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Chairman: Mr. Paul Bamela ENGO (Cameroon).

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.800-802)

1. Mr. EL HUSSEIN (Sudan) said that the Charter of the United Nations, through various provisions, had entrusted the International Court of Justice with a task of paramount importance in the maintenance of international peace and security. His country attached great significance to the Court and had not only accepted its compulsory jurisdiction but had also become a party to many treaties providing for that jurisdiction. It therefore welcomed the opportunity for an assessment of the Court's achievements and a review of the possibility of making it a more effective institution. The Secretary-General in the introduction to his report on the work of the Organization[1] had rightly drawn attention to the role it was intended to play. Many writers had commented on the lack of increase in the number of declarations accepting compulsory jurisdiction made in accordance with Article 36 (2) of the Court's Statute by comparison with the growth in the number of States and on the way in which the force of some declarations was virtually nullified by reservations. They had also remarked on the decline in the Court's contentious and advisory activity and on the tendency, in multilateral treaties, for compulsory jurisdiction provisions to be relegated to protocols.

2. The reluctance of States to have recourse to the Court could be overcome only through international effort at government level, since only Governments had full knowledge of the obstacles involved. Jurists had emphasized the difficulty of ascertaining international law, especially where customary rules were concerned. The Court had always sought to adjudicate by reference to legal relationships recognized by the parties rather than on the basis of general rules. Yet it could gradually clarify general rules by applying them and so contribute to the progressive development and codification of international law, in which the International Law Commission was so instrumental. In recent cases, the Court had in fact interpreted traditional rules quite liberally, in an awareness that they took insufficient account of the emerging cultures and legal systems of the newer States, especially those of Africa and Asia. But his delegation agreed that the Court's composition failed to reflect the realities of the contemporary world and that its procedures should be expedited. The views of Governments should naturally be sought before any action was taken.

3. Mr. ALCÍVAR (Ecuador) said that the peaceful settlement of international disputes was one of the pillars of international security established by the Charter, as earlier by the Covenant of the League of Nations. However, the machinery for the settlement of disputes was not so clearly articulated in the Charter as it had been in the Covenant. In the Charter, the pre-eminence accorded to the means of adjudication by Article 36 (3) was not borne out by the enumeration in Article 33 and was, moreover, diminished by the optional nature of the Court's compulsory jurisdiction, which tended to weaken the institutionalization of the international judicial function. It was a fact that relatively few States had availed themselves of the option provided for in Article 36 (2) of the Statute. That was due, in his view, to the fact that traditional international law was the fruit of customary practices which had been established by economic and military might. Treaties had been imposed on the weak and the rule of *pacta sunt servanda* had been invoked to sanctify them. But the rule of force had gradually given way. In 1945, a legal order had been created to embrace all the peoples of the world. The new realities of an international community profoundly changed by decolonization had called for international law to be progressively developed. That process signified the gradual eclipse of the importance of customary rules, which had become inadequate for the solution of the economic and social problems of a world characterized by a wide gap between rich and poor. The general international law of today had therefore to be sought elsewhere than in the custom of a few States: principally in general mutilateral treaties, and also in the duly adopted decisions of those international organizations which formed part of the international legal order and in the general principles of law ascertainable through United Nations organs.

4. In that context, the acceptance of the compulsory jurisdiction of the Court would depend on its response to the new conception of international law, since its primary function was to apply that law. As far as the Court's juridical basis was concerned, there were clear defects in the Statute. Article 38, for instance, admitted international conventions as a source of law only if they established rules expressly recognized by the litigants. It dealt imprecisely with international custom and implied an unacceptable distinction in referring to the recognition of general principles of law by civilized nations; in any case, it was the organs of the United Nations, including the Court itself, that should recognize such principles. Furthermore, the mention of judicial decisions exluded reference to decisions of universal international organizations as a source of jurisprudence.

