UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/8568
10 December 1971
ENGLISH
ORIGINAL: FRENCH

Twenty-sixth session
Agenda item 90

REVIEW OF THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE

Report of the Sixth Committee

Rapporteur: Mr. Alfons KLAFKOWSKI (Poland)

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

I. INTRODUCTION

1. In resolution 2723 (XXV) of 15 December 1970, the General Assembly decided to include in the provisional agenda of its twenty-sixth session an item entitled "Review of the role of the International Court of Justice". At its 1939th plenary meeting, on 25 September 1971, the Assembly decided on the recommendation of the General Committee to include the question in the agenda, and referred it to the Sixth Committee.

2. The Sixth Committee examined the question at its 1277th to 1284th and 1293rd to 1296th meetings, held from 9 to 17 November and from 29 November to 1 December 1971.

3. At its 1279th meeting, on 11 November 1971, the Chairman drew the attention of the Sixth Committee to the request by Switzerland (A/C.6/407), for permission to participate in the discussion on the question of the role of the International Court of Justice. The Chairman also stated that "pursuant to General Assembly resolution 2723 (XXV), Switzerland had been invited to submit its views and suggestions concerning the role of the Court, on the basis of the Secretary-General's questionnaire. It seemed logical to allow Switzerland to express its views on the subject. Hence, if there were no objections he would invite Switzerland, when it so requested, to present its views and suggestions on the item". It was so decided. One representative pointed out that Switzerland was being allowed to submit its observations on the Secretary-General's questionnaire as a matter of courtesy and expressed the hope that the same attitude would be adopted in the future in regard to other States non-members of the United Nations.

4. The Committee had before it a report by the Secretary-General (A/8382 and Add.1-4), prepared in pursuance of resolution 2723 (XXV), containing the views communicated by Member States and the States Parties to the Statute of the International Court of Justice, as well as the text of a letter addressed to the Secretary-General by the President of the Court concerning operative paragraph 3 of that same resolution.

5. At the 1296th meeting, on 1 December, the Rapporteur of the Sixth Committee raised the question whether the Committee intended to include in its report to the General Assembly a summary of the views on that item of the agenda expressed

during the debate. Referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII), dated 8 December 1967, the Rapporteur gave the Committee details of the financial implications of the decision it might take. At the same meeting, the Committee decided that in view of the decision it had taken at the previous session in regard to the report on the question of the review of the role of the Court, the report on agenda item 90 should contain a summary of the main trends of opinion which had emerged during the debate.

II. PROPOSALS AND AMENDMENTS

6. At the 1293rd meeting, on 29 November 1971, the representative of Ghana submitted a draft resolution (A/C.6/L.829) on behalf of the following countries: Argentina, Barbados, Belgium, Canada, Cyprus, Denmark, Ethiopia, Finland, Ghana, Greece, Guatemala, Guyana, Haiti, Italy, Ivory Coast, Japan, Liberia, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Sierra Leone, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

7. The draft resolution was worded as follows:

"The General Assembly,

"Recalling that the International Court of Justice is the principal judicial organ of the United Nations,

"Considering the desirability of finding ways and means of enabling the Court to play a more effective role in the international community,

"Bearing in mind that a study of the Court will in no way impair its authority but should seek to facilitate the greatest possible contribution by the Court to the advancement of the rule of law and the promotion of justice among nations,

"Noting the comments of Governments in response to General Assembly resolution 2723 (XXV) of 15 December 1970,

"1. Expresses its appreciation to the Secretary-General for the report contained in document A/8382 and Add.1-4;

"2. Decides to establish an Ad Hoc Committee on the Role of the International Court of Justice which shall be composed of 25 States Parties to the Statute of the Court to be appointed by the President of the General Assembly after appropriate consultations with regional groups, on the basis of equitable geographical distribution;

"3. Invites States Parties to the Statute of the Court who have not yet done so to submit to the Secretary-General their comments on the subject-matter of the study on the basis of the questionnaire prepared by the Secretary-General;

"4. Requests the Ad Hoc Committee to study, in the light of the comments of Governments and the views expressed at the twenty-fifth and twenty-sixth sessions of the General Assembly, the role actually being played by the Court in the international community, the problems involved, and ways and means of solving them;

"5. Recommends that each State appointed to membership in the Ad Hoc Committee designate as its representative a person having appropriate expert knowledge;

"6. Requests the Secretary-General to transmit to the Court the report contained in document A/8382 and Add.1-4 and the records of the discussions and proposals in the Sixth Committee on this item;

"7. Invites the Court, if it sees fit, to assist the Ad Hoc Committee with information and by submitting its views, or its comments on specific questions, to the Committee orally or in writing;

"8. Decides that the Ad Hoc Committee should hold a four-week session commencing on _____ 1972;

"9. Requests the Ad Hoc Committee to submit a preliminary report to the General Assembly at its twenty-seventh session;

"10. Requests the Secretary-General to furnish all appropriate assistance to the Ad Hoc Committee;

"11. Decides to inscribe on the provisional agenda of its twenty-seventh session an item entitled 'Report of the Ad Hoc Committee on the Role of the International Court of Justice'."

8. At the same meeting, the representative of the Union of Soviet Socialist Republics presented a draft resolution (A/C.6/L.830) sponsored by the following countries: Bulgaria, Byelorussian SSR, Czechoslovakia, Hungary, Mongolia, Poland, Ukrainian SSR and Union of Soviet Socialist Republics.

