodies provided for in Article 96 (2), and secondly, that the other bodies should not be held to be precluded from requesting such an authorization.

192. By resolution 89 (I), the General Assembly authorized the Economic and Social Council to request advisory opinions of the Court (see paragraph 212 below).

193. At the same session, views similar to those set forth in paragraph 191 above were expressed in the course of the discussion in the Sixth Committee of draft agreements between the United Nations and certain specialized agencies regarding the question whether a general authorization should be granted to the specialized agency concerned to request the advisory opinion of the Court. 178/ Much of the discussion centred on a corollary to this question, namely, whether certain kinds of general

174/ G A (VI), Plen., 360th mtg.

175/ G A (I/2), 6th Com., 20th mtg., pp. 94 and 95.

176/ Ibid., p. 96.

177/ Ibid., p. 97.

178/ See also in this Repertory under Article 63.

authorization would have the effect of annulling the power of granting authorization conferred upon the General Assembly under the terms of the Charter. The latter question is discussed below.

*2. The question of the revocability of the authorization
by the General Assembly*

194. At the second part of the first session of the General Assembly, the Sixth Committee considered the provisions contained in the draft agreements between the United Nations and the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization of the United Nations (FAO) and the International Civil Aviation Organization (ICAO), relating to the right of those agencies to request advisory opinions of the Court.

195. The representative of the Secretary-General, speaking before the Sixth Committee, explained 179/ that in the draft agreement with ILO a clause had been inserted giving that organization a general authorization to request advisory opinions, while the draft agreement with UNESCO contained a more restrictive clause. No provision had been made for authorization in the draft agreement with FAO as that organization had taken exception to a clause which was more limited in scope than that contained in the draft agreement with ILO. The draft agreement proposed for ICAO also contained a clause similarly limited in scope.

196. The views set forth below were among those expressed 180/ by representatives who did not consider it necessary to grant a general authorization to the specialized agencies. (1) Caution should be exercised before allowing a request for an advisory opinion to be made to the Court and the United Nations should retain control of the specialized agencies in this respect. (2) The power to give authorizations provided for under Article 96 was a discretionary power; the General Assembly could exercise its competence but could not delegate its rights. (3) Since the specialized agencies were, under the terms of Articles 57 and 63, to be brought into relationship with the United Nations and, more particularly, with the Economic and Social Council, the authorization given to the Council should be sufficient. The specialized agencies would apply to the Economic and Social Council, which would grant them authorization to request advisory opinions.

197. Other representatives expressed 181/ the view that the same arguments which had led the Sixth Committee to recognize the right of the Economic and Social Council to request advisory opinions of the Court would decide the Committee to grant a general authorization on the same lines to the specialized agencies. It was added, however, that under the provisions of Article 96 (2), the General Assembly would remain master of the situation and could always revoke the authorization which it had given. A draft resolution 182/ was submitted under the terms of which a general authorization would be given to the specialized agencies, while the General Assembly would, at the same time, retain the right to revoke the authorization.

179/ G A (I/2), 6th Com., 27th mtg., p. 135.

180/ Ibid., Chile, p. 138; India, p. 136; Poland, p. 136; Saudi Arabia, p. 139; USSR, p. 137; Yugoslavia, p. 136.

181/ Ibid., Belgium, pp. 141 and 144; Dominican Republic, p. 147; France, p. 140; United Kingdom, p. 137; United States, p. 147.

182/ G A (I/2), 6th Com., p. 289, annex 19 a (A/C.6/109).

198. In support of the draft resolution it was explained 183/ that it was designed to interpret the draft agreements, and that there was no question of inserting special clauses in those texts under which the General Assembly would reserve the right to revoke the authorization.

199. The draft resolution referred to above was adopted by the Sixth Committee and was reported 184/ by the Chairman of the Sixth Committee to the Chairman of the Joint Second and Third Committee as follows:

"The Sixth Committee adopted, on 4 December 1946, the following resolution:

"The Committee is in favour of granting to the four specialized agencies the general authorization proposed by the Economic and Social Council, it being understood that the Assembly may at any time revoke this authorization.

"It was the understanding of the Committee that the adoption of the above resolution does not entail any change in the texts of the agreements."