1 See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 1A*, para. 145.

5. As far as the composition of the Court was concerned, the criterion of equitable geographical distribution was difficult to define. With regard to the requirement concerning legal systems, it would be preferable to speak of legal cultures, since the old dichotomy of the Anglo-Saxon and Roman systems had been superseded in part of the Western hemisphere with the emergence of an independent Latin-American legal culture which had made far-reaching contributions to international law. The young countries of Africa were forging their own legal culture as well. In considering the share which should fall to any legal culture in the composition of the Court, the guiding consideration should be a judicious balance between them all and not the number of States which subscribed to any one. Such truths would have to be faced in the task of restoring the court to its proper place in the United Nations system.

6. Mr. YASSEEN (Iraq), replying to the point raised by the Lebanese representative (1217th meeting) with regard to consultation with the Court, said that he saw nothing in the Court's Statute, or in international law generally, to prevent the General Assembly from seeking the views of the Court on its Statute and procedure. If it did so, it would not be asking for an advisory opinion in the technical sense; both the Court and the General Assembly were principal organs of the United Nations and as such could establish contact with each other to settle questions which concerned them. If the Court wished to respond to such a request, it could do so either in its annual report to the General Assembly or by correspondence.

7. Mr. FRANCIS (Jamaica), commenting on the Australian representative's observations (1216th meeting) concerning the volume of documentation in cases before the Court, said that the criticisms which Jamaica had expressed (1212th meeting) on the subject were not intended to imply that there should be any curtailment of a State's sovereign right to produce such evidence as it saw fit. At the same time, he did not think it would be inappropriate for the Court itself to advise litigants as to what materials were relevant to their case so as to prevent unnecessary proofs from being submitted. He suggested that the possibility of its doing so should be borne in mind in any examination of the Court's Rules.

8. The CHAIRMAN announced that Guatemala had been added to the list of the sponsors of draft resolution A/C.6/L.800.

9. Mr. CHAMMAS (Lebanon) thanked the Iraqi representative for his comments on the question of ascertaining the Court's views. He still had doubts, however, since he did not think that authority for such a step could be found in the Charter or in the Court's Statute or Rules. What in fact would be the legal character of any views which the Court might express? But it should not be thought that Lebanon was opposed to the Court's views being sought.

10. Mr. ROSENSTOCK (United States of America) agreed with the representative of Iraq that the question of inviting the Court to state its views came into the category of relations between the principal organs of the United Nations. In reply to the representative of Lebanon, he pointed out that there was a precedent for ascertaining the Court's views. In 1946, the General Assembly had invited the members of the Court to consider the question of its privileges and immunities and to inform the Secretary-General of their recommendations.[2] In 1969, the Court had communicated with the Secretary-General concerning Article 22 of its Statute.[3] The question whether the views should be communicated to the Secretary-General, the Sixth Committee, or an *ad hoc* committee should be left for the Court to decide, and the Court would be free not to reply, if it so wished.

11. Mr. DELEAU (France), introducing draft resolution A/C.6/L.801, said it was clear from the debate that there was general respect in the Committee for the authority of the Court and that a spirit of moderation and caution prevailed in approaching the delicate question under consideration. The draft resolution was intended to reflect those two factors. Paragraph 2 invited the Court to state its views in respectful terms and it was clear that the Court was to communicate them through administrative channels, for example, in a report to the General Assembly, rather than by judicial procedure. The comprehensive report requested from the Secretary-General in paragraph 3 should provide an analytical and detailed working document which would facilitate the Committee's further work on the question as provided in paragraph 4.

12. He hoped the delegations would give the draft resolution careful consideration and that it would be possible to obtain a consensus on a subject of such importance and delicacy which affected the dispensation of international justice.

13. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic), introducing draft resolution A/C.6/L.802 on behalf of the sponsors, said that a revision of the functions and competence of the Court would require the revision of its Statute, which formed an integral part of the Charter. That was a step which his delegation had always firmly opposed, because it would upset the delicate balance of relations between the different organs of the United Nations. Only by acting within the strict limits of the provisions of the Charter could the different organs maintain their international authority. His delegation could not agree with those who wanted to limit the rights of States and give sovereign powers to the Court. His delegation had misgivings concerning the establishment of an *ad hoc* committee, since that had not been requested by the Court itself. The Court was aware that there were obstacles to its effective operation and had already embarked on the revision of its Rules. He hoped that the Court would be able, within the limits of its Statute, to examine the reasons preventing the satisfactory dispensation of international justice in accordance with the needs of contemporary international relations. He trusted that the Court would take into account the views and suggestions put forward in the Committee at the current session. His delegation had co-sponsored draft resolution A/C.6/L.802 because it saw no urgent reason to revise the Statute of the Court and was opposed to the establishment of the proposed *ad hoc* committee.

