



UvA-DARE (Digital Academic Repository)

Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, [1980] ICJ Rep 73

Brölmann, C.

DOI

[10.1093/law/9780198743620.001.0001](https://doi.org/10.1093/law/9780198743620.001.0001)

Publication date

2016

Document Version

Final published version

Published in

Judicial Decisions on the Law of International Organizations

License

Article 25fa Dutch Copyright Act (<https://www.openaccess.nl/en/policies/open-access-in-dutch-copyright-law-taverne-amendment>)

[Link to publication](#)

Citation for published version (APA):

Brölmann, C. (2016). *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, [1980] ICJ Rep 73. In C. Ryngaert, I. F. Dekker, R. A. Wessel, & J. Wouters (Eds.), *Judicial Decisions on the Law of International Organizations* (pp. 245-254). Oxford University Press. <https://doi.org/10.1093/law/9780198743620.001.0001>

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

UvA-DARE is a service provided by the library of the University of Amsterdam (<https://dare.uva.nl>)

Username

Password

[Login](#)

[Forgotten your password?](#)

[Login with your Library Card »](#)

[Login with Athens/Access Management Federation »](#)

[Don't have an account?](#)

Oxford Law Citator

Contents

[Expand All \[+\]](#) | [Collapse All \[-\]](#)

[\[+\] Preliminary Material](#)

[\[-\] Main Text](#)

General Introduction

[\[+\] 1 Legal Status \(Personality\)](#)

[\[+\] 2 Legal Powers](#)

[\[+\] 3 Institutional Structure and the Position of Members](#)

[\[+\] 4 Legal Acts](#)

[\[-\] 5 Obligations of International Organizations](#)

Preliminary Material

[\[+\] 5.1 Case 21-24/72, International Fruit Company v Produktschap voor Siergewassen, Court of Justice of the EC, \[1972\] ECR 1219](#)

[\[-\] 5.2 Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, \[1980\] ICJ Rep 73](#)

Relevance of the case

I The facts of the case

II The legal question

III Excerpts

IV Commentary

[\[+\] 5.3 Case No. IT-95-9-PT, Decision on the Motion for a Judicial Assistance to be Provided by SFOR and Others, Trial Chamber of the International Criminal Tribunal for the former Yugoslavia, 18 October 2000](#)

[\[+\] 6 Responsibility](#)

[\[+\] 7 Immunity](#)

[\[+\] Further Material](#)

[Sign up for alerts](#)

5 Obligations of International Organizations, 5.2 Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, [1980] ICJ Rep 73

Catherine Brölmann

From: [Judicial Decisions on the Law of International Organizations](#)

Edited By: Cedric Ryngaert, Ige F Dekker, Ramses A Wessel, Jan Wouters

Content type: Book content

Published in print: 01 March 2016

Product: Oxford Scholarly Authorities on International Law

[OSAIL]

ISBN: 9780198743620

Subject(s):

International Court of Justice (ICJ) — International organizations, membership — International organizations, practice and procedure — Responsibility of international organizations — World Trade Organization (WTO)

(p. 245) 5.2 Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, [1980] ICJ Rep 73

Relevance of the case

This opinion constitutes a point of reference when it comes to enunciating the sources of obligations binding upon international organizations. It is also authoritative as it elaborates on the general legal obligations governing the relation between an organization and its host state. Incidentally, the Court makes an articulate pronouncement on the possible political aspects of a question put before it.

