

## INTERPRETATION OF THE AGREEMENT OF 25 MARCH 1951 BETWEEN THE WHO AND EGYPT

Advisory Opinion of 20 December 1980

In its Advisory Opinion on the question concerning the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt submitted to it by a request from the World Health Assembly, the Court set forth the legal principles and rules concerning consultation, negotiation and notice that would apply as between the WHO and Egypt if the Regional Office of the WHO for the Eastern Mediterranean, in Alexandria, were transferred from Egyptian territory.

1. By 12 votes to 1, the Court decided to comply with the Request for an advisory opinion.

2. With regard to *Question 1*, which read as follows:

“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?”

the Court, by 12 votes to 1, expressed the opinion that in the event of a transfer of the Regional Office of the WHO from Egypt, the WHO and Egypt would, in particular, have (a) a mutual obligation to consult together in good faith as to the question under what conditions and in accordance with what modalities the transfer might be effected; (b) a mutual obligation to consult together and to negotiate regarding the arrangements needed to effect such transfer in an orderly manner and with a minimum of prejudice to the work of the WHO and the interests of Egypt; and (c) an obligation on the part of the party which wishes to effect the transfer to give a reasonable period of notice to the other party.

3. With regard to *Question 2*, which read:

“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 2-year period between notice and termination of the Agreement?”

the Court, by 11 votes to 2, expressed the opinion that, in the event of a decision to transfer, the legal responsibilities of the WHO and Egypt between the notification of the proposed transfer and the accomplishment thereof would be to fulfil in good faith the mutual obligations stated in the reply to *Question 1*.

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The Court was composed as follows: *President* Sir Humphrey Waldock; *Vice-President* Elias; *Judges* Forster, Gros, Lachs, Morozov, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara.

Judges Gros, Lachs, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara have appended separate opinions to the Advisory Opinion.

Judge Morozov has appended a dissenting opinion.

In these opinions the judges concerned make clear and explain their reasons for the positions which they take in regard to the various matters dealt with in the Court's opinion.

### *Factual and legal background to the submission of the Request*

(paras. 1–32 of the Advisory Opinion)

After detailing the various stages of the proceedings (paras. 1–9), the Court recounts the antecedents of the WHO Regional Office at Alexandria, from the creation in that city of a general Board of Health in 1831 for the purpose of preventing epidemics up to the integration of the Alexandria Sanitary Bureau with the WHO in 1949 as a regional organ. The Eastern Mediterranean Regional Office commenced operations on 1 July 1949, while negotiations were in progress between the WHO and Egypt for the conclusion of an agreement on the privileges, immunities and facilities to be granted to the Organization. This agreement was eventually signed on 25 March 1951 and entered into force on 8 August 1951. (Paras. 10–27.)

The Court next examines the events which led to the submission of the request for an Advisory Opinion. It recapitulates proceedings within the WHO, from the recommendation by a Sub-Committee of the Regional Committee for the Eastern Mediterranean on 11 May 1979 that the Office be transferred to another State in the region, up to the recommendation by the same Sub-Committee on 9 May 1980 that the Regional Office be transferred as soon as possible to Amman (Jordan) and the adoption by the World Health Assembly on 20 May 1980 of resolution WHA33.16 by which, on account of differing views as to the applicability of Section 37 of the Agreement of 25 March 1951 to the transfer of the Regional Office, it sought the Court's advisory opinion on two questions prior to taking any decision. (Paras. 28–32.)

### *Competence to deliver an Opinion*

(para. 33 of the Advisory Opinion)

Before going any further, the Court considers whether it ought to decline to reply to the request for an Advisory Opinion by reason of its allegedly political character. It concludes that to do so would run counter to its settled jurisprudence. If a question submitted in a request is one that otherwise falls within the normal exercise of its judicial powers, the Court has not to deal with the motives which may have inspired the request.

### *Significance and scope of the questions put to the Court*

(paras. 34 f. of the Advisory Opinion)

The Court next considers the meaning and implications of the hypothetical questions on which it is asked to advise. Section 37 of the Agreement of 25 March 1951, to which the first question refers, 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.”