9. The draft resolution was worded as follows:

"The General Assembly,

"Having reviewed the role of the International Court of Justice,

"Noting that under the Charter of the United Nations all Members of the Organization are obliged to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

"Recalling that in accordance with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)) international disputes are to be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means for the peaceful settlement of disputes,

"Taking into account the fact that the International Court of Justice is the principal judicial organ of the United Nations,

"Believing that the International Court of Justice could, in accordance with the above-mentioned principles, settle disputes of a legal nature or contribute to their settlement,

"Noting that the possibilities afforded by the Statute of the International Court of Justice are not yet being fully utilized,

"Noting that of the 134 States Members of the United Nations or Parties to the Statute of the International Court of Justice, only 31 have submitted their views and suggestions in accordance with General Assembly resolution 2723 (XXV),

"Noting that the International Court of Justice is taking measures to enhance the effectiveness of the Court's procedure, in particular through revision of the Rules of the Court,

"1. Draws the attention of States Members of the United Nations or Parties to the Statute of the International Court of Justice to the possibilities afforded by the Statute of the International Court of Justice for the peaceful settlement of disputes of a legal nature;

"2. Requests the International Court of Justice to accelerate the revision of its Rules and to inform the General Assembly of the results;

"3. Requests the Secretary-General to transmit to the President of the International Court of Justice the records of the debates on the role of the International Court of Justice at the twenty-fifth and twenty-sixth sessions of the General Assembly as well as the report contained in document A/8382 and Add.1-4;

"4. Decides to postpone further consideration of the role of the International Court of Justice until the Court completes the revision of its Rules."

10. This draft resolution was withdrawn at the 1295th meeting.

11. At the 1293rd meeting, the representative of France presented a draft resolution (A/C.6/L.831) sponsored by the following countries: Dahomey, Ecuador, El Salvador, France, Kenya, Madagascar, Morocco, Spain and Sudan.

12. The draft resolution was worded as follows:

"The General Assembly,

"Recalling that the International Court of Justice is the principal judicial organ of the United Nations,

"Recalling further that, in accordance with Article 2, paragraph 3, of the Charter, 'all Members shall settle their international disputes by peaceful means in such a manner that interantional peace and security, and justice, are not endangered',

"Emphasizing that, in conformity with that principle, as solemnly proclaimed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, judicial settlement is one of the means to which States can have recourse in seeking a just settlement of their disputes,

"Considering the desirability of finding ways and means of enhancing the effectiveness of the Court,

"Noting that the Court has undertaken a revision of its rules,

"Having noted the report of the Secretary-General containing the replies received from certain Member States and from Switzerland to the questionnaire prepared in accordance with General Assembly resolution 2723 (XXV) and the text of the letter addressed to the Secretary-General by the President of the Court,

"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 resolution 2723 (XXV);

"2. Requests the Secretary-General to submit those comments to it at its twenty-seventh session;

"3. Requests the Secretary-General to transmit to the Court the report contained in document A/8382 and Add.1-4 and the summary records of the discussions held in the Sixth Committee at its twenty-sixth session;

"4. Invites the Court to submit its views on the matter if it so desires;

"5. Expresses the hope that the Court will complete the revision of its rules as soon as possible;

"6. Decides to include in the provisional agenda of its twenty-seventh session an item entitled 'Review of the role of the International Court of Justice'."

13. Three series of amendments were submitted to draft resolution A/C.6/L.829, by the Union of Soviet Socialist Republics (A/C.6/L.834), Kuwait and Lebanon (A/C.6/L.836), and Uganda (A/C.6/L.837) respectively.

14. The amendment submitted by the Union of Soviet Socialist Republics (A/C.6/L.834) was worded as follows:

"Preamble

After the word 'Considering' in the second paragraph add the following: 'the fact that the possibilities afforded by the Statute of the International Court of Justice are not yet being fully utilized, and'.

The paragraph would then read:

'Considering the fact that the possibilities afforded by the Statute of the International Court of Justice are not yet being fully utilized, and the desirability of finding ways and means of enabling the Court to play a more effective role in the international community,'.

In the third paragraph replace the word 'will' by the word 'should'.

Replace the fourth paragraph by the following:

'Noting that of the 134 States Members of the United Nations or Parties to the Statute of the Court, only 31 have submitted their views and suggestions in accordance with General Assembly resolution 2723 (XXV),'.

"Add the following as the fifth paragraph:

'Noting further that the Court is taking measures to enhance the effectiveness of its procedure, in particular through revision of the Rules of the Court,'.

"Operative part

"Replace paragraph 2 by the following:

'2. Draws the attention of States Members of the United Nations or Parties to the Statute of the Court to the possibilities afforded by the Statute of the International Court of Justice for the peaceful settlement of possible disputes of a legal nature;'.

"Delete paragraph 4.

"Delete paragraph 5.

"Renumber paragraph 6 paragraph 4.

"Replace paragraph 7 by the following:

'5. Requests the Court to accelerate the revision of its Rules and to inform the General Assembly of the results;'.

"Delete paragraph 8.

"Delete paragraph 9.

"Delete paragraph 10.

"Replace paragraph 11 by the following:

'6. Decides to postpone further consideration of the role of the International Court of Justice until the Court completes the revision of its Rules.'."

15. The amendments submitted by Kuwait and Lebanon (A/C.6/L.836) and introduced by the representative of Lebanon at the 1295th meeting on 30 November, were worded as follows:

"1. Replace operative paragraph 3 by the following:

'3. 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 resolution 2723 (XXV);'.

"2. At the end of line four in operative paragraph 4, after the word 'means', insert between commas the following:

'short of amending the Statute of the Court'.

"3. Reword operative paragraph 8 as follows:

'8. Decides that the Ad Hoc Committee should hold a four-week session as early as possible in 1973;'.

"4. In operative paragraphs 9 and 11, replace the word 'twenty-seventh' by 'twenty-eighth'."

