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SIXTH COMMITTEE, 1294th MEETING

Tuesday, 30 November 1971, at 11.05 a.m.

NEW YORK

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, A/C.6/L.829-831, A/C.6/L.833, A/C.6/L.834)

1. The CHAIRMAN announced that Dahomey had become a sponsor of draft resolution A/C.6/L.831.

2. Mr. OTSUKA (Japan), speaking as one of the sponsors of draft resolution A/C.6/L.829, said that the replies of Governments to the Secretary-General's questionnaire (see A/8382 and Add.1-4) and the relevant discussions in the Sixth Committee confirmed the importance attached by States to the International Court of Justice as the principal judicial organ of the United Nations and showed that better use of the Court would further the purposes and principles of the Charter. The views expressed by States should be carefully studied and, as the Committee did not have enough time for that purpose, it could delegate that work to a small group of governmental experts which could identify the problems confronting the Court and seek ways and means of solving them. Of course, the work of such a group would not in any way prejudge the action that the General Assembly might take to deal with them.

3. Draft resolution A/C.6/L.830 proposed that further consideration of the matter should be postponed because the Court had undertaken to revise its Rules. His delegation thought, on the contrary, that the General Assembly's consideration of the question would make it possible to transmit some useful information and suggestions to the Court.

4. It had also been pointed out that, since the Charter did not give judicial settlement any priority over the other peaceful means of settling disputes, there was no reason why the General Assembly should try to enhance the role of the Court. His delegation did not believe that that argument was cogent because enhancing the Court's role would certainly not prejudice the other means of settlement provided for in the Charter and would generally facilitate the peaceful settlement of disputes between States.

5. At the previous session of the General Assembly, some delegations had stated that they considered it premature to set up an *ad hoc* committee to study the role of the Court, as not all States had expressed their views on the subject. Since then, many had stated their positions either by replying to the Secretary-General's questionnaire or in the discussions in the Sixth Committee, and those which had not yet done so had every opportunity to transmit their views before the proposed *ad hoc* committee met.

6. As for the comments made at the 1293rd meeting by the Lebanese representative concerning the possible terms of reference of the *ad hoc* committee, he endorsed the observations of the Cypriot and Pakistani delegations made at the same meeting. According to operative paragraph 4 of draft resolution A/C.6/L.829, the views of States on the advisability of revising the Statute of the Court would be duly taken into account by the *ad hoc* committee.

7. Mr. ZOTIADIS (Greece) said that his delegation was particularly interested in the item under discussion because it considered that, in order to promote the cause of peace and justice, judicial settlement should be given a more important place among the various means for the peaceful settlement of disputes. The declining role of the Court had been emphasized both in the replies of States to the Secretary-General's questionnaire and in the discussions in the Sixth Committee and it had been generally admitted that some way must be found to help the Court to overcome its difficulties. His delegation thought that the best way of doing so would be to establish an *ad hoc* committee consisting of a small number of jurists who would study the question. He failed to understand the objections to that proposal raised by the sponsors of draft resolutions A/C.6/L.830 and A/C.6/L.831. In particular, the International Law Commission was far from always having available for its work as many comments as those that had been transmitted on the item under discussion. Moreover, if an *ad hoc* committee were to be set up, its work would be the subject of discussion in the Sixth Committee which would make whatever recommendations it deemed appropriate to the General Assembly; the establishment of such a body would therefore by no means prejudge the decisions of the Committee. That being so, his delegation thought that the Committee should not delay the establishment of an *ad hoc* committee any further and it could not therefore support draft resolutions A/C.6/L.830 and A/C.6/L.831.

8. Mr. SHITTA-BEY (Nigeria) said that, if the Committee wished to discharge its responsibilities, it must decide, in accordance with draft resolution A/C.6/L.829, to establish an *ad hoc* committee to submit specific proposals to it. In introducing draft resolution A/C.6/L.831, the French representative had appealed to the sponsors of the various texts submitted to the Committee to continue their efforts to arrive at a compromise. If that was the wish of the Committee, his delegation was prepared to respond to the appeal, although it doubted whether any result would be achieved. It had also been proposed that the *ad hoc* committee should be set up immediately but not meet until

early in 1973. If that suggestion was likely to facilitate the Committee's work, his delegation was also prepared to support it.

