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REVIEW OF THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE

Report of the Sixth Committee

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## I. INTRODUCTION

1. At its 2197th plenary meeting, on 12 December 1973, the General Assembly, on the recommendation of the Sixth Committee, 1/ decided to include in the provisional agenda of its twenty-ninth session the item entitled "Review of the role of the International Court of Justice". At its 2237th plenary meeting, on 21 September 1974, the Assembly, on the recommendation of the Sixth Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.
2. The Sixth Committee considered the item at its 1465th to 1468th, 1470th, 1486th, 1490th and 1492nd meetings, on 30 September, 1, 2, 3, 7 and 28 October and 1 and 5 November 1974.
3. At the 1466th meeting, on 1 October, the Chairman of the Committee noted that, pursuant to General Assembly resolution 2723 (XXV) of 15 December 1970, Switzerland had been invited to submit its views and suggestions concerning the role of the International Court of Justice, on the basis of the Secretary-General's questionnaire (see A/8382, para. 5), and that it seemed logical to allow Switzerland to express its views on this subject. The Committee therefore decided that Switzerland, should it so request, would be invited to present its views and suggestions.

## II. PROPOSAL AND AMENDMENT

4. At the 1486th meeting, on 28 October 1974, the representative of the Netherlands introduced a draft resolution (A/C.6/L.987/Rev.1, 2/ sponsored by Australia, Austria, Canada, Colombia, Germany (Federal Republic of), Ghana, Italy, Jordan, Liberia, Morocco, Nepal, the Netherlands, Nicaragua, Nigeria, Pakistan, the Philippines, Sweden and Uruguay, which read as follows:

"The General Assembly,

"Recalling that the International Court of Justice is the principal judicial organ of the United Nations,

"Bearing in mind that, in conformity with Article 10 of the Charter of the United Nations, the role of the International Court of Justice remains an appropriate matter for the attention of the General Assembly,

"Recalling further that, in accordance with Article 2, paragraph 3, of the Charter of the United Nations, all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

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1/ Official Records of the General Assembly, Twenty-eighth Session, Annexes, agenda item 97, document A/9413, para. 3.

2/ The revised version differs only on a minor drafting point from the original version.

"Taking note of the views expressed by Member States during the debates in the Sixth Committee on the question of the review of the role of the International Court of Justice at the twenty-fifth, twenty-sixth, twenty-seventh and twenty-ninth sessions of the General Assembly,

"Taking note also of the comments transmitted by Member States and by Switzerland in answer to a questionnaire of the Secretary-General in accordance with General Assembly resolutions 2723 (XXV) and 2818 (XXVI), and of the text of the letter addressed to the Secretary-General by the President of the Court,

"Considering that the International Court of Justice has recently amended the Rules of Court, with a view to facilitating recourse to it for the judicial settlement of disputes, inter alia by simplifying the procedure, reducing the likelihood of undue delays and costs and allowing for greater influence of parties on the composition of ad hoc chambers,

"Recalling the increasing development and codification of international law in conventions open for universal participation and the consequent need for their uniform interpretation and application,

"Recalling further the opportunities afforded by the power of the International Court of Justice, under Article 38, paragraph 2, of its Statute, to decide a case ex aequo et bono if the parties agree thereto,

"1. Recognizes the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the Court in accordance with Article 36 of the Statute;

"2. Draws the attention of States to the advantage of inserting in treaties, in cases considered possible and appropriate, clauses providing for the submission of disputes, which may arise from the interpretation or application of such treaties to the International Court of Justice;

"3. Calls upon States to keep under review the possibility of identifying cases in which use can be made of the Court;

"4. Draws the attention of States to the possibility of making use of chambers as provided in Articles 26 and 29 of the Statute and in the Rules of Court, including those which would deal with particular categories of cases;

"5. Recommends that United Nations organs and the specialized agencies should, from time to time, review legal questions within the competence of the International Court of Justice that have arisen or will arise during their activities and should study the advisability of referring them to the Court for an advisory opinion, provided that they are duly authorized to do so;

"6. Reaffirms that recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered as an unfriendly act between States."

/...

5. At the same meeting, the representative of Mexico introduced an amendment (A/C.6/L.989) to the 18-Power draft resolution, sponsored by the Congo, the Ivory Coast, Kenya, Kuwait and Mexico, which read as follows:

"After the sixth preambular paragraph, insert an additional paragraph reading as follows:

'Considering also that the International Court of Justice should take into account those developments in international law reflected in declarations and resolutions adopted by the United Nations General Assembly,'"

6. At the 1490th meeting, on 1 November, the representative of Mexico withdrew that amendment and announced that his delegation and that of Kenya had become co-sponsors of a new revised version (A/C.6/L.987/Rev.2) of the 18-Power draft resolution. The revised text read as follows:

"The General Assembly,

"Recalling that the International Court of Justice is the principal judicial organ of the United Nations,

"Bearing in mind that, in conformity with Article 10 of the Charter of the United Nations, the role of the International Court of Justice remains an appropriate matter for the attention of the General Assembly,

