

ARTICLE 94

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TEXT OF ARTICLE 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

INTRODUCTORY NOTE

1. Article 94 (1) is connected with Article 59 of the Statute of the International Court of Justice, which provides that "The decision of the Court has no binding force except between the parties and in respect of that particular case.", and Article 60 of the Statute, which provides, in part, that "The judgment is final and without appeal."
2. Article 94 (2) has been related by the Committee of Experts of the Security Council to the provisions of Articles 25 and 103 of the Charter. There is nothing in the practice of the Security Council to show whether Article 94 (2) can, in itself, furnish a basis for action by the Security Council, or whether Chapter VI or Chapter VII would have to be invoked at the same time in order that the Council might act. In the only case before the Security Council in which Article 94 (2) was relied on, Articles 34 and 35 were also invoked.

I. GENERAL SURVEY

3. The scope of the obligations of a Member of the United Nations under Article 94 has been considered in the Security Council in connexion with the laying down, in accordance with the terms of Article 35 (2) of the Statute of the Court, of the conditions under which the Court shall be open to States not parties to the Statute, and in connexion with the determination of the conditions, under the terms of Article 93 (2) of the Charter, by which Switzerland might become a party to the Statute.
4. Article 94 (2) has been invoked before the Security Council in one instance, in which the United Kingdom asked the Council to call upon Iran to act in conformity with provisional measures of protection indicated by the Court in the Anglo-Iranian Oil Company case.

5. The terms of Article 94 (2) have also been cited in two dissenting opinions 1/ by judges of the International Court of Justice to show the distinction between a "recommendation" and a "decision" of the Security Council.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Acceptance of the obligations of a Member of the United Nations under Article 94 in connexion with conditions of accession to the Statute of the Court by non-members or of access to the Court by States not parties to the Statute

6. Reference to the acceptance of the obligations of a Member of the United Nations under Article 94 has been made in connexion with the laying down by the Security Council of the conditions under which a non-member State might become a party to the Statute of the Court and of the conditions under which the Court shall be open to States not parties to the Statute.

7. Under the terms of Article 35 (2) of the Statute of the International Court of Justice, the Security Council shall lay down the conditions under which the Court shall be open to States not parties to the Statute. The question was considered by the Committee of Experts of the Security Council. Among the conditions proposed by the Committee in its report 2/ and subsequently adopted 3/ by the Council was the following provision:

"The International Court of Justice shall be open to a State which is not a party to the Statute of the International Court of Justice, upon the following conditions, namely: that such State shall previously have deposited with the Registrar of the Court, a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and rules of the Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter."

1/ (a) In the Corfu Channel case, Judge ad hoc Daxner, in his dissenting opinion, stated that

"The meaning thus attached to the word 'recommendation' does not permit it to be regarded as an obligatory decision. Moreover, the Covenant [of the League of Nations] distinguished between a 'decision' (Article 5 of the Covenant) and a 'recommendation' (see, for instance, Article 15), and the Charter of the United Nations also makes a distinction (see ... Article 94, paragraph 2, of the Charter.). (Corfu Channel case, I C J, Reports 1948, p. 34.)

(b) In the Competence of the General Assembly for the admission of a State to the United Nations case, Judge Azevedo, in his dissenting opinion, stated that

"It is therefore impossible to confuse the two species, but if, setting aside all logical rigour, 'decisions' were raised to the rank of a genus, the specific character of 'recommendations' would be that they do not carry the same degree of compulsion as laid down in various provisions of the Charter. The two words have even been used one beside the other, in order to indicate a difference in the strength of the action of the Security Council (Arts. ... 94)." (Competence of Assembly regarding admission to the United Nations, I C J, Reports 1950, p. 28.)

2/ S C, 1st yr., 2nd Series, Suppl. No. 6, annex 11 (S/169).

3/ S C, 1st yr., 2nd Series, No. 19, 76th mtg., pp. 467 and 468.

