Chairman: Mr. Paul Bamela ENGO (Cameroon).

In the absence of the Chairman, Mr. Houben (Netherlands), Vice-Chairman, took the Chair.

AGENDA ITEM 96

Review of the role of the International Court of Justice (continued) (A/8042 and Add.1 and 2, A/C.6/L.800-802)

1. Mr. SECARIN (Romania) said that he was gratified to see the President and several members of the International Court of Justice present in the Committee room. His delegation was among those which regarded the Court’s over-all record as positive. The role of the Court had to be judged not by the number of cases submitted to it, but on a more general basis, for it should be remembered that the Court had been established as an organ for the judicial settlement of international disputes in a world of sovereign States pledged under international law to settle their international disputes by peaceful means. There were many such means available to them for that purpose, forming a whole series whose components were enumerated in Article 33 of the Charter of the United Nations. Judicial settlement by the Court was only one of those components, so that in reviewing its effectiveness the whole system of the Charter had to be considered, and not the Court alone. Besides, the efforts of Member States were directed towards increasing the effectiveness of the fundamental instrument of law represented by the Charter and the principles expressed in it; that was clear from the discussion at the present session. A substantial contribution to that goal would be a general study of peaceful means of settlement of international disputes, aimed at the identification of the rules of law applicable in the procedural sphere. In that connexion, his delegation had drawn attention to the value of such a study on two occasions, in 1968 and 1969, and re-emphasized its importance at the present session, in the First Committee at its 1734th meeting.

2. The role of the Court corresponded to the position occupied by judicial settlement in the system of peaceful means of settlement of international disputes. It was a highly important function, defined in Articles 7 and 92-96 of the Charter, and in the Court’s Statute.

3. In his delegation’s view, the decisive rule with regard to judicial settlement, and also arbitration, was that jurisdiction in the international order was subject to the will of the State, whose consent was a prerequisite for any judicial settlement. That principle had in fact been recognized both by the Permanent Court of International Justice and by the International Court of Justice itself. It was also an acknowledged tenet of legal teaching. However, the rule of State consent was in turn closely connected with the principle of free choice of means, a principle laid down in Article 33 of the Charter and expressly mentioned in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV). The formulation of the principle of the peaceful settlement of disputes contained in the Declaration had repeatedly been held to support the view that the acceptance of a procedure freely agreed to by States could not be regarded as incompatible with sovereign equality. However, the principle of peaceful settlement could not be properly understood unless interpreted in the context of the Declaration as a whole. Although the formulation provided that States should settle their international disputes by peaceful means, it also stated that in doing so they should agree upon such peaceful means as might be appropriate to the circumstances and nature of the dispute, which meant that the parties to a dispute were free to choose the means most conducive to its settlement. That seemed to be one of the reasons why the jurisdiction of the Court had been made optional. While it was open to States parties to a dispute to refer it to the Court, they could also seek to settle it by diplomatic negotiation, mediation, conciliation or any other means they saw fit. The optional nature of the Court’s competence was therefore the rule, the exception to which was the declaration that States could make under Article 36 (2) of its Statute, accepting its compulsory jurisdiction.

4. There were several reasons why, in addition, States had not resorted more frequently to judicial settlement: the nature of relations between States, which very often preferred a friendly settlement to the most perfect judgment; the preference of some States for modes of settlement which resulted in compromises where neither side won or lost; the debatable nature of some of the Court’s decisions, such as the one in the South West Africa case; the lengthy procedures and the expense, and so forth. Even if those considerations deterred States from having recourse to the Court, that did not mean that they had a rigid conception of national sovereignty.

5. His delegation did not object to a review of the functioning of the Court provided it took place within the context of the Charter and the Court’s Statute, which was an integral part of the Charter. Moreover, the opinion of the Court, which had undertaken its own study of its Rules, should be ascertained before any inquiry took place; and there was no call for hasty amendments to the Statute when it contained provisions whose application could enhance the Court’s effectiveness. As far as the proposed ad hoc committee was concerned, his delegation considered that the question should be deferred pending the results of
the preliminary studies summarizing the views and observations of Governments.

6. Mr. SEATON (United Republic of Tanzania) observed that the title of the item under consideration suggested an intention to change the actual role of the Court, whereas the discussion showed that no one had that in mind. What was envisaged was a review of the functioning of the Court, which obviously implied that at present it was not satisfactorily fulfilling its proper role.