9. Mr. ALCIVAR (Ecuador) said that the question of the review of the role of the Court went far beyond the terms of reference which would be assigned to the proposed *ad hoc* committee under operative paragraph 4 of draft resolution A/C.6/L.829. The current difficulties confronting the Court were more than mere points of procedure; they involved the question of the sources of international law and the composition of the Court which, in his delegation's opinion, did not reflect modern political realities. Actually a subsidiary organ of the General Assembly must be available, competent to undertake a study in depth of the international judicial function. Again, to overcome the Court's difficulties the main requirement was to dispel the misgivings of States concerning it. As matters stood, the replies received from States did not justify the establishment of an *ad hoc* committee in accordance with draft resolution A/C.6/L.829. In the prevailing circumstances, such a committee could propose only palliatives for the Court's difficulties and not measures that would restore the confidence of States. Its establishment seemed all the less acceptable to his delegation as no specific procedure for the distribution of seats in such a committee was mentioned in draft resolution A/C.6/L.829.

10. Mr. KANIARU (Kenya) observed that draft resolution A/C.6/L.831, of which his delegation was one of the sponsors, was based on the idea that it would be premature to set up immediately an *ad hoc* committee to review the role of the Court and that it would be better, for that purpose, to wait until a larger number of States had replied to the Secretary-General's questionnaire. In particular, all the new States should be given an opportunity to study the questionnaire and reply to it. The real problem resided less in the possible establishment of an *ad hoc* committee as in the time-table proposed for that purpose in draft resolution A/C.6/L.829. Undue haste must be avoided in view of the fact that the committee's work might have important repercussions. At the moment the Sixth Committee could not unanimously adopt any of the draft resolutions before it and his delegation thought it would be better if the sponsors of the different drafts were to seek agreement on a compromise text.

11. Mr. KOLESNIK (Union of Soviet Socialist Republics) pointed out that, according to the information in the statement on the financial implications of draft resolution A/C.6/L.829, submitted in document A/C.6/L.833, the proposed *ad hoc* committee could meet between 3 and 28 July 1972. When the Sixth Committee had been considering the dates of the next session of the Special Committee on the Question of Defining Aggression, the Under-Secretary-General for Conference Services had not indicated that the period 3-28 July 1972 was available (see 1281st meeting). He would welcome some clarification of that point from the Secretariat.

12. Moreover, the estimated cost of the sessions of the proposed *ad hoc* committee and of the Special Committee on the Question of Defining Aggression amounted, respectively, to $15,300 (see A/C.6/L.833, para. 2) and $31,100, as indicated in document A/C.5/1401, on the administrative and financial implications of the draft resolution recommended by the Sixth Committee on the question. His delegation wondered what the reasons were for such a large difference, which the smaller size of the first-mentioned body did not satisfactorily explain. He wondered whether the officers of the Secretariat who dealt with those matters had, in the case mentioned, shown the impartiality which was incumbent on them.

13. Mr. OSMAN (Egypt) said that his delegation had already expressed its views on the question at the twenty-fifth session (1214th meeting). Then it had pointed out that the scarcity of cases submitted to the Court was not attributable to the composition, structure or procedures of the Court itself but to more profound reasons: the nature of the applicable law and, in particular, the lack of universality of international law; the fact that international law was sometimes applied, and sometimes suspended because of political interests; and finally the absence of a conception of international justice common to all nations. Those were not transitory problems which an *ad hoc* committee could solve. Accordingly, at the twenty-fifth session (1218th meeting), Egypt had supported those delegations which had proposed that the question should be submitted to Governments themselves. True, the reaction of Governments had not been encouraging. But the fact remained that the problem would be solved in capitals and not in an *ad hoc* committee.

14. His delegation could not associate itself with draft resolution A/C.6/L.829. It would support draft resolution A/C.6/L.831, which had the merit of encouraging Governments to take an interest in the problems of the Court.

15. Mr. DEBERGH (Belgium) said that his delegation was one of the sponsors of draft resolution A/C.6/L.829. He would not have spoken unless certain representatives had recalled the statement made by his delegation at the beginning of the discussion of the item. At that time Belgium (1278th meeting) had expressed certain doubts on the desirability of establishing an *ad hoc* committee because only some 30 States had replied to the Secretary-General's questionnaire. The Belgian position was perfectly valid at the time but since then more than 50 delegations had taken part in the debate on the review of the role of the Court. That showed that more countries were interested in the question than one might have thought on reading the Secretary-General's report. His delegation had also noted that the Sixth Committee was in danger of becoming trapped in a vicious circle in which each year the same arguments were presented from all sides. The establishment of an *ad hoc* committee seemed the only way of avoiding that danger and of persuading Governments to give practical expression to their interests.