8. In submitting the draft text of the above-quoted provision, the Committee of Experts of the Security Council stated ^{4/} that it had followed the text of a resolution adopted by the Council of the League of Nations, making only such changes as were necessary. The Committee explained the changes in question as follows:

"Thus, the last sentence of the first paragraph of that resolution [adopted by the Council of the League of Nations^{7/}, providing that the Court is open to any non-member State of the League of Nations or not mentioned in the Annex to the Covenant, on condition that 'such State shall not resort to war against a State complying with the decisions' (of the Court), has been omitted, because that condition was based upon a provision of the Covenant which underlies the Charter as a principle and for that reason does not appear in the corresponding section of that document. Another provision, which requires a State not party to the Statute to accept all the obligations imposed upon a Member of the United Nations by Article 94 of the Charter, has been substituted for the former condition."

9. Moreover, under the terms of Article 93 (2) of the Charter, the General Assembly, upon the recommendation of the Security Council, is to determine in each case the conditions on which a State which is not a Member of the United Nations may become a party to the Statute of the Court. Such conditions, substantially identical, were determined ^{5/} in four cases, relating to Switzerland, Liechtenstein, Japan and San Marino. Under the conditions mentioned above, each of the States in question was required to deposit with the Secretary-General an instrument containing

"(b) acceptance of all the obligations of a Member of the United Nations under Article 94 of the Charter."

10. The inclusion of this provision in the conditions, together with that quoted in paragraph 7 above relating to access to the Court by States not parties to the Statute, was explained as follows in the report and recommendation ^{6/} of the Committee of Experts of the Security Council concerning the conditions under which Switzerland might become a party to the Statute of the Court:

"The Committee desires to state that its intention in inserting the second suggested condition [acceptance of the obligations of a Member of the United Nations under Article 94^{7/}] is the same as that which caused it to recommend the identical wording appearing in paragraph 1 of the resolution adopted by the Security Council on 15 October 1946 setting the conditions under which the Court shall be open to States not parties to the Statute. The obligations imposed by Article 94 upon a Member of the United Nations should, in the opinion of the Committee, apply equally to non-members of the United Nations which become parties to the Statute and to non-parties which are allowed access to the Court. In the opinion of the Committee, the obligations of a Member of the United Nations under Article 94 include the complementary obligations arising under Articles 25 and 103 of the Charter in so far as the provisions of those Articles may relate to the provisions of Article 94, and non-members of the United Nations which become parties to the Statute (and non-parties which have access to the Court) become bound by these complementary obligations under Articles 25 and 103 in relation to the provisions of Article 94 (but not otherwise), when they accept 'all the obligations of a Member of the United Nations under Article 94'."

^{4/} S C, 1st yr., 2nd Series, Suppl. No. 6, annex 11 (S/169), p. 154.

^{5/} G A resolutions 91 (I), 363 (IV), 805 (VIII) and 806 (VII).

^{6/} S C, 1st yr., 2nd Series, Suppl. No. 8, annex 13 (S/191), para. 4; see also G A resolution 91 (I), annex.

11. The report and recommendation of the Committee of Experts was considered and adopted 7/ by the Security Council, and was subsequently annexed to General Assembly resolution 91 (I), entitled "Conditions in which Switzerland may become a Party to the International Court of Justice".

B. Invocation of Article 94 in connexion with the consideration of the Anglo-Iranian Oil Company question by the Security Council

1. *The question whether the Security Council should take action to give effect to provisional measures indicated by the Court under Article 41 of the Statute*

12. On 5 July 1951, the International Court of Justice, at the request of the United Kingdom, issued an order 8/ indicating interim measures of protection in the Anglo-Iranian Oil Company case. In accordance with the terms of Article 41 (2) of the Statute of the Court, notice of the measures suggested was given to the parties and to the Security Council. 9/ By a letter dated 28 September 1951, 10/ the United Kingdom requested the Security Council to consider, as a matter of extreme urgency, the item "Complaint of failure by the Iranian Government to comply with provisional measures indicated by the International Court of Justice in the Anglo-Iranian Oil Company case". The letter stated that, although the United Kingdom had proclaimed its full acceptance of the findings of the Court, Iran had rejected them and had ordered the expulsion of all the remaining staff of the Company in Iran, the expulsion order to take effect by 4 October 1951. Accompanying the letter was a draft resolution 11/ submitted for adoption by the Council, worded as follows:

