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Chairman: Mr. Paul Bamela ENGO (Cameroon).

AGENDA ITEM 96

Review of the role of the International Court of Justice (A/8042 and Add.1 and 2)

1. Mr. TSURUOKA (Japan), introducing the item, said that the observations he would offer made no claim either to represent uniform views on the part of all the sponsors of the item, not to set out any rigid position. Indeed, because of its importance, the item deserved an open-minded and also a frank approach. In view of the obligations laid down in Article 2 (3) and 2 (4) of the Charter of the United Nations, Japan had always attached great significance to the role of the International Court of Justice, since it was the principal judicial organ of the United Nations and should therefore be prominent in the settlement of disputes. Japan had become a party to the Court's Statute even before being admitted to the United Nations and had accepted the Court's compulsory jurisdiction without reservation. It was also a party to many treaties which provided for that jurisdiction. At conferences for the adoption of multilateral treaties, it had consistently urged that the treaty under consideration should stipulate that disputes be referred to the Court.

2. He said that, after having renewed their faith in the Charter on the occasion of the twenty-fifth anniversary of the United Nations, it was opportune for the Member States to ponder over the role of the Court, particularly because concern was being expressed in various quarters over the present state of affairs in which the Court found itself.

3. The degree of recognition of the compulsory jurisdiction of the international judicial organ had declined sharply from the time of the Permanent Court of International Justice, as had the number of cases and advisory opinions. At present, as all were aware, there was no contentious case before the International Court of Justice, but that was not because of the absence of unsettled disputes. While there were many studies by scholars with regard to the effective use of the Court, his delegation considered that there was a need for such studies by the Governments, which had intimate knowledge of the obstacles which had so far prevented them from using the Court more frequently. The sponsors of the item had accordingly decided to propose in their explanatory memorandum (see A/8042) the establishment of an *ad hoc* committee to examine ways and means of enhancing the Court's effectiveness, on the basis of the opinions and suggestions of States. The sponsors felt that such a committee should consist of government representatives with expert knowledge of the matter and that its composition should reflect the world's major legal systems and various schools of thought on the subject. It should be able to seek the views of Member States not represented on it, as well as any opinions the Court itself might wish to offer and it should be allowed adequate time for what would be a complex task.

4. Meanwhile, in Japan's view, the fundamental reason why the Court was shunned was that the international community was not yet as homogeneous as national communities. Also, there was a psychological reluctance to resort to the Court because it was felt in some quarters —although the facts disproved it—that the Court's composition failed to reflect contemporary realities and that even the impartiality of its judges was open to doubt. Some also felt that the Court's methods were too rigid, but any procedural obstacles could probably be overcome by greater use of the facilities provided for in Articles 26 and 29 of the Statute of the Court; the flexibility offered by Article 31 (2) of the Statute had likewise to be borne in mind. Other possibilities worth exploring were ways and means of encouraging the acceptance without reservation of the Court's compulsory jurisdiction and of reducing the cost of cases, perhaps by enlisting United Nations assistance. More effective use of advisory opinions might also be envisaged, and the possibility of extending the bodies entitled to request them, to a larger category of intergovernmental organizations, and even States.

5. Japan was determined to do its utmost to strengthen the International Court of Justice.

6. Mr. FERGO (Denmark) said that the conspicuous absence, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), of any reference to the role of the Court, showed that many countries, not including Denmark, refused to accept it as an essential part of the system of pacific settlement of disputes, despite Article 92 of the Charter. Constructive action was needed to restore its central function within that system. Denmark had always considered judicial settlement to be a natural means of settling disputes where agreement was impossible, and had been a party to a case recently before the Court. The structure and functioning of the Court had to be improved to bring it into line with present-day requirements. Denmark therefore welcomed the Court's decision to review its Rules of Procedure (see A/8005, paras. 31-35). It would be helpful to reduce the cost and length of cases referred to the Court, which might find ways of encouraging parties to be more expeditious. Other useful moves had already been suggested: to allow

international organizations to be parties to cases before the Court, which would entail the amendment of Article 34 of the Statute, and to widen the Court's capacity to give advisory opinions. The Security Council's decision (resolution 284 (1970)) to seek an advisory opinion on Namibia was an example of the facilities available to international organizations.

7. However, if the Court was to have a viable future, it was necessary to look beyond the uncontroversial area of procedure to the question of the Court's compulsory jurisdiction, for procedural reforms would be useless without a reversal of the trend away from the judicial settlement of disputes, a tendency clearly demonstrated by the fact that only about one third of the States Members of the United Nations had accepted the compulsory jurisdiction, and some of those very restrictively. To that end, it would be desirable to reinforce the Court's ability to contribute to the creative development of international law, so that its decisions commanded universal respect, and to encourage Governments which had not yet done so to accept the compulsory jurisdiction and those which had done so conditionally to withdraw or curtail their reservations.

8. His delegation fully supported the idea of establishing an *ad hoc* committee to study means of increasing the effectiveness of the Court.

