UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/8747
24 August 1972
ENGLISH
ORIGINAL: ENGLISH/FRENCH/
RUSSIAN/SPANISH

Twenty-seventh session
Item 90 of the provisional agenda*

REVIEW OF THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE

Report of the Secretary-General

CONTENTS

* A/8760.

I. INTRODUCTION

1. On 15 December 1971, the General Assembly adopted resolution 2818 (XXVI) entitled "Review of the role of the International Court of Justice". Operative paragraphs 1, 2 and 4 of the resolution read as follows:

> "The General Assembly
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> ...
>
> "1. Invites Member States and States parties to the Statute of the International Court of Justice which have not yet been able to do so to transmit to the Secretary-General, by 1 July 1972, their comments on the questionnaire prepared in accordance with General Assembly resolution 2723 (XXV);
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> "2. Requests the Secretary-General to submit those comments to the General Assembly at its twenty-seventh session;
>
> ...
>
> "4. Invites the Court to submit its views on the matter if it so desires;
>
> ..."

2. Pursuant to operative paragraph 1, the Secretary-General sent the questionnaire referred to in that paragraph 1/ to those Member States and States parties to the Statute of the Court which had not replied to the invitation contained in resolution 2723 (XXV). 2/ As of 15 August 1972 the Secretary-General had received replies from the following Governments: Australia, Brazil, Colombia, Guyana, Iran, Kuwait and Mongolia.

3. The Secretary-General also wrote to the Registrar of the International Court of Justice to draw the Court's attention to operative paragraph 4 of resolution 2818 (XXVI).

4. This report contains the replies received from the above-mentioned States. Any replies which might still be forthcoming will be published as an addendum to this report.

1/ For the text of the questionnaire see A/8382, para. 5.

2/ The replies received further to resolution 2723 (XXV) are contained in document A/8382 and Add.1-4.

II. REPLIES RECEIVED FROM GOVERNMENTS

AUSTRALIA

/Original: English/
8 August 1972

I. The role of the International Court of Justice within the framework of the United Nations

Any discussion of the role of the International Court of Justice must proceed from Article 33 of the United Nations Charter under which Members are bound to seek peaceful solutions to disputes "by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice" and from Article 92, which establishes the Court as "the principal judicial organ of the United Nations". The Court is but one means for the peaceful settlement of disputes, but its role has come under study in recent times because of the small number of contentious cases before the Court and because of disappointment expressed in several quarters that the Court has not gained the "central place in the plans of the United Nations for the settlement of international disputes by peaceful means" 3/ for which those who drafted the Statute had hoped.

2. Before proceeding to examine some of the reasons advanced for this state of affairs, it is necessary to record, albeit briefly, that the Court has made a noteworthy contribution to the development of modern international law. Several of its judgements have been reflected in international conventions and all have been a stimulus to legal learning. Its advisory opinions have done much to develop the law, including the law of international organizations and the doctrine of international personality. These achievements are not inconsiderable and constitute a record of achievement which is far from the worst among the means for peaceful settlement mentioned in Article 33.

3. It must nevertheless be admitted that States have some reluctance to have recourse to the Court to settle those disputes which appear prima facie, suited to judicial settlement. A number of reasons for this have been suggested of which three recur in discussion, namely, the law applied by the Court, the composition of the Court and the length and cost of cases before the Court.

(a) The law applied by the Court

4. Under Article 38 (1) of the Statute, the Court applies, in summary, international conventions recognized by the contesting States, international custom, general principles of law and, subject to Article 59, judicial decisions

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3/ United Nations Conference on International Organization, Documents, vol. 13, Commission IV, Report of the Rapporteur of Committee 1, p. 393.

and the teachings of the most highly qualified publicists. Complaints about the law thus defined appear to spring essentially from a conviction that customary international law as applied by the Court is either uncertain or unsuitable and that the revision of international law by means of law-making conventions has not proceeded far enough.