"Whereas the International Court of Justice acting under Article 41, paragraph 2, of its Statute notified the Security Council of the provisional measures (the text of which is annexed hereto) indicated by the Court on 5 July 1951 at the request of the Government of the United Kingdom in the Anglo-Iranian Oil Company case, and

"Whereas the United Kingdom's request to the Court for the indication of provisional measures was based on the contention that the actions of the Iranian authorities threatened to bring the whole process of oil production and refining to a standstill in circumstances calculated to cause irreparable damage to the oil producing and refinery installations and seriously to endanger life and property and cause distress to the areas concerned, and the findings of the Court constituted an implicit recognition of the accuracy of this contention, and

"Whereas the United Kingdom Government at once publicly proclaimed its full acceptance of the Court's findings and so informed the Government of Iran but the Government of Iran rejected these findings and has persisted in the course of action (including interference in the Company's operations) which led the United Kingdom Government to apply to the Court for interim measures, and

"Whereas the Government of Iran has now ordered the expulsion of all the remaining staff of the Company in Iran and this action is clearly contrary to the provisional measures indicated by the Court,

7/ S C, 1st yr., 2nd Series, No. 22, 80th mtg., p. 502.

8/ Anglo-Iranian Oil Co. Case, I C J, Reports 1951, p. 89.

9/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., p. 1, S/2239.

10/ Ibid., pp. 1 and 2, S/2357.

11/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., pp. 2 and 3, S/2358.

"The Security Council,

"Concerned at the dangers inherent in this situation and at the threat to peace and security that may thereby be involved,

"1. Calls upon the Government of Iran to act in all respects in conformity with the provisional measures indicated by the Court and in particular to permit the continued residence at Abadan of the staff affected by the recent expulsion orders or the equivalent of such staff;

"2. Requests the Government of Iran to inform the Security Council of the steps taken by it to carry out the present resolution."

13. In the course of the debate on the adoption of the provisional agenda comprising the above-mentioned item, the representative of the United Kingdom, in arguing that the Security Council was competent to consider the question, stated ^{12/} that the formal basis of the reference to the Security Council was the right under Article 35 to appeal to the Council in regard to any matter of the nature referred to in Article 34. But in addition to those considerations, the Council had special functions in relation to the decision of the Court, both under Article 94 (2) of the Charter and under Article 41 (2) of the Statute. Under the latter provision, the Court had already notified the Council of the interim measures it had indicated; that action by the Court must imply that the Council had the power to deal with matters arising out of such interim measures. It might be argued, the representative of the United Kingdom continued, that Article 94 (2) applied only to final judgements of the Court and not to decisions on interim measures. However, a final judgement of the Court was binding on the parties under the terms of Article 94 (1) of the Charter and Articles 59 and 60 of the Statute, and there would be no point in making the final judgement binding if one of the parties could frustrate that decision in advance by actions which would render the final judgement nugatory. It was a necessary consequence of the binding force of the final decision that the interim measures intended to preserve its efficacy should equally be binding. Moreover, although in rendering its order in the case, the Court had reserved the ultimate question of its jurisdiction for consideration with the merits of the case, it had held that it had, in the circumstances, jurisdiction to decree interim measures, and that a decree of interim measures was necessary to preserve the rights of the parties. Although the ultimate issue of jurisdiction was still open, Iran was not justified in ignoring the interim measures indicated. It was for the Court to decide whether it had jurisdiction or not, and any such decision was binding upon all Members of the United Nations. In any event, whether or not the interim measures were binding, they were an expression of opinion by the highest international judicial tribunal of what was considered to be necessary to preserve the rights of the parties pending a final decision. There was, therefore, a very strong moral obligation on every Member of the United Nations to conform thereto, for to act in conformity with the decisions of the Court was to act in conformity with the Purposes and Principles of the United Nations. Iran, by not having done so, had created a situation which might constitute a potential threat to peace and security.

