United Nations
GENERAL ASSEMBLY
TWENTY-FIFTH SESSION
Official Records

SIXTH COMMITTEE, 1214th MEETING

Tuesday, 3 November 1970, at 10.45 a.m.

NEW YORK

Chairman: Mr. Paul Bamela ENGO (Cameroon).

In the absence of the Chairman, Mr. Houben (Netherlands), Vice-Chairman, took the Chair.

AGENDA ITEM 96

Review of the role of the International Court of Justice *(continued)* (A/8042 and Add.1 and 2, A/C.6/L.800)

1. Mr. A. O. KHALIL (United Arab Republic) said his country attached great importance to the role of the International Court of Justice, not only because the latter symbolized the rule of law, but also because the United Arab Republic had, since 1957, accepted its compulsory jurisdiction for the disputes arising from the application or interpretation of the Convention respecting the free navigation of the Suez Maritime Canal, signed at Constantinople in 1888.

2. There were two kinds of obstacle to a more satisfactory funtioning of the Court. First, there were those relating to procedure. In that connexion, several representatives had mentioned the complexity, slowness and high cost of proceedings before the Court. It should be quite easy to remedy that situation, for, as the representative of France had observed (1212th meeting), not all the resources of the Statute had been fully explored. Furthermore, the Court itself had embarked upon a revision of its Rules. Similarly, it had been pointed out that only a few international organizations had the right to request advisory opinions from the Court, and it had been suggested that more should be enabled to do so. His delegation favoured that suggestion. On two occasions, in 1947 and in 1951, Egypt had requested the General Assembly and the Security Council respectively to invite the Court to formulate an advisory opinion on certain aspects of the Palestine question. If that request had been accepted, there would perhaps have been no war in the Middle East. In any event, the improvement of the Court's procedures did not seem to involve any major difficulties.

3. However, there was another category of obstacle which was much more fundamental. States, citing the principle of sovereignty, showed a certain reluctance to submit their disputes to the Court. In fact it was possible to agree with certain writers that States feared the Court's decisions. The reasons for that lack of confidence should not be sought in the composition or Statute of the Court. They derived from the way in which international justice was currently conceived, the content of the law in force and the way in which that law was applied.

4. It must be recognized that the community of nations did not yet have a unified concept of international justice. What was good for one group was not always good for the others. For example, resistance to nazism was considered a heroic act, whereas the resistance of the Asian and African countries to foreign occupation was regarded as terrorism. Since, for the first time in history, almost all the nations of the world were associated in the United Nations, it was to be hoped that a really equalitarian concept of international justice would be developed, which would lead States to submit willingly to the Court's decisions.

5. With regard to the law in force, the new countries of Africa and Asia found themselves confronted with a law which had been formed without their participation, in order to satisfy the requirements and conciliate the interests of the European continent alone. The representative of Kenya had analysed (1213th meeting) the difficulties which arose from that fact and had given examples of them. However, the situation was beginning to improve, thanks to the participation of the new States in the formulation of law in many codification bodies. Such general participation in the creation of law would no doubt lead States to accept the Court's competence more willingly.

6. With regard to the obstacle deriving from the way in which the law was applied in the modern international community, he observed that some States, far from seeking a uniform application of the law, based their foreign relations on the balance of power. Furthermore, the principle concerning the right of peoples to self-determination was sometimes used to dismember or fragment the territories of African and Asian peoples.

7. Those considerations showed that the obstacles to the satisfactory functioning of the Court derived primarily from the current state of international society. Unsettled by the rapid changes which were taking place in the scientific, technological, economic and social fields, international society would need time to adapt itself to the requirements of the new order. The problem could not be solved by amendments to the Statute of the Court or to the Charter of the United Nations.

8. His delegation considered that in order to make progress with regard to the question under consideration, the first step should be to seek the Court's advice. As suggested by the representative of Kenya, it would also be desirable to address to States a questionnaire based on the views expressed in the Committee. He was glad that the debate was being conducted in a spirit of support for the Court and the rule of law, without the introduction of political considerations irrelevant to the question at issue, as often happened in other United Nations bodies.

9. Mr. LIANG (China) recalled that at the 1944 Dumbarton Oaks Conference, China had been the first to propose that the Court should have compulsory jurisdiction, and that as early as 1946 China had accepted that compulsory jurisdiction, in accordance with Article 36 of the Statute.

10. Some speakers had said that the question of the review of the Court's role was primarily the responsibility of the Court itself. That was not true. Article 10 of the Charter stated that the General Assembly might discuss any questions or matters relating to the powers and functions of any United Nations organ. In 1947, the General Assembly had adopted resolution 171 (II), entitled "Need for greater use by the United Nations and its organs of the International Court of Justice", whose existence seemed to have been forgotten by both the United Nations and Member States. Indeed, both section A of that resolution, which recommended that organs of the United Nations should refer the difficult and important points of law which arose in the course of their activities to the Court for an advisory opinion, and section C, which drew the attention of States to the desirability of the greatest possible number of States accepting the jurisdiction of the Court and recommended that they should submit their legal disputes to the Court, had apparently never been implemented.