5. Three comments can be made about these criticisms. Firstly, the Court has, on the whole, been progressive in its view of international law, especially in its advisory opinions. In the Corfu Channel and Fisheries cases, the Court made important contributions to the development of international law, as it did also in its advisory opinions concerning the Reparation for Injuries Suffered in the service of the United Nations and the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. Secondly, there is no international law without consent. It is inconceivable that States would agree to a system of judicial settlement based on so-called "laws" which they have had no part in making or which purport to bind them without their consent. For this reason, the modernization and codification of international law must proceed carefully.

6. Finally, it should be noted that, under Article 38 (2) of the Statute, the Court may decide a case ex aequo et bono if the parties so agree. This provision has rarely been used, never by the International Court of Justice, although it appears to give the Court as wide a discretion as it could reasonably be expected to have.

(b) The composition of the Court

7. There have been many changes in the membership of the United Nations in the last 10 years and the membership of organs of the United Nations, including the Court, has changed in sympathy. In his report to the twenty-fifth session of the General Assembly, the Secretary-General commented that "the composition of the present Court is exactly the same as that agreed on in 1963 for the Security Council. Since the composition of the Council is generally considered balanced, there appears little justification for objections to that of the Court". 4/

(c) The length and cost of cases

8. Considerable attention has been given to the question of the length of cases and their consequent cost, especially after the South West Africa cases (Second Phase) and the Barcelona Traction, Light and Tower Company, Limited, case (Second Phase). It is unjust, however, to lay the blame for the length of cases on the Court or its Statute. The Court has always had proper regard for the sovereignty and equality of States parties to disputes before it and has granted requests for delays and has received vast quantities of written and oral evidence if the States wished to present it. In the Barcelona Traction case, the Court, in granting a request for a delay, specifically regretted that it had been forced to do so by the parties.

4/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 1A (A/8001/Add.1), para. 147.

9. There are remedies within the existing Statute if States choose to use them, in the provisions of Articles 26, 27, 28 and 29 of the Statute, which establish the power of the Court to form chambers and to hear and determine cases by summary procedure.

10. It is apparent that these are not the real reasons for the reluctance of States to submit legal disputes or the legal aspects of disputes to the Court. This reluctance extends to all forms of judicial settlement. The confidence of sovereign States in these processes of settlement is one of slow growth. At present the consequence of this unwillingness is that many disputes remain unsettled.

II. Organization of the Court

11. The main organizational proposals have been referred to above, in particular, the composition of the Court and the use of summary procedure and the establishment of chambers.

III. Jurisdiction of the Court

(i) Contentious cases

12. Little is to be gained by looking for ways of increasing the Court's automatic jurisdiction, either by increasing the number of States which have made a declaration under Article 36 (2), (3), (4) and (5), or by writing a self-executing clause into more treaties. The fact is that the reasons now inhibiting States from having recourse to the Court will prevent them from agreeing to declare their acceptance of compulsory jurisdiction in either form or, more importantly, will prevent them from invoking such declarations or clauses in treaties intended to be automatic or self-executing in operation.

13. Since States have a free choice of means for the peaceful settlement of disputes, they may and, indeed, do refrain from seizing the Court of a dispute where they or the other party or parties to the dispute wish it to be settled in some other way. The fact that States choose to do this should not, of itself, be a matter for criticism. Provided the dispute is settled peacefully, the means which are chosen are of little consequence and the choice must be left to the disputants.

(ii) Advisory jurisdiction

14. The procedures of the Court are flexible. They permit the parties to tailor a reference to the Court to their own particular needs. It would even be possible by "compromis" so to phrase the submission of a question to the Court that what was being sought was in effect a legal opinion which would guide the parties in the settlement of a dispute. The North Sea Continental Shelf case was a case in point. This is close in substance, if not in form, to the seeking by States of an advisory opinion.