14. One other representative also invoked ^{13/} Article 94 in support of the competence of the Security Council. Others, however, either supported the competence of the Council on other grounds or favoured the adoption of the agenda item while reserving

^{12/} S C, 6th yr., 559th mtg., paras. 19, 20 and 93-99.

^{13/} Ibid., para. 25.

their position on the question of competence. Two representatives believed 14/ that the matter in question was essentially within the domestic jurisdiction of Iran and that, therefore, the question was outside the competence of the Security Council by virtue of Article 2 (7); one of them added that the fact that the Council was being requested to call for compliance with provisional measures indicated by the Court did not affect the aspect of the question relating to the matter of domestic jurisdiction.

15. Against the draft resolution, the representative of Iran argued 15/ that, by reason of Articles 1 (2) and 2 (7), neither the Security Council nor the International Court of Justice was competent in the case; the indication by the Court of interim measures of protection was invalid. In any event, the indication was neither a decision nor a judgement, so that, even if it were valid, it would not be binding. Article 94 meant that, before a party to a case was obligated to comply with a decision of the Court, that decision must be both final and binding. Article 41 of the Statute, which gave the Court the power to indicate provisional measures, stated that such measures were to be suggested "pending the final decision", and thus they were not final; moreover the language of that provision was hortatory and not obligatory. It was only in respect of final decisions - and then only in cases to which they were parties - that Members of the United Nations had given undertakings of compliance by virtue of Article 94 (2). The argument, put forward by the United Kingdom, that there would be no point in making a final decision binding if a party could frustrate the decision in advance was, in the view of Iran, an argument *de lege ferenda*, rather than one based on existing law. Provisional measures indicated by the Court would have binding force only if the parties were bound by a treaty provision expressly obligating them to respect such measures. The notification of the Court to the Security Council under Article 41 (2) was not an argument in support of the competence of the Council. The purpose of the provision was simply to further the co-operation which was required of all organs of the United Nations; situations might be conceived in which it might be of interest or importance to the Council in the exercise of its own authority under the Charter - for it had none under the Statute - to be informed of provisional measures indicated by the Court. Later in the debate, Iran declared that, as the Security Council was not competent, it would oppose any draft resolution on the matter. 16/

16. After the evacuation of the staff of the Anglo-Iranian Oil Company from Abadan had taken place, the United Kingdom submitted a revised draft resolution, 17/ worded as follows:

"Whereas a dispute has arisen between the Government of the United Kingdom and the Government of Iran regarding the oil installations in Iran, the continuance of which dispute is likely to threaten the maintenance of international peace and security, and

"Whereas the efforts to compose the differences between the United Kingdom Government and the Government of Iran regarding the installations have not succeeded, and

"Whereas the Government of the United Kingdom requested the International Court of Justice for an indication of provisional measures, and

14/ Ibid., paras. 2-4, 9-12 and 46-50.

15/ S C, 6th yr., 560th mtg., paras. 28-39 and 43-67.

16/ S C, 6th yr., 561st mtg., para. 89.

17/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., pp. 3 and 4, S/2358/Rev.1; S C, 6th yr., 560th mtg., paras. 1-5.

"Whereas the International Court of Justice, acting under Article 41, Paragraph 2 of its Statute, notified the Security Council of the provisional measures indicated by the Court on 5 July 1951, pending its final decision as to whether it had jurisdiction in the proceedings instituted on 26 May 1951, by the United Kingdom Government against the Government of Iran, and

"Whereas the United Kingdom Government accepted the indication of the provisional measures and the Government of Iran declined to accept such provisional measures,

"The Security Council,

"Concerned at the dangers inherent in the dispute regarding the oil installations in Iran and the threat to international peace and security which may thereby be involved,

"Noting the action taken by the International Court of Justice on 5 July 1951, under Article 41, paragraph 2 of its Statute,

"Conscious of the importance, in the interest of maintaining international peace and security, of upholding the authority of the International Court of Justice,

"Calls for:

"1. The resumption of negotiations at the earliest practicable moment in order to make further efforts to resolve the differences between the parties in accordance with the principles of the provisional measures indicated by the International Court of Justice unless mutually agreeable arrangements are made consistent with the Purposes and Principles of the United Nations Charter;

"2. The avoidance of any action which would have the effect of further aggravating the situation or prejudicing the rights, claims or positions of the parties concerned."