I. The facts of the case

In 1949 the *Alexandria Sanitary Bureau* (dating from the nineteenth century) was integrated in the World Health Organization (WHO) as a 'regional organ' (ex art. 44 WHO Constitution). The *Eastern Mediterranean Regional Office* (EMRO) thus commenced operations on 1 July 1949, while in 1951 the WHO and Egypt concluded a host agreement further specifying privileges, immunities, and facilities of the organization ('the 1951 Agreement'). Following the 1978 Camp David Accord, agreed to by Egypt, Israel, and the United States, a number of Arab states severed diplomatic relations with Egypt and lobbied for the Regional Office to be transferred to Amman, Jordan, as soon as possible.¹ Different draft resolutions submitted to the World Health Assembly, reflecting contradicting views on a possible move of the Regional Office out of Egypt, and on the relevance of the 1951 Agreement for such a move, led the Health Assembly by Resolution of 20 May 1980 to submit to the International Court of Justice ('the Court') for its advisory opinion the following questions:

1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt?
2. If so, what would be the legal responsibilities of both the World Health Organization and Egypt, with regard to the Regional Office in Alexandria, during the two-year period between notice and termination of the Agreement?

Section 37 of the 1951 Agreement reads:

The present Agreement may be revised at the request of either party. In this event the two parties shall consult each other concerning the modifications to be made in its provisions. If the negotiations do not result in an understanding within one year, the present Agreement may be denounced by either party giving two years' notice.

(p. 246) II. The legal question

The question(s) put to the Court were formulated in technical and rather narrow terms, linked to a specific provision in the 1951 Agreement. The Court, however, undertook to examine which legal principles and rules more generally were applicable to the question of a possible transfer of the WHO Regional Office from Egypt, and which rules and principles were part of the general legal relationship between the WHO and Egypt.

III. Excerpts

33. In the debates in the World Health Assembly [...], on the proposal to request the present opinion from the Court, opponents of the proposal insisted that it was nothing but a political manoeuvre designed to postpone any decision concerning removal of the Regional Office from Egypt, and the question therefore arises whether the Court ought to decline to reply to the present request by reason of its allegedly political character. [...] [J]urisprudence establishes that if, as in the present case, a question submitted in a request is one that otherwise falls within the normal exercise of its judicial process, the Court has not to deal with the motives which may have inspired the request. [...] Indeed, in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate, especially when these may include the interpretation of its constitution.

[...]

35. [...] The Court points out that, if it is to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction, it must ascertain what are the legal questions really in issue in questions formulated in a request [...]

36. The Court will therefore now proceed to consider its replies to the questions formulated in the request on the basis that the true legal question submitted to the Court is: What are the legal principles and rules applicable to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected? [...]

37. The Court thinks it necessary to underline at the outset that the question before it is not whether, in general, an organization has the right to select the location of the seat of its headquarters or of a regional office. On that question there has been no difference of view in the present case, and there can be no doubt that an international organization does have such a right. The question before the Court is the different one of whether, in the present case, the Organization's power to exercise that right is or is not regulated by reason of the existence of obligations vis-a-vis Egypt. The Court notes that in the World Health Assembly and in some of the written and oral statements before the Court there seems to have been a disposition to regard international organizations as possessing some form of absolute power to determine and, if need be, change the location of the sites of their headquarters and regional offices. But States for their part possess a sovereign power of decision with respect to their acceptance of the headquarters or a regional office of an organization within their territories; and an organization's power of decision is no more absolute in this respect (p. 247) than is that of a State. As was pointed out by the Court in one of its early Advisory Opinions, there is nothing in the character of international organizations to justify their being considered as some form of 'super-State' [...]. International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties. Accordingly, it provides no answer to the questions submitted to the Court simply to refer to the right of an international organization to determine the location of the seat of its regional offices. [...]

[...]

42. [...] Whatever view may be held on the question whether the establishment and location of the Regional Office in Alexandria are embraced within the provisions of the 1951 Agreement, and whatever view may be held on the question whether the provisions of Section 37 are applicable to the case of a transfer of the Office from Egypt, the fact remains that certain legal principles and rules are applicable in the case of such a transfer. These legal principles and rules the Court must, therefore, now examine.