11. The Institute of International Law–an academic body whose members included several present as well as former judges of the Court–had repeatedly proposed various improvements to the Rules and even to the Statute of the Court. It had, for example, drafted a model clause on the compulsory jurisdiction of the Court, which could be included in any convention. It had also adopted a resolution stating that recourse to the Court could never be considered an unfriendly act towards another State party to a dispute and stressing the competence of the Court with regard to the legal aspects of financial and economic agreements concerning development. The proposed *ad hoc* committee (see A/C.6/L.800) should consult the *Annuaires* of the Institute of International Law, when it reviewed the role of the Court.

12. The end of the First World War had seen the emergence of a whole series of peace treaties, most of which had contained arbitration clauses providing for compulsory recourse to the Permanent Court of International Justice in matters such as labour, the protection of minorities, mandates, the right of transit and communications. The existence of those treaties had facilitated the activities of that Court, which had been asked to give numerous advisory opinions and to hand down a number of judgements. At the end of the Second World War, the situation had been quite different. The procedure for the settlement of disputes had been to set up conciliation commissions, quite independently of the International Court of Justice which had therefore been much less active than the Permanent Court. A number of more recent agreements, however, mentioned the compulsory jurisdiction of the Court. Examples were the Convention on the Prevention and Punishment of the Crime of Genocide, article 66 of the Vienna Convention on the Law of Treaties and the optional protocols concerning the compulsory settlement of disputes relating to the conventions on the law of the sea and to the Vienna conventions on diplomatic and consular relations. Nevertheless, the Court had received no general mandate from the community of States as a whole. The exercise of its jurisdiction was subject to the consent of the States parties to the dispute and it did not have the necessary authority to hear a case without their consent.

13. It was true that Article 92 of the Charter stated that the International Court of Justice was the principal judicial organ of the United Nations, but that pre-eminence had never become a fact in practice. Unlike the United States Supreme Court, the International Court of Justice was not empowered to review decisions taken by other United Nations organs or to rule on the constitutionality of such decisions. Moreover, for various reasons States had rarely made use of the Court. In explanation of that fact, it had been claimed that existing international law was inadequate. Yet that inadequacy could be corrected only by following the procedures prescribed by the existing law. The Court had a role to play in the improvement of modern international law but it would not play that role unless invited to do so.

14. Turning to the proposals before the Committee, he noted that any amendment of the Statute would constitute an amendment of the Charter, since the Statute was an integral part of the Charter. He pointed out, however, that the review of the Statute could be undertaken separately and that a precedent existed for such an approach: the Statute of the Permanent Court had been amended in 1929.

15. The basic problem was the fact that the existing interplay of political forces discouraged States from appealing to the Court. The advent of a better political climate would facilitate a solution of the current problems inherent in the role of the Court.

16. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) said that the peaceful settlement of disputes was one of the fundamental principles of modern international public law and one of the prerequisites for the peaceful coexistence of States with different political systems. Judicial settlement was one of the means available to States, under Article 33 of the Charter, for the settlement of their disputes and the Court, which was the subject of Chapter XIV of the Charter and whose Statute formed an integral part of the Charter, was the judicial organ which they could use for that purpose. Although the judgements given by the Court had binding force, it followed from the principle of State sovereignty that a dispute could be submitted to the Court only with the consent of the parties concerned.

17. Certain States, considering that the Statute and Rules of the Court did not meet the needs of the modern international community, had advocated a review of the role of the Court with a view to removing the obstacles to its functioning. They had also proposed that an *ad hoc* committee should be established to make recommendations on that subject. His delegation did not believe that the establishment of such a committee would serve the interests of the international community, since it failed to see how the committee's conclusions could enhance the role of the Court as the organ responsible for promoting the establishment of a satisfactory international legal order.

18. The main problem was whether it was preferable to retain the principle of the optional jurisdiction of the Court—a solution which had been adopted at the San Francisco Conference, after animated discussions—or, alternatively, to proclaim the principle of the compulsory jurisdiction of the Court in international disputes; his delegation believed that the second alternative, in addition to having no legal basis, presented serious dangers for the international community.

19. An amendment of the Statute of the Court and, consequently, of the Charter along those lines might upset the over-all balance of the Charter and obstruct the machinery which it provided for the maintenance of international peace and security; in addition, an extension of the Court's jurisdiction would amount to limiting that of the Security Council and result in certain matters being withheld from the Council and wrongly referred to the Court, even if they were clearly of a political nature. Indeed, the very principle of the compulsory jurisdiction of the Court was contrary to the sovereignty of States. Its acceptance would mean that more importance was attached to judicial settlement than to the other means for the peaceful settlement of disputes, so that the Security Council would find itself obliged—contrary to the Charter—to refer to the Court any dispute which might threaten international peace and security.