15. A number of interesting proposals have been made for broadening the categories or bodies which may be authorized by the General Assembly to seek advisory opinions of the Court. As a preliminary comment on these proposals, it is noted that implementation of some of them would require revision of the Charter or the Statute or both. Yet the present provisions of the Statute have not been fully explored. Firstly, disputants may approach the General Assembly and request it to ask the Court for an advisory opinion. This technique was used by the League of Nations in the case of the dispute between Britain and France over France's nationality decrees in Tunisia and Morocco. Secondly, if the Security Council is seized of a dispute, it can, under Article 36 (3) of the Charter, recommend to the parties that they refer their dispute to the Court. This has been done only once, in the Corfu Channel case. Greater use of these two devices could mitigate the procedural problems for which the more far-reaching proposals are intended as solutions and would not preclude greater use of the normal procedures whereby advisory opinions are sought by the General Assembly and the Security Council.

IV. Procedures and methods of work of the Court

16. The rules of the Court are a matter for the Court itself and Australia welcomes the review of its Rules by the Court. As has been pointed out above, the problems of the length and cost of cases are caused more by the parties to cases before the Court than by the procedures and methods of the Court.

17. Perhaps one possible suggestion which could be made is that procedural issues should be separated as far as possible from questions of substance. This will of course not always be possible as, in the view of the Court, it was not in the Barcelona Traction Light and Power Company, Limited.

V. Future action on the item by the General Assembly

18. The above review does not claim to examine the question in depth. Yet it reveals a number of areas in which more use could be made of the Court under its present Statute if States were so disposed. The fact is that many States do not favour judicial settlement of disputes. Consequently, it is unlikely that greater use would be made of the Court if its Statute were amended and unlikely that amendments to the Statute would be approved for the sole purpose of facilitating greater recourse to the Court.

19. Greater use of the Court will develop as States gain confidence in judicial settlement. Perhaps a way of achieving this may be to encourage more reference of minor matters to the Court. For the General Assembly, however, the appropriate course is simply to discuss this question. There is no other action which could do more towards the development of confidence in judicial settlement while any attempt to extend the compulsory jurisdiction of the Court or to amend the Statute to widen the Court's jurisdiction will do nothing to help such a development.

BRAZIL

/Original: English/

20 July 1972

I. The role of the International Court of Justice within the framework of the United Nations

1. The International Court of Justice, according to Article 7 of the United Nations Charter, is one of the principal organs of the Organization and, according to Article 92, its principal judicial organ. This attests to the high esteem which the founders of the United Nations held for the pacific settlement of disputes, of which the Court is an instrument, propitiating the maintenance or restoration of good relations among States and the preservation of the peace. Notwithstanding its recognition of the value of good offices, enquiry, mediation, negotiation, conciliation and other peaceful means of the choice of the parties involved, envisaged in Article 33 of the United Nations Charter, Brazil reaffirms the importance attributed by the Charter to the International Court of Justice and its respect for the recourse to the judicial settlement of disputes.

2. The law applied by the Court, particularly as to the sources of international law enumerated in Article 38, paragraph 1, of the Statute, is likely to remain vague and uncertain for some time to come. Only the slow but steady development of international law in the last twenty-seven years has been able to fill the vacuum created by the relative lack of legislative elements in international society. As codification proceeds, affording us a clear definition of the areas of the law of the sea, diplomatic law and the law of treaties, and the number of conventions signed annually increases the body of codified international law, the task of the Court will become less difficult and more complete as the rules applied currently are no longer taken in their entirety from the amorphous mass of international custom. Although acknowledging that Article 38 of the Statute contains some imprecise formulations, i.e., the reference to the "general principles of law recognized by civilized nations", its amendment is not a conditio sine qua non for the improved functioning of the Court. Article 38, in our view, still covers existing sources of international law. Although a revision of its terminology should be included in some future attempt to amend the Statute, this does not, at the present time, present any obstacle to the Court's discharging its lofty responsibilities.