16. At the 1295th meeting, the sponsors of draft resolution A/C.6/L.829 announced that they were prepared to accept amendments 3 and 4 submitted by Kuwait and Lebanon (A/C.6/L.836), and the representative of Lebanon indicated that amendment 1 was withdrawn, but amendment 2 was being maintained.

17. The amendments submitted by Uganda (A/C.6/L.837) were presented by their sponsor at the 1295th meeting; they read as follows:

"1. Delete operative paragraph 8 and replace it by the following:

'8. Decides that the Ad Hoc Committee should meet at an appropriate time to be agreed upon at the twenty-seventh session of the General Assembly;'.

"2. Delete operative paragraph 9 and replace it by the following:

'9. Requests the Ad Hoc Committee to submit a preliminary report to the General Assembly after holding its first session;'.

"3. Delete operative paragraph 11 and replace it by the following:

'11. Decides to inscribe on the provisional agenda of the session of of the General Assembly immediately following the first session of the Ad Hoc Committee an item entitled 'Report of the Ad Hoc Committee on the Role of the International Court of Justice'."

18. These amendments were withdrawn at the 1295th meeting.

19. The administrative and financial implications of draft resolution A/C.6/L.829 were set out in document A/C.6/L.833; those of draft resolution A/C.6/L.831 were indicated orally by the Secretary of the Committee at the 1293rd meeting.

III. DEBATE

20. The main trends of the debate of the Committee on the agenda item dealt with in this report are summarized in three sections. Section A is devoted to the role of the International Court of Justice within the framework of the United Nations. Section B deals with the factors relevant to the present situation of the Court. Finally, section C deals with the question of the review of the role of the Court.

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

1. The place of the Court and of the judicial settlement of disputes in the system established by the United Nations Charter

21. All the representatives who spoke stressed the importance of the role of the International Court of Justice, as the principal judicial organ of the United Nations under Article 92 of the Charter. Some delegations expressed the view

that judicial settlement was among the foremost of the means of peaceful settlement of disputes provided for in Article 33 of the Charter; mention was made in particular of Article 36 (3). In this connexion, it was observed that, since the idea of peaceful change was today a factor of predominant concern in international affairs, it was understandable that among the means of pacific settlement of disputes mentioned in Article 33 of the Charter special attention should now be paid to those which, like judicial settlement, seemed most appropriate for preparing the peaceful evolution of the international community. It was noted in addition that, in the internal legal order, resort to judicial institutions was the normal method of settling disputes. Although that could not yet be entirely the case in relations between States, owing to the international situation, it was nevertheless the great advantage of judicial settlement that it dealt essentially with rules of law, whereas the other methods provided for in Article 33 often involved a compromise in which the physical or economic pressures exerted by one of the parties might predominate. It was also stated that those other means were often purely temporary expedients, whereas a judicial settlement should normally produce a lasting solution because it was based on law and justice.

22. Other representatives felt, however, that recourse to the International Court of Justice was only one means of peaceful settlement among others and that the Charter gave it no priority. It was noted in this connexion that Article 33 left States free to solve the disputes to which they were parties by any peaceful means of their choice and that Article 95 permitted them to address themselves to tribunals other than the Court if there was an agreement to that effect. It was recalled that the principle of freedom of choice had been reflected in various decisions taken by the General Assembly, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. It was observed that Article 36 (3) of the Charter, which provides that "legal disputes should as a general rule be referred by the parties to the International Court of Justice", was worded very cautiously, and indeed restrictively. In these circumstances, it was held that care must be taken not to over-estimate the role assigned to the Court by the Charter and not to jeopardize, through a biased reading of the relevant provisions of the Charter, the delicate balance of powers established among the principal organs of the United Nations.

2. The role played by the Court

23. Most delegations praised the outstanding competence and integrity of the Court's judges and emphasized the very positive influence which its judgements and opinions had had on relations between States and on the progressive development and codification of international law. They also expressed the view that it would be desirable for greater use to be made of the Court. While several representatives expressed regret that the Court had handed down some decisions which they considered to be questionable, other representatives noted with satisfaction the renewed confidence in the Court which seemed to be emerging. Mention was made in particular of the recent Advisory Opinion delivered on the question of Namibia. It was also noted that a new case had recently been brought before the Court. Despite these hopeful developments, most delegations were agreed that the Court had not been enabled to discharge in full the role originally envisaged for it as was made plain by its relative inactivity.

B. Factors relevant to the present situation of the Court

1. General factors

(a) The state of international society

24. Several delegations expressed the opinion that while there was a geniune role for the Court to play in existing circumstances, the Court would be unable to play a role similar to that of national courts until international society had become homogeneous. It was stressed in this connexion that contemporary international society consisted of sovereign States having different political, economic and legal systems and was in no way comparable to national societies with a homogeneous State structure. Mention was also made of the present state of political relations between States, which explained the failure of the United Nations to settle disputes by political decisions and was inconducive to the creation of the climate of international confidence essential for the progress of judicial settlement.

25. A number of delegations felt that the reluctance of States to resort to the Court was due to their excessive attachment to the concept of national sovereignty, a notion with which they were still to imbued to comply readily with

the decisions of a supranational tribunal. In addition, some delegations observed that States which were on good terms with each other were often adverse to submitting disputes to the Court, regarding that as an unfriendly act rather than a normal part of international life. Reference was also made to the view States took of their interests and to their disinclination to call on an outside party to weigh important national interests of which the legal aspects were often difficult to distinguish from the political aspects. It was further noted that in the absence of voluntary compliance, the enforcement of the Court's judgements was a matter for the Security Council, under Article 94 of the Charter; which in turn raised the problem of the effectiveness of the Security Council itself.

