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Chairman: Mr. Zenon ROSSIDES (Cyprus).

AGENDA ITEM 90

Review of the role of the International Court of Justice *(continued)* (A/8382 and Add.1-4, A/C.6/407)

1. Mr. JELENIK (Hungary) said that his country valued the Court for its usefulness and its influence on the development of international law. His delegation, like others which had spoken on the subject already, felt that it should play a more important part in the peaceful settlement of international disputes. Yet it would be wrong to exaggerate the seriousness of the present situation, which should be viewed in the light of all the relevant factors.

2. The first point was that, under Article 33 of the Charter, judicial settlement was only one of a number of means for the peaceful settlement of disputes, and had no priority in that connexion. It should also be remembered that, in conformity with the principle of sovereignty, States were free to choose the means for settling their disputes, i.e. they could resort to any of the means enumerated in Article 33 or even, under the same provision, to other peaceful means of their choice; that was why his delegation strongly opposed the principle of the compulsory jurisdiction of the Court. Furthermore, it had to be admitted that States' mistrust of the Court was not wholly unjustified, since some of its decisions had been questioned, its very composition was controversial, and its proceedings were too lengthy and too costly. But only the Court could solve those problems, and the Charter and the Statute offered it opportunities for doing so. His delegation was therefore opposed categorically to any amendment of the Charter and the Statute, which would amount to challenging a system that had already proved its worth.

3. His delegation felt that the role of the Court should be viewed against the realities of present-day international life, where different political and social systems existed side by side. As understanding between States grew, their attitude to the Court was bound to change for the better. The Court's recent advisory opinion of 21 June 1971 on the *question of Namibia* was of particular interest in that respect and seemed to indicate a new trend.

4. His delegation therefore maintained that it was pointless to think in terms of an *ad hoc* committee to consider a question which had already been discussed by the General Assembly and had been the subject of a questionnaire prepared by the Secretary-General (A/8382 and Add.1-4) to which less than a quarter of the Member States had replied.

5. Mr. ALCIVAR (Ecuador) said that the prohibition of the threat or use of force needed to be supplemented by an effective system for the peaceful settlement of disputes between States. That was precisely the weakness of the juridical régime established by the Charter.

6. Firstly, if the principle of the peaceful settlement of disputes as laid down in Article 2, paragraph 3, of the Charter was analysed, it seemed uncertain whether the provision established a positive or a negative obligation, i.e. an obligation not to settle disputes except by peaceful means. The distinction was not simply academic, since it raised the fundamental problem of the legal force of an obligation formulated negatively which might allow a dispute to continue indefinitely, with a consequent threat to peace.

7. The provisions of Chapter VI of the Charter were even more disconcerting, since Article 33 merely provided that the parties to any dispute should seek a solution by one of the means enumerated in the Article. Moreover, the scope of Article 34, which empowered the Security Council to investigate any dispute or any situation which might lead to international friction, was limited by its very purpose, namely that of determining whether the continuance of the dispute or situation was likely to endanger the maintenance of international peace and security. The remaining Articles simply gave the Security Council, and the General Assembly where appropriate, the limited power of recommending solutions. With particular regard to judicial settlement as one of the optional means set out in Article 33, Article 36, paragraph 3, merely provided that the Security Council could recommend the parties to a legal dispute to refer it to the Court.

8. As to the optional clause in Article 36 of the Statute, his delegation did not share the view that the acceptance of the compulsory jurisdiction of the Court conflicted with the principle of State sovereignty. The scope of the Charter went far beyond that of a general multilateral treaty, and it could be regarded as a kind of constitution for the universal international community as juridically represented by the United Nations. States, as juridical persons, were therefore subjects of national and international rights and obligations, and thus subjects of a national and an international legal order.

