

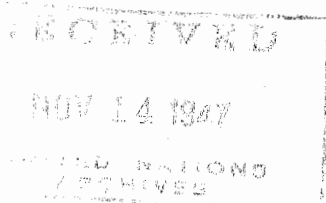
GENERAL
ASSEMBLYASSEMBLEE
GENERALEA/459
11 November 1947
ENGLISH
ORIGINAL: FRENCHNEED FOR GREATER USE BY THE UNITED NATIONS AND ITS
ORGANS OF THE INTERNATIONAL COURT OF JUSTICE

REPORT OF THE SIXTH COMMITTEE

Rapporteur: Mr. G. KAECKENBEECK (Belgium)

1. In a letter dated 19 August 1947 the Australian Mission to the United Nations requested the Secretary-General to place the following item on the agenda for the second session of the General Assembly: The need for greater use by the United Nations and its organs of the International Court of Justice in connexion not only with disputes of a legal character, but also with legal aspects of disputes and situations (document A/346).
2. The General Assembly, at its ninety-first plenary meeting held on 23 September 1947, referred this matter to the Sixth Committee (document A/C.6/134).
3. Two draft resolutions were submitted to the Committee: an Australian draft resolution (A/C.6/165), and an Iranian draft resolution (A/C.6/164).
4. The discussion of these two proposals, in the Committee's forty-fourth and forty-fifth meetings, revealed a very general feeling of regret and concern at the indifference too often shown for the legal aspects of matters and at the disregard shown in recent years for arbitral and judicial methods. This feeling, although not shared by all the members of the Committee, proved the unifying element of the various amendments submitted by the delegations of Argentina, Colombia, Egypt, France and Poland.
5. In order to provide the Committee with joint proposals which would take due account of the various wishes expressed, an ad hoc Sub-Committee was set up consisting of the Rapporteur and the authors of the proposals and amendments. This ad hoc Sub-Committee endeavoured, in a constructive and conciliatory spirit, to co-ordinate the various suggestions, seeing that they conformed to the Charter and did not conflict with one another or contain unnecessary repetitions. The proposals agreed upon by this ad hoc Sub-Committee were submitted to the Sixth Committee as three separate resolutions. The first resolution, based on the Australian draft text, concerns the methods whereby advisory opinions of the Court may be requested

/by organs



by organs of the United Nations and specialized agencies duly authorized to do so. The second resolution is designed to authorize the Trusteeship Council, under Article 96, paragraph 2 of the Charter, to request advisory opinions on legal questions arising within the scope of its activities. The third resolution, based on the Franco-Iranian proposal, deals with the Court's jurisdiction in case of disputes.

6. As regards the first resolution (A/C.6/167/Rev.1), the ad hoc Sub-Committee had instructed the Rapporteur to make clear the following points:

(a) The draft resolution as submitted applies to all organs of the United Nations authorized by Article 96, paragraph 1, or in conformity with Article 96, paragraph 2, of the Charter, to request advisory opinions of the Court, and to all specialized agencies which are or may be so authorized, under Article 96, paragraph 2.

(b) The points of law upon which advisory opinions may be requested are points of law arising from concrete cases dealt with by the said organs and agencies within the scope of their competence.

(c) In order to avoid the risk of conflicts between the attitude adopted by an organ of the United Nations in a concrete case and an advisory opinion of the Court which might be subsequently requested, it is desirable that requests for opinions should, as far as possible, be submitted while the matter is still pending, and preferably at an early stage.

(d) The organs of the United Nations and the specialized agencies are, of course, in no way relieved of the task of interpreting provisions on which their activity depends. The sole object of the Court's advisory opinions is to enlighten and guide them in the accomplishment of that task. The recommendation is, moreover, limited to cases the interpretation of which involves questions of principle. It does not therefore, propose that all points of law should be referred to the Court indiscriminately. There is no question of the Court being flooded with futile or hypothetical questions. The aim is to recommend a limited but perfected use of the machinery for requesting advisory opinions from the Court to constructive ends in conformity with the objects of the Charter.

