Role and Functioning of the International Court of Justice

Proposals recently made on the subject

Heribert Golsong *)

I. Introduction

1. It is general belief that the International Court of Justice has so far not completely fulfilled the role of the principal judicial organ of the World Community which was certainly expected of it in 1945 — mainly because of the widespread and, since 1945, ever increasing reluctance of the majority of States to submit their disputes for adjudication to the Court.

On the other hand, it is obvious that an international community, in which a system of judicial adjudication of international disputes were lacking, could hardly bring about the respect of the rule of law. The respect of the rule of law is, however, the essence of any system to be qualified as "International legal order". Thus, the problem of the proper role and

*) Director of Legal Affairs, Council of Europe, Strasbourg. The views expressed in this article are those of the author.

functioning of the International Court of Justice is, to a large extent, the problem of the existence or non-existence of a universal legal order.

It is, therefore, not astonishing that many quarters throughout the world are exploring ways and means in order to enhance the effectiveness of the World Court.

These efforts have found an official expression in an initiative, taken within the United Nations, aiming at a review, within the World Organisation, of the role of the Court.

The initiative was taken in August 1970 by a group of States composed of Argentina, Australia, Canada, Finland, Italy, the Ivory Coast, Japan, Liberia, Mexico, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Uruguay. These States requested the inclusion in the agenda of the 25th Session (1970) of the General Assembly of the United Nations of an item entitled "Review of the Role of the International Court of Justice". They also proposed the setting-up of a special committee of the General Assembly to undertake this review and to submit its conclusions to the Assembly.

While the item proposed was accordingly included in the agenda of the 1970 Session of the General Assembly, no decision was reached as to the suggested establishment of the special committee. Consideration of the matter was therefore adjourned until the 26th Session (1971) of the United Nations Assembly.

In the event of the General Assembly this time agreeing to undertake the proposed review of the Court's role, the study will no doubt require a certain amount of time during the years to come and thus remain for several years on the agenda of the United Nations. And even if no agreement can be reached to proceed with the study within the United Nations, the matter will remain a preoccupation of all those who are in favour of a more developed international legal order — an essential requisite of peace within the world community of States.

2. In the discussion thus opened, many ideas have already been launched with a view to improving the role, functioning and working methods of the Hague Court. This paper is an attempt to summarise the most striking suggestions, proposals and initiatives made by:

(i) Governments; in particular within the Sixth Committee (Legal) of the General Assembly of the United Nations [1]);

(ii) non-governmental institutions, such as the "Institute of International

[1]) In this respect, reference is made mainly to the Summary Record of discussions held within the Sixth Committee at the 25th Session (1970) of the General Assembly and the report (A/8238) drawn up on the basis of these discussions.

Law" [2]) and the "International Law Association" (abbreviated: ILA) [3]);

(iii) learned writers [4]).

The list thus drawn up is not exhaustive; it would hardly be possible to be complete in this subject matter in view of the great number of ideas formulated in this respect during the last few years and also because of the fact that one can expect a number of new suggestions in the near future. One has, in this respect, to bear in mind that, at the time of printing of this paper, the General Assembly will have resumed the discussion of this item at its 26th Session, on the basis of written observations which Governments have been asked to formulate, according to Resolution 2723 (XXV) of the General Assembly [5]).

The list has also no definitive character with regard to the classification or insertion of any particular proposal under a special heading. Furthermore, it does not deal with the form or the means of the possible implementation of the proposals and suggestions, so far made, which aim mainly at:

(i) the adoption of one or more Resolutions of the General Assembly of the United Nations;

(ii) the revision of the Rules of Procedure of the Court [6]);

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[2]) The resolutions of the Institute, as published in its «Annuaire», are quoted in this paper by "Institute" with the year of the Session and of the Annuaire, followed by I or II to indicate the tomes and page. The resolutions of 1952 (Session of Siena), of 1954 (Session of Aix-en-Provence), of 1956 (Session of Grenade) and of 1959 (Session of Neuchâtel) are reproduced below V.

[3]) The resolutions of the ILA, as published in its "Reports", are quoted by "ILA" with addition of the year and page. The resolution of 1964 (Tokyo) and of 1956 (Dubrovnik) are reproduced below VI.

[4]) The following publications have been taken into account (quoted in this paper by the names of their authors); P. J. Allott, The International Court of Justice, in: Report of a Study Group on the Peaceful Settlement of Disputes, Annex II.E., David Davies Memorial Institute of International Studies (London 1966), pp. 123—158; Ch. M. Dalfen, The World Court: Reform or Re-appraisal, The Canadian Yearbook of International Law 6 (1968), pp. 212—225; L. Gross, The International Court of Justice: Consideration of Requirements for Enhancing its Role in the International Legal Order, American Journal of International Law 65 (1971), pp. 253—326; E. Hambro, Should the Membership of the International Court of Justice be Enlarged? ZaöRV 19 (1958), pp. 141—152; C. W. Jenks, The Prospects of International Adjudication (London 1964); P. C. Jessup, Do new Problems need new Courts, A.S.I.L. Proceedings (1971), not yet published; M. Lachs, Problems of the World Court: A Member's Perspective, New York University, Center for International Studies Policy Papers vol. 3 No. 4 (1970); S. Rosenne, The International Court of Justice (Leyden 1957); The Law and Practice of the International Court of Justice vol. 1 and 2 (Leyden 1965) (quoted in this paper as "Rosenne 1957" and "Rosenne 1965").

[5]) Reproduced below III.

[6]) The Court is at present proceeding to a revision of its Rules of Procedure, by virtue of Article 30, paragraph 1 of its Statute.

(iii) the revision of the Charter of the United Nations and/or the Statute of the Court[7]);

(iv) the conclusion of one or more international treaties.

Furthermore, this paper does not deal with problems raised in connection with possible future action at the United Nations within the framework of its examination of the role of the International Court of Justice. The observations already made on this question in the Sixth Committee of the General Assembly are summarised in paragraphs 57—68 of General Assembly document A/8238, which contains the report made by Mr. H. Owada (Japan) on behalf of the Sixth Committee. It has, however, been felt useful to add to the list of proposals the text of Resolution 2723 (XXV) adopted by the General Assembly on 15 December 1970, as well as of the "Questionnaire"[8]) prepared by the Secretary General of the United Nations by virtue of paragraph 1 of this Resolution. It thus seems easier to follow further developments in this matter.