200. By resolution 50 (I), the General Assembly approved the agreements with ILO, UNESCO, FAO and ICAO. 185/

3. *The question whether a prior request of the organ concerned is necessary*

201. At the second session of the General Assembly, in the course of the debate in the Sixth Committee on a draft resolution 186/ under the terms of which the Trusteeship Council would be authorized to request advisory opinions of the Court, a proposal submitted by the representative of the USSR to postpone the decision on that draft resolution "until the consent of the Trusteeship Council had been obtained" was rejected 187/ by the Committee by 37 votes to 6. The views expressed in this connexion were summarized in the relevant report of the Sixth Committee to the General Assembly as follows: 188/

"As regards the second resolution, authorizing the Trusteeship Council to request advisory opinions from the International Court of Justice on legal questions arising within the scope of the activities of the Trusteeship Council, the USSR delegation had no objection to the substance of the resolution but thought it desirable, before granting this right, to make sure that the Trusteeship Council had requested it. The Committee, however, was of the opinion that, the Trusteeship Council not being in session, the procedure suggested would involve a year's delay

183/ G A (I/2), 6th Com., 28th mtg., p. 145.

184/ G A (I/2), Joint 2nd and 3rd Com., p. 92, annex 2 e (A/C.2 and 3/35).

185/ See also G A resolutions 124 (II), concerning the agreements with the International Bank for Reconstruction and Development (the Bank), the International Monetary Fund (the Fund), the International Telecommunication Union (ITU) and the World Health Organization (WHO); 204 (III), concerning the agreement with the Inter-Governmental Maritime Consultative Organization (IMCO) (not yet established); 205 (III), concerning the agreement with the International Refugee Organization (IRO); and 531 (VI), concerning the agreement with the World Meteorological Organization (WMO).

186/ A/C.6/168/Rev.1.

187/ G A (II), 6th Com., 52nd mtg., p. 104.

188/ G A (II), Plen., vol. II, annex 18 (A/459), pp. 1561 and 1562.

and that moreover, as it was only a question of authorizing the Council, a prior request was not essential. The Sixth Committee adopted the resolution by 38 votes to 0, the USSR delegation asking merely that this procedure of authorizing requests for advisory opinions without having been asked to do so, should not constitute a precedent."

202. The above-mentioned draft resolution was adopted by the General Assembly and became resolution 171 B (II).

*4. The question of the organs which may be authorized
to request advisory opinions*

a. WHETHER AUTHORIZATION CAN BE GIVEN TO A SUBSIDIARY ORGAN

203. The question whether the General Assembly can authorize a subsidiary organ to request the advisory opinions of the Court arose in connexion with the discussion on the establishment of the Interim Committee of the General Assembly. The Interim Committee was first established by the General Assembly at its second session under the terms of resolution 111 (II) for the period between the close of the second session and the opening of the third session of the Assembly, and was instructed to report on the advisability of establishing a permanent committee to perform the duties of the Interim Committee.

204. During the discussion of this question in the Interim Committee, the representative of Belgium proposed 189/ that, should the Interim Committee reach the conclusion that the establishment of such a permanent committee was advisable, it should recommend to the General Assembly to include among the powers of this permanent committee the power to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities. In support of this proposal the sponsor, after referring to the United Nations organs and the specialized agencies authorized by the General Assembly to request advisory opinions of the Court, stated: 190/

"While the General Assembly has so liberally conferred upon agencies which have not the standing of organs of the United Nations, the power to request opinions of the Court, it would be difficult to understand that it should deny it to its Permanent Committee, a direct emanation of the Assembly. It would be all the less conceivable since the Permanent Committee would be established precisely to advise the Assembly, and to prepare its work. The very nature and importance of its functions require, indeed, that the Committee should be enabled efficiently to ensure its own enlightenment by recourse to the counsels of the highest international jurisdiction."

205. The proposal submitted by Belgium was adopted by the Interim Committee and incorporated in the draft resolution annexed to the report 191/ submitted by the Committee to the General Assembly.

206. At the first part of the third session of the General Assembly, the report of the Interim Committee was referred to the Ad Hoc Political Committee for consideration. In connexion with the consideration of that part of the draft resolution submitted by

189/ A/AC.18/44.

190/ A/AC.18/44/Add.1.

191/ A/606.

the Interim Committee under the terms of which the General Assembly would grant authorization to the Interim Committee to request advisory opinions of the Court, the views set forth below were among those expressed 192/ in opposition to the provision in question. (1) Since the Interim Committee was a subsidiary organ of the General Assembly, it was legitimate to wonder whether the General Assembly could delegate authority to the Interim Committee to request the advisory opinion of the Court under Article 96, which mentioned only "other organs ... and specialized agencies". (2) The terms of Article 96 implied that only principal organs and not subsidiary organs could be authorized to request advisory opinions; Article 96 (2) did not state that subsidiary organs were included amongst the "other organs". The arguments set forth below were among those advanced in support of the relevant provision. (1) The right to request advisory opinions could be conferred both upon principal and subsidiary organs. (2) Since the right to request advisory opinions had been granted to the Economic and Social Council, the Trusteeship Council and several specialized agencies, it would be illogical to refuse the same right to an organ which was a direct emanation of the General Assembly.