7. That role, like the role of any court, consisted in handing down decisions, in accordance with the law and relating to commercial questions, geographical questions, political questions, and so forth. While the function of a court did not depend on the subject-matter of the litigation before it, it must be agreed that no court should shy away from deciding issues merely because they were of a political nature. All that was required of a court was to isolate the legal dispute proper from its political context and then to hand down a decision according to the applicable law. If it was to exercise that function, the Court should be composed of judges who were independent of the litigants and young enough to be familiar with contemporary ideas of justice. Those considerations were just as valid for national courts as for international courts. The judges of the Court were unquestionably the most distinguished unemployed in the world. But that was neither new nor peculiar to the Court. The various international courts of arbitration were in the same situation. Some regarded the judgement in the South West Africa case as the decisive factor in the decline of the activity of the Court, but that was too facile an explanation, even though the Court had on that occasion missed an opportunity of proving that it was possible to achieve international peace through justice.

8. A number of proposals had been made with a view to remedying the inactivity of the Court, and they could be divided into three categories. One group of reforms, which would be effected by the modification of the Rules of Court, came within the Court's competence. Another category of reforms lay outside the competence both of the Court and of the General Assembly and would require joint action by all States parties to the Statute of the Court. To the second category might be added the reform of the judges' term of office, which in his delegation's view, instead of being nine years as provided by the Statute, should be relatively short, say three to five years. A third category of reforms came within the exclusive competence of States, the most important relating to the optional declaration of recognition of the compulsory jurisdiction of the Court. The fact was that less than half of the States parties to the Statute of the Court had made such a declaration, and that many of them had even then hedged it about with reservations which considerably reduced its effect. In his delegation's view, consideration of the matter should not be entrusted to a committee of experts but should be undertaken by States themselves.

9. His delegation was opposed to the establishment of an ad hoc committee. The Court had already embarked on the revision of its Rules. The response of the General Assembly should not be to establish an ad hoc committee but to review those questions which came within its competence and to recommend States to review matters that came within theirs. If that method was followed, it should be possible for proposals on specific measures to be submitted to the next session of the General Assembly. Such a course would receive the unreserved support of the Government of the United Republic of Tanzania.

10. Mr. PRANDLER (Hungary) noted that the debate had shown that the members of the Committee were agreed on a number of points: that the Court was one of the principal organs of the United Nations; that the competence and integrity of its members were outstanding; that its Statute formed an integral part of the Charter; and that judicial settlement should play an important role in the peaceful settlement of disputes. There were, however, some points of difference as well.

11. The question of review of the role of the Court raised two main problems, for each of which two solutions had been offered. The first problem was to discover the reason for the Court's failure to become an effective legal organ of the United Nations and the reason for the reluctance of States to submit their disputes to it. Some delegations believed that the reason lay in the fact that the international community had not yet attained the same degree of homogeneity as national communities, or in the unduly restrictive limits of the competence of the Court, or in the outdated nature of its Statute, which was based on that of the Permanent Court of International Justice. His delegation believed that the role and activity of the International Court of Justice could not be considered separately from the realities of international relations. As long as the principle of the sovereign equality of States applied, the Court could play only an auxiliary role in the peaceful settlement of disputes. Moreover, the composition of the Court, which was a decisive factor, was not such as to assure "the representation of the main forms of civilization and of the principal legal systems of the world", as laid down in Article 9 of its Statute. Lastly, the lengthy and costly procedures of the Court did not encourage States to have recourse to its services.

12. The second problem was to choose between the solutions offered by the State most directly concerned with the situation. Some believed that a solution was to be found only in a general revision of the provisions of the Statute and the Rules of Court. That was the view of the delegations which had requested the inclusion of the present item in the agenda of the General Assembly; they felt that new methods were needed, and were recommending the establishment of an ad hoc committee. Other States, including Hungary, believed that the decline of the Court had nothing to do with the provisions of the Charter of the United Nations and the Statute of the Court. It was possible for the Court to function satisfactorily under those provisions, and attention should be directed to ensuring that they were implemented. The problem called to mind the problem of the Charter itself, which some believed should be revised while others felt that all that was needed was a more faithful observance of its provisions. It called to mind also the question which had been raised concerning another organ of the United Nations, the Security Council. After a period in the doldrums, the Council seemed to be undergoing a revival. That gratifying development had taken place without the need for revision of the Charter provisions concerning the Security Council. His delegation
was convinced that the same evolution could be effected in the case of the Court.