II. Analytical List of Proposals Concerning the Role and Functioning of the International Court of Justice
(as at 1st July, 1971)

1. Constitution of the Court

1.1: Establishment of regional chambers for cases concerning States belonging to the same region: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 54; Summary Records: SR 1210 (Castrén, Finland; Lee, Canada), 1211 (Javits, United States), 1212 (Deleau, France; Kolesnik, U.S.S.R.), 1213 (Njenga, Kenya), 1215 (Miras, Turkey), 1216 (Freeland, United Kingdom), 1217 (Nana, Pakistan).

1.2: Formation of chambers for particular categories of cases (Article 26, paragraph 1 of the Statute of the Court): General Assembly (25th Session) Sixth Committee, Summary Record, SR 1210 (Lee, Canada).

1.3: Constitution of a system of a functional and regional hierarchy of courts: General Assembly (25th Session), Sixth Committee, Summary Record, SR 1210 (Lee, Canada).

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[7]) For a recent study of the procedure for amending the Statute, cf. E. Schwelb, The Process of Amending the Statute of the International Court of Justice, American Journal of International Law 64 (1970), pp. 880—891.

[8]) Reproduced below IV.

2. Composition of the Court

2.1: The most equitable representation of the main forms of civilisation and of the principal legal systems of the world (Article 9 of the Statute of the Court): General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 37.

2.2: Representation of the different legal cultures of the world: *Id.* Summary Record, SR 1218 (Alcivar, Ecuador).

2.3: The taking into consideration, at the time of the election of judges, of whether candidates are nationals of States which have recognised the compulsory jurisdiction of the Court in application of Article 36, paragraph 2 of the Statute: General Assembly, Sixth Committee, 18th Session, Summary Record 226 (Hattori, Japan). — Gross, pp. 283—284. — Cf. Point 2.9 below.

2.4: Recalling of the necessity of according greater importance at the time of the election of judges, to the personal qualifications of the candidates, as required by Article 2 of the Statute of the Court. — Institute 1954 II, p. 296. — Gross, pp. 282—283; Jessup, p. 11.

2.5: Enlarging or modification of the composition of the Court so that it would reflect the structure of the international community: General Assembly, Sixth Committee, Report A/8238, paragraph 37; Summary Records: SR 1215 (Jagota, India), 1216 (Persson, Sweden). — Institute 1954 II, p. 296. — Gross, pp. 285—286.

2.6: Formation of two permanent sections or chambers of the Court. — Gross, p. 285; Hambro, p. 149.

2.7: Reduction, or conversely, extension of the term of office of the judges with, in the second case, the fixing of an age limit, abandoning of the possibility of re-election and deletion of the provision concerning the completion of the term of office of a judge who has been replaced (Articles 13, paragraph 1, and 15 of the Statute of the Court): General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 55; Summary Records: SR 1215 (Vallarta, Mexico), 1217 (Seaton, Tanzania). — Institute 1954 II, p. 296. — Gross, pp. 292—294; Rosenne 1965 vol. 1, p. 191. — Cf. Point 2.15 below.

2.8: Obligation, for each national group of the Permanent Court of Arbitration, to nominate two candidates of its nationality and preparation of the list of candidatures by a special committee to be set up within each national group (Article 5 of the Statute of the Court). — Institute 1954 II, p. 476. — Gross, p. 287.

2.9: Preparation, by the Secretary General of the United Nations, of an additional list, mentioning the candidates who are nationals of States which recognised the compulsory jurisdiction of the Court under Article 36, para-

graph 2, of the Statute (Article 7, paragraph 1 of the Statute of the Court). — Gross, p. 288. — Cf. Point 2.3 above.

2.10: Examination of the list of candidates by a special committee of the General Assembly of the United Nations, instructed to prepare the elections of judges to the Court (Article 8 of the Statute of the Court). — Gross, p. 288, based on H. Lauterpacht and Fitzmaurice, Institute 1954 II, p. 481 and p. 511.

2.11: Separation of elections of judges to the Court from other elections to other functions in the United Nations, either by a modification of the order of taking items on the agenda of ordinary sessions of the General Assembly, or by the holding of extraordinary sessions dealing only with questions concerning the Court. — Institute 1952 II, p. 474. — Gross, pp. 290—291.

2.12: Measures to avoid communications between the Security Council and the General Assembly during the procedure for electing judges to the Court (Article 8 of the Statute of the Court).

2.13: Organisation of successive votes for each seat, when there are more than one to be filled (Article 10 of the Statute of the Court). — Institute 1954 II, p. 296. — Gross, pp. 291—292.

2.14: Abolition of successive votes at the time of the election of judges in favour of the cooption of judges by the Court itself from among the candidates who, in the first vote, received a certain minimum number of votes. — Gross, p. 291, referring to Rolin, Institute 1954 I, p. 544.

2.15: Abolition of the system of triennial elections (Article 13 of the Statute of the Court). — Gross, p. 293. — Cf. Point 2.7 above.

2.16: Modification of Article 24 of the Statute of the Court concerning incompatibility of functions, so as to empower the Court to take decisions on this matter. — Gross, pp. 294—295.

2.17: Modification of the quorum required by Article 25, paragraph 3 of the Statute of the Court: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 55, Summary Record SR 1215 (Vallarta, Mexico).

2.18: Removal of the right to nominate an *ad hoc* judge, possibly to be compensated by a provision forbidding a judge who has the nationality of one of the parties to sit on the case (Article 31 of the Statute of the Court). — Gross, pp. 295—299 (against the removal of the *ad hoc* judge system); Rosenne 1965 vol. 1, pp. 202—205.

2.19: Election of *ad hoc* judges, possibly by the national groups of the Permanent Court of Arbitration. — Institute 1954 II, p. 296. — Gross, p. 297, quoting Schlochauer, ZaöRV 19 (1958), p. 446.

