

United Nations
**GENERAL
ASSEMBLY**

TWENTY-FIFTH SESSION

Official Records



**SIXTH COMMITTEE, 1226th
MEETING**

Friday, 13 November 1970,
at 5 p.m.

NEW YORK

Chairman: Mr. Paul Bamela ENGO (Cameroon).

In the absence of the Chairman, Mr. Houben (Netherlands), Vice-Chairman, took the Chair.

AGENDA ITEM 96

**Review of the role of the International Court of Justice
(continued) (A/8042 and Add.1 and 2, A/C.6/
L.800-802, A/C.6/L.806, A/C.6/L.808)**

1. The CHAIRMAN announced that the Central African Republic and Gabon were to be added to the list of sponsors of the amendments contained in document A/C.6/L.808.

2. Mr. BREWER (Liberia) said that his delegation had sponsored both the inclusion of the item in the agenda of the twenty-fifth session of the General Assembly and draft resolution A/C.6/L.800, on the grounds that the developing countries saw the jurisdiction of the International Court of Justice in the new international system as a political rather than a legal issue. That had been true from the outset; in 1945, in the preparatory work in connexion with the drafting of the Statute of the Court, the question whether the Court's jurisdiction was to be made obligatory for all parties to the Statute had been the subject of debate. The smaller nations had wanted compulsory jurisdiction in the hope that they could offset their military weakness by their ability to bring even large countries into court, but the two major world Powers had been unwilling to accept it. The majority had thus been forced to settle for optional jurisdiction to avoid jeopardizing the Court's future. Since the issue of the Court's jurisdiction still raised essentially the same kind of political considerations, his Government had decided that only an inquiry undertaken by a committee of experts appointed by the General Assembly would ensure a fully objective investigation of the problem. The Court itself was only a creation of the States Members of the United Nations and was not the body best qualified to judge the political aspects of its own role in international society today. That did not mean that its views on the matter should not be sought, for they would be a valuable adjunct to those of States. Nor did Liberia's attitude imply any criticism of the Court; it simply indicated its desire to see the Court play a more active role in international life.

3. Mr. YASSEEN (Iraq) said that his delegation approached the draft resolutions before it with the conviction that it was important to ascertain adequately not only the Court's views on its role but also the opinions of States on the subject. The proposal in document A/C.6/L.800 went too far in recommending the General Assembly to take a

methodological decision before the question was examined in detail by the Sixth Committee. The problem need not be institutionalized until the twenty-sixth session, when the Committee should consider it in the light of the Court's views on its Statute and rules of procedure and Governments' opinions on the Court in general. The question was too important to be rushed. Consequently, his delegation was unable to accept draft resolution A/C.6/L.800 as it stood, but could do so if it was amended as proposed in document A/C.6/L.808, which Iraq would therefore support.

Mr. Engo (Cameroon) took the Chair.

4. Mr. COLE (Sierra Leone) said that his delegation opposed draft resolutions A/C.6/L.800 and A/C.6/L.806 because it did not think an investigatory body should be set up immediately. States should be consulted first, especially those which were parties to the Court's Statute.

5. As far as amendment A/C.6/L.808 was concerned, Sierra Leone accepted it in principle but felt that the debate had revealed a widespread view that the Committee's discussion on the item would be of interest to the Court in connexion with its procedural review. He therefore suggested that the operative paragraph of draft resolution A/C.6/L.802 should be added to the proposals in amendment A/C.6/L.808. His delegation did not reject the possibility of setting up an investigatory body at a later stage. Sierra Leone therefore suggested a further sub-amendment to amendment A/C.6/L.808, consisting of the addition, at the end of the proposed paragraph 4, of the words "with a view to taking such appropriate measures as may seem desirable". If the sponsors of the amendments in document A/C.6/L.808 accepted his suggestions, his delegation would sponsor their amendments.

6. Mr. NJENGA (Kenya) said that those suggestions would appear to be acceptable to the sponsors of the amendments contained in document A/C.6/L.808. The additional paragraph would constitute the second amendment in the revised version¹ and the succeeding amendments would be renumbered accordingly.

7. The CHAIRMAN said that on that understanding Sierra Leone was to be added to the list of sponsors of the amendments.

8. Mr. CHAILA (Zambia) said that the important question concerning the Court needed clear-sighted examination by the generation that had come into existence since the Court's creation. Zambia thought that the States Members of the United Nations and the States parties to the Court's

¹ Subsequently circulated as document A/C.6/L.808/Rev.1.

Statute, as well as the Court itself, should have an opportunity of expressing their views as to why it was not functioning properly, and of suggesting remedies, before a decision was taken about the manner of the proposed review. That would ensure that if a committee was appointed it could be given a well-defined mandate. Such a decision should therefore be deferred until the twenty-sixth session of the General Assembly, as would be possible under the arrangements proposed in document A/C.6/L.808.

