UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/8382/Add.4
12 November 1971

ORIGINAL: ENGLISH

Twenty-sixth session
Agenda item 90

REVIEW OF THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE

Report of the Secretary-General

Addendum

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71-23771

(5 p.)

REPLIES RECEIVED FROM GOVERNMENTS

NEW ZEALAND

/Original: English/

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

The question of the attitude of States towards the Court should in New Zealand's view be considered against the wider perspective of States' attitudes to third party settlement in general. In this respect it should be recalled that the Secretary-General in the introduction to his annual report last year noted that the very limited use made of the Court seemed to reflect a general aversion to settlement by means of a binding legal decision rather than a specific aversion to the Court, since arbitration has also been little used. 1/ For its part, New Zealand attaches considerable importance to third party settlement as a means of resolving disputes and in particular has always strongly supported the Court and the role of judicial settlement. We have declared our acceptance of the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute and have also accepted the jurisdiction under special provisions contained in a number of treaties. At the same time we would note that the use of judicial settlement at a particular stage in a dispute or in regard to a particular aspect of the dispute need not exclude the use of other methods of peaceful settlement, such as negotiation and conciliation, in arriving at an over-all resolution of the dispute. The way in which the Court can be used, for example, to obtain what in effect is a declaratory judgement on a particular legal point in a dispute, as in the Continental Shelf case (where the parties sought a ruling from the Court only on the method which should be followed in fixing the boundaries of the continental shelf between them, leaving to negotiation the determination of the actual boundaries) may be worthy of attention in any review of its functioning.

As to the law applied by the Court, little dissatisfaction has ever been expressed with Article 38 of the Statute. So far as particular areas of the law are concerned, the work of the International Law Commission in developing and codifying the law in many of these areas must be recalled. In this respect it is disappointing to note that even where, following the preparatory work of the International Law Commission, a particular area of the law has been newly formulated and embodied in a treaty in the negotiation of which most States have participated there has been a reluctance on the part of many to see provision made in the treaty for judicial settlement of disputes arising out of it.

1/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 1 A (A/8001/Add.1), para. 148.

II. Organization of the Court

On the question of the composition of the Court, it should be remembered, as the Secretary-General pointed out in a further passage in the introduction to his 1970 report, first, that the requirement of the Statute with regard to composition is representation of the main forms of civilization and the principal legal systems of the world rather than geographical distribution and, secondly, that in any case the present geographical distribution of the seats on the Court is the same as that agreed for the Security Council in 1963. As the Secretary-General commented, the composition of the Council is generally regarded as balanced and therefore there seems little basis for any suggestion that the composition of the Court is not. 2/ At the same time, however, New Zealand would not wish to suggest that the question of the size or composition of the Court should be excluded from any thoroughgoing review of the Court's present and future functioning.

The other matters referred to in relation to the organization of the Court, the possibility of recourse to the chamber of summary procedure and the question of regional chambers appear to be worthy of further consideration, particularly so as, if developed, they might prove to be a means of encouraging States to seek judicial settlement of those less important disputes which, although suitable for determination according to law, they may have been reluctant in the past to submit to the full Court. To that end it would seem desirable that they be studied by a small expert group which could examine them more closely, taking into account the work of the Court on the revision of its rules and report back with detailed suggestions.

III. Jurisdiction of the Court

(a) Contentious cases

States' acceptance of the Court's jurisdiction under Article 36, paragraph 2, of the Statute is obviously an issue of central importance in any consideration of the effectiveness of the Court's functioning in its contentious jurisdiction. Wider acceptance of the compulsory jurisdiction of the Court is obviously desirable and States should be encouraged to re-examine their present position on this question and consider whether they may be able to make a declaration under Article 36, paragraph 2, or alter the form of their present declaration to widen the scope of their acceptance of the Court's jurisdiction. In this respect, New Zealand is currently reviewing the terms of its existing declaration under Article 36, paragraph 2, with a view to the possibility of deleting some of the reservations it at present contains.

The possibility of enabling international organizations to be parties in cases before the Court is a question which would require careful study. The increasingly important role of these different organizations in world affairs points to the desirability of providing for judicial settlement of disputes involving them. While no doubt some difficulties with regard to reciprocity with States might arise if they were given general access to the Court, there would seem no reason why access should not be provided for in at least certain categories

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2/ Ibid, para. 147.

of cases, e.g. cases involving a dispute arising out of an agreement between an international organization and a State. Again this question and the further possibility of allowing access to the Court by individuals in certain situations would seem best considered further by a small expert group.

Attention has already been drawn to the fact that there has been in the past some reluctance to see provision for judicial settlement of disputes written into important multilateral treaties, including those representing the culmination of the United Nations work in codifying and progressively developing a particular area of the law. In New Zealand's view greater efforts should be made to include such provisions in future multilateral treaties. States should also be encouraged to include clauses in their bilateral treaties accepting the compulsory jurisdiction of the Court in respect of disputes arising out of those treaties.

(b) Advisory jurisdiction

The suggestion that the Court's advisory jurisdiction could be extended is another possibility deserving of careful examination. The availability of the advisory jurisdiction to a greater number of international organizations, including regional organizations, would seem advantageous. As far as the possibility of opening the jurisdiction to States is concerned, however, considerable thought would need to be given, in New Zealand's view, to the effect of this on the Court's contentious jurisdiction. Moreover, as pointed out in section I above, the contentious jurisdiction is flexible. For example, States involved in a wide-ranging dispute which raises one or more legal points can submit those points to the Court, so framing their question that they obtain what is effectively a declaratory judgement on those points which they can then apply in the course of reaching a negotiated settlement. In the light of this flexibility, a rationale for enabling States to make use of the advisory jurisdiction is not apparent.

IV. Procedures and methods of work of the Court

The question of changes in the Court's Rules is primarily a matter for the Court. The completion of the Court's current review of its Rules is accordingly awaited with interest by New Zealand. As it may be helpful for the Court in carrying out its review to have an indication of the views of Governments, however, New Zealand would like to make the following general comment. Much of the criticism of the Court based on the length and consequent cost of the proceedings is, in New Zealand's view, misplaced in that the protracted nature of proceedings in past cases is attributable to the time taken by the parties to prepare and present their arguments and not to delay by the Court. At the same time, however, it might be suggested that the Court could in the future go some way to reducing the time taken for argument by directing the parties to those issues and points which it considers most relevant or important and in this way exercising rather greater control of the case than it has tended to in the past. Part of this direction or control by the Court should involve ensuring that preliminary procedural matters are raised and decided wherever possible at an early point in the proceedings. As to the question of costs in general, it can be pointed out that the cost of making use of the facilities of the Court for the judicial settlement of a dispute is much less than that involved in putting the dispute to arbitration where the basic costs of establishing the arbitral tribunal have to be borne by the parties. Nevertheless costs are high and consideration might be given to the provision of assistance to States which otherwise might find the financial outlay a barrier to submitting a case to the Court.

V. Future action on the item by the General Assembly

With the replies from Governments to the Secretary-General's questionnaire and comments in two years of debate in the Sixth Committee the General Assembly will have before it a wide range of suggestions for ways in which the effectiveness of the Court may be improved. These measures will require careful study before action is taken to implement any of them and New Zealand considers that a small committee of experts should be set up for this purpose.