(b) The content of international law and its application by the Court

26. A number of delegations expressed the opinion that the law which the Court was required to apply under Article 38 of its Statute reflected essentially the legal systems of Europe and America and did not correspond to the realities of present-day life or the legitimate aspirations of many States. Mention was also made of the gaps and uncertainties in international law. The representatives of other delegations, however, expressed the view that existing international law showed universality in many areas, particularly as a result of the work of the International Law Commission and the United Nations system generally; moreover, the Court itself, through its jurisprudence, was helping to eliminate gaps and to clear up the obscurities and doubts which international law exhibited. In this connexion, reference was made to the recent jurisprudence of the Court for examples of the progressive development that had occurred in international law. It was also said that the advancement of international law necessitated greater efforts towards progressive development and codification and wider participation in that task by new States.

27. With regard to the sources of international law to be applied by the Court, as enumerated in Article 38 (1) of the Statute, some representatives considered that these should include the resolutions and declarations of the General Assembly and the Security Council, as well as recent international instruments in the adoption of which all States had been able to participate fully and directly. Others, however, argued that the inclusion of the resolutions and declarations

of the General Assembly among the sources of law to be applied by the Court would attribute a status to them which did not flow from either the provisions of the Charter or the rules of international law concerning the creation of the legal norms applied in international relations; and that such a change could not be brought about through the reinterpretation of existing provisions but would have to be achieved in accordance with the procedures laid down in Article 108 for amendment of the Charter.

28. As to the manner in which the Court applied existing international law, some delegations felt that it should show greater determination in the application of the new law, in whose formulation the newer States Members of the United Nations had taken part and that, by its decisions, it should also assert in practice the principles of progressive international law. In this connexion, regret was expressed that, in its Advisory Opinion on the question of Namibia, the Court had based its reasoning on analogies taken from the concept of trusteeship rather than on the relevant declarations and resolutions of the General Assembly.

29. Several delegations, however, maintained that the Court had acted in a progressive manner as far as the application of international law was concerned. It was pointed out, in this connexion, that in the cases concerning the North Sea Continental Shelf the Court had recognized, even if indirectly, that the speedy evolution of present-day international society demanded that customary international law should develop more rapidly. In those cases the Court had ruled on questions relating to a practice which could not have been more than 10 years old, thus contradicting the argument that its jurisprudence was stultified by old and formalistic doctrine. It was also stated that the rising tide of moral law in the international legal order tended to widen the margin of judicial law-making. In particular, it was recalled that in its Advisory Opinion on Reservations to the Genocide Convention the Court had explicitly referred to international moral law and to the spirit and aims of the United Nations, and had stated that the principles underlying the Convention were principles recognized by civilized nations as binding on States, even without conventional obligations.

2. Factors relating to the organization, jurisdiction and procedures and methods of work of the Court

(a) Organization of the Court

(1) The composition of the Court

30. While some representatives felt that the composition of the Court was not adequately representative of all the legal systems in the world today, others expressed the view that, after the last elections of the Court, the main forms of civilization and the principal legal systems of the world could be said to be properly represented in it. It was observed in this connexion that the criterion of geographical regions, which was imprecise, and that of the world's different legal systems, which was debatable, were difficult to apply to the Court, and that only the proper representation of the various legal cultures could ensure a satisfactory juridical balance in the Court's membership.

31. It was also stated that the question of the composition of the Court, from the point of view of the nationalities represented on it, was a matter for the two political organs - the General Assembly and the Security Council - which elected its members, and that the replies of Governments indicated general acceptance of the fact that, politically, the composition of the Court was very similar to that of the Security Council. Some representatives, on the other hand, questioned the informal understanding whereby a national of each of the permanent members of the Security Council was always included among the judges of the Court. It was also asserted that the structure of the Court could not reflect that of the Council without also reflecting the same political difficulties in its work.

32. Several delegations maintained that the composition of the Court should be enlarged to enable candidates from developing countries to be elected to further judgeships. Others, however, recommended a cautious approach to the matter, since there seemed to be no agreement as to the number of additional judges, if any, the Court should have, and an excessive number of judges would make the deliberations of a body, in which a very high degree of unanimity was most desirable, still more difficult.

(2) The method of nomination and term of office of judges

33. Some representatives expressed the view that the process of selecting judges should be free as far as possible from any national influence and should depend

solely on the criteria of the professional competence and integrity of the candidates; it was suggested in this connexion that elections to the Court should be dealt with separately from the other work of the General Assembly in order to benefit from a calmer atmosphere.

34. Several delegations expressed interest in proposals relating to the introduction of an age limit for nominated candidates and a mandatory retirement age. Suggestions that judges should be elected for a non-renewable term of office and that their term of office should be shortened found favour with some representatives, but others expressed doubts on the subject. In this connexion, it was held that such matters were peripheral and that raising them only served to complicate further an already complex problem.

(3) Recourse to chambers, as provided in Articles 26 and 29 of the Statute, and the creation of regional chambers

35. A number of delegations considered that recourse to the chamber of summary procedure provided for in Article 29 of the Statute and the formation of chambers for dealing with particular categories of cases in pursuance of Article 26 might encourage States to resort to the Court more frequently. It was suggested that the Court might have preconstituted chambers with the number of seats variable according to the needs of each case. The idea was also voiced that the particular members of a chamber might be appointed by agreement between the Court and the parties. Representatives of other delegations, however, point out that chambers with fewer members than the full Court might seem biased in favour of one of the parties. Moreover, the outcome of proceedings before a chamber might be hard to predict, in the absence of previous decisions emanating from such a chamber. Various delegations pointed out that, since during the past 25 years, States had never made use of the possibilities offered by Articles 26 and 29 of the Statute. It was essential to discover the reasons for that state of affairs. Some, however, felt that the disinclination of States to call upon chambers should dictate caution, and that the benefits and drawbacks should be carefully studied before any course of action was recommended.

