1466th meeting

Tuesday, 1 October 1974, at 10.45 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1466

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)*

1. The CHAIRMAN said that the Swiss Government had replied to the Secretary-General's questionnaire prepared pursuant to General Assembly resolution 2723 (XXV).[1] If he heard no objection, he would take it that, when the Swiss delegation so requested, the Committee would invite that delegation to offer its comments on the item under discussion.

It was so decided.

2. Mr. WEHRY (Netherlands) informed the Committee that his delegation had undertaken informal consultations with other delegations in order to draw up a multiregional

[1] See A/8382, para. 5.

non-controversial draft resolution on the review of the role of the International Court of Justice. He hoped that the draft resolution would be the subject of a consensus in the Committee.

3. Mr. COLES (Australia) thought that the main objective of the review of the role of the International Court of Justice should be to seek the eventual acceptability of its jurisdiction to all members of the international community. As the highest international juridical tribunal, the Court was the focal point in the international legal system for the judicial determination of the law of nations. That judicial process was essential to the peaceful settlement of international disputes.

4. The role of the Court could be enhanced only if the members of the international community brought cases before it. In that respect, he referred the Committee to the statement by the Prime Minister of Australia before the 2249th plenary meeting of the General Assembly.

5. Arbitration and adjudication had long been established as the institutional means of settling disputes when negotiation had failed, but a major development had been the provision by the League of Nations Covenant of an optional clause covering the compulsory jurisdiction of the Permanent Court of International Justice. He regretted that there was not greater awareness among States Members of the United Nations of the need for the compulsory jurisdiction of the International Court of Justice. The acceptance of the principle of compulsory jurisdiction could only serve to enhance the Court's effectiveness, but there still seemed to be a reluctance on the part of States to entrust their international disputes to any form of third party settlement.

6. He further regretted that the review of the role of the International Court of Justice had not aroused the interest it deserved. For example, only a few replies had been received to the Secretary-General's questionnaire prepared pursuant to General Assembly resolution 2723 (XXV). In accordance with his Government's view that the greater efficacy of the Court was a very important matter, his delegation would favour the establishment of a special *ad hoc* committee to review the role of the Court, and to determine whether the method of judicial peaceful settlement of disputes could be strengthened. Such strengthening of procedure was essential in view of the intolerable nature of war as a means of settling international disputes in the modern world.

7. His country had placed its confidence in the Court as an organ of the United Nations, but such confidence should be manifested by all States in their concern for its efficacy in developing the rule of law in international relations. The rule of law could be strengthened in a better world order if the international community was thoroughly committed to the Court's principles and if recourse was made to the compulsory jurisdiction of the Court in accordance with Article 36 of its Statute.

8. Under existing declarations and instruments governing the jurisdiction of the Court and the relationships of United Nations organs and other international organizations with the Court, it was often provided that disputes concerning the application or interpretation of the instrument might be referred to the Court for a decision. The promotion of the rule of law, however, would best be served if future multilateral treaties provided as a matter of course for the compulsory settlement by the Court of disputes arising from their application or interpretation. The international community would thereby be giving effect tp Article 33 of the Charter of the United Nations.

9. It was sometimes said that one of the factors which impeded recourse to the Court was the consideration that such action might be regarded as an unfriendly act by the respondent Government. His delegation hoped that the General Assembly might make a clear statement to the effect that recourse to the International Court should not be considered an unfriendly act. Such recourse would be a responsible alternative when diplomacy had failed. There were precedents for such a statement. Finally, he hoped that a resolution would be adopted at the current session of the General Assembly which would reflect adequately the importance of the principle of the compulsory adjudication of legal disputes between States.

10. Mr. ROSENNE (Israel) recalled that his delegation had explained its position on the item at the twenty-sixth session (1278th meeting) and continued to think that a special committee could then have been set up with useful results. However, the debate in the Committee since the twenty-fifth session had covered most of the major issues of principle concerning the Court, and together with the observations submitted by Governments and the records and analytical reports of the Committee gave a fairly clear picture of current thinking on the role of the Court. A more systematic presentation of that material was perhaps the only useful contribution that remained to be made at the current stage.

11. The 1972 amendments of the Rules of Court[2] were welcome to the extent that they contributed to modernizing the Court's practices. However, some of them were undoubtedly controversial, and judicial experience since their normalization suggested that the new rules might not always be adequate in achieving one of the principal objectives of their authors, namely to render the conduct of proceedings before the Court more expeditious and less expensive.

12. While the Permanent Court had found it possible to publish the records of its internal discussions on its Rules of Court, the present Court had not. Experience had shown that such records were of the greatest practical utility for those who practised before the Court, and the role of *travaux préparatoires* in the interpretation and application of texts was well known. They were also needed to facilitate political understanding of what had been done. The United Nations had developed extremely refined and effective techniques of record writing, and if the Court had valid reasons for not publishing the verbatim records of internal discussions it should explore ways to publish an authoritative and objective account of the issues discussed and the texts rejected in the process of reviewing the Rules in 1946 and 1972 and the 1968 resolution on the internal judicial practice.