II. Organization of the Court

1. The Brazilian Government believes that the membership of the Court adequately reflects the principle of equitable geographical distribution. In the future, its enlargement could provide better representation for the growing number of members of the United Nations. At the present time, however, the principal problem is the non-recourse by States to judicial settlement, and it is doubtful that an increase in the Court's membership would suffice to increase its efficiency. Brazil would not be opposed to the consideration of a proposal to the effect of increasing the

membership of the Court to 18, as suggested by the Institute of International Law. None the less, there do not appear to be any pressing reasons for such a change to be made forthwith.

2. A series of constructive measures could be proposed in order to improve the independence and representative character of the judges. It might be advisable to introduce the idea of compulsory retirement at the age of 72 and to recommend that States present only such candidates as can complete their terms before reaching the age limit.

3. However, the proposal made by the Institute of International Law at the Aix-en-Provence meeting, calling for judges to be elected for 15-year terms, with no re-elections, is excessive. In the view of the Brazilian Government, the nine-year term in force is adequate assurance for the continuity of the Court's work, particularly in view of the fact that paragraph 3 of Article 13 establishes that even though they may have been replaced, judges should follow through to their conclusion the judgement of any cases whose consideration they may have begun. A 15-year term is very long and could militate against the need to preserve the principle of rotation in the membership of the Court, a principle which must be observed if we are to ensure the participation of the principal juridical systems of the world in that organ.

4. Among the suggestions made in order to guarantee the independence of the judges and to keep politics out of the elections, Brazil favours holding the elections for the Court on the first day of sessions of the General Assembly, preferably, or even just prior to the official opening, independently of the other elections held during the Assembly. This would help to minimize the usual electoral manoeuvring.

5. The possibilities envisaged in the Statute have not as yet been fully explored. To date, no State has taken advantage of the option to expedite the dispatch of business by annually forming a chamber which may hear and determine cases by summary procedure, in conformity with Article 29 of the Statute. Nor has the option of forming chambers to deal with particular cases been exercised. In the opinion of the Brazilian Government, any criticism relating to the current state of affairs should, thus, be levelled at the States and not at the Court.

6. On the other hand, the formation of regional chambers would fail to increase the efficiency of the Court. Co-operation between regional juridical organs and the International Law Commission demonstrates, as can be verified each year, a strong tendency in favour of rendering international law progressively more universal.

7. The question of ad hoc judges, nominated in conformity with Article 31 of the Statute, is a controversial one. There is no doubt that this is a superfluous provision for a judicial body considering the principle that excludes the judex in causa propria. The acceptance of ad hoc judges should be looked upon as a compromise with old arbitral procedures justified by the incipient nature of international jurisdictional power. Ad hoc judges are bound to disappear as in international relations progress under the force of law and as judicial settlements gain general acceptance.

III. Jurisdiction of the Court

1. The Government of Brazil still considers the optional clause of the second paragraph of Article 36 of the Statute as the only valid, albeit limited, way to reconcile the principle of sovereignty with compulsory jurisdiction. Brazil prides itself on the fact that this realistic formula was added to the Statute of the former Permanent Court of International Justice and maintained in the Statute of the present Court, due to the talent and resourcefulness of Raul Fernandes. Undeniably, the number of countries which opted to accept the clause has not increased since the days of the former Court. To date, only 36 States have accepted compulsory jurisdiction, and many of these acceptances are subject to a series of reservations, the majority dealing with the exception made as to internal jurisdiction. Brazil does not believe, however, that any change would increase the number of States subscribing to the optional clause on compulsory jurisdiction. It would be unrealistic to seek formulae for the purpose of applying the general and unrestricted jurisdiction of the Court to international disputes. For many years to come, the optional clause will be the only way to induce States to accept the jurisdiction of the Court, at least in some specific areas of the law.

2. Brazil is in favour of studying the possibility of allowing intergovernmental organizations to have access to the Court as parties to a case. This would be a step forward, keeping pace with the needs of international life.