16. In its reply Belgium had suggested nothing that went beyond the existing Statute of the Court and it did not intend to suggest anything of the kind in the future. Any proposal to amend the Statute could only be noted by the proposed *ad hoc* committee; it would have no authority to take a decision on the question.

17. Mr. BEESLEY (Canada) said his delegation was also one of the sponsors of draft resolution A/C.6/L.829. There was considerable validity in the arguments of those dele-

gations which felt that the proposal to establish an *ad hoc* committee should be treated with caution. Canada had put forward similar arguments in 1970. But a year had now passed, Governments had made known their views, and representatives could now ask, without discussing the substance, whether enough data were available for the establishment of an *ad hoc* committee. His delegation gave an affirmative reply to that question. It did not share the anxiety expressed by some delegations that the Statute of the Court might be amended; the proposed *ad hoc* committee would not be competent to undertake such a task and any recommendation on those lines could only be submitted to the Sixth Committee and the General Assembly. Moreover, there was plenty of work to be done without there being any need to undertake a revision of the Statute. Nor did his delegation share the concern of certain delegations who feared that the action proposed would result in a diminution of the Court's role: draft resolution A/C.6/L.829 in no way prejudged the results of the *ad hoc* committee's study.

18. Other delegations had pointed out that the number of replies to the Secretary-General's questionnaire were not enough to justify a general study of the question. However, the 31 replies received were not negligible and they contained sufficient comments and suggestions to serve as a basis for the work of the *ad hoc* committee. Moreover, certain Governments might not have replied to the questionnaire because they preferred to make known their views in other ways, in particular during the Sixth Committee's debates. Some representatives had proposed that the Committee should send a reminder to Governments which had not replied to the questionnaire: apart from the fact that it would be embarrassing to make the same request twice, the establishment of an *ad hoc* committee would enable those Governments to state their views either in the *ad hoc* committee itself or in the Sixth Committee when it discussed the *ad hoc* committee's report.

19. It had been suggested that a compromise solution should be reached. His delegation, which always favoured any move that could facilitate general agreement, wished nevertheless to point out that the present debate on review of the role of the Court was the result of a compromise reached at the previous session when the idea of the immediate establishment of an *ad hoc* committee had been abandoned. Perhaps it was now for other delegations to show the same desire for compromise. That course of action seemed all the more likely because every Government appeared to be sincerely attached to the Court and because the differences between them were in no way serious.

20. Mr. NOSEK (Under-Secretary-General for Conference Services) said he wished to answer the two questions raised by the representative of the Soviet Union. At the 1281st meeting he had stated that the forthcoming session of the Special Committee on the Question of Defining Aggression had been scheduled for 31 January-3 March 1972 on the basis of information then available to the Secretariat and with due regard to the very heavy calendar of meetings at Headquarters for the weeks following that period. He had added, however, as could be seen from the provisional summary record of the meeting, that it might be possible to service the Special Committee without additional financial implications from 26 June to 28 July. Consequently, the Sixth Committee had decided to accept the dates 31 January-3 March, as could be seen from paragraph 3 of document A/C.5/1401. Since the month of July had thus been set aside, the Secretariat had proposed that the *ad hoc* committee on the role of the Court should meet at that time.

21. The difference between the financial implications of the two sessions—$31,100 and $15,300 respectively—was attributable to the fact that the session of the Special Committee on the Question of Defining Aggression would entail the preparation of provisional summary records. Out of the $31,100 estimated for that Committee, about $22,800 would be required for the preparation of summary records. Obviously such an explanation was valid only if the *ad hoc* committee on the role of the Court did not also request provisional summary records. Moreover, any such request should be approved by the General Assembly, in conformity with resolution 2538 (XXIV).

22. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that, in order to appreciate the difference between the financial implications of the two sessions, the Sixth Committee should note that the *ad hoc* committee on the role of the Court would require not $15,300 but about $6,000, since out of the figure of $15,300, $8,900 would be for the recruitment of additional interpreters. Moreover, his delegation was surprised to learn that the *ad hoc* body was not to have provisional summary records, a fact that so far had not been mentioned.