14. Mr. GONZÁLEZ GÁLVEZ (Mexico) said that his delegation had agreed to become a sponsor of draft

2 See resolution 22 C (I), para. 1.

3 See *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda item 93, document A/7591.

resolution A/C.6/L.800 because it had felt that the procedure it proposed was the best way of achieving the desired end. His delegation had started out without any preconceived ideas and had wanted to take constructive action in good faith to enhance the role of the Court. The task should be a joint effort by all States, not only those which had accepted the compulsory jurisdiction. In order to put fresh life into the Court, his delegation would consider any line of action on which there was a consensus in the Committee.

15. If the draft resolution of France (A/C.6/L.801) was adopted, very few replies from States might be received by 1971; he recalled that when the General Assembly in its resolution 2330 (XXII) had first established the Special Committee on the Question of Defining Aggression, the replies to the request for comments from Member States had been brief and few. The establishment of an *ad hoc* committee might therefore expedite work on the items.

16. Turning to draft resolution A/C.6/L.802, he expressed misgivings concerning the third preambular paragraph. To state that the Committee had taken note of the report of the Court (A/8005) might prejudice further consideration of the questions dealt with in that document, which included, for example, the proposed amendment of the Statute and the revision of the Rules of Court. The decision in the operative paragraph of the draft resolution hardly seemed necessary. The Court would surely in any case obtain records of the General Assembly's consideration of legal items. In principle, he shared the Ukrainian representative's concern about any amendment of the Statute of the Court. However, although it would be undesirable to embark on a general revision of the Charter, his delegation nevertheless felt that certain parts of the Charter required some modification in order to meet modern needs, and if specific proposals were made to that end they should be considered in the appropriate organ of the United Nations. However, the terms of reference of the *ad hoc* committee as propsed in draft resolution A/C.6/L.800 did not presuppose any amendment to the Statute of the Court. The *ad hoc* committee would be appointed after appropriate consultations with regional groups, so that it would be possible for all States to defend their positions. The proposed committee might be able to find a solution through the liberal interpretation of the Charter. Such an interpretation had been required, for example, by the implementation of General Assembly resolution 1514 (XV) and the establishment of the United Nations Conference on Trade and Development by means of resolution 1995 (XIX). That technique in the present instance should allay the misgivings expressed by the Ukrainian representative.

17. He conceded that draft resolution A/C.6/L.800 did not allow much time before the commencement of the *ad hoc* committee's work, but that was because it was necessary to take into account the general pattern of conferences. His delegation was also, in general, opposed to the proliferation of new committees and would welcome any alternative suggestion that would achieve the same end.

18. In reply to the Lebanese representative, he pointed out that the *ad hoc* committee's mandate had been left vague deliberately, so that it would be able to consider all aspects of the question and all possible solutions. Moreover, greater precision was not possible at the present stage. A questionnaire might prove the best way of eliciting the views of States to serve as a guideline for the *ad hoc* committee.

19. Since it did not seem possible to obtain unanimous agreement on any one of the three draft resolutions now before the Committee, it might be appropriate to suspend consideration of the question for twenty-four hours so that delegations might consult together and try to reach agreement. On such an important item, any decision must be taken by an overwhelming majority. It might be advisable to allow more time for the submission of comments by States—perhaps extending the period to one year—and to postpone the date of commencement of the *ad hoc* committee's work. A group of experts might be appointed at the current session with the specific task of assisting the Secretary-General in preparing a questionnaire to be sent to States. Careful preparation was required because of the political implications involved. The appointment of such a group would not jeopardize the independence of the Secretariat. He hoped that the consultations would result in a draft resolution which could be adopted unanimously.

20. The CHAIRMAN said it had already been arranged that only one meeting would be held on each of the next two working days. There would thus be ample time for consultations. There should be no undue haste in reaching a decision on such an important question.