36. With regard to regional chambers, most of the representatives who commented on the subject were not in favour of the idea. It was observed in this connexion that the modern trend was towards the universalization of rules of law and not

towards the fragmentation of international norms into a multitude of regional juridical systems. Reference was also made to the problems which recourse to regional chambers might pose to the over-all progressive development and codification of international law. It was pointed out, moreover, that the Court did not appear to have found it particularly difficult to apply regional norms, as for example in the Asylum case, and that the parties themselves might prefer recourse to a tribunal which looked beyond regional considerations.

(4) The question of judges ad hoc

37. Some delegations expressed themselves in favour of the institution of judges ad hoc, who could provide the Court with useful information on regional conditions or the facts submitted to the Court, and whose presence would give States more confidence. The representatives of other delegations, however, considered that the institution, which was a survival of the old arbitral procedures, was justified only by the novel character of the international judicial jurisdiction and would no doubt disappear as such jurisdiction became more firmly established. In this connexion, there were felt to be grounds for recommending that the parties to a case should waive their right to designate a judge ad hoc, as they had done in the case of the Temple of Preah Vihear. However, it was also suggested that Article 31 of the Statute should be amended to enable the President of the Court to appoint judges ad hoc for purposes other than those mentioned in the article, for example, in order to provide the Court with expertise not otherwise available to it.

(b) The jurisdiction of the Court

(1) Contentious cases

(i) General comments

38. It was observed that, under Article 36, paragraph 3 of the Charter, judicial settlement by the Court was limited to legal disputes. It was pointed out that courts could not properly serve the cause of peace by settling political conflicts and assuming what were essentially legislative functions. It was also said that it would be undesirable if a tendency developed towards transforming the Court into an organ with the task of formulating texts having the appearance of judgements but actually constituting ex post facto attempts at legal justification for decisions reached elsewhere.

(ii) The question of the compulsory jurisdiction of the Court

39. Many representatives considered that the system established by Article 36 (2) of the Statute remained, and would probably remain for a long time to come, the only realistic means of reconciling the principle of sovereignty with the compulsory jurisdiction of the Court. Nevertheless, it was considered significant that only 47 States had accepted the optional clause on compulsory jurisdiction and that some of them had done so with reservations which greatly reduced the scope of their acceptance. Some representatives regretted the existing situation and the view was expressed that the permanent members of the Security Council should set an example by accepting the Court's compulsory jurisdiction. Other representatives suggested that the General Assembly should once again invite States to make the declaration provided for in Article 36 (2) of the Statute, and that Governments should be asked to reconsider their declarations of acceptance with a view to clarifying their scope and duration. In addition, it was proposed that the Court's jurisdiction should become compulsory when the other means of settlement enumerated in Article 33 of the Charter had been exhausted.

40. Some representatives, however, disagreed with the view that the Court's difficulties would be overcome if all States recognized its compulsory jurisdiction. They recalled that the San Francisco Conference had clearly decided that the Court's jurisdiction should be optional; that was reflected in the Statute of the Court and the Charter of the United Nations, which stipulated that the Court was only competent to examine disputes between States when the parties agreed to submit them to it. These representatives considered that it was for States to decide whether to refer a matter to the Court. Any pressure exerted on States that did not recognize the Court's compulsory jurisdiction would be contrary to the principle of respect for national sovereignty and would be a step towards turning the Court into a supranational organ, which would be contrary to the provisions of the Charter.

(iii) Access to the Court

41. Most of the representatives who commented on the question of access to the Court considered that international organizations, in view of their increasingly

important role, should be allowed to appear before the Court. It was pointed out that the idea was not new, since it was provided for in section 30 of the Convention on the Privileges and Immunities of the United Nations and article 11 of the Statute of the United Nations Administrative Tribunal. It was observed, however, that since the definition of "public international organizations" might be controversial, locus standi should at the outset be limited to the United Nations, the specialized agencies and the International Atomic Energy Agency.

42. On the other hand, the view was expressed that to allow international organizations access to the Court would be a violation of the Charter. It was noted that it would be difficult to grant such access to all international organizations without granting it to the United Nations itself, but to subject the United Nations to the jurisdiction of one of its own organs would amount to upsetting the distribution of powers within the Organization.

(iv) Disputes relating to the interpretation or application of treaties

43. Some representatives referred to the question of disputes relating to the interpretation or application of treaties. These representatives considered it desirable to encourage the inclusion in treaties of a stipulation that disputes concerning their interpretation and application should be submitted to the jurisdiction of the Court. It was pointed out, however, that such a clause was lacking in some major codification conventions concluded in recent years.

(v) Other suggestions

44. It was mentioned by one delegation that the disinclination of States to resort to the Court had been attributed to the binding nature of its decisions, and that an answer to that problem might lie in a re-evaluation of the method of framing questions submitted to the Court; in this connexion, reference was made to the North Sea Continental Shelf cases. The same example was cited by other delegations in support of the idea of separating the purely legal aspects of a dispute from the other issues. Also, it was suggested that new means of fact-finding might be devised in the case of disputes where the success of peaceful settlement would seem to be dependent on accurate information concerning the underlying facts. However, that suggestion was criticized on the ground that making the Court into

a fact-finding organ would distort its role as interpreter of legal rules and encroach upon the competence of the Security Council as defined in Article 34 of the Charter.