13. For all those reasons his delegation opposed the establishment of an ad hoc committee. The delegations making the proposal, although not necessarily in favour of amending the Charter, stated in their draft resolution (A/C.6/L.800) that the ad hoc committee should “examine ways and means of enhancing the effectiveness of the International Court of Justice, taking into account all suggestions made...”. The adoption of any suggestion to enlarge the Court’s competence, to request States to accept its compulsory jurisdiction or to admit international organizations as parties to the Court would entail revision of its Statute, which was an integral part of the Charter.

14. On the other hand, the suggestion to form chambers composed of three or five judges could be implemented by the Court under Article 26 of its Statute, while a more equitable geographical distribution of seats could be effected in accordance with Article 9. The Rules of Court could be revised by the Court itself, which, as the report (A/8005) showed, was already happening. All those proposals could be implemented without having to set up an ad hoc committee.

15. While it opposed draft resolution A/C.6/L.800, his delegation was in favour of inviting Member States to submit their views and suggestions concerning the role of the Court. It also supported the suggestion to invite the Court itself to study the views and suggestions put forward in the Sixth Committee. His delegation was therefore sympathetic to the draft resolution submitted by the French delegation (A/C.6/L.801).

16. Mr. KOSTOV (Bulgaria) said he had closely followed all the arguments adduced in favour of reviewing the role of the Court. Despite differences in approach, all delegations seemed to agree on the need to revise the Statute of the Court and consequently the Charter itself, of which the Statute was an integral part. He therefore concluded that the proposal fitted into a wider plan aimed at bringing about the amendment of the Charter. His delegation would resolutely oppose any attempt to modify the balance in the powers of the principal organs of the United Nations, being far from convinced that a study of the role of the Court was a matter of urgency. On the contrary, it believed that extreme caution was essential.

17. It was indisputable that, in accordance with the Charter, States were under the strict obligation to settle their disputes by peaceful means. However, within the context of that obligation, they were entirely free to choose among the means of settlement enumerated in Article 33, which was not in any event exhaustive. Judicial settlement was one of the means to which States might have recourse, but its use was not linked exclusively to the Court. Without wishing to belittle in any way the importance of the principal judicial organ of the United Nations, his delegation stressed that its role could be examined only in the context of the Charter, which determined the balance between United Nations bodies.

18. Mankind had not yet reached the stage where the planet as a whole was governed by a supranational institution. As the representative of Japan had pointed out (1210th meeting), the chief reason why the Court’s work was more restricted than might be desirable should be sought in the fact that the international community had not yet reached the same degree of homogeneity as national communities. Moreover, the founders of the United Nations seemed to have taken that fact into account when laying down the functions of the Court. In present-day conditions, international tension and lack of confidence between States were hardly conducive to their making greater use of the Court. Its effectiveness, like that of other international institutions, varied with the international political climate.

19. It had been stated that one of the obstacles to the effective functioning of the Court was the fact that a large majority of States did not recognize its compulsory jurisdiction. That issue had been raised even before the Court had been established. The founders of the United Nations had taken the view—and experience seemed to have proved them right—that the only way to achieve wider acceptance of the Charter was by making the Court’s jurisdiction voluntary.

20. His delegation appreciated the need to enhance the Court’s effectiveness and improve its procedures, but that was the primary responsibility of the Court itself. It was therefore difficult to see the need for an ad hoc committee, which might well be called upon to give its views on certain issues before the Court itself had expressed an opinion. The Court had already undertaken a revision of its Rules and could streamline its procedures by making fuller use of the existing provisions of the Charter and the Statute. An effort could also be made to ensure more equitable representation within it of the main forms of civilization and of the principal legal systems of the world. The most important problem facing the Court was to win the confidence of States, which could not be done by adopting resolutions or setting up ad hoc committees. It was for the Court itself to impose its authority.

21. His delegation considered that the Sixth Committee should merely refer the matter to the Court, requesting it to undertake a detailed study. It strongly opposed the proposal to set up an ad hoc committee.