2.20: Invitation to States to encourage them not to designate *ad hoc* judges,

or to designate for this function persons of another nationality than their own. — Gross, p. 299.

2.21: Assimilation of the function of *ad hoc* judges to that of assessors for whom provision is made in Article 30, paragraph 2 of the Statute of the Court, and designation of such *ad hoc* judges by the Court itself. — Gross, p. 298; Rosenne 1965 vol. 1, p. 204—205.

3. Jurisdiction of the Court in Contentious Cases

3.1: More frequent recourse to Article 36, paragraph 3 of the Charter of the United Nations (recommendations of the Security Council concerning procedures or methods for settling disputes) and drawing up of special procedures to this end: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 53, Summary Record SR 1211 (Houben, Netherlands). — Cf. Point 4.3 below.

3.2: Granting of access to the Court in contentious cases to international organisations or to certain of them (Article 34 of the Statute of the Court): General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 49; Summary Records: SR 1211 (Javits, United States), 1215 (Vallarta, Mexico), 1216 (Brennan, Australia; Bolbotenko, Ukrainian SSR). — Institute 1954 II, p. 296; ILA 1956, p. VIII. — Gross, pp. 302—306; Jenks, pp. 208 and 217—218; see also Seidl-Hohenveldern, Der Zugang Internationaler Organisationen zum Internationalen Gerichtshof, Die Friedens-Warte 54 (1957/58), p. 26.

3.3: Granting of access to the Court in contentious cases to individuals and in particular to agents of international organisations for disputes between them and the head of the administration of the organisation. — Gross, p. 303.

3.4: Institution of appeal procedures against decisions of other international tribunals, especially against arbitral awards (cf. Article 67 of the Rules of procedure of the Court). — Dalfen, p. 215.

4. Compulsory Jurisdiction of the Court

4.1: Establishment of a general system of compulsory jurisdiction for all disputes of a legal character or, at least, for all disputes relating to the interpretation or application of an international treaty: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 42; Summary Record: SR 1215 (Jagota, India). — Dalfen, p. 217.

4.2: Establishment of a general system of compulsory jurisdiction, accompanied by the possibility for States to declare that they do not recognise it as applicable to themselves ("contracting out"). — Gross, pp. 313—314; Rosenne 1965 vol. 1, p. 419.

4.3: Conclusion of an international agreement under the terms of which the States would accept beforehand, subject to reciprocity, to be bound by any recommendation which might be made by the Security Council by virtue of Article 36, paragraph 3 of the Charter of the United Nations: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 53; Summary Record: SR 1211 (Houben, Netherlands). — Allott, paragraph 73. — Cf. Point 3.1 above.

4.4: Invitation to States encouraging them to accept the compulsory jurisdiction of the Court in application of Article 36, paragraph 2 of its Statute: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 43; Summary Records: SR 1212 (Deleau, France), 1215 (Jagota, India); General Assembly, Resolution 171 (II) of 14 November 1947. — Gross, pp. 274—275; Jenks, pp. 109 and 124—125.

4.5: Drawing up of a list, wider in scope than that contained in Article 36, paragraph 2 of the Statute of the Court, of categories of legal disputes, States being free to chose from among these categories those which they intend to cover in their declarations of recognition of the compulsory jurisdiction of the Court. — ILA 1964, p. XIII. — Gross, p. 316, quoting Sohn, Step-by-Step Acceptance of the Jurisdiction of the I. C. J., A. S. I. L. Proceedings 1964, p. 131; Dalfen, p. 216.

4.6: Automatic examination by the Court of the compatibility of reservations accompanying declarations of recognition of the compulsory jurisdiction, with the Statute of the Court. — Gross, p. 316.

4.7: Prohibition of any reservation excluding from the compulsory jurisdiction of the Court, matters essentially within domestic jurisdiction. — Gross, p. 316; Rosenne 1965 vol. 1, pp. 393—399.

4.8: Invitation to States encouraging them to withdraw reservations whereby the question as to whether matters are essentially within their domestic jurisdiction is determined by their own Government: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 43; Summary Records SR 1210 (Fergo, Denmark), 1212 (Deleau, France). — Institute 1959 II, p. 380; Voeu, Institute 1954 II, p. 300[9]). — Gross, pp. 272 and 314; Waldock, The Decline of the Optional Clause, B.Y.I.L. 32 (1955—56), pp. 244—287.

4.9: Elimination of uncertainties as to the entry into force of declarations of recognition of the compulsory jurisdiction of the Court (Article 36, paragraph 4 of the Statute of the Court). — Gross, p. 315.

4.10: Invitation to States encouraging them not to limit their declarations

[9]) "*Vœu:* The Institute of International Law expresses the hope that States which include in their declarations accepting the compulsory jurisdiction of the International Court of Justice a reservation in respect of matters of domestic jurisdiction will leave it to the Court to decide in each particular case whether the reservation is applicable".

of recognition of the compulsory jurisdiction of the Court to less than a certain period of time, and to permit a tacit renewal of these declarations. — Institute 1959 II, p. 380. — Gross, pp. 314—315.

4.11: Invitation to States encouraging them not to accompany their declarations of recognition of the compulsory jurisdiction of the Court by reservations permitting them to withdraw or modify them unilaterally at a later date. — Gross, p. 315.

4.12: Drawing up of a model declaration of recognition of the compulsory jurisdiction of the Court in application of Article 36, paragraph 2 of the Statute of the Court. — Gross, p. 315.

4.13: Invitation to States encouraging them to include in any bilateral or multilateral treaty which they may conclude, a clause providing for unilateral recourse to the Court by any party to a dispute relating to the interpretation or application of the treaty: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 43; Summary Records: SR 1215 (Jagota, India), 1216 (García Bauer, Guatemala). — Institute 1956, p. 358. — Jessup, p. 3 *et seq.*

4.14: Drawing up of a model treaty clause conferring compulsory jurisdiction in the Court for any dispute relating to the interpretation or application of the treaty in question: *Id.*

4.15: Undertaking, by special treaty or by a treaty clause, to accept as compulsory the provisional measures which the Court may indicate under Article 41, paragraph 1 of the Statute. — Gross, p. 280; Jenks, p. 157.