9. Today, because of the existence of an international legal order higher than national legal orders, it was no longer proper to speak of the supreme authority of the State in the traditional sense of sovereignty of powers. A State was sovereign in as much as it was not subject to the municipal law of other States, but since it was subordinate to the international legal order, its sovereignty was only

sovereignty of competence, an attribute essential internally for the application of normative law.

10. As far as the institutionalization of the international legal order was concerned, it could no longer be claimed that the customary law imposed in the past through a policy of force was *lex lata*. The incorporation into the international community of many peoples previously subject to colonial domination had also given a new direction to the law being formulated through the United Nations. Furthermore, the conventions which the international community helped to formulate had replaced custom as the principal source of international law. Finally, the general principles of law and the decisions of international bodies had become additional sources of law. Those various points were not adequately reflected in the Statute of the Court, yet the Court was responsible for applying the new law.

11. The composition of the judicial organ, like that of the Security Council, did not offer ideal safeguards for the proper administration of justice. It might be mentioned in that connexion that the amendment to the Charter which had taken effect in 1965 had resulted from unequal negotiations in which the permanent members of the Council had been able to exercise their veto; and it was a fact that the Security Council was far from reflecting the political realities of the present day.

12. 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. His delegation considered that only the proper representation of the various legal cultures could ensure a balance which would restore States' confidence in the Court.

13. With regard to the proposed establishment of an *ad hoc* committee, his delegation felt that the question should be deferred for a year, to give time for the submission of more opinions and for deeper reflection on a problem of such importance. However, Ecuador's position would depend on the terms of reference and the composition proposed for the committee. In the first place, the creation of a subsidiary body was not justified unless it was to attempt a detailed study of the problem—in the present instance, of the sources of international law. That was unlikely to lead to the establishment of a compulsory jurisdiction, which his delegation ruled out for the moment, since the option to accept the Court's jurisdiction should continue until States had more faith in the Court. With regard to the composition of the committee, his delegation would oppose the formula adopted so far for *ad hoc* committees, since the proposed committee should reflect a balance between the various legal cultures of the world and include the permanent members of the Security Council.

14. Mr. SAMUELS (Guyana) said that, at the twenty-fifth session of the General Assembly, his delegation had opposed the proposal for the establishment of an *ad hoc* committee to review the role of the Court, not because it thought the Statute of the Court required no amendment but because it felt that the new Members of the United Nations should be given the opportunity to state their views on the question. The fact that not all States had replied to the Secretary-General's questionnaire proved the need for reflecting at greater length on the points 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.

15. His delegation felt that the fundamental issue involved was not so much the inactivity of the Court as its "relevance". The "relevance" of the Court was bound up with the law it applied, and since the value of a legal system was inseparably bound up with the way in which it reflected the evolution of the *milieu* in which it was applied, the "relevance" of modern international law was proportionate to the degree to which it was capable of adapting itself to the constant changes in the international community. In that regard, two factors must be borne in mind. Firstly, the majority of States had not participated in the elaboration of the international legal norms currently in force; secondly, the Statute of the Court was substantially the same as that of the Permanent Court of International Justice, which had been established for the purpose of interpreting norms conceived basically to regulate relations among civilized nations. The international community had, however, expanded considerably since 1945, and it was obvious that the effectiveness of the process of the judicial settlement of disputes could be improved only if the applicable norms were endorsed by the great majority of States. Efforts towards the codification and progressive development of international law should therefore be intensified.

16. His delegation did not believe that the proposal to make the jurisdiction of the Court compulsory was likely to make its role more active. The adoption of that proposal would, on the contrary, give rise to numerous problems, and in any event the principle of compulsory jurisdiction would be applied in practice only to the weakest States; such a situation would be disastrous and, inevitably, of short duration. The court must therefore win the confidence of the international community, so that States would voluntarily bring before it those disputes which were amenable to judicial settlement.