9. Mr. ALCÍVAR (Ecuador) said that it was essential not to proceed too hastily, above all because the Secretariat should be given sufficient time to prepare adequate documentation on the basis of material submitted by States and the Court. Consequently, failing a generally acceptable compromise text, his delegation was inclined in favour of draft resolution A/C.6/L.800 as modified by the amendments in document A/C.6/L.808 in its original form. At the moment it hesitated, however, because of the change which had been accepted in the fourth amendment suggested in that document and it would not make up its mind until it had seen the revised version of the amendment in writing.

10. Mr. GASTLI (Tunisia), replying to the suggestion that draft resolution A/C.6/L.806 added nothing to draft resolution A/C.6/L.800, reaffirmed his delegation's belief that the establishment of a working group would ensure that the necessary work would be carried out efficiently. Both the terms of reference and the term of office of the proposed working group would be limited, and its purpose would be to prepare a preliminary but nevertheless comprehensive report dealing with the whole issue together with all the opinions and suggestions made not only by Member Governments but also by the Court itself. The working group would ease the burden on the Secretariat by producing such a report, and would then cease to exist. He believed that his delegation's proposal was an effective approach to the problem and avoided the delays that would be caused by inquiries and reports going back and forth between the various organs involved.

11. He discounted the suggestion that it would be difficult for the Committee to set up a working group because of the problem of geographical distribution. There were, after all, numerous precedents for *ad hoc* committees and working groups coming into existence, notwithstanding initial differences of opinion with regard to geographical distribution.

12. The French delegation (1224th meeting) had expressed misgivings about the proposal that the working group should meet at the beginning of the twenty-sixth session of the General Assembly. His delegation held no strong views as to the precise date, which in any event would have to be approved by the Office of Conference Services. He would therefore be willing that the working group should commence its work just before the twenty-sixth session, and his delegation would then propose that an *ad hoc* committee be set up to review the role of the Court.

13. After a procedural discussion in which Mr. SHITTA-BEY (Nigeria), Mr. BRENNAN (Australia), Mr. SEATON (United Republic of Tanzania) and Mr. CHAMMAS (Lebanon), took part, the CHAIRMAN said that if there was no objection he would close the list of speakers on the item.

It was so decided.

14. Mr. OSMAN (United Arab Republic) said that his delegation was not against the idea of an *ad hoc* committee being set up to review the role of the Court. The divergence of opinion remaining in the Sixth Committee was whether it should be set up in 1970 or later. Since the matter was extremely delicate, it required careful reflection by Governments, particularly those of new States which had joined the United Nations after the signature of the Charter at San Francisco. He strongly doubted whether the time spent on reflection would be wasted, because it would make headway on the question of the Court in 1971 much easier. By then the views expressed in the Sixth Committee would have been communicated to Member Governments, and the latter would have been able to give their views. By 1971, the opinion of the Court would also be available. Consequently, at the twenty-sixth session the Committee would be in a position to take an informed decision on whether it was necessary to establish an *ad hoc* committee or to take any alternative action. His delegation therefore supported the amendments in document A/C.6/L.808 and would vote for them.

15. Mr. BOULBINA (Algeria) said it was quite clear from the discussions that the review of the role of the Court was a matter of great importance requiring special attention, and hence the deadline for comments on the Court from Member Governments as proposed in draft resolution A/C.6/L.800 should be extended. He noted that the Secretariat (1225th meeting) had dispelled the doubts that it might itself take a position on the subject in the course of preparing the questionnaire. Although his delegation had originally wished to support the French proposal (A/C.6/L.801), which it considered a satisfactory compromise, the proposals contained in document A/C.6/L.808, as amended by the representative of Sierra Leone, seemed perfectly adequate. It was satisfied that they were not intended to eliminate the possibility of the Court's role being reviewed and it would therefore support them.

16. Mr. CHAMMAS (Lebanon) said there was no cause for concern about the possibility that the proposed *ad hoc* committee might prejudice the issue of the Court or indeed attempt to amend the Court's Statute, because the *ad hoc* committee's action would always be subject to the jurisdiction of the Sixth Committee. In the view of his delegation, it seemed probable that further progress could be made towards reaching agreement on one of the various proposals now before the Committee. The Tunisian draft resolution (A/C.6/L.806), proposing to establish a working group on the subject, would surely have that effect, and his delegation could support it. It could also support the proposals contained in document A/C.6/L.808, as amended by the representative of Sierra Leone. In that connexion he recalled that at the 1218th meeting his delegation had formally proposed that the title of the item should be amended to read: "Study of obstacles to the satisfactory functioning of the International Court of Justice and ways and means of removing them". That would resolve what he believed to be the basic difference of opinion in the Committee, and he commended the change to the various delegations that had sponsored draft resolutions or amendments.

17. The Court deserved a unanimous decision on the part of the Committee, and he urged the various sponsors of

draft resolutions or amendments to endeavour to reach agreement on a text that the Committee as a whole could accept. One possibility would be to modify draft resolution A/C.6/L.800 along the lines of the Sierra Leone proposal.

18. Mr. BRUM (Uruguay) said that the proposals contained in document A/C.6/L.808 were actually a new draft rather than amendments, although, since they had been submitted as such, they would be given priority in the voting over the original draft resolution (A/C.6/L.800).