4.16: The possibility for international organisations, or some of them, to recognise the compulsory jurisdiction of the Court in application of Article 36, paragraph 2 of the Statute. — ILA 1956, p. VIII. — Gross, p. 304.

5. Advisory Opinions

5.1: Extension of the right to request advisory opinions of the Court to international organisations, whether universal or regional, other than the United Nations and its Specialised Agencies (Article 96 of the Charter of the United Nations and Article 65 of the Statute of the Court): General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 50; Summary Records: SR 1210 (Tsuruoka, Japan; Fergo, Denmark; Castrén, Finland), 1211 (Javits, United States; Houben, Netherlands), 1214 (Osman, U.A.R.; Shardyko, Byleorussian SSR), 1215 (Miras, Turkey; Jagota, India); 1216 (Freeland, United Kingdom; García Bauer, Guatemala). — ILA 1956, p. VIII. — Gross, pp. 276—277 and 321; Jenks, pp. 160—161.

5.2: Invitation to international organisations encouraging them to make use of their right of requesting the Court to give advisory opinions: General

Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 50; General Assembly (2nd Session) Resolution 171 (II) of 14 November 1947.

5.3: Creation, within the United Nations, of a special organ empowered to express an opinion on the expediency of a request for an advisory opinion. — Jenks, pp. 160—161; Gross, p. 276.

5.4: Obligation for international organisations to request an advisory opinion in certain circumstances and under certain conditions. — ILA 1956, p. VIII. — Gross, p. 321.

5.5: Extension to States of the right to request advisory opinions of the Court, unilaterally, by compromise or possibly through the General Assembly of the United Nations: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraphs 51 and 52; Summary Records: SR 1210 (Tsuruoka, Japan), 1211 (Javits, United States; Houben, Netherlands), 1215 (Jagota, India), 1216 (García Bauer, Guatemala), 1217 (Nana, Pakistan). — Gross, p. 321; Jenks, p. 141.

5.6: Extension of the right to request advisory opinions of the Court to international organisations not entirely composed of States: General Assembly (25th Session) Sixth Committee; Summary Records: SR 1211 (Javits, United States), 1212 (Kolesnik, U.S.S.R.). — Gross, p. 320, quoting Herndl, in: Strupp-Schlochauer, Wörterbuch des Völkerrechts vol. 3, p. 34.

5.7: Extension to individuals, in particular to agents of international organisations, of the right to request advisory opinions of the Court. — Jenks, p. 144; Gross, pp. 322—323.

5.8: Granting to States of the power to request advisory opinions of the Court on interlocutory questions relating to international law, whether conventional or customary, which could arise in cases brought before their internal courts. — Cf. Point 6.2 below. — Gross, p. 276.

5.9: Undertaking, by interstate treaty or by a clause included in the constitution of an international organisation, to be bound by an advisory opinion given by the Court. — Gross, p. 276; Jenks, pp. 160—161; Jessup, p. 3 *et seq.*

5.10: Recourse to Article 36, paragraph 3 of the Charter of the United Nations, with a view to recommending the introduction of a request for an advisory opinion by the Court. — Gross, p. 322.

5.11: Possibility to have recourse to an advisory opinion if an organ of an international organisation is alleged to have exceeded its attributions. – ILA 1956, p. VIII.

6. New Competences to be Granted to the Court

6.1: Granting to the Court, by treaty clauses, of competence to deal with requests for interpretation of the treaty in question, introduced by unilateral

application of one of the Contracting States or by the Organisation which is a party to the treaty, and without designation of an opposing party (*"ex parte* proceedings"). — Jenks, pp. 153—157; Gross, p. 280.

6.2: Granting to the Court of the competence to decide, on an interlocutory motion, on questions concerning either customary international law, or the validity of the interpretation of international treaties or acts emanating from the United Nations or other international organisations, which would be submitted to it by a national tribunal before which such questions are raised. — Cf. Article 177 of the treaty instituting the European Economic Community. — Cf. Point 5.8 above. — Jenks, pp. 165—168; Gross, p. 307.

6.3: Entrusting the Court with tasks of fact-finding with recourse to chambers to be formed under Articles 26 and 29 of its Statute: General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 55; Summary Records: SR 1211 (Houben, Netherlands), 1212 (Kolesnik, U. S. S. R.); General Assembly (22nd Session) Resolution General Assembly (XXII) 2329 on "Fact finding".

7. Law Applicable by the Court

7.1: Mention of the law of the United Nations (Resolutions and other acts emanating from its organs) in Article 38 of the Statute of the Court, possibly among the subsidiary means for the determination of rules of law. — Gross, pp. 318—319.

7.2: Extension of the competence of the Court to decide a case *ex aequo et bono* (Article 38, paragraph 2 of the Statute of the Court): General Assembly (25th Session) Sixth Committee, Report A/8238, paragraph 55; Summary Record: SR 1215 (Vallarta, Mexico).

8. The Procedure of the Court

8.1: Acceleration of the contentious procedure by the strengthening of the powers of the Court and of its President. — Gross, pp. 278—279 and 301.

8.2: The abandoning, for certain contentious cases and requests for an advisory opinion, of the oral proceedings (Article 43 of the Statute of the Court): General Assembly (25th Session) Sixth Committee, Summary Record: SR 1211 (Javits, United States).

8.3: Shortening of the written proceedings, in particular by the suppression of replies (Article 43, paragraph 2 of the Statute of the Court): *Ibid.*

8.4: Determination of the kinds of cases for which recourse to the Summary procedure, provided for in Article 29 of the Statute of the Court, would be appropriate: *Ibid.* Report A/8238, paragraph 47, Summary Records: SR 1211 (Houben, Netherlands), 1215 (Miras, Turkey), 1216 (Freeland, United

Kingdom; Brennan, Australia), 1217 (Ofsted, Norway). — Gross, p. 278; Jenks, p. 132.