"Recalling further that, in accordance with Article 2, paragraph 3, of the Charter of the United Nations, all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

"Taking note of the views expressed by Member States during the debates in the Sixth Committee on the question of the review of the role of the International Court of Justice at the twenty-fifth, twenty-sixth, twenty-seventh and twenty-ninth sessions of the General Assembly,

"Taking note also of the comments transmitted by Member States and by Switzerland in answer to a questionnaire of the Secretary-General in accordance with General Assembly resolutions 2723 (XXV) and 2818 (XXVI), and of the text of the letter addressed to the Secretary-General by the President of the Court,

"Considering that the International Court of Justice has recently amended the Rules of Court, with a view to facilitating recourse to it for the judicial settlement of disputes, inter alia, by simplifying the procedure, reducing the likelihood of undue delays and costs and allowing for greater influence of parties on the composition of ad hoc chambers,

"Recalling the increasing development and codification of international law in conventions open for universal participation and the consequent need for their uniform interpretation and application,

/...

"Recognizing that the development of international law may be reflected, inter alia, by declarations and resolutions of the General Assembly which may to that extent be taken into consideration by the International Court of Justice,

"Recalling further the opportunities afforded by the power of the International Court of Justice, under Article 38, paragraph 2, of its Statute, to decide a case ex aequo et bono if the parties agree thereto,

"1. Recognizes the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the Court in accordance with Article 36 of the Statute;

"2. Draws the attention of States to the advantage of inserting in treaties, in cases considered possible and appropriate, clauses providing for the submission of disputes, which may arise from the interpretation or application of such treaties, to the International Court of Justice;

"3. Calls upon States to keep under review the possibility of identifying cases in which use can be made of the Court;

"4. Draws the attention of States to the possibility of making use of chambers as provided in Articles 26 and 29 of the Statute and in the Rules of Court, including those which would deal with particular categories of cases;

"5. Recommends that United Nations organs and the specialized agencies should, from time to time, review legal questions within the competence of the International Court of Justice that have arisen or will arise during their activities and should study the advisability of referring them to the Court for an advisory opinion, provided that they are duly authorized to do so;

"6. Reaffirms that recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered as an unfriendly act between States."

7. At its 1492nd meeting, on 5 November, the Committee adopted the revised draft resolution (A/C.6/L.987/Rev.2) by consensus (see para. 8 below).

### III. RECOMMENDATION OF THE SIXTH COMMITTEE

8. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

#### Review of the role of the International Court of Justice

The General Assembly,

Recalling that the International Court of Justice is the principal judicial organ of the United Nations,

/...

Bearing in mind that, in conformity with Article 10 of the Charter of the United Nations, the role of the International Court of Justice remains an appropriate matter for the attention of the General Assembly,

Recalling further that, in accordance with Article 2, paragraph 3, of the Charter of the United Nations, all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Taking note of the views expressed by Member States during the debates in the Sixth Committee on the question of the review of the role of the International Court of Justice at the twenty-fifth, twenty-sixth, twenty-seventh and twenty-ninth sessions of the General Assembly,

Taking note also of the comments transmitted by Member States and by Switzerland in answer to a questionnaire of the Secretary-General in accordance with General Assembly resolutions 2723 (XXV) of 15 December 1970 and 2818 (XXVI) of 15 December 1971, and of the text of the letter addressed to the Secretary-General by the President of the International Court of Justice, 3/

Considering that the International Court of Justice has recently amended the Rules of Court, 4/ with a view to facilitating recourse to it for the judicial settlement of disputes, inter alia by simplifying the procedure, reducing the likelihood of undue delays and costs and allowing for greater influence of parties on the composition of ad hoc chambers,

Recalling the increasing development and codification of international law in conventions open for universal participation and the consequent need for their uniform interpretation and application,

Recognizing that the development of international law may be reflected, inter alia, by declarations and resolutions of the General Assembly which may to that extent be taken into consideration by the International Court of Justice,

Recalling further the opportunities afforded by the power of the International Court of Justice, under Article 38, paragraph 2, of its Statute, to decide a case ex aequo et bono if the parties agree thereto,

1. Recognizes the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;
2. Draws the attention of States to the advantage of inserting in treaties, in cases considered possible and appropriate, clauses providing for the submission of disputes, which may arise from the interpretation or application of such treaties, to the International Court of Justice;
3. Calls upon States to keep under review the possibility of identifying cases in which use can be made of the International Court of Justice;

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3/ A/8382, para. 393.

4/ I.C.J. Acts and Documents No. 2 (Sales No. 364).

4. Draws the attention of States to the possibility of making use of chambers as provided in Articles 26 and 29 of the Statute and in the Rules of Court, including those which would deal with particular categories of cases;

5. Recommends that United Nations organs and the specialized agencies should, from time to time, review legal questions within the competence of the International Court of Justice that have arisen or will arise during their activities and should study the advisability of referring them to the Court for an advisory opinion, provided that they are duly authorized to do so;

6. Reaffirms that recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered as an unfriendly act between States.

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