21. Mr. KHALIL (United Arab Republic) said his delegation believed that, as a matter of principle, the greatest caution should be exercised in the consideration of any matter relating to the Court. He noted with satisfaction that there seemed to be general agreement in the Committee that care must be taken not to detract in any way from the prestige and authority of the Court. When his delegation had agreed to discuss the present item, it had approached the question with an open mind. The twenty-fifth anniversary of the United Nations had seemed a timely occasion for reviewing the role of the Court, and as the judicial organ of the General Assembly, the Sixth Committee was entitled to take an interest in the present and future operation of the Court and note any defects in its functioning. The debate in the Committee had been useful. It should help to draw the attention of Governments to the state of the Court and give them food for reflection before they expressed their views. That was important because the political decision ultimately taken would depend on Governments.

22. Draft resolution A/C.6/L.801 allowed the Court and Governments full liberty to express their views, without in any way prejudging the outcome. With regard to draft resolution A/C.6/L.800, experience had shown that the establishment of an *ad hoc* committee was not always the best way of achieving speedy results. Moreover, such a step would be premature at the present stage. The situation would be clearer after replies from Governments had been received, and it might prove desirable to establish an *ad hoc* committee in the light of the discussions in the Sixth Committee at the twenty-sixth session of the General Assembly. If the International Court of Justice was regarded as a continuation of the Permanent Court of

International Justice, it might be said to have been in existence for forty years. A delay of one more year would do no harm.

23. He agreed with the Mexican representative that a questionnaire would assist Governments in formulating their views. The idea of a questionnaire might be introduced into the draft resolution of France (A/C.6/801), which, in his delegation's view, proposed the wisest course at the present stage. The action recommended in draft resolution A/C.6/L.802 was less than was called for, while draft resolution A/C.6/L.800 went too far. His delegation would abstain in any vote on draft resolution A/C.6/L.802.

24. Mr. ROSSIDES (Cyprus) said that the main difference between draft resolutions A/C.6/L.800 and A/C.6/L.801 was that the former proposed the establishment of an *ad hoc* committee to review the role of the Court, while the latter requested Governments to submit their comments on the advisability and means of strengthening the role of the Court. In the light of previous experience, it seemed unlikely that many Governments would respond to such a request or that any meaningful action could be taken on the basis of their replies alone. A questionnaire would be more productive than a mere request for comments, but certainly not as valuable as a detailed study of the subject. Under the procedure proposed in the draft of France, once replies had been received from Governments the revision of the Court's procedures and functioning would presumably be undertaken by the Court itself. Quite apart from the fact that the problems called for more far-reaching reforms, there was no guarantee that the Court would be able to undertake such a revision; for the last two years it had been endeavouring to revise its Rules without making any visible progress. That was understandable, since the Court had many other matters to attend to. On the other hand, an *ad hoc* committee established for the express purpose of reviewing the role of the Court would be able to examine the problem broadly, on the basis not only of replies received from Governments, but of all suggestions made and would of course take the views of the Court itself into account in its conclusions and recommendations. The *ad hoc* committee would not impinge on the Court's authority in any way and its report would not, of course, be binding on the Court.

25. The net result of the adoption of the draft of France would be that one more year would elapse before any definite progress was made, since the General Assembly would doubtless decide at its twenty-sixth session, in the light of the lack of progress made, to establish an *ad hoc* committee to review the role of the Court. He disagreed with the representative of the United Arab Republic that no harm would be done by waiting one year; the United Nations was far too reluctant to take vigorous action, and that was perhaps why it was unable to cope with developments in a fast-moving world. The question of the role of the Court had originally been raised in 1962; eight years had elapsed before the item had been considered, and the General Assembly should not defer action for yet another year. The draft resolution submitted by Czechoslovakia and the Ukrainian SSR (A/C.6/L.802) would delay effective action still further.

26. With regard to the question raised by the representative of Lebanon, there was no precedent for requesting the Court to state its views on the matter. It would certainly be useful to ask the Court to give its views and it would probably comply, but it was under no obligation to do so.