8.5: Determination of the type of cases for which the forming of a chamber of the Court by virtue either of paragraph 1 or of paragraph 2 of Article 26 of the Statute of the Court would be appropriate: General Assembly (25th Session) Sixth Committee, Summary Records: SR 1211 (Javits, United States), 1212 (Deleau, France). — Jessup, p. 3 *et seq.*

8.6: Forming of itinerant chambers of the Court: General Assembly (25th Session) Sixth Committee Report A/8238, paragraph 54 *in fine*; Summary Records: SR 1210 (Lee, Canada), 1211 (Javits, United States), 1212 (Kolesnik, U. S. S. R.), 1217 (Nana, Pakistan).

8.7: Forming of chambers of the Court for advisory proceedings (Articles 29 and 68 of the Statute of the Court). — Jenks, p. 160; Gross, p. 277.

8.8: More frequent recourse to assessors under Article 30, paragraph 2 of the Statute of the Court, in particular for advisory opinions: General Assembly (25th Session) Sixth Committee Report A/8238, paragraph 47. — Gross, p. 278.

8.9: More frequent recourse to enquiries and the giving of expert opinion as provided for in Article 50 of the Statute of the Court.

8.10: Revision of the rules relating to the examination of preliminary questions (Article 62 of the Rules of procedure of the Court): General Assembly (25th Session) Sixth Committee, Summary Record: SR 1215 (Sperduti, Italy).

9. Miscellaneous Questions Relating to the Functioning of the Court

9.1: Amendments to Articles 22, 23 and 28 of the Statute of the Court, relating to the seat of the Court: General Assembly (24th Session) Report of the I. C. J. 1968—1969, Doc. A/7605; General Assembly (25th Session) Sixth Committee, Doc. A/8054 (prepared by the Court) and Report A/8201. — Gross, pp. 299—301; cf. E. Schwelb, The Process of Amending the Statute of the International Court of Justice, AJIL 64 (1970), pp. 880—891.

9.2: Limitation of the expenses incurred by parties to proceedings before by the Court, either with United Nations assistance or by agreement between the parties: General Assembly (25th Session) Sixth Committee, Summary Records: SR 1210 (Tsuruoka, Japan), 1211 (Houben, Netherlands).

10. Action to increase Confidence in the Mission and Role of the Court

10.1: Adoption of a Resolution by the General Assembly of the United Nations:

(i) recommending more frequent recourse to the jurisdiction and consultation of the Court;

(ii) declaring that recourse to the Court can never be regarded as an unfriendly act towards the respondent State;

(iii) recalling the terms of Article 36, paragraph 3 of the Charter of the United Nations, relating to recommendations of the Security Council concerning proceedings or methods of settling international disputes. — Institute 1959 II, p. 380. — Gross, pp. 273—275.

10.2: Acceleration of the progressive development and of the codification of international law. — Gross, pp. 318—319; Dalfen, pp. 222—223.

10.3: Action to be taken to promote knowledge of the working of the Court and its decisions. — Institute, Voeu 1959 II, p. 383 [10]). — Dalfen, p. 222.

III. United Nations — General Assembly

Res. 2723 (XXV) 15 December 1970
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,

Considering the desirability of finding ways and means of enhancing the effectiveness of the Court,

Bearing in mind that a study of the Court will in no way impair its authority, but should seek to facilitate the greatest possible contribution by the Court to the advancement of the rule of law and the promotion of justice among nations,

1. *Invites* Member States and States Parties to the Statute of the International Court of Justice to submit to the Secretary-General, by 1 July 1971, views and suggestions concerning the role of the Court on the basis of the questionnaire to be prepared by the Secretary-General;

2. *Requests* the Secretary-General to transmit to the Court the records of the discussions and proposals in the Sixth Committee on this item;

3. *Invites* the Court to state its views, should it so desire;

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[10]) "*Vœu:* The Institute of International Law

Draws the attention of institutions responsible for legal education, of professional bodies of jurists and legal practitioners, and of all those engaged in the publication of judicial decisions to the need for strengthening the confidence of peoples and governments in international adjudication by promoting wider and more thorough knowledge of the working and decisions of the International Court of Justice and other international courts and arbitral tribunals; and

Expresses the hope that public and private bodies, both national and international, will consider what measures should be taken to promote wider diffusion of the decisions of international courts and tribunals among jurists and legal practitioners".

4. *Requests* the Secretary-General to prepare a comprehensive report in the light of the opinions expressed by States and the Court, should the Court so desire;

5. *Decides* to include in the provisional agenda of its twenty-sixth session an item entitled "Review of the role of the International Court of Justice" with a view to taking such appropriate measures as may seem desirable.

IV. United Nations — Secretary General

Questionnaire established by the Secretary General according to paragraph 1 of Resolution 2723 (XXV) of 15 December 1970

You may wish to comment on the following main points which were made in the General Assembly during the discussion of the item "Review of the Role of the International Court of Justice":

I. The role of the International Court of Justice within the framework of the United Nations

Questions were raised such as the attitude of States towards the Court, the meaning and place of judicial settlement among the peaceful means of settlement of disputes, the law applied by the Court.

II. Organisation of the Court

Questions were raised such as the composition of the Court and its representative character, the recourse to the chamber of summary procedure, the creation of regional panels of judges and other steps the Court or parties might take.

III. Jurisdiction of the Court

(a) Contentious cases: Questions were raised such as the compulsory jurisdiction of the Court, the possibility of enabling inter-governmental organisations to be parties in cases before the Court and the possibility of including in future treaties provisions giving the Court jurisdiction over disputes under the treaties.

(b) Advisory jurisdiction: Questions were raised such as the possibility of making the advisory procedure available to more inter-governmental organisations, including regional organisations, and permitting States to have the option of seeking an advisory opinion.

IV. Procedures and methods of work of the Court

Questions were raised such as the flexibility in the rules of the Court, the length of the procedure and the cost of litigation.

V. Future action on the item by the General Assembly

Questions were raised such as how should the General Assembly proceed with the consideration of the item, how to implement measures aiming at enhancing the effectiveness of the Court, should such measures be deemed desirable.