2 See *I.C.J. Acts and Documents No. 2.*

13. During the discussion of the item in 1972, proposals had been made (A/C.6/L.887 and L.894),[3] but never put to the vote, according to which the General Assembly would have gone on record as having welcomed the 1972 amendments to the Rules of Court. Both for constitutional reasons connected with the mutual independence and autonomy of the Court and the General Assembly, and in the light of some doubts regarding the substance, it would be preferable not to push that kind of proposal to a vote.

14. Since the Court was still considering further revisions to its Rules, his delegation wished to make a number of comments. The first concerned the publicity and general public relations activities of the Court. The annual report submitted by the President of the Court to the General Assembly (A/9650) served no useful purpose, being merely a severely truncated version of the Court's Yearbook, and containing formulations that might be viewed as tendentious in some quarters. Constitutional and institutional reasons also made the submission of such a report inadvisable. Its cancellation would naturally entail the discontinuance of the pertinent General Assembly agenda item. However, no objection would be seen to the distribution of the Court's Yearbook as a General Assembly document, without impairing its unofficial character as having been prepared by the Registry.

15. Another comment concerned the publication of legal articles and books by members of the Court, certain of whom were now even publishing articles dealing with current aspects of the Court's activities, which might lead to polemical confrontations. Could the international community really accept that its elected judges should engage in what might develop into wounding literary disputations?

16. It was essential that the basic principle of the secrecy of judicial deliberations should be preserved. His delegation was dismayed by the incident which had led to the Court's communiqué No. 73/30 and to the resolution of 21 March 1974. That was another reason for believing that it was undesirable to publish articles which might mislead the reader into thinking that he was being given secrets from the inner sanctum. The Statute of the Court contained adequate provisions enabling every judge to make public his views on any aspect of the judicial activities of the Court: the Court should consider whether its members were justified to go beyond that.

17. One aspect of the actual judicial working of the Court should be carefully re-examined. Article 56 of the Statute required that every judgement–which in practice also meant every order and advisory opinion–should state the names of the judges who had taken part in the decision, and Article 57 entitled every judge to deliver a separate opinion. Articles 79 and 90 of the 1972 Rules of Court made it obligatory for every judgement and advisory opinion to state the number of judges constituting the majority. However, the practice had grown up by which it was not always possible, from the separate opinions, to identify how each judge who was present had voted. If the secrecy of deliberations was protected by the Statute, as well as the right of every judge to deliver his own opinion, it did not necessarily follow that the anonymity should extend so far that it became impossible to determine the composition of the majority and minority in a given case.

18. The issue had to be decided on the basis of international requirements, which justified a change in that practice. In that connexion, it might be noted that the records of the Security Council always indicated how each member voted, including the fact that a member might not have taken part in the vote. It was not adequate for a judicial pronouncement of the International Court simply to indicate which judges were present, without indicating how each one voted. No amendment of the Statute would be required to bring about a change in that practice.

19. There could be no point in attempting artificially to stimulate the judicial business of the Court. The long discussions of the item had been useful in revealing various aspects of political interest, and encouraging governmental and academic interest in the question. Above all, they had confirmed the continued political interest in the maintenance of the Court as established in the Charter and Statute. It would therefore be sufficient for the Committee to adopt a non-controversial resolution recording that fact, without any value-judgements on the Court's performance or any suggestions regarding its future action. In particular, it should not contain elements susceptible of interpretation as attempting to amend the Charter or the Statute of the Court, or to change the order established by the Statute.

20. Mr. SA'DI (Jordan) said his delegation attached great importance to the item under consideration. Close scrutiny of civilization in general revealed that courts had evolved as the best device for resolving human conflicts. Arbitration, conciliation and direct negotiation had always been part of the machinery for resolving disputes, but the judicial process was the most efficient means of achieving that end. Civilization could not establish a better forum for resolving international disputes than an international court system.

21. In a world in which power politics and national interests prevailed, the weight of the respective parties to a dispute would determine the settlement. Only in a court system could the weak and the strong enjoy equality, and justice reign. Moreover, only in an international court could the Charter of the United Nations and international law stand a reasonable chance of being observed. That was not merely a theoretical argument: if applied to all the disputes threatening world peace, the practical value of an increased role for the international court system would be readily apparent. There could be no doubt, for example, that the Israeli-Arab dispute would have had a better chance of being resolved if the International Court had had wider jurisdiction. His delegation would therefore support any initiative to increase the Court's powers and relevancy.

The meeting rose at 11.45 a.m.

[3] See *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 90, document A/8967, paras. 6 and 9 respectively.