27. He expressed the hope that some agreement could be reached between the sponsors of the various draft resolutions so that the Committee could take a unanimous decision on the item.

28. Mr. AL-ATRACHE (Syria) felt that the Committee should proceed with caution on what was an extremely complicated matter. He agreed with the representative of Mexico that the Committee should be given time to reach a generally acceptable solution. In that respect, he was pleased to note that the sponsors of draft resolution A/C.6/L.800 were prepared to take a flexible attitude. His delegation supported draft resolution A/C.6/L.801 for a number of reasons. First, it felt that the procedure suggested there would be more effective, notwithstanding the pessimism voiced about the reluctance of Governments to submit comments or reply to questionnaires. If Governments had an opportunity to express their views, their unwillingness to submit cases to the Court and to accept its decisions as binding might be made clearer. Secondly, the establishment of yet another *ad hoc* committee would not in itself represent any progress; past experience had shown that such committees often failed to discharge their mandate. His delegation felt that the Court itself was the body best qualified to review its Rules and functioning. Thirdly, the draft resolution submitted by France reflected accurately the opinions expressed in the Committee; it had been generally felt that the time was not ripe for the establishment of an *ad hoc* committee and that any decision taken should have the support of Governments and of the Court itself.

29. Although draft resolution A/C.6/L.802 met his delegation's general requirements, it did not take account of the political and legal aspects of the problem.

30. Mr. CHAMMAS (Lebanon) agreed that the Committee should endeavour to reach a unanimous decision on the item. However, delegations were experiencing some difficulties with the draft resolutions before the Committee. One of his delegation's concerns was the time element; since the request for the inclusion of the item in the agenda of the twenty-fifth session had been submitted only a month before the session opened, delegations had not really had time to prepare themselves for the consideration of such a complex question. Furthermore, draft resolution A/C.6/L.800 set 15 March 1971 as the time-limit for the receipt of Governments' views and suggestions. His delegation felt that the time was insufficient. That was what had led the delegation of France to submit draft resolution A/C.6/L.801 proposing an alternative procedure. Secondly, the title of the item, which appeared to be a paraphrase of the sponsors' intentions, had given rise to some difficulties. It should be re-worded so as to leave no doubt as to those intentions. He proposed that the title of the item, as it would appear in the draft resolution eventually adopted by the Committee, should be amended to read: "Study of obstacles to the satisfactory functioning of the International Court of Justice and ways and means of removing them." That would also lay the foundations for a more precise definition of the *ad hoc* committee's mandate and

thus allay fears that if it were established it might go beyond its mandate—a concern which had perhaps prompted draft resolution A/C.6/L.802. The changing of the title would necessitate further amendments to draft resolution A/C.6/L.800 if it were pressed to a vote, and the following words should be added at the end of paragraph 1: ", taking into account equitable geographical distribution and the different legal systems". Furthermore, paragraph 6 should be amended to state that the *ad hoc* committee was instructed to include the results of its study, taking into account all suggestions made, in a report containing its conclusions to be submitted to the General Assembly at its twenty-sixth session. If draft resolution A/C.6/L.800 came to the vote, he would formulate a specific proposal to that effect.

31. His delegation supported draft resolution A/C.6/L.801 and hoped that the Committee could reach unanimous agreement on that text. The suggestion that a specific questionnaire should be forwarded to Member States was a sound one; its preparation could be entrusted either to the Secretary-General or to a committee of experts established for that purpose alone. His delegation would vote in favour of draft resolution A/C.6/L.800 if the occasion arose, but it felt that the establishment of an *ad hoc* committee would not be a practical move at the present stage. The problem required deep reflection.

32. Mr. ALCIVAR (Ecuador) expressed the hope that the Committee could achieve unanimity on one of the draft resolutions. Obviously, consultations to that end would have to be held among members; he therefore suggested that the Committee should take up the consideration of another item.

33. The CHAIRMAN, announcing that Nicaragua had joined the sponsors of draft resolution A/C.6/L.800, said that, if there were no objections, he would take it that the Committee agreed to suspend its consideration of the item under discussion for several days.

It was so decided.

The meeting rose at 5.40 p.m.