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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

TURKEY

[Original: French]

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

1. Since the Second World War, the number of States which recognize the compulsory jurisdiction of the International Court of Justice has declined in relation to the number of States in existence. The number of cases submitted to the Court, particularly under the advisory procedure, has also declined in relation to the number of issues in dispute. This means that States are not inclined to bring their disputes before the Court with a view to resolving them.

2. There are a number of reasons for the disinclination of States to resort to the Court. The main reason is fear, which is due to the fact that States still cling to their sovereignty. Measures must be taken as swiftly as possible to dispel the misgivings of States with regard to the Court. States originally had similar misgivings about their own courts, but in time they realized that there was no reason for any such misgivings. All recent constitutions reflect the progress that has been made in this respect. The principle of the primacy of the law is recognized in domestic law, and the time has come to achieve similar progress in connexion with international law. One of the most effective means of bringing security and the rule of law to the international community is to recognize the primacy of the law.

3. Since the Second World War, there have been frequent attempts to resolve international disputes through political mechanisms. The latter have even been used in efforts to find solutions to legal disputes. The result is not satisfactory, since most of the disputes are still unsettled. The fact that this situation continues is a threat to international peace and security, and it is time, therefore, to turn our thoughts to the judicial settlement of conflicts. Judicial settlement should be regarded as a major means of settlement of disputes, at least whenever the dispute is a legal one. There is no need to stress how difficult it is to distinguish between political disputes and legal disputes. The more disputes are settled on the basis of general and objective criteria, the more States will resort to this means of settlement - as is the case in domestic law - and the more the political nature of the disputes will diminish. Once such progress begins to be made, the true meaning of judicial settlement may be seen in practice.

4. The settlement of international disputes by peaceful means is in keeping with the provisions of the Charter and with the present circumstances of the international community. The essential point is that international disputes should be resolved without the use of force. In that connexion, one peaceful means of

settlement of disputes cannot be given preference over others. The most appropriate means of peaceful settlement should be chosen, according to the nature of the conflict. The superiority of judicial settlement lies in the fact that it constitutes the final resolution of a dispute. Consequently, if a peaceful solution cannot be obtained by means other than judicial settlement, it would be desirable to make provision for recourse to the latter.

5. Among the causes of the disinclination which States now show for the Court, mention is made of the fact that international law, as a judicial system, is still vague and insufficiently developed; international law is not so well developed as domestic law. With a view to eliminating the inadequacies of international law, valuable work has been done and considerable results have been achieved. A good first step would be to encourage States to bring before the Court such of their disputes as fall within the codified area of international law. The only way in which international law can be made less vague is for more disputes to be referred to the Court, which will then be able gradually to build up a body of precedents.

6. Ever since the San Francisco Conference, Turkey has favoured recognition of the compulsory jurisdiction of the Court. It has confirmed its resolute stand on that point whenever the occasion arose, and in particular at the quite recent Vienna Conference on the Law of Treaties. In addition, it has demonstrated its conviction by recognizing the compulsory jurisdiction of the Court in accordance with article 36, paragraph 2, of the Statute. Turkey believes that the best way of ensuring that the international legal order shall prevail is for all States to follow its example.

II. Organization of the Court

7. There is no reason why the present structure of the Court should deter States from having recourse to it. If necessary, in order to dispel the misgivings of States with regard to the Court and to ensure balanced representation of the principal legal systems, some new seats might be allocated to judges from developing countries.

8. The existing rules with regard to the process by which judges are elected and the length of their term of office can be retained. It would be desirable to reconsider the principle that they may be re-elected. Although there are advantages in the re-election of highly qualified judges, thought might be given to allowing only a single term in order to make the Court more representative.

9. Turkey is in favour of retaining the institution of judges ad hoc. There is definite merit in giving judges ad hoc the right to sit, which helps to increase the confidence of States and to ensure their support for the Court.

10. With the aim of encouraging States to have more frequent recourse to the Court, it would be particularly useful to create regional chambers or courts to the greatest extent possible, while at the same time making use of the possibilities provided by the Statute and Rules of Court. The creation of chambers might shorten the time which is needed to deliver judgements and reduce the financial burden of proceedings before the Court. Any increase in the number of judges

on the Court will necessitate the creation of chambers. If provision is made for appeals to be taken to the Court, the creation of so-called regional chambers will not lead to the emergence of regional bodies of precedents or to fragmentation of jurisdiction.

III. Jurisdiction of the Court

(a) Contentious cases

11. Turkey has always favoured compulsory jurisdiction for the Court. If it is not possible to make the jurisdiction of the Court compulsory in present circumstances, it should at least be made compulsory once the peaceful means enumerated in Article 33 of the Charter have been exhausted. The provisions of Article 2, paragraphs 3 and 4, of the Charter are not sufficient in practice. In addition, it would be useful to invite States to make the declaration referred to in article 36, paragraph 2, of the Statute and to refrain from restrictive reservations. It might also be conducive to this end if the declarations were considered to be valid until the State concerned gave notice to the contrary.

12. Article 34, paragraph 1, of the Statute of the Court does not cover all subjects of international law. Consideration should be given to enlarging the jurisdiction of the Court to allow international organizations, or some of them, to appear before it.

13. States should be encouraged to include in future bilateral or multilateral agreements clauses providing that the Court shall have jurisdiction over any disputes that might arise under the agreements.

(b) Advisory jurisdiction

14. Consideration should be given to the possibility of making the advisory procedure available to international organizations, either by revising Article 96 of the Charter or by enlarging the scope of authorization by the General Assembly in that connexion.

15. There would be merit in making the advisory procedure available to States Members of the United Nations but limiting it to general subjects relating to the international legal order.

IV. Procedures and methods of work of the Court

16. Since the Rules of Court are entirely a matter for the Court itself, Turkey's views on this point are simply the expression of a desire.

17. Proceeeings before the Court are very lengthy. In order to shorten them, the Court must be given greater control over the length of the written proceedings and of oral statements. It would be useful if the proceedings were devoted to points directly connected with the case and if the parties to disputes were asked to limit their pleadings to those aspects of the case. With the same end in view, a clear distinction should be made, wherever possible, between preliminary objections and matters relating to the merits, and the Court should give a speedy decision on preliminary objections.

18. The costs of proceedings before the Court are unduly high in comparison with national court costs. This is one factor which developing countries have to take into account as soon as the question of having recourse to the Court arises. It would be a great help to any State wishing to institute proceedings before the Court if provision could be made for financial assistance, to be granted upon application by States.

V. Future action on the item by the General Assembly

19. Turkey favours the idea of entrusting the work concerning a review of the role of the International Court of Justice to a special committee established for the purpose. The special committee should certainly take into account the deliberations of the Sixth Committee, consider the replies from Governments to the questionnaire and make recommendations on the subject in question. It is difficult to express any views on how the recommendations should be implemented until the Committee has made them. In any event, Turkey wishes to state at the present stage that it is prepared to support any efforts to enhance the role of the International Court of Justice.
