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REVIEW OF THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE

Report of the Secretary-General

Addendum

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REPLIES RECEIVED FROM GOVERNMENTS

IVORY COAST

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1. Now that the United Nations General Assembly is reconsidering the problem of the organization and operation of the International Court of Justice, the opportunity should be taken to amend the Statute of this high court with a view to increasing its jurisdiction, making it more representative of the composition of the United Nations and establishing rules of procedure that will give the Court a more pronounced jurisdictional character than it has at present. These three points should be examined below.

JURISDICTION OF THE COURT

2. At the present time, the jurisdiction of the Court is twofold: it is either contentious or advisory. In the first case, the Court pronounces enforceable judgements; in the second case, it gives opinions either on an abstract point of international law, or on a current litigious case, which have no binding force. In view of its nature, this second form of jurisdiction does not seem to require comment.

3. With regard to contentious jurisdiction, the basic principle is that the jurisdiction of the International Court of Justice is facultative, in that it can be consulted only if the parties are agreed on the basis of a compromise. There are, however, cases in which this jurisdiction is compulsory, for example under the terms of international treaties, under the rules of international organizations, under treaty decisions, or when the Court exercises accessory jurisdiction in addition to the main jurisdiction already established. It is obvious that the scope of these exceptions is extremely limited.

4. States have, however, the power to accept the compulsory jurisdiction of the Court, prior to any litigious case, for the settlement of legal disputes between States. These "optional clauses of compulsory jurisdiction" generally refer to the settlement of disputes concerning the interpretation of a treaty, any point of international law, the truth of any fact which, if established, would constitute a breach of an international agreement and the scope or nature of any reparation resulting from such a breach.

5. Such clauses increase considerably the range of cases of compulsory jurisdiction of the Court. However, on 30 September 1967, only 42 of 122 States that are parties to the Statute were bound by this clause; furthermore, the majority of these clauses contain reservations which limit their scope considerably in that they refer certain essential points to the national jurisdiction of States.

6. It would seem that the range of cases of compulsory jurisdiction should be extended by defining, on the basis of the clauses approved by States, a set of litigious cases for which the Court's jurisdiction is generally accepted, and by making such jurisdictional cases compulsory for all States. What must therefore be done is simply to change international custom into international law.

7. The International Court of Justice might perhaps constitute the most appropriate repository should the United Nations finally come to some agreement on the establishment of an embryonic international criminal code designed to punish the most serious crimes against humanity.

8. For the present, there can be no question of making specific proposals for such an extension of jurisdiction; all that can be done is to refer to the problem and possibly to provide for the setting up of a commission specially entrusted with examining the various aspects of the preparation of such an embryonic international criminal code and with the study of an appropriate judgement procedure.

ORGANIZATION OF THE COURT

(1) Election of judges

9. At present, the members of the Court are elected for nine years by the Security Council and the United Nations General Assembly voting simultaneously after nomination by national groups in the Permanent Court of Arbitration.

10. However, the Permanent Court of Arbitration has not met since 1932. This electoral procedure should therefore be changed, since it is based on a list of persons appointed to sit on a court which, de facto, no longer exists. Each State should appoint three persons, having all the guarantees of competence and impartiality, who need not necessarily be chosen from among the nationals of that State. The General Assembly would hold a single vote on each candidate, who would have to receive a two-thirds majority of the votes in order to be elected.

(2) Composition and structure of the Court

11. At the same time as the jurisdiction of the Court is extended, the number of judges - at present fixed at 15 - should be increased and the Court should be divided into several chambers which would be specialized, either geographically (regional chambers), or according to the type of litigious case.

PROCEDURE

12. There are four points, with regard to the procedure followed before the International Court of Justice, that require comment: preliminary investigation of cases, pronouncement of decisions, and enforcement of judgements.

(1) Access to the Court

13. In principle, only States may have access to the Court. This right is not granted to international organizations although they are subject to international law in the same way as States.

14. The Statute of the Court should be altered to allow international organizations composed of States which, at least in the majority, are Members of the United Nations or parties to the Statute of the Court access to the Court, both with regard to advisory and contentious jurisdiction.

15. The problem of access by private individuals or bodies corporate under private law might also be raised. At presenty, they are not admitted to the Court unless the State whose nationality they hold exercises its right to diplomatic protection in their favour, supports the dispute when its national is opposing another State.

16. Although it might be said that the submission of a matter to an international judge is too serious a matter to be left to the appreciation of private individuals, it might be asked, in the first instance, whether the Court, having been consulted by a State acting in support of its national's case, should not continue to consider the case even if the State withdraws its support, should the interested party maintain his suit.

(2) Preliminary investigation

17. In the case of investigations, the investigatory powers of international judges should be increased and they should be given the opportunity to entrust domestic court judges with rogatory commissions.

(3) Pronouncement of decisions

18. Under the terms of the present Statute, hearings are not closed. Judges are not therefore bound by the decision and can, when they are in the minority, publish their dissenting opinion.

19. It is possible that the adoption of the principle of closed hearings by the International Court of Justice might strengthen the independence of the judges who might, in certain cases, find it easier to dissociate themselves from the currents of opinion existing in the country of which they were nationals. Furthermore, a decision made under these conditions would be as a whole binding on the Court and would certainly have greater authority in consequence.

(4) Enforcement of judgement

(a) Under domestic law:

20. At the present time, it seems that the decisions of the Court can be enforced under domestic law only in so far as the domestic courts grant them exequatur. This procedure, which results in the domestic judge confirming a decision taken by a superior organ, is contrary to the principle of the supra-nationality of the International Court of Justice. States should agree to provide that such judgements be made enforceable in their territory without exequatur.

(b) Under international law:

21. Under the terms of the Statute, each Member of the United Nations undertakes to comply with the decisions of the International Court of Justice in all litigious cases to which it is a party. If a party does not fulfil the

obligations incumbent upon it following a judgement of the Court, the other party may refer to the Security Council, which, if it deems necessary, may make recommendations or decide upon the steps to be taken to ensure enforcement of the judgement.

22. The Security Council cannot therefore consider a case proprio mota. This provision is based on the principle of the authority of res judicata, whereby only the parties have standing to register a complaint concerning the non-enforcement of a judgement of the Court. However, from a political point of view, the non-enforcement of a judgement might affect the international community of States more or less seriously. This being the case, the Security Council should be given the power to consider a case on its own authority when the situation resulting from the non-enforcement of the judgement is sufficiently serious.

23. Finally, if all the measures taken by the Council to ensure the enforcement of the decisions of the Court fail, the ultimate sanction should be exclusion from the United Nations.