3. The participation of the Court in world affairs would also be increased by the inclusion in international treaties of provisions for disputes having to do with the interpretation and application of these same treaties to be submitted to the International Court of Justice.

4. Brazil agrees with those Governments which are against extending the competence of the Court to include advisory opinions requested by regional organizations and States, a measure which would certainly require amending the Charter and the Statute. At this time, four principal organs (Article 96, paragraph 1, of the United Nations Charter), two subsidiary organs of the General Assembly, 12 specialized agencies (Article 96, paragraph 2, of the Charter) and the International Atomic Energy Agency are authorized to request advisory opinions. To date, the number of such organizations and organs which have had recourse to these opinions remains small. The General Assembly has done so twice, the Security Council once and only two specialized agencies have had occasion to do so. Consequently, it can be assumed that there are no practical grounds for authorizing other organs to request advisory opinions. As to States, certain difficulties arise, inasmuch as an advisory opinion received by a State could be considered as a prejudgement of a concrete case. The proposal that States be allowed to request an advisory opinion only in cases involving matters which are not to be submitted as real cases in the future does not come to grips with the problem, since it is difficult to foretell with any degree of accuracy what the future holds for any issue on which an advisory opinion has been requested. Moreover, the extension of the role of the Court could result in allowing a secondary function of the Court to outweigh its more important responsibilities, even that of jurisdiction, which, according to the Statute, is its principal function.

IV. Procedures and methods of work of the Court

Brazil believes it advisable to postpone consideration of the issues in regard to this matter. The Court adopted only very recently an amended version of its Rules. 5/ Hence it would be only natural to await the results of the measures thus taken before studying means to improve the procedures and methods of work of that organ of the United Nations. Furthermore, in keeping with the provision of Article 30 of the Statute, the framing of rules for carrying out its functions falls within the competence of the Court itself.

V. Future action on the item by the General Assembly

1. The many suggestions contained in the comments of Governments fall into two categories: some require amendments to the Statute, tantamount to amendments to the Charter (Article 69 of the Statute), while others are less complex, involving minor changes in current procedures, and do not require formal amendments. Obviously, the more ambitious alterations should be carefully considered and viewed merely as preliminary suggestions to be subsequently subjected to prolonged and meticulous study, with the Court itself playing a decisive role in the process. The less complex suggestions could be weighed on their merits as a source of information to be provided the Court to reveal the trends of thought of Governments in connexion with the difficulties of the Tribunal.

2. As co-sponsor in 1970 of the idea of the establishment by the General Assembly of an ad hoc committee to study the review of the role of the International Court of Justice, Brazil would not oppose the resubmission of a proposal for the creation of such a committee. It would be advisable, however, to stress that to a large extent, criticisms have been levelled at States and not at the Court of the Hague, and that prudence is required in our consideration of the matter.

5/ International Court of Justice, Acts and Documents Concerning the Organization of the Court No. 2, Rules of Court adopted on 6 May 1946, as amended on 10 May 1972.

COLOMBIA 6/

/Original: Spanish/

19 June 1972

Colombia attaches the highest importance to the role of the Court as the principal judicial organ of the United Nations under the terms of Article 92 of the Charter. It has for a long time recognized the compulsory jurisdiction of the Court, in accordance with Article 36 of the Statute, and has not hesitated to have recourse to it. It has confidence in the Court's procedure for the peaceful settlement of disputes, without prejudice to any of the other means provided for in Article 33 of the Charter, and it would like to see the Court enjoy greater prestige and exercise greater influence.

It has to be acknowledged that at the present time the general climate of opinion is not favourable to the Court or its work. In the discussions of the Sixth Committee, in which the delegation of Colombia participated, comments were made regarding the Court's lack of opportunity to exercise its functions. The apathy, reticence or distrust of States cannot be hidden: they are content to extol the Court and, with the exception of a minority, of which some have entered reservations, do not bring cases before it or recognize its compulsory jurisdiction.