43. [...] The very fact of Egypt's membership of the Organization entails certain mutual obligations of co-operation and good faith incumbent upon Egypt and upon the Organization. Egypt offered to become host to the Regional Office in Alexandria and the Organization accepted that offer; Egypt agreed to provide the privileges, immunities and facilities necessary for the independence and effectiveness of the Office. As a result the legal relationship between Egypt and the Organization became, and now is, that of a host State and an international organization, the very essence of which is a body of mutual obligations of co-operation and good faith. [...] This special legal regime of mutual rights and obligations has been in force between Egypt and WHO for over thirty years. The result is that there now exists in Alexandria a substantial WHO institution employing a large staff and discharging health functions important both to the Organization and to Egypt itself. In consequence, any transfer of the WHO Regional Office from the territory of Egypt necessarily raises practical problems of some importance. These problems are, of course, the concern of the Organization and of Egypt rather than of the

Court. But they also concern the Court to the extent that they may have a bearing on the legal conditions under which a transfer of the Regional Office from Egypt may be effected.

44. [...] It is also apparent that a reasonable period of time would be required to effect an orderly transfer of the operation of the Office from Alexandria to the new site without disruption to the work. Precisely what period of time would be required is a matter which can only be finally determined by consultation and negotiation between WHO and Egypt [...]

[...]

46. [...] [D]espite their variety and imperfections, the provisions of host agreements regarding their revision, termination or denunciation are not without significance in the present connection. In the first place, they confirm the recognition by international organizations and host States of the existence of mutual obligations incumbent upon them to resolve the problems attendant upon a revision, termination or denunciation of a host agreement. But they do more, since they must be presumed to reflect the views of organizations and host States as to the implications of those obligations in the contexts in which the provisions are intended to apply. In (p. 248) the view of the Court, therefore, they provide certain general indications of what the mutual obligations of organizations and host States to co-operate in good faith may involve in situations such as the one with which the Court is here concerned.

47. A further general indication as to what those obligations may entail is to be found in the second paragraph of Article 56 of the Vienna Convention on the Law of Treaties and the corresponding provision in the International Law Commission's draft articles on treaties between States and international organizations or between international organizations. Those provisions [...] specifically provide that, when a right of denunciation is implied in a treaty by reason of its nature, the exercise of that right is conditional upon notice, and that of not less than twelve months. Clearly, these provisions also are based on an obligation to act in good faith and have reasonable regard to the interests of the other party to the treaty.

48. [...] [I]n formulating its reply to the request, the Court takes as its starting point the mutual obligations incumbent upon Egypt and the Organization to co-operate in good faith with respect to the implications and effects of the transfer of the Regional Office from Egypt. The Court does so the more readily as it considers those obligations to be the very basis of the legal relations between the Organization and Egypt under general international law, under the Constitution of the Organization and under the agreements in force between Egypt and the Organization. The essential task of the Court in replying to the request is, therefore, to determine the specific legal implications of the mutual obligations incumbent upon Egypt and the Organization in the event of either of them wishing to have the Regional Office transferred from Egypt.

49. The Court considers that in the context of the present case the mutual obligations of the Organization and the host State to co-operate under the applicable legal principles and rules are as follows:

- In the first place, those obligations place a duty both upon the Organization and upon Egypt to consult together in good faith as to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected.
- Secondly, in the event of its being finally decided that the Regional Office shall be transferred from Egypt, their mutual obligations of co-operation place a duty upon the Organization and Egypt to consult together and to negotiate regarding the various arrangements needed to effect the transfer from the existing to the new site in an orderly manner and with a minimum of prejudice to the work of the Organization and the interests of Egypt.
- Thirdly, those mutual obligations place a duty upon the party which wishes to effect the transfer to give a reasonable period of notice to the other party for the termination of the existing situation regarding the Regional Office at Alexandria, taking due account of all the practical arrangements needed to effect an orderly and equitable transfer of the Office to its new site.