22. Mr. BRUM (Uruguay) said that it was because the Court did not play the full role that it should in the settlement of disputes requiring a legal solution that his delegation had joined with others in requesting the inclusion of the present item in the agenda of the twenty-fifth session and had helped to draw up draft resolution A/C.6/L.800. Since the Court’s role depended mainly on the confidence, or lack of it, displayed by States, the proposed ad hoc committee should concentrate on that particular aspect of the matter.

23. At the present time the world stage was dominated more by power relations than by the rule of law. Even small States, which ought to find in recourse to justice the best guarantee that their rights would be respected, were reluctant to submit to the jurisdiction of a court and often preferred to exploit the antagonism between the great Powers to gain advantages that would not have been recognized in law. The present-day world lived in a state of constant tension, which could not find an outlet in violence
and could not last indefinitely. Eventually the time would have to come when due respect would at last be paid both to the independence of States and to principles which distinguished between the lawful and the arbitrary. When that time came there would be no more need to feel concern about the inactivity of international courts; on the contrary, more of them would be needed in order to meet the growing demands of a community of States ready to respect the law and to live in peace.

24. Obviously the review of the Court's role in no way infringed the principle that the judicial settlement of a dispute was dependent on the consent of all States parties to it. That principle could not be challenged. Neither would the establishment of an ad hoc committee in any way detract from the dignity and competence of the judges, which were universally recognized, since its function would be to examine those aspects of the question, in particular the behaviour of States, which were not the direct concern of the Court. Nor would it trespass on the authority of the Court, since it in no way affected the Court's power, set forth in Article 70 of the Statute, to propose amendments to it. Finally, it would not conflict with the provisions concerning Charter amendments in Articles 108 and 109 of the Charter.

25. Mr. ALVAREZ TABIO (Cuba) said that, to study the obstacles to the satisfactory functioning of the Court, there was no need either to establish an ad hoc committee or to widen the functions of the Court. More than anything else the aim was to establish the reasons for the crisis of confidence facing that body—a prior question which had to be examined before any decision was taken. The procedure advocated in draft resolution A/C.6/L.800 seemed somewhat paradoxical, for it was proposed to invite States Members of the United Nations and States parties to the Statute of the Court as well as the Court itself to submit their views and suggestions and, at the same time, to establish an ad hoc committee to consider those suggestions and submit its conclusions to the General Assembly. How could the proposed ad hoc committee deal with the question before it knew the views of all concerned?

26. Although his delegation did not question the qualifications of the judges who made up the Court, it did not have full confidence in the Court. It considered that, in the modern world the concept of a supreme judicial organ capable of handing down judgements regarded as equitable in the eyes of those most deprived of justice was little more than utopian. Contemporary international society was marked by the coexistence, and not always peaceful coexistence, of States with legal systems and institutions consistent with specific economic and social situations. It was not possible to impose on human society a legal order which actually served individual interests that were reflected in the composition of the Court itself. With international law built up on outmoded practices regarded as unacceptable by the overwhelming majority of States, the task of an independent judge was extremely arduous. Moreover, the judgement given was not purely and simply the outcome of a logical process, for the judge's opinion of the problems posed by the complexity of the real situation always played a part. In giving his judgement, he applied the tools of interpretation available to him to his own conception of justice.

27. Accordingly, in the matter under consideration, the Committee should be concerned not so much with changing the functions of the Court as with looking into its composition. So long as the Court continued to be dominated by a certain school of thought, the small States which were endeavouring to make their way, free from outside interference, would find it difficult to place their trust in a body in which most of the members professed preconceived legal and political ideas incompatible with the interests which the small States sought to promote. Consequently, they would never submit their disputes for a binding decision by a Court which did not offer them the requisite minimum guarantees.

28. For those reasons, his delegation would not support the establishment of the proposed ad hoc committee.

29. Mr. OFSTAD (Norway) said that Norway was a small nation whose existence depended on the development of peaceful relations in international society. Accordingly, it had accepted the compulsory jurisdiction of the Court in accordance with Article 36 (2) of its Statute and had concluded various bilateral agreements which recognized the Court's competence in disputes which might arise concerning their interpretation or application. In addition, it was a relatively young nation which had had little opportunity of participating in the development of international law. However, it had not hesitated to submit several of its international disputes to the Court and was therefore in a correspondingly better position to stress the need to improve the Court's procedures and to adapt them to present-day requirements.