Compulsory jurisdiction is a justifiable aspiration. It can be objected, however, that compulsory jurisdiction implies an unacceptable limitation of sovereignty and ignores the force of the argument that sovereign States can make international relations more viable by voluntarily accepting a limitation of their sovereignty. Be that as it may, if the Court is to have the extended and influential role desired, there must be goodwill and trust on the part of States. Much can be done in the General Assembly to foster such goodwill and trust - with the co-operation of the Court, of course.

6/ Colombia transmitted in the same letter its observations on the review of the role of the International Court of Justice and its views on the need to consider suggestions regarding the review of the Charter of the United Nations (item 89 of the provisional agenda). In that connexion the letter contains the following statement: "Since the Statute of the International Court of Justice is part of the Charter and the review of the Court's role may lead to revisions in its Statute, I felt that it would be appropriate to deal with both subjects in a single document". Only the observations relating to the review of the role of the International Court of Justice are being reproduced here. For the complete text of the letter, see the report of the Secretary-General entitled "Need to consider suggestions regarding the review of the Charter of the United Nations" (A/8746).

In its views on the revision of the Charter 7/, Colombia suggested that the Court should be given the power to settle any doubtful issues that might arise in the Security Council or the General Assembly in connexion with the legal status of a State seeking membership or association with the United Nations. This new power would undoubtedly enhance the Court's prestige.

The Government of Colombia does not consider that the number of judges should be increased or that their term of office should be changed. Neither of these matters has any bearing on the Court's problems.

Colombia endorses the provisions of Articles 26 to 29 of the Statute under which the Court may form one or more chambers for dealing with particular categories of cases, including labour cases and cases relating to transit and communications, and may form a chamber for dealing with a particular case. It would go further and would suggest that the formation of the chambers should be provided for in the Statute and that, in addition to those enumerated, there should be chambers for dealing with, inter alia, the law of the sea, the law of the air, and financial law. Such chambers should be of a permanent nature.

It is proposed that Article 29 of the Statute should specify time-limits within which the cases referred to are to be heard and determined.

The Government of Colombia also takes the view that careful and thorough consideration should be given to the question of regional chambers or courts. The creation of such bodies, by taking into account the existence of the different legal systems in the world, would certainly inspire greater confidence and be in the interests of the Court. It seems manifestly desirable that provisions relating to the creation of regional courts or chambers should be included in the Statute of the Court.

With regard to assessors in the advisory opinion procedure, the Government of Colombia considers that their attendance should no longer be subject to the provisions relating to contentious jurisdiction; instead, the Statute should stipulate that assessors should always be present. The Government of Colombia also believes it desirable to specify in the Statute time-limits for summary procedures in advisory jurisdiction where the matter is deemed to be urgent by the requesting party. Nothing would help to enhance the prestige of the Court more than the expeditious delivery of learned advisory opinions. Care should be taken, however, to avert situations in which the Court would have to determine a case in contentious proceedings after already giving an advisory opinion on it because States have been allowed recourse to this expedient in connexion with contentious

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7/ See A/8746.

cases. Access to advisory jurisdiction should be extended to a number of international organizations which do not at present have this prerogative; the conditions therefore should be established, however.

Colombia is also in favour of conducting a thorough study to investigate the desirability of allowing international organizations to invoke the Court's jurisdiction. The Court should co-operate in this study, which should be comprehensive and should cover the key aspect of precluding an international organization from initiating proceedings against States Members of the United Nations.

Colombia whole-heartedly endorses the idea of encouraging the inclusion in international treaties of clauses giving the Court jurisdiction to settle any disputes that might arise from the interpretation or application of such treaties.

Lastly, as the Colombian delegation stated in the Sixth Committee 8/, Colombia is of the opinion that any action with regard to the Court should be regarded as an important part of the Assembly's work on the revision of the Charter and that the two matters should not be dissociated.

GUYANA

/By a note dated 17 February 1972, the Permanent Mission of Guyana to the United Nations recalled the statement made by the representative of Guyana at the 1284th meeting of the Sixth Committee, on 17 November 1971 (A/C.6/SR.1284)/

8/ See A/C.6/SR.1213 and 1283.