V. Resolutions of the Institute of International Law

1. Siena, April 1952 [11])

The Composition of the International Court of Justice

The Institute of International Law,

Being deeply conscious of the growing importance of the International Court of Justice and of its rôle in the development of International Law;

Being desirous, as it always has been, to contribute to the improvement of international justice, has resolved to undertake a study of the improvements that might be made in the Court's Statute, with a view to its possible revision.

But, pending the results of these studies, the Institute considers it highly desirable, as a practical step, that, in order to comply with the letter and the spirit of Articles 2 and 8 of the Statute, the following administrative measures should be taken at once:

1. By reason of its non-political character, the election of the Members of the Court, being concerned with persons, not with States, should be kept altogether apart from the elections relating to the other organs of the United Nations, and should take place at the nearest possible date to the opening of the Session of the Assembly and immediately after the closure of the general opening debate.

2. In order to ensure independence for the voting in the two organs which have to carry out the elections of the judges simultaneously, steps should be taken to prevent any communications passing between them, save only the official announcements made by each body to the other, of the results of their respective electoral meetings.

2. Aix-en-Provence, 22 April—1 May 1954 [12])

Study of the amendments to be made in the Statute of the International Court of Justice

The Institute of International Law,

Having continued the study of the Statute of the International Court of

[11]) Annuaire de l'Institut de Droit International, Session de Sienne avril 1952 vol. 44 (1952 II), p. 474.

[12]) Annuaire de l'Institut de Droit International, Session d'Aix-en-Provence avril/mai 1954 vol. 45 (1954 II), p. 296.

Justice, in accordance with the Resolution adopted at its 45th session at Siena on 24 April 1952;

Reaffirms the proposals adopted at Siena, the text of which is attached hereto, and expresses the hope that they will be taken into account in the forthcoming elections;

Makes, moreover, the following suggestions which, in its opinion, are likely to strengthen even more the authority and effectiveness of the supreme judicial organ of the United Nations, and invites the Secretary-General to send them, together with the documents and records relating thereto, to the President of the International Court of Justice and to the Secretary-General of the United Nations.

1. Criteria for the choice of judges: Without prejudice to the need for maintaining a certain geographical representation within the International Court of Justice, as provided for in Article 9 of the Statute, judges of the Court should be elected primarily on the basis of their personal qualifications in accordance with Article 2.

In the event of the Statute being revised, a clarification covering this point could usefully be added to Article 9.

2. Number of judges: It is desirable to avoid an increase of the number of judges, which would be calculated to make the deliberations of the International Court of Justice more difficult.

Should new circumstances make some increase necessary, the number of judges should not exceed eighteen.

3. Election: When several seats are to be filled, successive votes for each seat seem more likely to prevent unexpected results. This method is not incompatible with the present Statute.

4. Tenure of office: With a view to reinforcing the independence of the judges, it is suggested that members of the Court should be elected for fifteen years and should not be re-eligible. In this event an age-limit should be laid down; it might be fixed at seventy-five years.

Provision should also be made whereby, contrary to the present text of the Statute, new members of the Court would be elected for terms of fifteen years, subject to the age-limit, irrespective of the terms for which their predecessors held office.

It is not intended to suggest that these new provisions should apply to judges now in office, except in cases of re-election for a new term of office.

5. Ad hoc judges: If the system of *ad hoc* judges cannot be abandoned, it is as a minimum highly desirable that the appointment of such judges should be subject to guarantees as nearly as possible equivalent to those governing the election of titular judges. The appointment of such judges might, for instance, be entrusted to the national group of the Permanent Court of Arbitration of the State concerned, or to the national group appointed by the Government in pursuance of Article 4, paragraph 2, of the Statute.

6. Competence of the Court: It is a matter of urgency to widen the terms of Article 34 of the Statute so as to grant access to the Court to international organizations of States of which at least a majority are Members of the United Nations or Parties to the Statute of the Court.

Annex: Extract from the Resolution adopted at the Siena Session on 24 April 1952

The Institute considers it highly desirable, as a practical step, that, in order to comply with the letter and the spirit of Articles 2 and 8 of the Statute, the following administrative measures should be taken at once:

1. By reason of its non-political character, the election of the members of the Court, being concerned with persons, not with States, should be kept altogether apart from the elections relating to the other organs of the United Nations, and should take place at the nearest possible date to the opening of the Session of the Assembly and immediately after the closure of the general opening debate.

2. In order to ensure independence for the voting in the two organs which have to carry out the elections of the judges simultaneously, steps should be taken to prevent any communications passing between them, save only the official announcements made by each body to the other, of the results of their respective electoral meetings.

3. Grenade, 11—20 avril 1956 [13])

L'élaboration d'une clause-modèle de compétence obligatoire de la Cour internationale de Justice

I: L'Institut de Droit international recommande aux Gouvernements et aux Organisations internationales d'insérer, lors de l'élaboration de conventions internationales multilatérales ou bilatérales, une clause conférant compétence obligatoire à la Cour internationale de Justice dans tout différend relatif à l'interprétation ou à l'application de la convention.

II: Cette clause pourrait être la suivante:

«Tout différend relatif à l'interprétation ou à l'application de la présente convention relèvera de la compétence obligatoire de la Cour internationale de Justice qui, à ce titre, pourra être saisie par requête de toute Partie au différend.»

III: Dans le cas où la convention prévoit une procédure spéciale pour l'examen de questions relatives à son interprétation ou à son application, il conviendrait d'ajouter à cette disposition la clause suivante:

«Tout différend relatif à l'interprétation ou à l'application de la présente convention qui n'aura pas pu être réglé par les moyens de la procédure prévue (à l'alinéa précédent ou à l'article X) relèvera de la compétence obligatoire de la

[13]) Annuaire de l'Institut de Droit International, Session de Grenade avril 1956 vol. 46 (1956), p. 358. The French text is authentic; English version below.

Cour internationale de Justice, laquelle pourra être saisie par requête de toute Partie au différend.»

IV: 1. — Dans le cas où la convention contient une disposition déférant à l'arbitrage le règlement des différends relatifs à l'interprétation ou à l'application de la convention, il est recommandé de compléter cette disposition par la clause suivante:

«Si l'arbitrage prévu à l'article X n'a pas pu aboutir à une décision portant règlement du différend relatif à l'interprétation ou à l'application de la présente convention, toute Partie à ce différend pourra soumettre celui-ci par voie de requête à la Cour internationale de Justice.»