(2) Advisory jurisdiction

45. A number of delegations regretted that so little use had been made of the possibilities offered by Article 96 of the Charter for requesting advisory opinions from the Court. In this connexion, the hope was expressed that the initiative taken recently by the Security Council would not remain an isolated case. Several delegations considered that intergovernmental organizations other than specialized agencies, and in particular regional organizations, should be given access to the Court's advisory jurisdiction. Some supported proposals to permit States to request advisory opinions from the Court. Other representatives considered that caution was necessary in such a matter. It was stated in particular that in order to avoid any risk of prejudging the final settlement, the opinion requested from the Court should merely indicate to the parties concerned the rules of law applicable, and that the right to request advisory opinions should depend on the consent of all States concerned if it was not to result in circumvention of that principle that a State could not be subject to any type of third party settlement of a dispute without its consent. Mention was also made of the idea of authorizing national supreme courts to ask the Court for advisory opinions on questions of international law.

46. Other delegations, however, were opposed to the idea of extending the advisory jurisdiction of the Court to regional organizations and States. The United Nations organs and international organizations which had that power had made very little use of it. Any advisory opinion handed down by the Court at the request of a State might give the appearance of a preliminary decision on a contentious matter. The proposal to limit advisory opinions to questions that could not be presented as an actual case did not come to grips with the problem, since it would frequently be difficult to foresee the future development of a question on which an advisory opinion was requested. Besides, such an extension of the advisory role of the Court could be prejudicial to its judicial jurisdiction proper which, under its Statute, was its primary responsibility.

(c) Procedures and methods of work

47. A number of representatives considered that it was necessary to simplify and expedite the Court's procedure. Several of them noted, however, that the length of proceedings was very often due to the parties themselves, which requested long extensions of time-limits and postponements. It was generally agreed that the Court's control over the duration of written and oral proceedings should be strengthened. Mention was also made of a suggestion that the Court should be encouraged to take a decision on preliminary objections as quickly as possible and to refrain from joining them to the merits unless it was strictly essential.

48. Several representatives mentioned the high cost of proceedings before the Court. Some of them, however, observed that since the general expenses of the Court were paid by the United Nations, the parties were required to pay only the fees of their counsel, and that arbitration was generally considered even more expensive. Reference was made to the idea of establishing a multilateral assistance fund to finance litigation costs; it was also suggested that the United Nations should draw up a list of qualified international jurists whom States could employ, with the costs being paid from the fund in question.

49. In addition, it was suggested that Article 25 and Article 55, paragraph 2, of the Statute should be amended to raise slightly the present quorum and to abolish the casting vote of the President.

C. The question of the review of the role of the Court

1. General comments

50. It was recalled that General Assembly resolution 2723 (XXV), by which Member States and States Parties to the Statute of the International Court of Justice were invited to submit their views and suggestions concerning the role of the Court, had been the result of a compromise between the States that advocated the establishment of a committee to undertake such a review and those that were not prepared at that time to establish such a committee. It was pointed out that the report prepared by the Secretary-General on the basis of the replies from Governments (A/8382 and Add.1-4) reflected that same divergence of opinions. Some representatives, noting that only a quarter of the States consulted had replied to the questionnaire, argued that the review of the role of the

International Court of Justice was not a burning issue and was generally viewed with scepticism. Others, however, considered that the report testified to the importance and urgency of the matter for Governments, and expressed the view that it contained numerous suggestions, from as many Governments as normally replied to such questionnaires, which merited further consideration.

51. Those representatives opposed to a review of the role of the Court attached significance to the fact that the Court had declined the invitation which the Assembly had extended to it in paragraph 3 of its resolution 2723 (XXV). Other representatives, however, interpreted the Court's reply as meaning that it would prefer to await concrete proposals from the General Assembly before adopting any position.

52. A number of delegations considered that the strengthening of the Court's role was an important problem which had been raised at an opportune moment, and that what was now needed was a careful study of the replies received from Governments with a view to developing a consolidated body of recommendations for future action. Others held that the fact that not all States had replied to the Secretary-General's questionnaire proved the need for reflecting at greater length on the problems it raised, and possibly for some reconsideration of the questionnaire so that all States might be encouraged to undertake a constructive examination of the difficulties facing the Court. The representatives of other delegations believed that the review of the role of the Court had already achieved such objectives as were feasible. It was also said that the replies of Governments dealt largely with peripheral matters and that the role of the Court might be weakened by any attempt to introduce minor reforms which would do nothing to resolve the substantive problems.

53. In support of their view, some of those opposed to a further review of the role of the Court held that since the position of the Court was the outcome of a political situation and of the transformation which international law was undergoing, it could not be solved by new instruments or different machinery. As the President of the Court had pointed out in his message to the Secretary-General dated 18 June 1971 (A/8382, paragraph 393), the decision lay with States. Other representatives, however, while recognizing that the Court's role depended essentially on the attitude of States, did not see this as a reason for abandoning the attempt to make technical improvements in the Court. It was pointed out that the attempt was all the more justified in that changes in an institution could sometimes affect the attitudes of States towards it. It was further

asserted that a detailed study of the reasons States had for their lack of willingness might indicate ways and means of alleviating their hesitancy.

54. Another argument advanced against a review of the role of the Court was that its role depended primarily on the extent to which its decisions contributed to the fundamental task of the United Nations, namely, the maintenance of international peace and security. The Court's future was therefore in its own hands, and the problem before the Sixth Committee was a false one. On the other hand, the view was expressed that it was natural that those States for which international jurisdiction played a fundamental role should continue their efforts to perfect an institution which to them was of primary importance, and that the States which were reluctant to resort to the Court need have no grounds for misgivings on the subject since no one contemplated imposing the compulsory jurisdiction of the Court on them.

2. The question of the revision of the Statute

55. Some representatives said they would favour a revision of the Statute of the Court. It was pointed out in this connexion that, with a few exceptions, the Statute was based on the Statute of the Permanent Court of International Justice, and the international community and international law had evolved considerably during the past 50 years. It would therefore be possible, even without radical amendments, at least to make various technical improvements in the Statute.

