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REVIEW OF THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE

Report of the Secretary-General

Addendum

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I. INTRODUCTION

The Secretary-General has the honour to transmit herewith to the members of the General Assembly the replies to the questionnaire drawn up on compliance with General Assembly resolution 2723 (XXV) (A/8382, para. 5) which were received too late for inclusion in the report. Any replies that may be received later will appear in a further addendum.

II. REPLIES RECEIVED FROM GOVERNMENTS

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]

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

1. The International Court of Justice is recognized by Article 7 of the Charter as one of the principal organs of the United Nations and by Article 92 as its principal judicial organ. Its special function as an organ for the settlement of legal disputes is recognized in Article 36 (3) in accordance with which the Security Council should take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court. Under Article 96 the General Assembly and Security Council, and certain other bodies by special authorization, can obtain its assistance by requesting advisory opinions. Thus it is clear that the Charter itself envisages a central role for the International Court.

2. The primary function of the Court is to assist States in the resolution of their differences by deciding, in accordance with international law, those legal disputes which they submit to it. But in carrying out this function, as well as in the exercise of its advisory jurisdiction, the Court also serves to clarify and develop the law. The value of judgements and opinions of the Court for this purpose is borne out by the fact that the International Law Commission, the arm of the General Assembly specially created to make proposals for the codification and progressive development of international law, makes much use in its work of the jurisprudence of the Court.

3. While recognizing that not all disputes are suitable for submission to the International Court, the United Kingdom has supported the Court and endeavoured to encourage the reference of legal disputes to it. It has accepted the Court's jurisdiction by declaration under Article 36 (2) of the Statute and also by special provisions contained in numerous treaties and, pursuant to its acceptance of the Court's jurisdiction, has submitted several cases to it for adjudication.

4. If at the present time the Court is not playing the role foreseen for it in the Charter, it is surely the duty of the General Assembly to give careful consideration to the situation. The United Kingdom believes that the General Assembly should take the present opportunity to consider carefully any measures which may be proposed to enhance the role of the Court or extend its use by making it a more attractive and effective instrument for the settlement of legal disputes between States. At the same time, it should be borne in mind that no amount of improvement in the methods and procedures of the Court will avail unless States themselves are willing to use it. If the result of such an enquiry was to bring about a more widespread practice of bringing cases before the Court - not necessarily cases of major importance but also those concerning less important matters raising legal issues where the Court could give assistance - this would represent a substantial advance towards the establishment of the rule of law in international relations.

5. In reviewing the role of the Court, it may be necessary to distinguish between improvements which may only be practicable in the long term and those which could be made immediately. Measures involving amendments to the Statute of the Court, though they should not be excluded from any review, necessarily involve delay which may be very prolonged. However, the difficulties inherent in such measures should in any event not inhibit consideration of possible improvements which could be brought into effect more quickly.

II. Organization of the Court

6. States frequently make provision to refer their disputes for adjudication to tribunals other than the International Court, because for various reasons it is thought that the Court is not so organized as to provide a satisfactory forum for the disputes in question.

7. Consideration should be given to the possibility of providing greater flexibility in the organization of the Court to meet the special needs and wishes of the parties in particular cases. This could well have the effect of making the Court a more useful organ and attracting more business to it.

8. One aspect of the Court's organization which would be worth further study from this point of view is the use of chambers. Article 26 of the Court's Statute provides in paragraph 1 for the creation of chambers for dealing with particular categories of cases and in paragraph 2 for the establishment of ad hoc chambers for particular cases. Article 29 provides for the appointment annually of a chamber of summary procedure. In the 20 years of the present Court's existence no use has been made of these facilities. There are clearly reasons why in many cases the parties should prefer to have their dispute adjudicated by the full Court. But there are no doubt other cases for which a chamber following a more summary and expeditious form of procedure than is normal in the full Court or a chamber composed of judges with special qualifications to deal with a particular case would be advantageous.