9. Mr. SUY (Belgium) said that his delegation's views on the topic under discussion would include some general observations on the question of the judicial settlement of disputes. The basic principles of the United Nations were set forth in Article 2 of the Charter; one of them, the obligation to refrain from the threat or use of force, expressed in paragraph 4, was so fundamental that it had become a peremptory norm of international law. The obligation expressed in Article 2 (3) was equally mandatory, and of such significance that the entire Chapter VI of the Charter, which included Article 33 (1) referring to judicial settlement, was devoted to it. That means of peaceful settlement of disputes had in turn been regarded as so important that the Permanent Court of International Justice, which had been independent of the League of Nations, had been transformed into an official organ under the United Nations Charter.

10. However, despite the hopes placed in the Court, its compulsory jurisdiction had been accepted by only forty-six of the 127 States Members of the Organization, and in many cases with reservations which were tantamount to non-recognition of the Court's competence. Rather than submit disputes to an impartial body, States had proclaimed the justice of their cause or invoked legal arguments unilaterally. Belgium had regularly resorted to the judicial settlement of disputes, both in the Permanent Court and in the International Court. It did not consider that the reference of disputes to a judicial organ implied any abandonment of sovereignty, a view which was spelt out in the Declaration on Friendly Relations. It thought, nevertheless, that the arguments against judicial settlement which were based on the composition of the International Court or the applicable law were not without merit. Some criticisms of the slow and cumbersome nature of the Court's procedure might be equally justified, and if so remedial measures should be taken. The Court's present review of its procedure was to be welcomed, but procedural improvements alone would be insufficient. The confidence of States in the international judicial organ had to be restored. The move to study the question therefore deserved strong support. Reform to adapt judicial institutions to changed situations was a regular feature of national life and would be a natural step for the international community. His delegation considered that the suggested committee should consist of independent experts chosen for their reputation in that particular field. The path of reform would be a fortifying process for an institution which represented the very highest level of development of society.

11. Mr. CASTRÉN (Finland) noted that the importance of the International Court of Justice and the need to strengthen its role had been repeatedly emphasized by the Secretary-General and by States Members of the United Nations. The Court itself had embarked on a revision of its Rules; such a revision would be most useful but would not suffice to reactivate the Court.

12. The importance of the Court could be seen from the fact that not only the Charter of the United Nations but also many important treaties mentioned its role in the settlement of disputes. While relatively few States had accepted the compulsory jurisdiction of the Court in the matters mentioned in Article 36 of its Statute, other States had sought its assistance in individual cases. In addition, the parties to the Statute included States which were not Members of the United Nations. The President of the Court had certain important administrative powers in the settlement of disputes outside the Court, which also played a significant role in the codification and progressive development of international law. Its composition had changed and come closer to meeting the requirements laid down in Article 9 of the Statute.

13. While the provisions of the Statute concerning procedure could be modernized and improved in certain respects, they had not prevented the Court from functioning properly. It had been said that recourse to the Court was costly; but the same was true of international arbitration. Under Article 33 of the Statute, the expenses of the Court were borne by the United Nations. In addition, the cost of bringing a case before the Court could be reduced by the use of chambers of the Court or of summary procedure. The lengthiness of proceedings in the Court was usually due to the fact that the parties to the case had requested an extension of the time-limits.

14. The establishment of regional courts and international tribunals for the settlement of specific disputes was probably one of the reasons for the current inactivity of the Court. While that development was to be welcomed in some respects, it should be remembered that the international community would always need an international judicial organ to resolve legal disputes of all kinds and disputes between States belonging to different geographical regions.

15. The dissatisfaction of a number of States with the procedure followed and the judgements and advisory opinions handed down by the Court was reflected in an increasing reluctance to have recourse to it, and something

would obviously have to be done to restore confidence in its powers. Various suggestions had been made regarding new functions which could be entrusted to the Court. Particularly noteworthy were the suggestions that the Court's jurisdiction should be expanded to enable international organizations to bring cases before it and that Member States should be allowed to request advisory opinions. The hope had often been expressed that the international organizations which had been authorized by the General Assembly to request advisory opinions would make greater use of that right. Consideration should also be given to the idea of forming special chambers of the Court for the settlement of regional disputes, bearing particularly in mind the interests of groups of States which did not have their own organs for that purpose. All those suggestions should be considered by the proposed *ad hoc* committee, which should be given broad terms of reference and sufficient time to accomplish its difficult task. If necessary it should consult experts, and in any case, it should consult the Court before reaching any conclusions. The committee should be large—say, twenty-five members—so as to be fully representative.

16. Mr. KLAFKOWSKI (Poland) said that the proposed *ad hoc* committee should perform its duties within the framework of the United Nations Charter. Under Article 92 thereof the Statute of the Court was an integral part of the Charter, and any revision of the Statute would therefore amount to a revision of the Charter. Such a task could not be entrusted to an *ad hoc* committee. In addition, the legal status of the Court, as established in the Charter, should be respected. Although the Court was the principal judicial organ of the United Nations, Article 95 of the Charter stated that Members might entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which might be concluded in future.

17. According to Article 59 of the Statute, the decision of the Court had no binding force except between the parties and in respect of the particular case. Yet the decisions and advisory opinions had a considerable influence in international practice and in legal theory. Their influence could also be seen in the work on the codification and progressive development of international law.