20. The current difficulties of the Court derived, on the one hand, from the non-observance of Article 9 of the Statute of the Court, which provided that in its composition it should reflect the main forms of civilization and the principal legal systems of the world and, on the other hand, from the fact that some of its recent decisions were contrary to the principles and standards of modern international law. In the *South West Africa* cases, for instance, the Court had pronounced a judgement which represented a challenge to world opinion and violated several General Assembly resolutions and which, furthermore, could only serve to encourage colonialism and racism. If the Court's current difficulties were to be resolved, the first priority was to improve its composition and to ensure that any decisions which it was called upon to render in future should be morally just and legally acceptable; only if that was done would the distrust displayed by States towards it be reduced and the number of cases brought before it increased.

21. The optional nature of the Court's jurisdiction was compatible with the principle of national sovereignty, the norms of modern international law and the provisions of the Charter relating to the Security Council's competence with regard to the maintenance of international peace and security; it was also consistent with the principle that States should have a choice of means for the peaceful settlement of their disputes. Moreover, it should be noted that the statements made by some States recognizing the Court's compulsory jurisdiction contained reservations which rendered that recognition ineffectual in practice, and the arguments advanced in support of the Court's compulsory jurisdiction seemed much more political than legal in character.

22. The Statute of the Court offered a number of possibilities which had not been fully explored, notably the various chambers which the Court could form to deal with particular categories of cases; those chambers could meet elsewhere than at The Hague and could speed up the Court's procedure. His delegation therefore failed to understand the need for the establishment of regional chambers. Nor did it agree with those who thought that the intergovernmental and regional organizations should be authorized to seek advisory opinions from the Court, for such a measure might overload the Court with cases of regional or secondary interest and also jeopardize the unity of its jurisdiction.

23. For those reasons, his delegation could not support the proposal to establish an *ad hoc* committee for the role of the Court.

24. The CHAIRMAN announced that Cyprus, Greece and Haiti had joined the sponsors of the draft resolution (A/C.6/L.800).

25. Mr. PINTO (Ceylon) observed that, although his Government had not itself recognized the compulsory jurisdiction of the Court under Article 36 (2) of its Statute, it had always favoured the inclusion in multilateral treaties to which it was a party of provisions affirming the competence of the Court to settle disputes to which those treaties might give rise. While certain decisions of the Court had rightly evoked sharp criticism, the Court had undeniably, since its establishment, made a notable contribution to the development of international law, both by its judgements, the separate or dissenting opinions of its judges and its advisory opinions.

26. Nevertheless, it was clear from the debate that the working of the Court was by no means fully satisfactory. The solution of the Court's current difficulties did not, however, necessarily lie with the Court itself, and it was the clear duty of all members of the international community to re-examine carefully their attitudes to it.

27. As the representative of Iraq had observed (1211th meeting) the Court's difficulties could probably be attributed, firstly, to the law which it applied and, secondly, to its composition. The new States of Asia and Africa, which had had little to do with the formational process of international law, sometimes questioned the validity of certain principles of that law; one way of rectifying the situation therefore lay in the equal participation by all States in the progressive development and codification of all branches of international law. Moreover, stricter compliance with Article 9 of the Statute of the Court would mark an enormous advance towards solving the problems raised by the Court's composition and would certainly re-establish, at least to some extent, the confidence of States in the objectiveness of its decisions.

28. With regard to the question of the Court's internal procedure, his delegation felt, as several previous speakers had remarked, that any measure aimed at streamlining procedures and shortening delays could not fail to enhance the Court's efficiency. Similarly, consideration should be given to means of reducing the extremely heavy expenses incurred by the parties in a case brought before the Court; in that connexion, his delegation felt that more frequent use might be made of the machinery provided for in Articles 26 and 29 of the Statute.

29. While supporting the proposal for the establishment of an *ad hoc* committee to study the functioning of the Court, his delegation wished to make a number of observations on the aims of such a study. It wished to emphasize that all States Members of the United Nations were parties to the Statute of the Court and that no useful purpose was served by criticizing that body and denying its usefulness. Either the Court must be made to function justly and efficiently, so as to win general acceptance from the international community, or consideration should be given to whether the maintenance of the Court and the expenditure which that involved was worth while. For the majority of States the Court seemed to be only marginally useful, and the possibility that it should be financed by those which used it or by voluntary contributions should be considered.

30. His delegation emphasized that the reluctance of many States to accept the Court's jurisdiction was basically due to the different conceptions in the various countries of systems of values, political ends and the means of achieving those ends. Those differences found their most concrete expression in the efforts to make the composition of the Court more just. However the *ad hoc* committee might be composed and regardless of the length of its mandate, it could remove only some of the difficulties which beset the Court. Any reforms which it might recommend should be implemented only after careful study of the causes of the Court's current situation. The *ad hoc* committee would therefore do well to use the services of experts in political science, sociology and other social sciences, who might help it to determine the maximum functions which it could discharge in the modern age without arousing opposition and also ways of promoting general acceptance of the role conferred on it by the Charter.

The meeting rose at 12.35 p.m.