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. This it has had occasion to do in the past, as had also the Permanent Court of International Justice. The Court also notes that a reply to questions of the kind posed in the request submitted to it may, if incomplete, be not only ineffectual but actually misleading as to the legal rules applicable to the matter under consideration by the WHO.

Having regard to the differing views expressed in the World Health Assembly on a number of points, it appears that the true legal question under consideration in the World Health Assembly, which must also be considered to be the legal question submitted to the Court in the WHO's request, 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?

*The differing views advanced*  
(paras. 37–42)

In answering the question thus formulated, the Court first notes that the right of an international organization to choose the location of its headquarters or regional office is not contested. It then turns to the differing views expressed in the World Health Assembly and, before the Court, in the written and oral statements, regarding the relevance of the Agreement of 25 March 1951 and the applicability of Section 37 to a transfer of the Regional Office from Egypt.

With respect to the *relevance of the 1951 Agreement*, one of the views advanced was that that agreement was a separate transaction, subsequent to the establishment of the Regional Office, and that, although it might contain references to the seat of the Regional Office in Alexandria, it did not provide for the Office's location there. It would follow that it had no bearing on the Organization's right to remove the Regional Office from Egypt. The Agreement, it was claimed, concerned the immunities and privileges granted to the Office within the larger context of the immunities and privileges granted by Egypt to the WHO.

According to the opposing view, the establishment of the Regional Office and its integration with the WHO were not completed in 1949; they were accomplished by a series of acts in a composite process, the final and definitive step in which was the conclusion of the 1951 host agreement. It was contended, *inter alia*, that the absence of a specific provision regarding the establishment of the WHO Office in Alexandria was due to the fact that the Agreement was dealing with a pre-existing Sanitary Bureau already established there. Moreover, it was stated, the Agreement was constantly referred to as a host agreement in the records of the WHO and in official acts of the Egyptian State. (Paras. 37–39.)

So far as the applicability of Section 37 to the transfer of the Office from Egypt was concerned, the differences of view resulted essentially from the meaning attributed to the word "revise" in the first sentence. According to one view, a transfer of the seat would not constitute a revision and would thus not be covered by Section 37, which would not apply to the denunciation of the Agreement which a transfer of the Office from Egypt would involve. Upholders of this view concluded therefrom that since there was no provision in the Agreement for denunciation, the general rules of international law which provided for the possibility of denunciation and the need for a period of notice in respect of such agreements applied in the present case. According to the opposite view, the word "revise" might also signify a general revision of an agreement, including its termination, and was so used

in the 1951 Agreement. According to the proponents of this view, even if that interpretation was rejected, Egypt would still be entitled to receive notice under the general rules of international law.

Whatever view may be taken of the arguments advanced concerning the relevance and applicability of the 1951 Agreement, the Court finds that certain legal principles and rules are applicable in the case of such a transfer. (Paras. 40–42.)

*Mutual obligations of co-operation and good faith*  
(paras. 43–47)

Whether the mutual understandings reached between Egypt and the WHO from 1949 to 1951 are regarded as distinct agreements or as separate parts of a single transaction, a contractual legal régime was created between Egypt and the Organization which remains the basis of their legal relations today. These relations remain those 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. Having regard to the practical problems which a transfer would cause, the WHO and Egypt must co-operate closely to avoid any risk of serious disruption to the work of the Regional Office. In particular, a reasonable period of time should be allowed for the process. (Paras. 43 f.)

In the Court's view, certain pointers to the implications of these mutual obligations to co-operate in good faith in a situation like the one with which it is concerned may be found in numerous host agreements, as well as in Article 56, paragraph 2, 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. (Paras. 45–47.)

*Applicable legal principles and rules*  
(paras. 48 f.)

The Court thus finds the applicable legal principles and rules, and the consequent obligations, to consist in:

—consultation 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;

—if a transfer is decided upon, consultation and negotiation regarding the arrangements needed to effect the transfer in an orderly manner and with a minimum of prejudice to the work of the organization and the interests of Egypt;

—the giving of reasonable notice by the party desiring the transfer.