18. The first task of the *ad hoc* committee would be to study the obstacles to the satisfactory functioning of the Court. In that connexion, it would be necessary to discover why only forty-six States had accepted the compulsory jurisdiction of the Court and many of them had hedged their acceptance about with numerous reservations. A study would also have to be made of the causes of the ineffectiveness of the Court, which in twenty-five years had handed down far fewer judgements and advisory opinions than its predecessor, the Permanent Court of International Justice, had done in only eighteen years of effective existence. It was noteworthy that the Court issued on an average five orders for the conduct of a case—a practice which prolonged the proceedings. Advisory opinions were given more rapidly and, with one exception, had always been issued in the year following the request.

19. Consideration should also be given to the question of geographical distribution in the membership of the Court and the need to respect the geographical and political criteria underlying the provisions of Article 9 of the Statute. It was significant that, out of the total of forty-two members elected to the Court since its establishment, there had been fourteen judges from the American continents, eight from Asia and Australia, three from Africa and seventeen from Europe. It was also significant that the Court was less truly international than its predecessor, considering the number of different countries and regions which had brought cases before it. In addition—likewise in comparison with its predecessor—insufficient use had been made of the Court's power to give advisory opinions.

20. The second task of the *ad hoc* committee would be to find ways and means of removing obstacles to the satisfactory functioning of the Court. It would be useful to send a questionnaire on the subject to States; that method had been used successfully by the International Law Commission and by the United Nations Commission on International Trade Law. The Court itself was working in that direction by undertaking a revision of its Rules in order to adapt them to the changes that had occurred in recent years and to the pace of world events. Even if the reforms and transformations made to the Court's role were neither revolutionary nor rapid, it would be useful and necessary to start studying the question as soon as possible, in view of the present position of the Court and the needs of the United Nations as a whole.

21. The explanatory memorandum on the item under discussion suggested that the *ad hoc* committee should also explore additional possibilities for use of the Court that had not yet been adequately explored. The Polish delegation felt, however, that such exploration would be premature and that it could not be made until the committee had completed its first two tasks and replies had been received from Governments.

22. Mr. SPERDUTI (Italy) said that because of its keen interest in ensuring that disputes between States were settled by legal means, his delegation attached great importance to the review of the role of the International Court of Justice and had been one of the Group that had sponsored the item. In any such review, Articles 36 (3) and 92 of the Charter, referring to the functions of the Court, and Article 9 of its Statute, dealing with the election of the members, should be taken into account.

23. A perusal of the list of international instruments which governed the competence of the Court gave the impression that both its judicial and its advisory functions were widely recognized even if recognition had not yet reached the desired level, particularly with regard to unilateral declarations under Article 36 (2) of the Statute and the jurisdictional clauses in other international instruments. Nevertheless, it could not be said that the use of the Court's services had reached an adequate level, because during the past twenty-three years it had given only thirteen advisory opinions and dealt with only thirty-nine contentious cases, in which it had handed down thirty-one judgements. That situation could hardly be considered satisfactory, and all States which recognized the authority of the Court should make serious efforts to solve the various problems connected with improving its use and effectiveness.

24. Mr. LEE (Canada), speaking as one of the sponsors of the item, urged delegations to give serious consideration to the proposal that ways and means be found to increase the effectiveness of the Court. Since it was in the process of reviewing its Rules, the establishment of an *ad hoc* committee to consider the matter was most timely.

25. His delegation believed that the *ad hoc* committee should concentrate on streamlining the procedures of the Court, which could be done without amending the Statute. A simplification of procedures would greatly facilitate the operation and reduce costs. For example, the Court did not seem to have made full use of the provisions of Articles 26 and 29 of its Statute providing for the composition of chambers, or of the provision concerning oral evidence. The possibilities under Articles 28, 30 (2) and 50 would also warrant examination.

26. Several writers had proposed the establishment of chambers under Article 26 (1) of the Statute to deal with particular categories of cases. Thus, a functional and perhaps even a territorial hierarchy of courts might be established to hear specific cases relating to, for example, human rights or trade problems. Others had suggested that regional courts might be created with similar jurisdiction to the Court but with a limited right of appeal. Their members might be required to have experience in local practices and to be familiar with the problems of the particular region. Another suggestion was that itinerant judges should be appointed with a view to ensuring more efficient conduct of investigations.

27. Other suggestions of a more fundamental nature were amendment of Article 34 (1) of the Statute so as to provide that other United Nations organs and other institutions could become parties to proceedings before the Court on conditions set by the General Assembly on the recommendation of the Security Council, and various proposals concerning the method of electing Judges, the length of their term of office and the methods employed by the Court in handing down its judgements. In the view of his delegation, however, the proposed *ad hoc* committee should not devote most of its time to that category of proposals but should aim at recommendations of a specific, practical nature on the Court's procedures within the terms of its present Statute.

28. He urged all members to support the establishment of the proposed *ad hoc* committee and to see to it that those nominated for membership were persons respected who had demonstrated their interest in promoting the objective of an effective world court.

The meeting rose at 12.25 p.m.