17. The representatives of India and Yugoslavia submitted an amendment 18/ to the revised draft resolution offered by the United Kingdom under the terms of which the paragraphs in the preamble beginning with the words "Noting the action" and "Conscious of the importance" would have been deleted. The words "the principles of the provisional measures indicated by the International Court of Justice unless mutually agreeable arrangements are made consistent with" in operative paragraph 1 and the words "rights, claims or" in operative paragraph 2 would also have been deleted. The representative of India explained 19/ that, since the aim of the Council was the resumption of negotiations, an effort should be made to make the draft resolution acceptable to both parties; moreover, three of the five measures indicated by the Court were no longer capable of being easily implemented. The question of jurisdiction had not finally been decided by the Court, and it would not be wise or proper for the Security Council to pronounce on that question when it was sub judice. Since it was proposed to leave out all references to the provisional measures in the operative part of the draft resolution, there was no point in retaining in the preamble any paragraph explaining the need for upholding them.

18/ S C, 6th yr., 561st mtg., para. 68.

19/ Ibid., paras. 69-76.

18. The representative of Yugoslavia believed 20/ that the Security Council was incompetent in the matter by virtue of Article 2 (7), and should therefore not go into the merits of the case. At most, it should limit itself to promoting a settlement by the parties themselves, while refraining scrupulously from imposing a basis for the negotiations.

19. The representative of China, who agreed with the proposal to delete the two paragraphs of the preamble mentioned in the amendment submitted by India and Yugoslavia, wished 21/ also to make a consequential deletion of the preambular paragraph referring to the request made by the Government of the United Kingdom for an indication of provisional measures. He expressed his inability to support the draft resolution submitted by the United Kingdom and the proposed amendments if the references to the dispute as being likely to threaten the maintenance of international peace and security, contained in various paragraphs, were not deleted.

20. The United Kingdom accepted the amendment offered by India and Yugoslavia, and accordingly submitted a second revised draft resolution. 22/ The second revised draft retained the preambular statement to the effect that the United Kingdom had requested the indication of provisional measures, that the Court had notified the Security Council of the measures indicated and that the Government of the United Kingdom had accepted, and the Government of Iran had declined, to accept such provisional measures.

21. The representative of Ecuador then submitted a draft resolution 23/ which read as follows:

"Considering the request submitted and the statements made by the United Kingdom Government, and the statements made by the Government of Iran, in connexion with the oil installations in Iran, and the background of the dispute and the facts relating thereto,

"Considering that the International Court of Justice is to express its opinion on the question whether the dispute falls exclusively within the domestic jurisdiction of Iran,

"The Security Council,

"Without deciding on the question of its own competence,

"Advises the parties concerned to reopen negotiations as soon as possible with a view to making a fresh attempt to settle their differences in accordance with the Purposes and Principles of the United Nations Charter."

22. Explaining 24/ his inability to support the second revised draft resolution submitted by the United Kingdom, and the reasons for which he had offered his own proposal, the representative of Ecuador remarked that the wording of Article 94 implied that the power of the Council came into being only when the International Court of Justice gave a final judgement, and not when it merely indicated provisional measures, even though, according to the Court, these were intended to ensure that effect should

20/ Ibid., paras. 79-86.

21/ Ibid., paras. 90-102.

22/ S C, 6th yr., 562nd mtg., paras. 10 and 11; S C, 6th yr., Suppl. for Oct., Nov. and Dec., pp. 4 and 5, S/2358/Rev.2.

23/ S C, 6th yr., 562nd mtg., para. 48, S/2380.

24/ Ibid., paras. 38-44.

be given to a subsequent final judgement. Consequently, the failure of a State to observe provisional measures indicated by the Court did not empower the Security Council to make recommendations under the terms of Article 94 (2). His Government was, however, prepared to vote in favour of a decision by the Council to refer this question to the Court itself. It could not support the draft resolution submitted by the United Kingdom, because it appeared to admit by implication that the Council, notwithstanding the fact that the International Court of Justice had merely ordered provisional measures, had power to make a recommendation under the terms of Article 94 (2).