23. With regard to the question of dates, his delegation noted from the statement of financial implications (A/C.6/L.833) that the proposed committee could meet at Headquarters only between 3 and 28 July 1972. If the Secretariat would confirm that the Special Committee on the Question of Defining Aggression could meet at the same time or thereabouts, his delegation reserved the right to raise the question again when it had consulted other delegations. The date of the session of the Special Committee on the Question of Defining Aggression was vital for the success of its work and it would be doomed to failure if it had to meet so soon after the session of the General Assembly.

24. Mr. NOSEK (Under-Secretary-General for Conference Services) said that since the offer had been made to the Sixth Committee to convene the Special Committee on the Question of Defining Aggression from 26 June to 28 July—an offer which had been declined—two weeks had passed, during which the situation had evolved. Previously, it had seemed that that Committee could meet without the need for additional interpreters. That was no longer possible as could be seen from paragraph 2 of document A/C.3/L.833. As for the differences which the delegation of the Soviet Union had noted between the expenses of the Committee on the Question of Defining Aggression and the proposed *ad hoc* committee on the role of the Court, they would disappear in practice if, setting aside the question of provisional summary records, the Sixth Committee considered only the expenses of documentation proper.

25. Mrs. SLÁMOVÁ (Czechoslovakia) said her country attached considerable importance to the peaceful settle-

ment of international disputes and stressed that Article 33 of the Charter allowed complete freedom of choice between the various methods of settlement. Judicial settlement was only one possiblity among others. It was therefore for States themselves to decide whether or not to have recourse to the Court.

26. The main reason for States' distaste for the Court must be sought in their uncertainty about the legal norms applied by that body. The solution to the problem thus lay with the Court itself, which would be able to make States change their attitude towards it when it took truly objective decisions.

27. The establishment of an *ad hoc* committee as provided in draft resolution A/C.6/L.829 would certainly not restore to the Court the confidence it needed. Moreover, the proposed Committee would be composed of States parties to the Statute of the Court, which was contrary to the Charter, since the Committee, which would be an organ of the United Nations, should include only representatives of Member States. Taking into account the financial implications and the fact that the Committee would work for several years as was evident from operative paragraph 9, the Czechoslovak delegation could not consider that the creation of a special committee would serve any purpose.

28. Draft resolution A/C.6/L.831 provided for postponement of consideration of the question, while giving those Governments which had not yet done so an opportunity to reply to the Secretary-General's questionnaire, which would be useful.

29. Nevertheless, draft resolution A/C.6/L.830, of which Czechoslovakia was one of the sponsors, was the one which constituted the best solution, since it offered the Court itself an opportunity to adopt the necessary measures to restore the confidence of States and to complete the revision of its Rules. The Court would have access, for that purpose, to the summary records of the debates of the Sixth Committee and the report of the Secretary-General, which would enable it to take into account the views of States. Only when the Court had completed its work would there be grounds for resuming consideration of the question.

30. Mr. ALVAREZ TABÍO (Cuba) said that draft resolution A/C.6/L.829 was contrary to the views expressed by his Government in its reply to the Secretary-General's questionnaire. The establishment of an *ad hoc* committee would inevitably lead to envisaging a revision of the Statute of the Court, which would be contrary to the Charter. It should, moreover, be borne in mind that so far only 31 States had made their views known and that it was for the Court itself to take such measures as were necessary.

31. On the other hand, draft resolution A/C.6/L.830 conformed fully with the views of his delegation, because it recognized that it was for the Court to take the initiative in resolving its own problems and would postpone consideration of the question by the General Assembly until the Court had completed the revision of its Rules.

32. Draft resolution A/C.6/L.831, however, offered a compromise midway solution, which his delegation would be able to accept if it received majority support.

33. Mr. YASSEEN (Iraq) said that the problem did not lie in the organization of the Court but rather in the political willingness of States to have recourse to that organ. It appeared from the debate that the solution to that problem depended on the development of the international community, which might be extremely slow, and on the development of international law. For the time being, all that could be done was to remind States that the Court existed and that it could be of great assistance in the settlement of legal disputes. That simple reminder, if it reflected a decision taken by the General Assembly unanimously or, at least, by a large majority, might nevertheless prove highly effective. The Security Council, according to Article 36, paragraph 3, of the Charter, might also encourage the judicial settlement of legal disputes.