IRAN

/Original: French/
12 May 1972

I. The role of the Court within the framework of the United Nations

1. The Court can and must play a key role in the peaceful settlement of international disputes. It is true that the judgements and advisory opinions delivered by the Court have not always received unanimous acceptance from States parties to its Statute, but that in no way detracts from the role of the "principal judicial organ" of the United Nations, nor from the importance of judicial settlement as provided for in Article 33 of the Charter.

2. The law applied by the Court does not entirely meet the requirements of present-day international life; but it should be noted that, by its activities, the Court has made a significant contribution to the progressive development of international law. It is hoped that the Court will persevere in its work along these lines.

II. Organization of the Court

3. It is satisfying to note that the changes that have occurred in recent years in the composition of the Court have, to some degree, enhanced its representative character. A further development along these lines would clearly contribute to the Court's effectiveness.

4. It would appear that procedures such as recourse to the chamber of summary procedure and the creation of regional chambers of judges would assist in the speedy dispatch of cases brought before the Court.

III. Jurisdiction of the Court

(a) Contentious cases

5. The Government of Iran considers it desirable that States parties to the Statute of the Court should take full advantage of the range of possibilities which the latter can offer for the settlement of disputes. Furthermore, the Government of Iran takes the view that the Court, in order to encourage the greatest possible number of States to accept its compulsory jurisdiction, should seek to foster a feeling of confidence in the States parties to its Statute. The Court could achieve this by taking into account in its activities the changes in international relations that have occurred during the past two decades.

6. The activities of intergovernmental organizations are steadily growing. These bodies have considerable legal powers, particularly as regards the conclusion of

treaties. It would therefore contribute to the harmonious development of international treaty relations if these organizations were able to apply to the Court.

(b) Advisory jurisdiction

In view of the preceding comments, the Government of Iran would see no objection if a large number of intergovernmental organizations were allowed to request advisory opinions of the Court.

IV. Procedures and methods of work of the Court.

The application by the Court of certain rules, particularly those which are responsible for the unjustified length of proceedings and the rising expenses of the Court, constitutes an impediment discouraging States from referring their disputes to the Court. In the view of the Government of Iran, a revision that would render these rules more flexible might increase the number of hearings by the Court and ensure that justice prevailed in international relations. In that connexion, it is important to note the work which the Court itself has undertaken for the purpose of revising its rules.

V. Future action by the General Assembly

The debates of the General Assembly on the role of the Court have contributed to a better understanding of the problems involved in the Court's reorganization. In that connexion, the Government of Iran will support the views of the majority and will seek to take an active part in implementing the measures which the General Assembly may wish to take in this field.

KUWAIT

/Original: English/
4 April 1972

I. The role of the International Court of Justice within the framework of the United Nations

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". With these words of Article 2 (3) of the Charter of the United Nations the foundation stone of the principle of settling international disputes by peaceful means was laid. It was then only natural for Article 33 of the Charter to build on that foundation in specifying the means open to States for settling their disputes by peaceful means, the most important of which is judicial settlement.

Consequently the Charter of the United Nations recognized the International Court of Justice by virtue of Article 7 as one of the principal organs of the United Nations and by Article 92 as its principal judicial organ. Furthermore, Article 36 of the Charter makes it inter alia incumbent upon the Security Council to take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Thus it is an established fact that the role which the International Court of Justice can and should play in the field of peaceful settlement of disputes has been well envisaged by the Charter.

However, having those undisputed facts in mind, we will now attempt to explore the obstacles which have rendered the International Court of Justice incapable, to a certain extent, of serving the purpose for which it was established.

States who have accepted the compulsory jurisdiction of the Court, and who incidentally represent only one-third of the members of the United Nations have repeatedly blamed the failure of the Court ex post facto on the non-acceptance of its compulsory jurisdiction by the other members.