56. However, many delegations took the view that it would be premature to approach the review of the role of the Court from the standpoint of a possible revision of the Statute and the Charter; they felt it would not be realistic to consider undertaking a revision of the Statute at the present stage of development of international institutions. Moreover, the wording of the Statute was reasonably satisfactory and sufficiently flexible to enable it to be adapted to new requirements in international relations. Some delegations expressed the view that possibilities for improvement should first be explored with the existing Statute.

57. A third group of representatives expressed strong opposition to any attempt to revise the Statute and the Charter, of which the Statute was an integral

part. It was pointed out that the Charter gave the Court a clearly defined role, corresponding to the role of judicial settlement in relation to other means of settlement of international disputes, and that any move to amend provisions of the Charter which dealt with such fundamental matters as the maintenance of peace was dangerous for international peace and security and might undermine the authority of the United Nations.

3. The question of measures other than amendment of the Statute

58. Many representatives expressed the view that certain improvements could be made in the Court's procedure and noted with satisfaction that in 1967 the Court had undertaken a revision of its Rules. Several of them, however, voiced regret at the fact that the Court had not seen fit to indicate the direction and progress of its work and expressed the hope that Governments would be allowed an opportunity to become acquainted with any changes contemplated before they were given effect.

59. Some representatives pointed out that under Article 30 of the Statute the Court had exclusive competence with regard to its procedure; furthermore, it would not be appropriate to examine the procedures of the Court inasmuch as the Court itself was reviewing them. Other representatives, while recognizing the Court's prerogative to amend its Rules, believed that the Court would wish to take account of the views of Governments and of the General Assembly in doing so, and that the General Assembly, while acknowledging the Court's prerogative, could appropriately make recommendations on the subject.

60. A number of delegations observed that the Secretary-General's report contained many suggestions which went beyond the scope of the Court's review of its Rules yet would not require amendment of the Statute. It was pointed out, for example, that the General Assembly, by a resolution, could invite States to accept the optional provision of the Statute relating to compulsory jurisdiction or remind them that recourse to the Court did not imply per se an unfriendly act. Reference was also made to the possibility of establishing a United Nations Committee which could seek advisory opinions from the Court on behalf of States, the creation of a special United Nations fund to defray the costs of litigation, and the broadening of the Court's advisory jurisdiction to enable more organs of the United Nations and specialized agencies to request advisory opinions from it.

4. The question of the establishment of an ad hoc committee

61. A number of delegations felt that the time had come to study the various suggestions made by Governments. That could best be done, they thought, by a small, specialized body, such as an ad hoc committee; mention was made in that respect of the good results obtained in other contexts by the method of defining the areas of agreement and disagreement and, if possible, narrowing the discrepancy between the two. It was felt that sufficient documentation had already been gathered; it was noted in this connexion that, as a rule, the requests for information addressed to Governments did not elicit a larger number of replies; besides, quite a number of Governments which had not replied to the questionnaire had set forth their views during the current debate, and those which had not done so would still have the opportunity to make known their positions in the proposed new body. It was observed that the question of establishing an ad hoc committee was not a new one, for it had been raised the previous year; there was accordingly no justification for deferring the establishment of such a committee any longer, and doing so might only result in a vicious circle in which the Sixth Committee would hear the same arguments presented every year by both sides. Also it would be inappropriate to wait until the Court had completed the revision of its Rules, for that was a task which might take several years more.

62. With regard to the composition of the committee, some delegations expressed support for a body composed of experts and others for one composed of Government representatives. It was stated that the committee should be fairly large - perhaps 25 members - if it was to be fully representative of the different regions and the principal legal systems of the world, but not so large as to diminish its efficiency. In this connexion, emphasis was placed on the need to ensure a balance between the various legal cultures. Several representatives also expressed the view that the members of the committee should be chosen from among the States Parties to the Statute of the Court.

63. On the question of the committee's terms of reference, it was stated that the committee would be given the task of analysing the observations of Governments and the views expressed at the twenty-fifth and twenty-sixth sessions of the General Assembly, including those which concerned the desirability of revising the Statute of the Court. If the study was to be systematic, it would

obviously be impossible for the question of a possible revision of the Statute to be ruled out; however, any recommendations which the committee might make in that direction would not of course bind the General Assembly, which would be perfectly free to reject them. It was also noted that there was no question of the committee usurping the Court's functions; the latter would retain its full freedom of action but would be able to pursue its activities in complete awareness of the attitudes of States to the matter.

64. With regard to methods of work, it was observed that the committee should have at its disposal the Secretary-General's report and the summary records of the relevant debates at the twenty-fifth and twenty-sixth sessions, and also any views which the Court might wish to present orally or in writing.

65. Those delegations opposed to the establishment of an ad hoc committee maintained that the real purpose of such a step would be to set in motion the process of revising the Statute, a task that obviously lay outside the competence of a body of the type proposed, which could not encroach on the prerogatives of the General Assembly, the Security Council and the Court itself. The committee was therefore bound to be ineffective and would involve unjustified expenditures. To invite the Court, as had been proposed, to submit its views to the committee orally or in writing would be tantamount to asking it to account for itself, which would be incompatible with its status as the principal judicial organ of the United Nations and would constitute unacceptable interference in the affairs of the Court, particularly as the Court had already made it clear that it did not think it could usefully state its views at the present stage. It was also noted that the advocates of the committee intended that it should consist of States Parties to the Statute of the Court, but, in the view of the representatives concerned, this conflicted with the Charter, since a United Nations body could consist only of representatives of Member States.