Those, in the view of the Court, are the implications of the general legal principles and rules applicable in the event of the transfer of the seat of a Regional Office from the territory of a host State. Precisely what periods of time may be involved in the observance of the duties to consult and negotiate, and what period of notice of termination should be given, are matters which necessarily vary according to the (p. 249) requirements of the particular case. In principle, therefore, it is for the parties in each case to determine the length of those periods by consultation and negotiation in good faith. Some indications as to the possible periods involved, as the Court has said, can be seen in provisions of host agreements, including Section 37 of the Agreement of 25 March 1951, as well as in Article 56 of the Vienna Convention on the Law of Treaties and in the corresponding article of the International Law Commission's draft articles on treaties between States and international organizations or between international organizations. But what is reasonable and equitable in any given case must depend on its particular circumstances. Moreover, the paramount consideration both for the Organization and the host State in every case must be their clear obligation to co-operate in good faith to promote the objectives and purposes of the Organization as expressed in its Constitution; and this too means that they must in consultation determine a reasonable period of time to enable them to achieve an orderly transfer of the Office from the territory of the host State.

50. It follows that the Court's reply to the second question is that the legal responsibilities of the Organization and Egypt during the transitional period between the notification of the proposed transfer of the Office and the accomplishment thereof would be to fulfil in good faith the mutual obligations which the Court has set out in answering the first question.

IV. Commentary

This opinion constitutes a point of reference on two counts: first, it elaborates on the general legal obligations part of the relationship between an international organization and its host state, and secondly, it enunciates the sources of international legal obligations binding upon international organizations.

As to the first element, the questions put before the Court were formulated in rather narrow and technical terms, linked specifically to Section 37 of the 1951 Agreement. The Court however steered away from the question as to whether the 1951 Agreement was actually the legal foundation for the Regional Office, and whether by consequence the Agreement's terms for termination were applicable to a possible move of the Regional Office. This cautious approach was perhaps unsurprising given the fiery political context, and the ambiguous constellation of the 1949 informal agreement between the WHO and Egypt (see above, under II) and the 1951 Agreement.

A preliminary issue for the Court thus was to restate the question(s) put before it. Such rephrasing in order to capture the 'true legal question'² could seem remarkable, but falls within the competence of the Court and is not uncommon.³ With the

References

(p. 250) questions reformulated in more general terms, the Court then undertook to examine unwritten international law for rules and principles applicable to the situation, considering other headquarters agreements as well as common art. 56 – on denunciation of treaties – of the Vienna Conventions on the Law of Treaties (the later Vienna Convention's provision at the time of the opinion still in the form of the (identical) International Law Commission's draft art. 56).⁴

The various headquarters agreements⁵ considered by the Court as evidentiary sources generally prescribe a period of notice for the revision or termination of the treaty, often with a specific reference to removal of the seat of the organization or finalization of 'operations' in the host state. The second paragraph of art. 56 of both Vienna Conventions sets a procedural rule ('not less than twelve months' notice') for the termination of treaties in general, once it is established in accordance with art. 56(1) that the treaty is susceptible to denunciation. In the case at hand the Court referred to the standard of art. 56(2) by way of an example, but it did not enter into the question whether art. 56—presumably a provision with, at least for its general spirit, customary status⁶—was applicable to the *move of the Regional Office* to begin with (this would have led the Court back to the discussion about the applicability of the 1951 Agreement). Incidentally, in its commentary to art. 56 the International Law Commission mentioned headquarters agreements as a class of treaties which 'by their nature' could be subject to withdrawal or denunciation.⁷

The Court thus found evidence for a general rule requiring a 'reasonable' notice period, while the precise time would vary depending on the circumstances. The Court held that in a legal relationship of a host State and an international organization, 'the very essence [...] is a body of mutual obligations of co-operation and good faith' (para. 43, above). Proceeding therefrom, the Court concretely focused on the duty to consult in good faith, and—in relation to the actual move of the Office—on the duty to negotiate and consult, and on the relevant party's duty to give a reasonable period of notice. Interestingly, the opinion added a teleological slant to the duty of co-operation by stressing that the 'paramount consideration' must be 'to promote the objectives and purposes of the Organization as expressed in its Constitution' (para. 49, above).