7. It has been further pointed out in the Sixth Committee that the first resolution does not create any obligation to request advisory opinions but merely recommends that the possibility provided by Article 96 of the Charter and Article 65 of the Statute of the Court should be made use of in appropriate cases.

8. Finally, the opinion was expressed, but rejected by the Committee, that
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the Court was not competent to interpret the Charter. An amendment to this effect was proposed by the Polish delegation, but rejected with only six votes in favour.

It was explained that the question here was not, as in the Belgian proposal at San Francisco, to make the Court the constitutional organ for interpreting the Charter. The only question involved is rather whether the Charter or the Statute of the Court prevents consultative opinions from being requested or given because they relate to a point of interpretation of the Charter. Clearly, neither the Charter nor the Statute of the Court contains any restriction of that kind. On the contrary, the final report of Committee IV (2) of San Francisco on the interpretation of the Charter (document 750), expressly records that if two Member States are at variance concerning the correct interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice, as in the case of any other treaty. Similarly, it should always be open to the General Assembly or to the Security Council, in appropriate circumstances, to ask the International Court of Justice for an advisory opinion concerning the meaning of a provision of the Charter. Hence on points of interpretation of the Charter, as on other legal points, organs of the United Nations may request advisory opinions; just as specialized agencies may consult the Court on the interpretation of their organic provisions in accordance with such provisions.

9. Put to the vote, the first resolution was adopted by the Sixth Committee by thirty-nine votes in favour to seven against. The following statements were made to the Committee at the time of voting:

(a) The Colombian representative explained that he was abstaining from voting on the first paragraph of the resolution because he considered it not in conformity with the spirit of the Charter, the progressive development of international law constituting a task expressly entrusted to the Assembly by Article 13 of the Charter.

(b) The representative of Uruguay was in favour of the resolution, but considered it incomplete in the sense that it did not make application to the Court mandatory immediately the case arose, nor stipulate that a request for an opinion was a question of procedure and that the parties concerned should abstain from voting on the proposal to request an opinion.

(c) The Soviet representative requested the insertion in the Summary Record of its dissenting opinion, the gist of which was that the International Court of Justice had no jurisdiction for interpreting the Charter. In particular, he expressed the opinion that the recommendation would be contrary to the Charter and therefore illegal, inasmuch as it would amount to adding to the Charter a provision which was not in it and which in fact had been rejected in San Francisco. The

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Soviet delegation felt that such an illegal modification of the Charter would be yet another blow to the Charter and would weaken and undermine it.

10. As regards the second resolution authorizing the Trusteeship Council to request advisory opinions from the International Court of Justice on legal questions arising within the scope of the activities of the Trusteeship Council, the Soviet delegation had no objection to the substance of the resolution but thought it desirable, before granting this right, to make sure that the Trusteeship Council had requested it. The Committee, however, was of the opinion that, the Trusteeship Council not being in session, the procedure suggested would involve a year's delay and that moreover, as it was only a question of authorizing the Council, a prior request was not essential. The Sixth Committee adopted the resolution by thirty-eight votes to none, the Soviet delegation asking merely that this procedure of authorizing requests for advisory opinions without having been asked to do so should not constitute a precedent.

11. The third resolution simply, within the scope of existing provisions, draws attention to the desirability of the greatest possible number of States accepting, with as few reservations as possible, the jurisdiction of the Court as provided for in Article 36, paragraph 2 of the Statute of the Court, and to the desirability of inserting, whenever possible, in treaties and conventions, arbitration clauses providing, without prejudice to Article 95 of the Charter, for the submission of disputes to the Court. Finally, without expressly mentioning Article 33 of the Charter, the resolution recommends generally that States, whether Members of the United Nations or not (Article 35 of the Statute of the Court), should submit their legal disputes to the Court.