66. It was further said that the solution to the problem lay with the Court itself and that it was for the Court to win back the confidence of States. The best thing, therefore, would be to let the Court take whatever action was necessary - and in particular complete the revision of its Rules - and to transmit to it the summary records of the Sixth Committee and the report of the Secretary-General; only when the Court had finished its work could consideration be given to taking up the question again.

67. A number of delegations were of the view that too hasty action might do the Court more harm than good and they pointed out that the replies which had been received reflected a considerable divergence of views with regard both to the causes of the problem and to the appropriate direction for efforts to solve it. Given the prevailing uncertainty on those points, the committee's terms of reference would of necessity be vague; hence the fear of many delegations that the committee must embark on a revision of the Statute, an undertaking which would be both dangerous, since it could upset the delicate balance of forces achieved in the Charter, and useless, since two permanent members of the Security Council had expressed their unalterable opposition to any such project. In those circumstances, it was argued a committee of the type contemplated could do no more than propose palliatives for the Court's problems. In view of the financial difficulties which the United Nations was experiencing, it would be inappropriate to establish a new body with uncertain prospects and of questionable urgency. It would be far more advisable to defer the decision concerning the establishment of such a committee until the situation was clearer, and to request those Governments which had not yet done so to communicate their views on the subject; the Assembly would thus be in a better position to seek a decision at the next session.

IV. VOTING

68. At the 1295th meeting, the Commission considered a motion by the representative of Egypt to give priority in the voting to draft resolution A/C.6/L.831. At the request of the representative of Ecuador, a recorded vote was taken on the Egyptian proposal, which was adopted by 54 votes to 42, with 13 abstentions. The voting was as follows:

In favour: Algeria, Bahrain, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Central African Republic, Ceylon, Chile, Colombia, Cuba, Czechoslovakia, Dahomey, Ecuador, Egypt, El Salvador, France, Guinea, Hungary, India, Iran, Iraq, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Libyan Arab Republic, Madagascar, Mali, Mauritania, Mexico, Mongolia, Morocco, Nigeria, Panama, People's Democratic Republic of Yemen, Peru, Poland, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Spain, Sudan, Syrian Arab Republic, Togo, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Venezuela, Yemen, Yugoslavia.

Against: Argentina, Austria, Barbados, Belgium, Burma, Canada, Costa Rica, Cyprus, Denmark, Ethiopia, Finland, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Ireland, Israel, Italy, Ivory Coast, Japan, Khmer Republic, Lesotho, Liberia, Malaysia, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Philippines, Portugal, Sierra Leone, Sweden, Trinidad and Tobago, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Afghanistan, Australia, Cameroon, Dominican Republic, Equatorial Guinea, Indonesia, Laos, Niger, Singapore, South Africa, United Republic of Tanzania, Uruguay, Zambia.

69. The Committee then voted on draft resolution A/C.6/L.831. At the request of the representative of Madagascar, a recorded vote was taken. The draft resolution was adopted by 57 votes to 40, with 12 abstentions. The voting was as follows:

In favour: Algeria, Australia, Bahrain, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Central African Republic, Ceylon, Chile, Colombia, Cuba, Czechoslovakia, Dahomey, Ecuador, Egypt, El Salvador, Equatorial Guinea, France, Guinea, Hungary, India, Iran, Iraq, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Libyan Arab Republic, Madagascar, Malaysia, Mauritania, Mexico, Mongolia, Morocco, People's Democratic Republic of Yemen, Peru, Poland, Portugal, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Spain, Sudan, Syrian Arab Republic, Togo, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Venezuela, Yemen, Yugoslavia, Zambia.

Against: Austria, Belgium, Burma, Cameroon, Canada, Costa Rica, Cyprus, Denmark, Dominican Republic, Ethiopia, Finland, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Iceland, Ireland, Italy, Ivory Coast, Japan, Khmer Republic, Lesotho, Liberia, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Philippines, Sierra Leone, Sweden, Trinidad and Tobago, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Afghanistan, Argentina, Indonesia, Israel, Laos, Mali, Nepal, Niger, Singapore, South Africa, United Republic of Tanzania, Uruguay.

70. The Committee next decided, by 55 votes to 29, with 17 abstentions, not to vote on the other proposals before it.

71. At the same meeting, the representatives of Ceylon, Jamaica and Nigeria explained their votes.

V. RECOMMENDATION BY THE SIXTH COMMITTEE

72. The Sixth Committee recommended to the General Assembly that it adopt the following draft resolution:

Review of the role of the International Court of Justice

The General Assembly,

Recalling that the International Court of Justice is the principal judicial organ of the United Nations,

Recalling further that, in accordance with Article 2 (3) of the Charter 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",

Emphasizing that, in conformity with that principle, as solemnly proclaimed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,[1/] judicial settlement is one of the means to which States can have recourse in seeking a just settlement of their disputes,

Considering the desirability of finding ways and means of enhancing the effectiveness of the Court,

Noting that the Court has undertaken a revision of its rules,

Having noted the report of the Secretary-General[2/] containing the replies received from certain Member States and from Switzerland to the questionnaire prepared in accordance with General Assembly resolution 2723 (XXV) of 15 December 1970 and the text of the letter addressed to the Secretary-General by the President of the Court,

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);

1/ General Assembly resolution 2625 (XXV) of 24 October 1970.

2/ A/8382 and Add.1-4.

2. Requests the Secretary-General to submit those comments to it at its twenty-seventh session;

3. Requests the Secretary-General to transmit to the Court his report[2/] together with the summary records of the discussions held in the Sixth Committee at its twenty-sixth session;

4. Invites the Court to submit its views on the matter if it so desires;

5. Expresses the hope that the Court will complete the revision of its rules as soon as possible;

6. Decides to include in the provisional agenda of its twenty-seventh session an item entitled "Review of the role of the International Court of Justice".