17. His delegation did not believe that the concept of absolute sovereignty should be regarded as the sole cause of the problems which the Court was facing. Fear of unfamiliar institutions or persons often precluded recourse to third party settlement of disputes; in other cases, particularly where the survival of a State or Government depended on the settlement of a dispute, the parties often preferred to resort to a compromise solution.

18. As the Minister of State of Guyana had stated at the 1943rd plenary meeting of the General Assembly, Guyana was not opposed to the idea of amending the Statute of the Court. It felt, however, that such a task should not be embarked upon unless those areas in which no change should be introduced were clearly identified in advance. Guyana was therefore prepared to support the proposal to establish an *ad hoc* committee to study the question of a reform of the Court and recommend measures which would encourage States to have recourse to it more frequently, provided however that none of those measures entailed any amendment to Article 36 of the Statute. On that under-

standing, a number of changes could with advantage be made in the Statute. Articles 34 and 35, for example, could be amended so as to give all intergovernmental institutions and private individuals and bodies corporate the right, subject to certain reservations, to appear before the Court. Perhaps, what the Court had stated in the South West Africa Case with respect to the League of Nations mandates system[1] applied more generally, and it was desirable that international institutions should not be allowed to appear before the Court in contentious proceedings for the purpose of enforcing their constitutions. The same rule should, however, not apply with regard to agreements concluded by them or to delicts committed by or against them.

19. The process of selecting judges of the Court should be as far as possible free from any national influences and should depend solely on the criteria of the professional competence and integrity of the candidates. Similarly, his delegation 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, since that practice had resulted in the politicization of elections to the Court.

20. His delegation could understand why under Article 31 the parties to a dispute should retain the right to have a judge of their nationality on the bench when they came before the Court; it considered, however, that that provision might be modified to enable the President of the Court to appoint judges *ad hoc* for purposes other than those mentioned therein, for example, in order to provide the Court with expertise not otherwise available to it. On the other hand, his delegation did not believe that the parties should have the right to nominate judges *ad hoc* themselves; in order to ensure judicial impartiality, that right should be vested in the President of the Court, to be exercised in consultation with the States concerned.

21. While it seemed extremely useful for the Court to be able to form special chambers, the relevant provisions could be improved upon; his delegation believed that it would be preferable for the Court to have preconstituted chambers with the number of seats variable according to the needs of each case. The Court should also be provided with the necessary judicial expertise to enable it to deal with the extremely varied range of disputes that might be brought before it.

22. With regard to the proposal to create regional chambers within the Court, his delegation, while aware of the potential advantage of bringing certain cases before judges who had a thorough knowledge of local customs and practices, would point out that the formation of such chambers might encourage the fragmentation of international law and frustrate the process of harmonization and unification undertaken in that area.

23. His delegation saw no need for empowering States to request advisory opinions of the Court. In its opinion, that might lead to serious conflicts between States and it would be preferable to leave States to obtain bilaterally a legal opinion which they could, if they so agreed, recognize as binding.

24. Under its Statute, the Court was an organ of the United Nations in which the different legal systems of the world should be represented. That provision tended in some degree to politicize the composition of the Court, although the basic reason for it was the fact that the training of international lawyers was not uniform. His delegation believed that that state of affairs should be remedied by the establishment of an international university where specialists in international law could be trained on the basis of common traditions and disciplines.

25. The high cost of proceedings before the Court was unquestionably one of the main causes of the reluctance of poor States to have recourse to it. That defect was due partly to the procedure applied by the Court; it would undoubtedly be advantageous if the procedure were expedited and simplified and, *inter alia*, if the Court decided preliminary items and questions relating to jurisdiction expeditiously, showed less liberality than it had in the past in granting requests for extension of time-limits, and dispensed with oral proceedings in certain cases.

26. He expressed the hope that the Sixth Committee would be able to consider the revision of the Rules which the Court was now drafting and that the Court would take the views of Member States into consideration when preparing the final text.

The meeting rose at 4.25 p.m.

[1] See *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966*, paras. 80-88.