2. — Dans le cas où la convention contient une disposition prescrivant de soumettre à une procédure de conciliation les différends relatifs à l'interprétation ou à l'application de la convention, la clause de juridiction énoncée ci-dessus sous le numéro I devrait être complétée par une disposition indiquant à quelles conditions, éventuellement de délais, l'échec de la procédure de conciliation autorise toute Partie au différend à saisir la Cour internationale de Justice.

V: Si, dans une convention multilatérale contenant une clause consacrant la juridiction obligatoire de la Cour, on désire inscrire une disposition rendant obligatoire pour toutes les Parties à ladite convention un arrêt relatif à l'interprétation de la convention, rendu par la Cour internationale de Justice, cette disposition pourrait prendre la forme suivante:

«Les Hautes Parties Contractantes conviennent que, si un ou plusieurs Etats saisissent la Cour d'une demande tendant à obtenir l'interprétation d'une disposition de la présente convention, la décision rendue par la Cour sera obligatoire pour toutes les Parties à la convention (qu'elles aient usé ou non de la faculté d'intervention que leur donne le Statut de la Cour).»

Granada, 11—20 April 1956 [14])
(English version)

Model Clause Conferring Compulsory Jurisdiction on the International Court of Justice for Inclusion in Conventions

I: The Institute of International Law recommends that governments and international organisations should, when drafting multilateral or bilateral international conventions, include therein a clause conferring compulsory jurisdiction on the International Court of Justice in any dispute relating to the interpretation or application of the convention.

II: This clause might be in the following terms:

"Any dispute relating to the interpretation or application of this convention shall be subject to the compulsory jurisdiction of the International Court

[14]) *Ibid.*, p. 364.

of Justice, which may be seized of the matter by unilateral application by any party to the dispute."

III: If the convention provides for a special procedure for the examination of questions relating to its interpretation or application, it would be appropriate to add to the provision establishing such a procedure a clause in the following terms:

"Any dispute relating to the interpretation or application of this convention which has not been settled by means of the procedure provided for (in the preceding article or in article X, as the case may be) shall be subject to the compulsory jurisdiction of the International Court of Justice which may be seized of the matter by unilateral application by any party to the dispute."

IV: 1. If the convention contains a provision for the settlement by arbitration of disputes relating to its interpretation or application, it is desirable that this provision should be supplemented by a clause in the following terms:

"If the arbitration provided for in article X has not resulted in a decision settling the dispute relating to interpretation or application of this convention, any party to the dispute may submit it by unilateral application to the International Court of Justice."

2. If the convention contains a provision for the submission to a procedure of conciliation of disputes relating to its interpretation or application, the jurisdictional clause set forth in paragraph I should be supplemented by a clause indicating under what conditions and after what period of time failure of the conciliation procedure entitles any party to the dispute to submit it to the International Court of Justice.

V: If it is desired to include in a convention granting compulsory jurisdiction to the Court a provision making any judgment relating to the interpretation of the convention given by the International Court of Justice binding on all parties to the convention, such a provision might be in the following terms:

"The High Contracting Parties agree that if one or more States submit to the Court an application for the interpretation of a provision of this convention the decision given by the Court shall be binding upon all the parties to the Convention, whether or not they have exercised the right of intervention accorded to them by the Statute of the Court."

4. Neuchâtel, 3—12 September 1959 [15])

Compulsory Jurisdiction of International Courts and Tribunals

The Institute of International Law,

[15]) Annuaire de l'Institut de Droit International, Session de Neuchâtel, septembre 1959, vol. 48 (1959 II), p. 380.

Having examined the present situation as regards the compulsory jurisdiction of international courts and arbitral tribunals;

Convinced that the maintenance of justice by submission to law through acceptance of recourse to international courts and arbitral tribunals is an essential complement to the renunciation of recourse to force in international relations;

Considering that more general acceptance of compulsory jurisdiction would be an important contribution to respect for law and noting with concern that at the present time the development of such jurisdiction lags seriously behind the needs of a satisfactory administration of international justice;

Recognising the importance of confidence as a factor in the wider acceptance of international jurisdiction;

Considering it essential that Article 36, paragraph 2, of the Statute of the International Court of Justice should remain an effective means for securing progressively more general acceptance of the compulsory jurisdiction of the Court;

Recalling the Resolutions concerning the principle of compulsory jurisdiction adopted by the Institute in 1877, 1904, 1921, 1936, 1937, 1954, 1956 and 1957, and enumerated in the Annex to the present Resolution, and in particular the *voeu* concerning the reservation in respect of matters of domestic jurisdiction adopted at Aix-en-Provence in 1954 and the Resolution concerning a model clause conferring compulsory jurisdiction on the International Court of Justice for inclusion in conventions adopted at Granada in 1956;

Adopts the following Resolutions:

1. In an international community the members of which have renounced recourse to force and undertaken by the Charter of the United Nations to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, recourse to the International Court of Justice or to another international court or arbitral tribunal constitutes a normal method of settlement of legal disputes as defined in Article 36, paragraph 2, of the Statute of the International Court of Justice.

Consequently, recourse to the International Court of Justice or to another international court or arbitral tribunal can never be regarded as an unfriendly act towards the respondent State.

2. It is of the highest importance that engagements to accept the jurisdiction of the International Court of Justice undertaken by States should be effective in character and should not be illusory. In particular, States which accept the compulsory jurisdiction of the Court in virtue of Article 36, paragraph 2, of the Statute should do so in precise terms which respect the right of the Court to settle any dispute concerning its own jurisdiction in accordance with the Statute and do not permit States to elude their submission to international jurisdiction.

It is highly desirable that States having excluded from their acceptance of the compulsory jurisdiction of the International Court of Justice in virtue of Article 36, paragraph 2, of the Statute of the Court matters which are essentially within their domestic jurisdiction as determined by their own government, or having made similar reservations, should withdraw such reservations having regard to the judgments given and opinions expressed in the *Norwegian Loans* and *Interhandel Cases* and to the risk to which they expose themselves that other States may invoke such reservations against them.