207. A proposal submitted by the representative of the Ukrainian SSR, under the terms of which the paragraph in question would have been deleted from the draft resolution, was rejected 193/ by a vote of 27 to 14, with 9 abstentions. Another proposal submitted by the representative of Brazil, under the terms of which the paragraph in question would have been referred to the Sixth Committee, 194/ was also rejected 195/ by a vote of 23 to 4, with 12 abstentions. For details of the authorization subsequently granted by the General Assembly in this case, see paragraph 216 below.

b. WHETHER AUTHORIZATION CAN BE GIVEN TO AN ORGAN ESTABLISHED UNDER
AN INTERNATIONAL AGREEMENT CONCLUDED UNDER THE AUSPICES OF THE
UNITED NATIONS

208. The above-mentioned question was raised in connexion with the consideration 196/ by the Human Rights Commission of the Economic and Social Council at its sixth session of the draft First International Covenant on Human Rights, under the terms of which provision would have been made for the establishment of a human rights committee. In the course of its consideration of the measures of implementation, the Commission adopted the following resolution: 197/

"The Commission on Human Rights

"Considers that it is desirable that the Human Rights Committee should be able to obtain from the International Court of Justice advisory opinions on questions of law arising in the course of its work; and

192/ G A (III/1), Ad Hoc Pol. Com., 5th mtg., pp. 46-50.

193/ Ibid., p. 50.

194/ In connexion with this proposal, the view was expressed that by approving the paragraph in question, protracted discussion of the legal rights of the Interim Committee before another Committee would be avoided, and at the same time it would be left open to the International Court of Justice, when the Interim Committee requested an advisory opinion, to determine beforehand the preliminary question whether, under the Charter and the Statute of the Court, the General Assembly could lawfully authorize the Interim Committee to request advisory opinions of the Court. (See ibid., pp. 50 and 51).

195/ Ibid., p. 51.

196/ E S C (XI), Suppl. No. 5 (E/1681), annex I.

197/ Ibid., para. 45.

"Requests the Secretary-General of the United Nations to report to the Economic and Social Council upon the means by which this can be secured in conformity with the Charter of the United Nations."

In his report 198/ on the means by which the proposed human rights committee might be able to obtain advisory opinions from the International Court of Justice, submitted to the Economic and Social Council at its eleventh session, the Secretary-General stated that the proposed Human Rights Committee could not be considered an organ of the United Nations or a specialized agency and therefore could not be authorized by the General Assembly to request advisory opinions under the provisions of Article 96 (2). Nor could it request advisory opinions of the Court through an organ of the United Nations acting solely as an intermediary, as one representative had proposed 199/ in the Commission on Human Rights. If it were to be authorized to do so, it would mean that a body which could not be authorized to request advisory opinions under the Charter was in fact given that authority since the organ designated to transmit the requests of the Human Rights Committee would only be performing a purely administrative or "ministerial" function. The Secretary-General pointed out, however, that it would be legally permissible to provide that the proposed human rights committee might make suggestions to a competent organ to the effect that the organ submit a request for an advisory opinion on a legal question arising out of the work of the committee. The organ in question would, in that case, retain responsibility as to whether the question should be presented as well as with respect to the manner of presenting it.

209. In the light of the opinion of the Secretary-General, the Commission on Human Rights, at its seventh session, adopted a proposal and inserted its text in the draft International Covenant on Human Rights as an additional article. 200/ The proposal read as follows:

"The Committee may recommend to the Economic and Social Council that the Council request the International Court of Justice to give an advisory opinion on any legal question connected with a matter of which the Committee is seized."

A similar provision was inserted in the draft Covenant on Civil and Political Rights as article 44. 201/

5. The scope of questions on which advisory opinions may be sought under the terms of Article 96 (2)

210. Article 96 (2) provides that organs of the United Nations other than the General Assembly and the Security Council may be authorized by the General Assembly to request advisory opinions of the Court "on legal questions arising within the scope of their activities". By resolution 171 A (II), entitled "Need for greater use by the United Nations and its organs of the International Court of Justice", the General Assembly recommended that the organs of the United Nations and the specialized agencies, if duly authorized in accordance with Article 96, should refer to the Court for an advisory opinion points of law within the jurisdiction of the Court "which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled, including points of law relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies". The proceedings in connexion with the adoption of this resolution have been dealt with in paragraphs 77-82 above.