The reliance on good faith⁸ and reasonableness as guiding principles for the implementation of procedural norms in concrete cases is much in line with contemporary international law practice. Likewise, the 'obligation to co-operate' (with slightly varying meanings), which defers the concrete outcome to another legal setting, is found for instance in environmental law, disarmament law, or any dynamic legal regime with long-term objectives.(p. 251)

The *Reparation for Injuries* case may have introduced the United Nations as an international legal actor to international life, but in the early decades of the UN era it would not have been self-evident how to construe the relationship between an organization and its host state (which is usually also a member state); for one because the conceptualization of international organizations' legal autonomy—or the negotiation of the organizations' legal identity—was a lengthy process and the subject of much debate. The 1980 WHO Opinion was possibly the first time the Court addressed in clear terms the two-sided nature of the obligations resting on the organization and its host state, and the 'contractual' relationship as between legal equals (para. 43, above). In that respect the opinion may be taken as a landmark.

The opinion is perhaps best known for the dictum on the sources of international legal obligations for international organizations. This is a short passage, whose function in the immediate context of the decision (para. 37, above) is not easy to interpret.⁹ 'International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.' While the conjunction 'or' rather than 'and' suggests a concrete indication for the case at hand (that is, how complete freedom of the organization—in *casu* to choose the location for its headquarters—might be limited by legal obligations), the passage has attained status as a principled enunciation on the sources of legal obligation for international organizations.¹⁰

Uncontroversial is the last element, that international organizations are bound by the treaties they conclude. Organizations' legal personality and their treaty-making capacity were already in 1980 uncontested. Logically this

engenders fundamental treaty-making rules of becoming legally bound and *pacta sunt servanda*; at a formal level this was confirmed by the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations¹¹ ('the 1986 Vienna Convention'), which, although not in force, is held as largely applicable to the—extensive—treaty practice of international organizations by virtue of its reflecting customary law. The law of treaties now is a unitary regime, in which organizations appear as one-dimensional legal actors analogous to states; member states are not as such bound to a treaty concluded by 'their' organization,¹² and, conversely, organizations are not as such bound by a treaty to which their member states are a party.¹³

 References

(p. 252)

Most often reference is made to the first element, about international organizations being bound 'under general rules of international law'. This boldly seems to go to the heart of the debate on whether international organizations are bound by customary international law. At the time the Health Assembly's request was before the Court, this question was far from decided. In any event there seems to have been wide agreement that international organizations could not generate legally relevant practice or *opinio juris*, as appears also from the *travaux* of the 1986 Vienna Convention dating from the same period.¹⁴ Possible customary rules binding organizations would therefore be incidental and unaccounted for by the voluntarist *systématique* of international law. Since then, the debate has been spurred by developments in the field of human rights law, and the proposition that international organizations are fully bound by relevant customary international law arguably since at least a decade is no longer controversial.¹⁵

Less attention is generally paid to the middle part of the dictum: organizations *as subjects of international law* 'are bound by any obligations ... under their constitutions'. This completes the overview of normative constraints for organizations vis-à-vis their host states in the context at issue. The Court in this case seemingly takes the view that the institutional order is embedded in the international order¹⁶ (after all, the organization is not itself a party to its constituent treaty). It is true that even 'secondary' internal rules of organizations can gain normative effect in international law,¹⁷ but more often the doctrine and practice of international law cover and flatten out the internal institutional layer of the organization (see also above). The Court's statement touches upon the cutting face between the internal order of the organization and the general international legal order, which raises a number of questions that cannot be answered entirely within the 'contractual' international law framework¹⁸ set out by the Court for a contemporary and fair approach to both the organization and the host state.