9. One reason why more use has not been made of the possibility of establishing ad hoc chambers under article 26, paragraph 2, may be that article 24, paragraph 2 of the Court's Rules provides for the election of members of the chamber of the Court by secret ballot. In some cases the parties might wish to have a chamber composed of judges chosen by them and it is suggested that ways of making this possible should be considered.

10. It has been suggested that provision should be made for the constitution of regional chambers. There are arguments for and against this proposal. In the case of a dispute between States belonging to the same geographical region, it may be thought that judges from that region would be more likely to understand the particular problems of the parties, and therefore that cases having a regional character might be more readily brought to such a chamber especially if the chamber was to sit in the region concerned for the purpose of hearing the case. On the other hand, it is important to maintain the integrity of general international law and there is a danger that the use of regional courts or chambers might have a fragmentary effect, unless it is coupled with some system of appeal to the full Court. The advantages and disadvantages require careful consideration, but the idea is certainly deserving of further study.

11. In the same line of thought, the possibility of developing the use of assessors with specialist qualifications to sit with chambers established to deal with particular categories of cases or particular cases requiring technical knowledge or experience should be explored.

III. Jurisdiction of the Court

(a) Contentious jurisdiction

12. The primary function of the Court is to adjudicate in contentious proceedings between States. The United Kingdom would naturally welcome wider general acceptance of the jurisdiction of the Court under Article 36 (2) of the Statute. The uncertainty of the rules of international law in the present stage of development is sometimes given as a reason why States hesitate to commit themselves to a general acceptance of compulsory jurisdiction under this provision. But this does not apply in the case of treaties and States should be urged to adopt a policy of including as often as possible in their treaties a clause accepting in advance the compulsory jurisdiction of the Court for the settlement of disputes concerning their interpretation or application. It will be recalled that the Vienna Conference on the Law of Treaties could not have reached a successful outcome without agreement on procedures for the settlement of disputes and the International Court figured prominently in the provisions ultimately adopted.

13. The increasing part played by international organizations, worldwide and regional, is a notable feature of the modern international community. At present only States may be parties in cases before the Court. Considerations should now be given to the question of enabling international organizations, or some of them, to be parties in proceedings before the Court, at least in certain categories of cases. For instance, international organizations are entering into an increasing number of agreements with States and with one another and it seems regrettable that in the event of a dispute concerning the interpretation or application of such an agreement an international organization should lack procedural capacity to be a party in contentious proceedings before the International Court. In such cases, as in cases involving States only, mutual consent to submission to the Court should be a prerequisite for the exercise of jurisdiction but there seems no reason why, where such consent exists, procedural incapacity should be a bar.

14. Consideration might also be given to the possibility of enabling private individuals and corporations to be parties before the Court or to intervene in certain cases and on certain conditions. Such international tribunals as already exist to deal with disputes between private persons or entities and States or international organizations have jurisdiction in only limited categories of cases.

15. There might also be scope for conferring on the International Court an appellate jurisdiction from the decisions of other international tribunals.

(b) Advisory jurisdiction

16. This is another area in which the possibilities of extending the Court's jurisdiction could usefully be considered. While there are limits to the appropriateness of this form of jurisdiction as a method of dealing with matters of particular concern to individual States, it is nevertheless a field of activity which might usefully be expanded. At present only certain organs of the United Nations and of the specialized agencies have the right under Article 96 of the Charter to request an advisory opinion. The possibility of obtaining advisory opinions might with advantage be extended to a wider range of international organizations including regional organizations. If an amendment of the Charter for this purpose presents difficulties, consideration might be given to establishing a Committee of the United Nations with authority to request an advisory opinion, when asked to do so by another organization. The Committee on Applications for the Review of Administrative Tribunal Judgements, established by General Assembly resolution 957 (X), provides a precedent for a procedure of this kind.

17. The suggestion has also been canvassed that States should be allowed to seek advisory opinions, presumably by agreement. In so far as this is intended to provide an alternative to contentious proceedings in disputes between States, it is open to the objection that it would tend to weaken the jurisdiction and authority of the Court.