23. Another representative regretted 25/ such deletions of the references to the provisional measures indicated by the Court as had been made in the revised draft resolution submitted by the United Kingdom. He stressed the importance of upholding the authority and influence of the Court.

24. The Security Council finally decided, 26/ by 8 votes to 1, with 2 abstentions, to adjourn its debate until the International Court of Justice had ruled on its own competence in the matter.

*2. The question of the relation of the competence of
the International Court of Justice to the competence
of the Security Council*

25. At the 559th meeting, during the discussion concerning the competence of the Council in connexion with the adoption of the provisional agenda relating to the complaint by the United Kingdom in the Anglo-Iranian Oil Company question, the representative of the United Kingdom maintained that the Court, in its finding on interim measures, had indicated that it considered that the case was, at least prima facie, internationally justiciable and not, therefore, a mere matter of domestic jurisdiction. He was of the opinion that this decision of the Court regarding its jurisdiction was binding upon all Members. Another representative stated that, because the question was the subject of litigation in the International Court of Justice, it was within the purview of the Security Council, which thus had a reason for not accepting the objection that the matter was essentially within the domestic jurisdiction of Iran.

26. On the other hand, a representative expressed the view that it was for the Council itself to decide the question of jurisdiction in accordance with the generally accepted legal precept that interpretation was co-extensive with application. The Council was, therefore, not bound by decisions which another organ of the United Nations had taken with regard to the question of competence.

27. Other representatives who voted for inclusion of the item in the agenda made it clear that they did so without prejudice to the ultimate determination of the competence of the Council.

28. At a subsequent stage of the discussion, several representatives observed that, as the Court had not finally ruled on its own competence, it would be inadvisable for the Council to take a decision concerning its jurisdiction.

29. At the 565th meeting, the representative of France proposed that the Security Council adjourn its debate until the International Court of Justice had ruled on its own competence in the matter. In this connexion, the representative of the

25/ S C, 6th yr., 563rd mtg., paras. 135 and 136.

26/ S C, 6th yr., 565th mtg., para. 62.

United Kingdom stated that any doubts of a legal character concerning the competence of the Council would be set at rest if the Court should decide that it was competent to deal with the matter and should hand down a judgement. At that moment there could be no legal doubts left as to the competence of the Council. The representative of Ecuador expressed the view that, if the Court declared itself competent and gave a final judgement, then, if either Iran or the United Kingdom refused to comply with the judgement, the other State would clearly be entitled to appeal to the Security Council in accordance with the terms of Article 94 (2). If, on the other hand, the Court decided that it was not competent because the case fell within the domestic jurisdiction of Iran, the Security Council should not then intervene in a legal matter. To do so would impair the authority of the highest judicial organ of the United Nations.

30. The views set forth above were not shared by all the members of the Council. One representative stated that the competence of the Court and that of the Council were not identical. Should the Court decide that it was not competent, that would not automatically mean that the Security Council was also not competent. On the other hand, should the Court decide that it was competent, that would not automatically mean that the Security Council was competent. In explaining his vote on the proposal submitted by France, another representative stated that he had abstained because he felt that the proposal implied that the question of competence of the Security Council depended, at least to a certain degree, on the decision of another United Nations body, an opinion which he did not share. 27/

27/ For texts of relevant statements, see S C, 6th yr., 559th mtg.: Netherlands, p. 5; United Kingdom, p. 4; United States, p. 6; Yugoslavia, p. 3; 560th mtg.: Iran, pp. 3, 9 and 12; 562nd mtg.: Ecuador, pp. 5 and 6; 563rd mtg.: President (Brazil), p. 40; Netherlands, p. 32; 565th mtg.: China, p. 5; Ecuador, p. 5; France, pp. 2 and 3; India, pp. 9 and 10; United Kingdom, pp. 6 and 7; Yugoslavia, p. 13.