In the context of this opinion the dictum about the sources of obligation for organizations makes some clear statements—notably about the binding effect of unwritten international law—and it inspires further questions about the possible normative layers, and the interplay between the different sources. In a general sense the dictum functions as a reminder of how international organizations are not, or no longer, separate functional regimes and vehicles for state action, but rather fully fledged 'subjects of international law' which have 'as such' concomitant rights *and* duties. Also on this point the opinion can serve as a landmark along the same lines as indicated above.(p. 253)

Two elements in the WHO Opinion remain to be mentioned. One is that the Court (in the same context of para. 37) returns to the proverbial reassurance of UN member states in the *Reparation* case¹⁹ (which in turn echoed a concern voiced during the San Francisco conference,²⁰ while the notion as such had come up already in relation to the League of Nations):²¹ 'there is nothing in the character of international organizations to justify their being considered as some form of "super-state"'. In the opinion at hand, this reference could be seen as a bit top-heavy, as the question whether an organization's freedom to choose a seat is restricted by certain mutual obligations in relation to the host state, appears more mundane and less in need of a grand, principled statement than did the unprecedented question of legal personality for the UN in the heydays of state-centered international law. It is noteworthy that in the present opinion the Court considered it necessary to reassure in a general sense the states about autonomous aspirations of the Organization, while at the same time the Court did not waste words on the theoretical debate about legal personality of international organizations. When the legal personality of the United Nations was pronounced by the 1949 *Reparation* Opinion, this did not naturally extend to all international organizations. The *Repertory of United Nations Practice* in the 1950s indeed envisaged—without giving examples—member states concluding international agreements with 'an international organization that is not a subject of international law' (in which case there would be no duty of registration, presumably because these would not be real international agreements).²² After initial attempts to distinguish between organizations with legal personality and organizations without, the presumption of legal personality ultimately came to be applied to 'international organizations' as a general category, and—as exemplified by the 1980 Opinion—was never seriously challenged afterwards.

Last but not least, the Court as a preliminary issue had to address the allegedly political character of the request for an opinion. Article 65(1) of the ICJ Statute accords competence to the Court to give an opinion on legal questions, as opposed to political questions.²³ The objection that a question put before the Court was of a political nature had been raised in cases before the WHO Opinion,²⁴ as it would be in later ones.²⁵ It is

 References

(p. 254) undisputed that the 1980 request of the Health Assembly came about in a deeply politicized context (in the end the Regional Office stayed in Egypt, and work was regularly resumed in 1985 after Israel transferred its regional membership to the European regional office). This said, it was and is settled jurisprudence of the Court to separate the legal character of a question put before it from the possibly political considerations which may have motivated that question. In this opinion especially the Court made it a point to state that 'in situations in which political considerations are prominent it may be particularly necessary for an international organization to

obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate, especially when these may include the interpretation of its constitution' (para. 33, above). This appears as a remarkable 'rule of law' statement on the part of the Court regarding the functioning of international organizations.

Footnotes:

- ¹ K. Lee and J. Fang, *Historical Dictionary of the World Health Organization* (2nd edn, Lanham MD, Scarecrow Press 2012), s v 'Eastern Mediterranean Regional Office'.
- ² *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, [1980] ICJ Rep 73, para. 35.
- ³ As the Court itself also indicated, referring *inter alia* to *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion*, [1962] ICJ Rep 151, 156–8. But see the dissenting opinion of Judge Morozov, who criticizes the reformulation by the Court which essentially changes the nature of the questions (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, [1980] ICJ Rep 73, 190–7). A more recent example of such rephrasing is the Court's opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, [2004] ICJ Rep 136.
- ⁴ UN Doc A/CN.4/L.300.
- ⁵ The term seemingly used as synonymous with 'host agreement'; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, [1980] ICJ Rep 73, para. 45.
- ⁶ T. Christakis, 'Article 56' in O. Corten and P. Klein (eds), *The Vienna Conventions on the Law of Treaties* (Oxford, Oxford University Press 2011), pp. 1251–76; T. Giegerich, 'Article 56' in O. Dörr and K. Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Berlin and Heidelberg, Springer-Verlag 2012), pp. 967–87, at 986.
- ⁷ YBILC 1982 vol II (Part Two) at 57.
- ⁸ S. Reinhold, 'Good Faith in International Law', (2013) (2) *UCL Journal of Law and Jurisprudence* 40–63.
- ⁹ cf. E. Cannizzaro's and P. Palchetti's view that 'one can hardly draw from this dictum much indication that is useful for clarifying the issue,' in J. Klabbers and A. Wallendahl (eds), *Research Handbook on the Law of International Organizations* (Cheltenham, Edward Elgar 2011), pp. 365–97, at 370.
- ¹⁰ See for example T. Ahmed and I. de Jesús Butler, 'The European Union and Human Rights: An International Law Perspective', (2006) 17 *European Journal of International Law* 771–801, at 777, where it is used to support rebuttal of the EU's claim that the obligations incumbent upon it in the area of human rights stem from its own internal legal order.
- ¹¹ *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, 1986 (UN Doc A/CONF.129/15).
- ¹² See the hapless fate of draft art. 36*bis* which had a prominent role in the law of treaties codification process (YBILC 1982, Vol II (Part Two), at 44), but which never made it into the 1986 Convention.
- ¹³ See for example C-308/06 *International Association of Independent Tanker Owners (Intertanko) and others v Secretary of State for Transport*, ECJ judgment of 3 June 2008.
- ¹⁴ C. Brölmann, *The Institutional Veil in Public International Law* (Oxford, Hart 2007), pp. 197–244.
- ¹⁵ cf. O. De Schutter, 'Human Rights and the Rise of International Organisations: the Logic of Sliding Scales in the Law of International Responsibility', in J. Wouters et al. (eds), *Accountability for Human Rights Violations by International Organisations* (Antwerp, Intersentia 2010), p. 51, at 56.
- ¹⁶ cf. J. d'Aspremont, 'The Multifaceted Concept of Autonomy of International Organizations and International Legal Discourse' in R. Collins and N.D. White (eds), *International Organizations and the Idea of Autonomy: Institutional Independence in the International Legal Order* (Routledge 2011) pp. 63–86, at 65.
- ¹⁷ cf. L. Boisson de Chazournes on the external normative effect of operational guidelines of the World Bank and the IFC ('Standards and Guidelines: Some Interfaces with Private Investments' in T. Treves, F. Seatzu, and S. Trevisanut (eds), *Foreign Investment, International Law and Common Concerns* (NY, Routledge 2013) pp. 100–14, at 107–8).
- ¹⁸ C. Brölmann, *The Institutional Veil in Public International Law* (Oxford, Hart 2007), 251–71.
- ¹⁹ *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion*, [1949] ICJ Rep 174, 179.
- ²⁰ The Committee which discussed the matter was anxious to avoid any implication that the to-be-created United Nations would in any sense be a 'super-state' (*Report to the [US] President on the Results of the San Francisco Conference*, Dept of State Publication 2349 (1945)).
- ²¹ cf. P. Corbett, 'What is the League of Nations?', (1924) 5 *British Yearbook of International Law* 119–48, at 142, who mentions the 'invariably repudiated "super-State"'.
- ²² See *Repertory of Practice of United Nations Organs*, (Publication No. 55. V. 2) New York 1955, Vol. 5 at 292–7.
- ²³ J. Frowein and K. Oellers-Frahm, 'Article 65' in A. Zimmermann et al. (eds), *The Statute of the International Court of Justice: A Commentary* (2nd edn, Oxford, Oxford University Press 2012) p. 1614.
- ²⁴ *Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter), Advisory Opinion*, [1947–48] ICJ Rep 57, at 61–2; *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion*, [1950] ICJ Rep 3, at 6–7; *Certain Expenses of the United Nations (Article*

17, paragraph 2, of the Charter), Advisory Opinion, [1962] ICJ Rep 151, at 155.

²⁵ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, [1996] ICJ Rep at 226; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] ICJ Rep at 136, 155; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, available at <http://www.icj-cij.org>, para. 26.