Although the Government of the State of Kuwait recognizes this reasoning, it nevertheless suggests that the majority of States who have accepted the compulsory jurisdiction of the Court have done so with a long list of reservations on certain controversial cases which in its view renders their acceptance incompatible with the principle of pacific settlement of disputes and hardly worthwhile.

The Government of the State of Kuwait believes that the General Assembly should take the present opportunity to reconsider carefully any measures which may be proposed to enhance the role of the Court thereby making it a more attractive and effective instrument for the pacific settlement of disputes between States, so that they will be encouraged to make full use of it.

III. Jurisdiction of the Court

(a) Contentious cases:

Article 36 (2) of the Statute lays down the procedure by which States Parties to the Statute may recognize as compulsory ipso facto in relation to any other State accepting the same obligation, the jurisdiction of the Court.

Despite the term "compulsory jurisdiction of the Court", States are not bound by it unless they so indicate voluntarily. The majority of States have been reluctant to accept this compulsory jurisdiction, while other States have accepted it with reservations as they regard it as an impairment of their sovereignty.

Furthermore, this method of adjudication should be made available to intergovernmental organizations, which would ultimately entail an amendment of the Charter, causing thereby certain resistance from a group of States Members of the United Nations.

An appellate jurisdiction with respect to the decisions of other international tribunals as well as the possibility of enabling private individuals and corporations to be parties before the Court should be given due consideration.

(b) Advisory jurisdiction

Article 96 of the Charter provides that only certain organs of the United Nations and specialized agencies may request an advisory opinion from the Court. This provision in Article 96 should be expanded to include possibly regional organizations. States should also be allowed to seek an advisory opinion; they would thus avoid any impairment of their sovereignty since such an opinion is not binding upon States.

V. Future action on the item by the General Assembly

Since the item entitled "Review of the role of the International Court of Justice" was included on the agenda of the General Assembly, a number of States have repeatedly requested the establishment of an ad hoc committee to study and report on this matter.

In our opinion the establishment of such a committee at this stage is still premature; the General Assembly would be well advised to examine first all aspects of the matter and explore fully all the proposals contained in the replies of States to the Secretary General's questionnaire. Only when the majority of States have expressed their views, should the General Assembly decide on the possibility of establishing a committee for this purpose.

The Government of the State of Kuwait has refrained from submitting at this stage its observations on points II and IV of the questionnaire of the Secretary General as a deeper study of these problems is required.

MONGOLIA

/Original: Russian/

14 August 1972

1. In accordance with the Charter of the United Nations, the International Court of Justice constitutes the Organization's principal judicial organ, and the Statute of the Court forms an integral part of the Charter.

2. The main purpose of the International Court of Justice consists in the settlement of disputes between States, when the latter agree to submit such disputes for its consideration; and, under the Charter, any decision of the Court on any question is meant to promote the strengthening of international peace and security.

3. At the same time, under the Charter, States retain the sovereign right to choose freely the means of settling disputes between them. It is well known that neither the Charter nor the Statute provides for the compulsory jurisdiction of the Court. The acceptance of such jurisdiction under any pretext, however plausible it might appear, would transform the Court into a supranational body and would thus run counter to the principles relating to State sovereignty.

4. The basic causes operating to the detriment of the role and authority of the International Court lie above all in particular judgements which the Court has rendered contrary to Charter requirements and the just principles of international law, in the present composition of the Court, which is far from equitable, and in the very slow manner in which the Court conducts its proceedings.

In the light of the above, the Government of the Mongolian People's Republic takes the view that the only real means of enhancing the effectiveness of the work of the Court lies in the strict observance of the provisions of the Charter and the Statute; and, consequently, the success of the Court's work and its authority depend principally on the Court itself. Accordingly, the Mongolian Government holds that there is no need to consider the question of enhancing the role of the Court within United Nations organs until the Court itself fully utilizes the possibilities set forth for that purpose in the Charter and the Statute.