Precisely what periods of time may be involved in the observance of the duties to consult and negotiate, and what period of notice should be given, are matters which necessarily vary according to the requirements of the particular case. In principle, therefore, it is for the parties in each case to determine them. Some indications as to the possible periods involved 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. The paramount consideration for both the WHO and the host State in every case must be their obligation to co-operate in good faith to promote the objectives and purposes of the WHO.

*Second question submitted to the Court*  
(para. 50)

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

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For these reasons, the Court has delivered the Advisory Opinion whose complete operative provisions are reproduced below:

OPERATIVE PROVISION OF THE  
ADVISORY OPINION

THE COURT,\*

1. By twelve votes<sup>1</sup> to one,<sup>2</sup>

*Decides* to comply with the Request for an advisory opinion;

2. With regard to Question 1,  
by twelve votes<sup>1</sup> to one,<sup>2</sup>

*Is of the opinion* that in the event specified in the Request, the legal principles and rules, and the mutual obligations which they imply, regarding consultation, negotiation and notice, applicable as between the World Health Organization and Egypt, are those which have been set out in paragraph 49 of this Advisory Opinion and in particular that:

(a) Their mutual obligations under those legal principles and rules 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;

(b) 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;

(c) Their mutual obligations under those legal principles and rules 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

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<sup>1</sup>*President* Sir Humphrey Waldock; *Vice-President* Elias; *Judges* Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara.

<sup>2</sup>*Judge* Morozov.

the practical arrangements needed to effect an orderly and equitable transfer of the Office to its new site.

3. With regard to Question 2,

By eleven votes<sup>3</sup> to two,<sup>4</sup>

*Is of the opinion* that, in the event of a decision that the Regional Office shall be transferred from Egypt, the legal responsibilities of the World Health Organization and Egypt during the transitional period between the notification of the proposed transfer of the Office and the accomplishment thereof are to fulfil in good faith the mutual obligations which the Court has set out in answering Question 1.

SUMMARY OF JUDGE MOROZOV'S  
DISSENTING OPINION

Judge Morozov voted against the Advisory Opinion because in substance it is an attempt to involve the Court in the handling of one of the consequences of a serious political conflict existing in the Middle East. This conflict is directly related to the cause of the increasingly tense situation in the Eastern Mediterranean Region, which results from the Agreement signed at Camp David in the USA on 27 September 1978 which, as was said particularly in the Written Statement presented to the Court by the Syrian Arab Republic, "prevented the region from achieving the comprehensive and true peace called by the Arab States".

According to the dissenting opinion, the Court, which, by virtue of Article 65 of its Statute, has a *discretionary right to give or not to give* an Advisory Opinion, should in this case decline to deliver an Opinion in order to avoid an embarrassing situation where it would be involved in handling a dispute between States with a definite political character.

Judge Morozov also expressed the view that the Court, even from the point of view of those who consider that the Request of the WHO is a purely legal one, acted wrongly when in substance it changed the two questions submitted by the WHO into questions of its own. Thus Question 1 on the applicability of Section 37 of the 1951 Agreement was replaced by the question "under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected?" The same attempt to redraft was also made in relation to Question 2.

The references made to the previous practice of the Court do not in his view justify such kind of redrafting which, as a matter of principle, is incompatible with the judicial functions of the Court as defined in Chapter IV of its Statute. Moreover, the Court tacitly recognizes that Section 37 of the 1951 Agreement is not applicable to the question of the transfer of the office because it does not give the answer to Question 1 submitted by the WHO.

Judge Morozov considered that certain recommendations which were made by the Court to the WHO are in substance not an answer to its request. They constitute attempts to interfere with the activity of the WHO, which, in accordance with its Constitution, has an exclusive right to take the *decision* relating to the establishment of its Regional Offices, and consequently to the transfer thereof, including all steps for the implementation of the decision concerned.

<sup>3</sup>*President* Sir Humphrey Waldock; *Vice-President* Elias; *Judges* Forster, Gros, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara.

<sup>4</sup>*Judges* Lachs and Morozov.