IV. Procedures and methods of work of the Court

18. Under article 30 of the Statute, the adoption and amendment of the rules of procedure is the prerogative of the Court. But in its own consideration of what should be done in this field, the Court will no doubt be willing to take account of

any views put forward by Governments or by the General Assembly and in the opinion of the United Kingdom therefore any review of the role of the Court should include this important aspect of the matter.

19. In the view of the United Kingdom many of the criticisms that are made against the Court on the grounds for instance of the length and cost of proceedings are unjustified since these are matters which are to a large extent necessarily dependent on the will of the parties. A key factor in the conduct of international litigation is the relationship between the Court and the parties. This can only in part be a matter for regulation by the Statute and the Rules of the Court. The Court must assume responsibility for the control of the case, but a degree of flexibility is required to suit the needs of the parties in each particular case.

20. Thus the criticism of delay can often be directed more justly at the parties than at the Court; the time-limits appropriate may vary from case to case; some cases are for historical reasons or otherwise inherently extremely complicated; the parties must be given a fair opportunity to present their viewpoint to the Court. If a party seeks an extension of a time-limit which the other party does not oppose, it may be better to accept some additional delay rather than to hamper the presentation of the case.

21. This does not mean to say, however, that the procedures of the Court are not capable of improvement and the United Kingdom has noted with satisfaction that the Court is in the process of reviewing its Rules. Many suggestions have been made which are deserving of careful study, but there are two considerations in particular to which the United Kingdom wishes to draw attention, with a view to reducing cost and delay and at the same time increasing the efficiency of the Court's procedures.

22. The first of these is the need for preliminary issues to be raised and settled at the earliest possible stage in the proceedings. The outcome of some recent cases has served to demonstrate the undesirability of joining preliminary issues to the merits unless there are very compelling reasons for doing so.

23. Secondly, the procedures prior to the oral hearing itself should be directed more than they are at present to identifying and narrowing the issues in dispute, and also to ensuring that the parties are given notice of any issues that the

Court may consider relevant so that they are given the opportunity to present arguments on them. Ways should be explored of achieving this by means of the written pleadings, through consultations at appropriate stages in the proceedings between the Court and the parties, by directions given by the Court in the course of the written or oral pleadings or by such other means as may be devised.

24. An example of yet another and different matter which might receive attention is the question of printing pleadings both written and oral in both English and French. For all practical purposes, these are the two working languages of the Court and the parties may submit their written or oral pleadings in either. Written pleadings are unofficially translated by the Registry into the other working language for the use of the Judges, and copies are made available to the parties if they need them. During the oral proceedings, there are simultaneous translations of the speeches of Counsel. Unfortunately, when the pleadings are published, all the work that is done by way of translation is in effect jettisoned, for the pleadings are published only in their original language. This means that scholars and practitioners who find it easier to work in one language rather than the other are deprived of the opportunity of making use of the translations which have been made.

V. Future action on the item by the General Assembly

25. The above observations on points I, II, III and IV of the questionnaire of the Secretary-General give some examples of measures which should in the view of the United Kingdom be considered. Many other suggestions will no doubt be made and the United Kingdom will be happy to discuss them.

26. Before deciding what measures to adopt, the General Assembly would obviously be wise to examine all aspects of the matter and explore fully all proposals which may be made. In order that the detailed and technical questions involved may be properly studied, the United Kingdom considers that the General Assembly at its twenty-sixth session should establish a committee to review the role of the International Court and report its conclusions and recommendations to the General Assembly. Such a committee would be able to consider and evaluate all the detailed proposals which have been or may be made together with comments on them and present a report for consideration by a future session of the General Assembly.

The committee should not be so large as to be unwieldy but should reflect a wide range of opinions. The Court should be offered the opportunity and should be encouraged to associate itself with the committee and to appoint representatives to participate in its work.