198/ E/1732.

199/ E/CN.4/487.

200/ E S C (XIII), Suppl. No. 9 (E/1992), para. 87.

201/ E S C (XVIII), Suppl. No. 7 (E/2573), p. 71.

a. THE ECONOMIC AND SOCIAL COUNCIL

211. By resolution 15 (III), the Economic and Social Council recommended that the General Assembly, in accordance with Article 96 (2), authorize the Council to request an advisory opinion of the International Court of Justice on any legal question arising within the scope of its activities.

212. Under the terms of resolution 89 (I), the General Assembly authorized the Economic and Social Council to request advisory opinions of the Court "on legal questions arising within the scope of the ... activities of the Council". The preamble of the resolution, which reproduced the reasons advanced by the Council in its request for authorization, stated that the Economic and Social Council had "wide responsibilities in diverse fields of economic and social co-operation in the fulfilment of which it may need to request advisory opinions of the International Court of Justice"; that "by virtue of the terms of Article 63 of the Charter the function of co-ordinating the activities of specialized agencies brought into relationship with the United Nations had been conferred upon the Council"; and that to enable the Council to adequately discharge its co-ordinating responsibility "it should be authorized to request advisory opinions on all legal questions within its scope, including legal questions concerning mutual relationships of the United Nations and the specialized agencies".

b. THE TRUSTEESHIP COUNCIL

213. Under the terms of resolution 171 B (II), 202/ the General Assembly, in view of the provisions of Article 96 (2) and considering that the Trusteeship Council was one of the principal organs of the United Nations, with functions and powers conferred upon it by Chapters XII and XIII of the Charter, authorized the Trusteeship Council to request advisory opinions of the Court "on legal questions arising within the scope of the activities of the Council".

c. THE SPECIALIZED AGENCIES

214. All of the specialized agencies, with the exception of the Universal Postal Union (UPU), have been authorized to request advisory opinions of the Court. Provisions to this effect were included in the draft agreements bringing these agencies into relationship with the United Nations in accordance with Articles 57 and 63, and the authorization to request advisory opinions was effected by the adoption by the General Assembly of the resolutions approving these draft agreements. 203/

215. In all cases, the specialized agencies were authorized to request advisory opinions on legal questions arising within the scope of their activities (in the case of the agreements with the World Health Organization (WHO), the International

202/ This resolution was adopted following the consideration by the General Assembly of the agenda item entitled "Need for greater use by the United Nations and its organs of the International Court of Justice in connexion not only with disputes of a legal character, but also with legal aspects of disputes and situations".

203/ See G A resolutions 50 (I), concerning the agreements with ILO, UNESCO, FAO and ICAO; 124 (II), concerning the agreements with the Bank, the Fund, ITU and WHO; 204 (III), concerning the agreement with IMCO; 205 (III), concerning the agreement with IRO, and 531 (VI), concerning the agreement with WMO.

Telecommunication Union (ITU), and the World Meteorological Organization (WMO), the words "within the scope of its competence" are used), other than questions concerning the mutual relationships of the agencies and the United Nations or other specialized agencies. It was further provided that when requesting the International Court of Justice to give advisory opinions, the agencies should inform the Economic and Social Council of the request. ^{204/}

d. THE INTERIM COMMITTEE OF THE GENERAL ASSEMBLY

216. By resolution 196 (III), the General Assembly authorized the Interim Committee, "as a subsidiary organ [^{205/}] of the General Assembly established in accordance with Article 22 of the Charter", to request advisory opinions of the Court "on legal questions arising within the scope of the Committee's activities". The same provision was contained in resolution 295 (IV), by which the General Assembly established the Interim Committee on a continuing basis.

^{204/} The relevant provision is contained in the agreements between the United Nations and the specialized agencies (United Nations Publications, Sales No.: 1951.X.1) as follows: article VII of the agreements with ITU and WMO; article VIII of the agreements with the Bank and the Fund; article IX of the agreements with ILO and FAO, and of the draft agreement with IMCO; article X of the agreements with ICAO, WHO and IRO; and article XI of the agreement with UNESCO.

^{205/} For the question whether a subsidiary organ can be authorized to request advisory opinions, see paras. 191-200 above.

Chapter XV

THE SECRETARIAT