3. In order to maintain the effectiveness of the engagements undertaken, it is highly desirable that declarations accepting the jurisdiction of the International Court of Justice in virtue of Article 36, paragraph 2, of the Statute of the Court should be valid for a period which, in principle, should not be less than five years. Such declarations should also provide that on the expiration of each such period they will, unless notice of denunciation is given not less than twelve months before the expiration of the current period, be tacitly renewed for a new period of not less than five years.

4. With a view to ensuring the effective application of general conventions, it is important to maintain and develop the practice of inserting in such conventions a clause, binding on all the parties, which makes it possible to submit disputes relating to the interpretation or application of the convention either to the International Court of Justice by unilateral application or to another international court or arbitral tribunal; this clause might be based on the provisions of the Resolution concerning a model clause conferring compulsory jurisdiction on the International Court of Justice for inclusion in conventions adopted by the Institute in 1956.

5. In the interest of world economic development it is desirable that economic and financial agreements concerning development schemes, whether concluded between States or concluded with States by international organisations or international public corporations, should contain a clause conferring on the International Court of Justice (so far as the Statute of the Court allows) or on another appropriate international court or arbitral tribunal compulsory jurisdiction in any dispute relating to their interpretation or application.

6. Without prejudice to the possibility of international remedies being made available directly to private parties, certain economic and financial agreements between States could usefully contain a general provision for compulsory jurisdiction in respect of claims brought by one of the States concerned (either acting on its own behalf or espousing a claim on behalf of one of its nationals) against one of the other States concerned.

VI. Resolutions of the International Law Association

1. Dubrovnik 1956 [16])

Review of the Charter of the United Nations

The 47th Conference of the International Law Association held at Dubrovnik, in August, 1956, expresses its gratitude to Judge Boeg as Chairman, to Dr. G. Schwarzenberger as Rapporteur, to Mr. L. C. Green as Deputy Rapporteur, to the members of the Committee on the Review of the Charter and to the special Committees established by the American, Austrian, British, French, German, Italian, Netherlands and Yugoslav branches of the Association.

Resolves, in the light of the principal Report, the Reports of the Committee established by the branches and the observations made during the Conference, that: —

I. The desirability of the following amendments to the Charter of the United Nations and the Statute of the International Court of Justice should be considered by the United Nations:

(a) Article 34 of the Statute of the International Court of Justice should be amended to give to the United Nations and its specialised agencies direct access to the Court in contentious cases;

(b) Article 96 of the Charter should be amended to empower the General Assembly to authorise other public international organisations, whether general or regional, to request advisory opinions of the Court;

(c) Article 35 of the Statute should be amended to empower the General Assembly to establish the conditions under which the Court would be open to public international organisations other than the specialised agencies;

Article 36 of the Statute should be amended to empower the General Assembly to establish the conditions under which the United Nations, its specialised agencies and other public international organisations might make declarations accepting the jurisdiction of the Court under paragraph 2 of that Article.

II. Article 96 of the Charter should be amended so as to impose upon the organs of the United Nations the obligation to request from the International Court of Justice an advisory opinion concerning any situation in which the claim is made by a member that the organ had exceeded its jurisdiction under the Charter.

III. The Committee on the Review of the Charter should be kept in being and should, with the assistance of the special Committees established by the various branches, continue to study how the United Nations might be

[16]) The International Law Association, Report of the Forty-Seventh Conference held at Dubrovnik August/September 1956, p. VIII.

strengthened into an effective instrument for the maintenance of law and order in the world. In particular, the Conference requests the Committee to study:

(a) The impact of the recent admission of new members on the structure of the United Nations;

(b) The questions raised in the Report submitted by the Rapporteur to the Dubrovnik Conference in connection with the jurisdiction of the International Court of Justice; and

(c) Granting to the General Assembly the power to adopt rules of International Law which would become binding upon each member which does not within a specified time, notify the United Nations of its rejection of the rules.

IV. The resolution and the Second Report on the Review of the Charter of the United Nations be sent to the Secretary-General of the United Nations.

2. Tokyo 1964 [17])

Compulsory Jurisdiction of the International Court of Justice

The 51st Conference of the International Law Association held in Tokyo in August, 1964,

Recalling its previous resolutions supporting the extension of the compulsory jurisdiction of the International Court of Justice,

Having received a report on the subject from its Committee on the Charter of the United Nations,

Noting with appreciation the address delivered by Chief Justice Yokota at the Opening Session of the Conference,

Desiring to explore new ways for increasing the Court's jurisdiction,

1. *Supports* and calls to the attention of all States Resolution 171C (II) of the General Assembly of the United Nations of November 14, 1947, in which the Assembly drew "the attention of the States which had 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. *Suggests* that the United Nations should consider the adoption of a General Act for the Judicial Settlement of International Disputes which, in addition to the existing procedure under Article 36 of the Statute of the International Court of Justice, would allow States to accept the compulsory jurisdiction of the Court by means of:

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[17]) The International Law Association, Report of the Fifty-First Conference held at Tokyo August 1964, p. XIII.

(a) Declarations accepting the Court's jurisdiction with respect to ten or more areas of international law, in accordance with the comprehensive list of such areas contained in the proposed General Act, in relation to any other State which has accepted the Court's jurisdiction over the same area;

(b) Declarations accepting the Court's jurisdiction with respect to such matters as are found by the Security Council or the General Assembly to require reference to the Court in order to facilitate their settlement;

3. *Requests* each branch of the International Law Association to urge its Government to accept the optional clause without reservation and to encourage its Government to insert provisions concerning the jurisdiction of the International Court of Justice in any bilateral or multilateral Conventions to be concluded in the future;

4. *Requests* that the President of the Association, if he thinks it appropriate, approach the Government of Japan with a view to transmitting this Resolution to the Secretary-General of the United Nations as an official document for circulation;

5. *Thanks* the Committee on the Charter of the United Nations and, in particular, its Chairman, Judge N. V. Boeg, and its Rapporteur, Professor L. B. Sohn, for its Report, and *requests* that the Committee study further the question of the settlement of international disputes.