27. In resolution 2723 (XXV), and in particular its second preambular paragraph, the General Assembly accepted unanimously the desirability of finding ways and means of enhancing the effectiveness of the Court. The United Kingdom believes that a full study of this matter by the General Assembly on the basis of a careful report of a committee could lead to the adoption of valuable proposals, which would, as the Assembly said in that resolution, "facilitate the greatest possible contribution by the Court to the advancement of the rule of law and the promotion of justice among nations".

SENEGAL

/Original: French/

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

1. It seems that the confidence of the African States in the Court has been shaken by the judgement of 18 July 1966 on South West Africa. However, while it is true that the thinking underlying the judgement is open to criticism, there is no question that this kind of jurisprudence is a thing of the past.

2. Despite the fact that only one third of the States Members of the United Nations recognize the Court under the terms of article 36 of the Statute, Senegal remains firmly attached to the supremacy of law and is endeavouring to encourage a wider use of this high tribunal. There is no doubt about the value of judicial settlement. It constitutes a method for the peaceful settlement of disputes.

3. With regard to the law applied by the Court, although that law rests upon the notions set forth in article 38, whose terms should be made clearer, Senegal still thinks that there is no reason to abandon those principles, on the understanding that no rule could be applicable if it were to lead to flagrant injustice or to a denial of justice.

II. Organization of the Court

4. There are only three judges from Black Africa on the Court. This inadequate number should be raised to five, even if that were to entail an increase in the number of members of the Court. In any case, there would be a need for concerted diplomatic action which might perhaps induce the States that are most opposed to any amendment of the Charter to revise their position.

5. The chamber of summary procedure is set up "with a view to the speedy despatch of business" (article 29 of the Statute and rule 24 of the Rules). It is composed of five titular judges and two replacements. It rests with the parties to ask to have their cases heard by this chamber.

6. The creation of regional panels of judges would not appear to be advisable, since it would necessitate a difficult procedure for the amendment of the Charter and would be likely to be prejudicial to the homogeneous character of the Court's practice. It would therefore be better to adhere to the provisions of article 22 of the Statute.

III. Jurisdiction of the Court

(a) Contentious cases

7. Despite the term "compulsory jurisdiction of the Court", States are not bound by it unless they so desire, stating voluntarily that they accept the jurisdiction of the Court. All the efforts made so far to impose the jurisdiction of the Court automatically have met with resistance from States which consider that their sovereignty would be impaired. It is probable that, if the Charter and the Statute were amended to that effect, a number of States would prefer to leave the United Nations.

8. The same procedure would be necessary in order to enable intergovernmental organizations to appear before the Court. The Soviet Union, however, is opposed to any amendment of the Charter.

9. With regard to the possibility of including in future treaties provisions giving the Court jurisdiction in respect of disputes arising from such treaties, such treaties and conventions recorded in the Yearbook of the Court which provide for its jurisdiction, such as the economic co-operation agreements entered into in 1948 in accordance with the Marshall Plan, could serve as models.

(b) Advisory jurisdiction

10. Senegal would be favourable to the idea of making the advisory procedure available to intergovernmental and regional organizations and allowing States to have the option of seeking advisory opinions, but on the two-fold condition:

- that the Court would not play the part of a mere information bureau;
- that this would not be an indirect way of settling a dispute that had already been arisen.

IV. Procedures and methods of work

11. These should be simplified and made more flexible, although it must be admitted that delays in procedure are not so much the fault of the judges as of the parties.

12. As far as the cost of litigation is concerned, it should be borne in mind that the fees paid by the parties to the eminent lawyers and specialists in international

law cannot be regarded as such. As the judges are not paid by the parties, the real cost of litigation is the cost of printing the documents and the judgements handed down. When the litigant States are not parties to the Statute of the Court, the amount of their contribution is fixed by the Court itself, in accordance with article 35 of the Statute.

V. Future action on the item by the General Assembly

13. The method of reviewing the matter in committee seems a good one and it should be followed until the subject has been exhausted. Measures designed to enhance the effectiveness of the Court should be embodied in recommendations or resolutions, pending recourse to the delicate procedure of amending the Charter of the United Nations and the Statute of the Court.