The use of the word "legal" in this recommendation aroused comment from the Colombian representative. In his opinion, the recommendation should not be limited to legal disputes but should embrace all disputes whatever their nature, since Article 36, paragraph 1, of the Statute of the Court should be interpreted as extending the jurisdiction of the Court to all cases, regardless of their nature, which the parties might refer to it. It was only in paragraph 2, with a view to facilitating the acceptance of the compulsory jurisdiction of the Court, that the restriction to legal disputes was stipulated.

The Costa Rican representative endorsed this statement.

The United States representative dissented from this interpretation.

The representative of Egypt explained that, while not unfavourable to the resolution, he would not vote in favour of recommendations 2 and 3

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contained in it, in order not to prejudge the attitude of his Government with respect to the Anglo-Egyptian conflict which is pending before the Security Council and which, in the opinion of his Government, is a dispute of a political character.

The Guatemalan representative explained that he had voted in favour of the resolution because his country had accepted the compulsory jurisdiction of the Court. In regard to the case of Belize, pending between Guatemala and the United Kingdom, his Government was willing to submit it to the Court provided that the latter decided ex aequo et bono, as provided in Article 38, paragraph 2, of the Statute of the Court.

The third resolution was adopted by thirty-seven votes to five, with five abstentions.

12. The Sixth Committee therefore recommends, for adoption by the General Assembly, the three following resolutions concerning greater use of the services of the Court:

NEED FOR GREATER USE BY THE UNITED NATIONS AND ITS
ORGANS OF THE INTERNATIONAL COURT OF JUSTICE

I

THE GENERAL ASSEMBLY,

CONSIDERING that it is a responsibility of the United Nations to encourage the progressive development of international law;

CONSIDERING that it is of paramount importance that the interpretation of the Charter of the United Nations and the constitutions of the specialized agencies should be based on recognized principles of international law;

CONSIDERING that the International Court of Justice is the principal judicial organ of the United Nations;

CONSIDERING that it is also of paramount importance that the Court should be utilized to the greatest practicable extent in the progressive development of international law both in regard to legal issues between States and in regard to constitutional interpretation;

RECOMMENDS that organs of the United Nations and the specialized agencies should, from time to time, review the difficult and important points of law within the jurisdiction of the International Court of Justice which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled, including, in particular, points of law relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies, and, if duly authorized according to Article 96, paragraph 2, /of the Charter,

of the Charter, should refer them to the International Court of Justice for an advisory opinion.

II

Under Article 96, paragraph 2, of the Charter, the General Assembly is empowered to authorize other organs of the United Nations and specialized agencies to request advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities.

The Trusteeship Council, as one of the principal organs of the United Nations, and in view of the functions and powers conferred upon it by Chapters XII and XIII of the Charter, should be authorized to request advisory opinions on legal questions arising within the scope of its activities.

THE GENERAL ASSEMBLY, THEREFORE,

AUTHORIZES the Trusteeship Council to request advisory opinions of the International Court of Justice on legal questions arising within the scope of the activities of the Council.

III

THE GENERAL ASSEMBLY,

CONSIDERING that, in virtue of Article 1 of the Charter, international disputes should be settled in conformity with the principles of justice and international law;

CONSIDERING that the International Court of Justice could settle or assist in settling such disputes if, by the full application of the provisions of the Charter and of the Statute of the Court, more frequent use were made of its services;

1. DRAWS THE ATTENTION of the States which have not yet accepted the compulsory jurisdiction of the Court in accordance with Article 36 paragraphs 2 and 5 of the Statute, to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible;

2. DRAWS THE ATTENTION of States Members to the advantage of inserting in conventions and treaties arbitration clauses providing, without prejudice to Article 95 of the Charter, for the submission of disputes which may arise from the interpretation or application of such conventions or treaties, preferably and as far as possible to the International Court of Justice;

3. RECOMMENDS as a general rule that States should submit their legal disputes to the International Court of Justice.