34. With regard to draft resolution A/C.6/L.829, his delegation did not support the idea of establishing an *ad hoc* committee. The small number of replies did not justify the expense and effort involved in the establishment of a special organ. It would, in any case, not be able to do any more than the Secretary-General, who had already analysed the replies to the questionnaire which had been received. Furthermore, operative paragraph 7 of that draft resolution, which invited the Court to communicate its views in writing or orally to a committee of the General Assembly, was not in keeping with the character of the Court. The principal judicial organ of the United Nations could not be thus summoned, so to speak, before a subsidiary body.

35. Draft resolution A/C.6/L.830 was more realistic. Operative paragraph 1 reminded States Members of the Court's existence and the possibilities afforded by its Statute for the peaceful settlement of legal disputes. Paragraph 2 requested the Court to accelerate the revision of its Rules.

36. Draft resolution A/C.6/L.831 attempted to reconcile the divergent positions existing, while providing for the possibility of reconsidering the item by including it in the provisional agenda of the tweny-seventh session. His delegation could accept this draft. It would be timely, however, in any case as important as this, to try further to arrive at a consensus: it would be useful then for the various sponsors to proceed to consult further in this direction. That would be in conformity with the Sixth Committee's tradition of wisdom and prudence.

37. Mr. KOSTOV (Bulgaria) recalled that his country was one of the sponsors of draft resolution A/C.6/L.830, which fully reflected the views of his delegation. The question under consideration called for extreme caution, since it concerned one of the principal organs of the United Nations and it was necessary to respect the balance of powers among its different organs. It was, moreover, for the Court itself to deal with its own problems. The Court had embarked on the revision of its Rules, and the establishment of an *ad hoc* committee as proposed in draft resolution A/C.6/L.829 would constitute inadmissible interference in the affairs of that organ and would thus run counter to the objective sought, which was to strengthen the role of the Court.

38. His delegation considered that draft resolution A/C.6/L.831 offered a compromise solution which might possibly

form the subject of a consensus; that was especially necessary in view of the sensitive nature of the question. That draft resolution also afforded an opportunity for informal consultations and was in keeping with the Sixth Committee's tradition of exploring all possible solutions before taking a decision.

39. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said he found it surprising that draft resolution A/C.6/L.829 should stress the special urgency of the question of the review of the role of the Court, when no one had shown that the functioning of an organ which had been in existence for 26 years urgently required attention. It was obvious that the Court had some defects; they had been brought out in the debate and were, moreover, not new. Those defects were, however, the result not of specific inadequacies in the Charter or the Statute but of the attitude of the Court itself.

40. Those who wished to take action to resolve the Court's problems were contradicting themselves when they stated, on the one hand, that those problems were quite evident, while suggesting, on the other hand, that it was necessary to study them. In that connexion, it might be asked what would be the role of the *ad hoc* committee whose establishment was proposed in draft resolution A/C.6/L.829, seeing that the replies from Member States had already been analysed in the report of the Secretary-General and considered by the Sixth Committee, so that it was the Court itself which should now study those comments and take them into account in making its own decisions. By the expedient of an *ad hoc* committee on the review of the role of the Court, an attempt was being made to bring about a revision of the Statute of that organ. However, such an initiative would not be within the competence of an *ad hoc* committee, which could not infringe on the prerogatives of the General Assembly, the Security Council and the Court itself. The establishment of a committee that would inevitably be ineffectual would be a waste of time and money. With regard to operative paragraph 7 of draft resolution A/C.6/L.829, which invited the Court to make known its views, it should be pointed out that the Court was the principal judicial organ of the United Nations and could not be summoned in such a way to give an account of itself; moreover, in its reply to the Secretary-General the Court itself had said (see A/8382, para. 393) that it did not think that there would be any point in its stating its views at the present stage. Putting pressure on the Court in such a way would constitute inadmissible interference in the affairs of that body.

41. On the other hand, draft resolution A/C.6/L.830 accorded fully with the purposes of the Court, as set forth in the Charter and in the Statute. The sixth preambular paragraph noted, moreover, that the possibilities afforded by the Statute were not yet being fully utilized. The operative part of that draft resolution drew attention to the possibilities afforded by the Statute for the peaceful settlement of disputes of a legal nature and would postpone consideration of the question until such time as the Court had completed the revision of its Rules. That draft resolution, which did not propose any action without the Court's knowledge and which left the Court the primary responsibility for resolving its own problems, was thus fully in accordance with the aim in view, which was to strengthen the role of that organ. His delegation hoped that the Sixth Committee would adopt that draft resolution.

The meeting rose at 1.10 p.m.