19. The CHAIRMAN said that the question would be dealt with at the appropriate time. He invited the Secretary of the Committee to make a statement concerning the financial implications of documents A/C.6/L.800, A/C.6/L.806 and A/C.6/L.808.

20. Mr. MOVCHAN (Secretary of the Committee) said that all three documents contained requests for the preparation of documentation by the Secretariat. He had been informed by the Office of Conference Services that the cost of translation and reproduction would in each case amount to some \$12,000, including the cost of external translation and typing and internal reproduction costs. It might be possible for all the work to be done internally, in which case the cost might be lower than that figure, but would not be more.

21. The CHAIRMAN suggested that a vote on the documents before the Committee should be postponed in order to allow the sponsors time to consult together.

It was so decided.

Organization of the work of the Committee

22. The CHAIRMAN read out a letter from the President of the General Assembly (A/8165) concerning the need to expedite the Committee's work in order to enable the General Assembly to finish its work by the date set. He appealed to the Committee to take due note of the President's suggestions on ways and means of speeding up its work.

AGENDA ITEM 99

Aerial hijacking or interference with civil air travel (*continued*) (A/8091, A/C.6/403, A/C.6/L.803/Rev.1, A/C.6/L.804, A/C.6/L.805, A/C.6/L.807, A/C.6/L.809)

23. Mr. HOUBEN (Netherlands), introducing document A/C.6/L.803/Rev.1 on behalf of the sponsors, said that an attempt had been made to revise the original draft resolution A/C.6/L.803 so as to accommodate as many viewpoints as possible.

24. The sponsors had been unable to accept the Lebanese amendment (A/C.6/L.809) to paragraph 2 of the original draft resolution because it would be inappropriate for the General Assembly to call upon States to take action in accordance with a "specific régime" which did not yet exist. Moreover, the convention to be prepared at The Hague in December 1970 might take some time to enter into force, and perhaps not all States would ratify it. The

sponsors were calling for immediate action to deal with aerial hijacking, and had already stated that the application of paragraph 2 in no way prejudiced the application by a State of its own domestic law or practice concerning extradition or the provisions of any bilateral treaty concluded by it on the subject.

25. The sponsors could not agree to the Tanzanian proposal (A/C.6/L.804) to delete paragraph 8 of the draft resolution, but they had decided that it would be appropriate to replace the term "international blackmail" by a more legal term. Accordingly, they had replaced the words "do not become subjects of international blackmail" by the words "are not used as a means of extorting advantage of any kind". The revised text was based on the third Lebanese amendment contained in document A/C.6/L.809. The sponsors had felt that it would be superfluous to insert the words "in accordance with the Charter of the United Nations" in paragraph 8.

26. Nor had they been able to accept the amendments of Czechoslovakia and the Ukrainian SSR (A/C.6/L.807). The decision to convene the diplomatic conference at The Hague had been taken by the International Civil Aviation Organization (ICAO), and the United Nations General Assembly could not change that decision. At its meeting in March 1970, the Council of ICAO had decided that invitations to attend a conference should be issued to all States Members of the United Nations, all States members of ICAO, the specialized agencies and the International Atomic Energy Agency and all States parties to the Statute of the International Court of Justice. Nevertheless, the sponsors appreciated the concern of the delegations of Czechoslovakia and the Ukrainian SSR for the principle of universality and had, accordingly, inserted the word "effective" before the word "convention" in paragraph 10 of the draft resolution. He hoped also that the additional words at the end of paragraph 10 would be acceptable to the delegation of Sierra Leone.

27. Although the sponsors had not been able to accept all the amendments submitted, they hoped that the revision would make it possible to reach unanimous agreement in the near future.

28. Mr. CHAMMAS (Lebanon) expressed appreciation to the sponsors of draft resolution A/C.6/L.803/Rev.1 for taking his amendments into consideration. Since they had been unable to accept his amendment to paragraph 2, he proposed the following amendment:² the insertion after the word "extradition" of the words "without prejudice to obligations undertaken by them under the specific régime governing extradition". That would remove his delegation's difficulty in endorsing the imposition of an obligation which might conflict with prior obligations of States.

29. Lebanon was firmly opposed to hijacking and wished to make every effort to eliminate such acts of violence. However, it could not accept a politically oriented text such as draft resolution A/C.6/L.803/Rev.1. The word "condemned" in its paragraph 3 was unusual language for a resolution of the Sixth Committee. Moreover, the condemnation appeared to apply to one specific incident in the

² Subsequently circulated as document A/C.6/L.809/Rev.1.

past. Unless the circumstances of that incident were fully debated, the Committee should not make such pronouncements. Even the Security Council had not used the word "condemn" concerning the event in question. He appealed to the sponsors of draft resolution A/C.6/L.803/Rev.1 to redraft paragraph 3.

30. He maintained his objection to the wording of paragraph 8. The phrase "action in co-operation with the

United Nations and the International Civil Aviation Organization" was open to misinterpretation. The dangers of such loose wording were evident: the United Nations Charter itself had been misinterpreted to justify the occupation of whole territories. Unless the paragraph was amended, his delegation might be obliged to vote against the draft resolution.

The meeting rose at 6.50 p.m.