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REPORT OF MR. BEELAERTS VAN BLOKLAND, RAPPORTEUR OF THE COMMITTEE
OF EXPERTS CONCERNING THE CONDITIONS UNDER WHICH THE INTERNATIONAL
COURT OF JUSTICE SHALL BE OPEN TO STATES NOT PARTIES TO THE STATUTE

By a decision taken on 12 July 1946 at its fiftieth meeting, the Security Council referred to the Committee of Experts the question submitted to it by the President of the International Court of Justice with a view to laying down the conditions under which the Court shall be open to States not parties to the Statute (Document S/99).

The circumstances under which this question arises are almost identical to those which confronted the Council of the League of Nations when this matter was laid before it in a letter from the President of the Permanent Court of International Justice, dated 21 February 1922. Article 35 (2) of the Statute, which gives the Security Council the power to lay down the conditions under which the Court shall be open to States not parties to the Statute, remained practically identical to the corresponding provision of the former Statute. Furthermore, Article 92 of the Charter states that the Statute of the International Court of Justice is based upon the Statute of the Permanent Court. The Committee thought it advisable, in view of the similarity of these texts, to find, in the attached draft, a solution to this problem analogous to that adopted by the Council of the League of Nations, taking into account the changes necessary to adapt the text of the Resolution of the Council of the League of Nations of 17 May 1922 to the provisions of the Charter and of the new Statute, a solution which, moreover, has the merit of placing no new obligation on States parties to the Statute.

Thus, the last sentence of the first paragraph of that Resolution, providing that the Court is open to any State not a Member of the League of Nations or not mentioned in the Annex to the Covenant, on condition that

"such State shall not resort to war against a State complying with the decisions" (of the Court), has been omitted because that condition was based upon a provision of the Covenant which underlies the Charter as a principle and for that reason does not appear in the corresponding section of that document. Another provision, which requires a State not party to the Statute to accept all the obligations imposed upon a Member of the United Nations by Article 94 of the Charter, has been substituted for the former condition.

The second paragraph of the draft Resolution refers to the types of declaration which may be made by a State not party to the Statute in order to obtain access to the Court.

In this connection, it should be emphasized that the mere deposit of a declaration does not suffice to confer on the Court jurisdiction over a specific case. A State party to the Statute cannot, without its consent, be brought before the Court by a State not party to the Statute. The mutual consent of both parties to the dispute, either for a particular case or generally for future cases, is required for the Court to be seized of a dispute.

An express reservation has been made in paragraph 2 of the draft Resolution to prevent a State party to the Statute, having recognized the Court's compulsory jurisdiction, from being bound by the fact that a State not a party to the Statute accepts the compulsory jurisdiction of the Court under Article 36 (2) of the Statute.

The Committee accepted a revision whereby the passage "and to such other States as the Court may determine", which appears in the text of the 1922 Resolution, was deleted and replaced, in the third paragraph of the draft Resolution, by the words "and to such other States as shall have deposited a declaration under the terms of this Resolution". The Committee considers that notification of declarations by the Court is of a purely informative nature and does not change the status of a State so notified in relation to the Court.

The following proposal was put before the Committee by the Delegate of Poland:

"In accordance with the spirit of the Resolutions adopted by the General Assembly in London on February 9 and February 10, 1946, the above Resolution does not apply to States whose régimes have been installed with the help of armed forces of countries which have fought against the United Nations so long as these régimes are in power."

This proposal, which was originally submitted in the form of an additional paragraph 6 to the draft Resolution, and later as a separate draft Resolution, received the support of the French, Mexican, and Soviet Delegates. It was not, however, adopted. The other members of the Committee were of the opinion that it was better, in principle, not to limit, for the Members of the United Nations, the possibility of pacific settlement of disputes between States by recourse to the Court. The French, Mexican, and Polish Delegates reserved the position of their Delegations in this respect.

Draft Resolution

The Security Council of the United Nations in virtue of the powers conferred upon it by Article 35, paragraph 2, of the Statute of the International Court of Justice, and subject to the provisions of that Article, resolves:

(1) The International Court of Justice shall be open to a State which is not a party to the Statute of the International Court of Justice, upon the following condition, namely: that such State shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and Rules of the Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter.

(2) Such declaration may be either particular or general.

A particular declaration is one accepting the jurisdiction of the Court in respect only of a particular dispute or disputes which have already arisen.

A general declaration is one accepting the jurisdiction generally in respect of all disputes or of a particular class or classes of disputes which have already arisen or which may arise in the future.

A State in making such a general declaration may, in accordance with Article 36, paragraph 2, of the Statute recognize as compulsory, inso facto,

and without special agreement, the jurisdiction of the Court, provided, however, that such acceptance may not, without explicit agreement, be relied upon vis-à-vis States parties to the Statute, which have made the declaration in conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice.

(3) The original declarations made under the terms of this Resolution shall be kept in the custody of the Registrar of the Court, in accordance with the practice of the Court. Certified true copies thereof shall be transmitted, in accordance with the practice of the Court, to all States parties to the Statute of the International Court of Justice, and to such other States as shall have deposited a declaration under the terms of this Resolution, and to the Secretary General of the United Nations.

(4) The Security Council of the United Nations reserves the right to rescind or amend this Resolution by a Resolution which shall be communicated to the Court, and on the receipt of such communication and to the extent determined by the new Resolution, existing declarations shall cease to be effective except in regard to disputes which are already before the Court.

(5) All question as to the validity or the effect of a declaration made under the terms of this Resolution shall be decided by the Court.