30. His delegation had no preconceived idea as to the method of bringing about such improvements. It appeared that a good deal could be done if better use was made of the various procedures provided for in the Statute. The parties to a dispute could, for example, have recourse to the chamber for summary procedure referred to in Article 29 of the Statute. Greater recourse might also be had to the small chambers which the Court could form under Article 26 of its Statute. Under Article 28 such bodies could convene elsewhere than at The Hague if the parties so requested. The Statute in Article 38 (2) provided for some flexibility regarding the norms applicable to the decision to be taken, since the Court could, if the parties agreed, give rulings ex aequo et bono.

31. His delegation felt that the time had come for a complete review of the rule and the functioning of the Court. It would support the draft resolution (A/C.6/L.800) submitted for that purpose which proposed the establishment of an ad hoc committee.

32. Mr. TUTU (Ghana) observed that neither the performance of the Court nor the attitude of Member States towards the Court had fulfilled the hopes of the founders of the Organization. All States agreed, however, that if a stable and progressive world community was to be maintained, it was necessary to strengthen the principal judicial organ of the United Nations. A number of reasons for the reduced effectiveness of the Court had already been mentioned: the composition of the Court did not reflect a proper geographical balance; the law it practised was not universally accepted; procedures were slow and costly; the
Court had limited jurisdiction; and it sometimes handed down unpopular decisions. His delegation considered that the basic reason for the weakness of the Court lay in the attitude of States, for they were reluctant to give up their national sovereignty.

33. With a view to enhancing the effectiveness of the Court, his delegation would support the proposal to establish an ad hoc committee to examine all aspects of the problem. The committee should confine its examination, nevertheless, to matters laid down by the Charter and the Statute and should work in co-operation with the Court itself, which was fully aware of the inadequacies of its procedures. Furthermore, it was essential for States to have the opportunity of expressing their views before the Committee started its work, otherwise the latter would be merely a fruitless academic exercise. He hoped that other delegations would lend their support to the draft resolution, in the sincere belief that the proposed Committee would contribute to the strengthening of the Court and therefore enhance the rule of law, as the buttress of international peace and security.

34. Mr. NANA (Pakistan) said that it was in a constructive spirit rather than one of criticism that his delegation had joined the eleven Member States which had requested that the item under consideration should be included in the agenda of the General Assembly. The Court was intended to make a major contribution to the maintenance of peace by settling legal disputes between States and it was regrettable that, of late, its activities had declined somewhat. Its Statute was based on that of the Permanent Court of International Justice and a comparison of the performance of those two bodies revealed that the relative inactivity of the former was attributable to some reluctance on the part of States to submit their disputes to it. That reluctance was explained by the diversity which was now a feature of the international community and the fact that a large number of recently independent States considered that contemporary international law basically reflected the legal systems of those States, mostly European and American, which had made up the international community at the time of the League of Nations. It could therefore be expected that, as more new States took part in the codification and progressive development of international law, increasing confidence would be shown in international law and, hence, in the Court.

35. Some States felt that the composition of the Court did not adequately reflect the new forms of civilization and new legal systems which should be taken into account, in the light of the development of the international community. The explanation for some of the Court's most criticized judgements was apparently to be found in its composition. As the Polish representative had pointed out (1210th meeting) of the forty-two judges elected to the Court since its establishment, seventeen had been from Europe, fourteen from the American continent, eight from Asia and Australia and three from Africa; that distribution was not satisfactory and the Pakistan delegation believed that the question of the Court's composition could usefully be reconsidered at an appropriate time.

36. With regard to the improvement of the effectiveness of the Court, the ad hoc committee whose establishment was proposed in draft resolution A/C.6/L.800 could study ways of expediting the consideration of cases by the Court and reducing the costs involved, for example by exploring the possibility of establishing regional courts or mobile chambers in order to simplify the proceedings. The ad hoc committee could also consider the possibility of enlarging the Court's role by allowing it to give advisory opinions more often and, in particular, by authorizing States to request such opinions. It had been noted that the reason why States did not make greater use of the Court was that its judgements generally cut off diplomatic negotiations for the settlement of disputes. The settlement of disputes would be certainly facilitated if States could request the Court to give an advisory opinion on the questions of law involved in the disputes to which they were parties. That would be particularly useful, since it was well known that the Court handed down advisory opinions much more rapidly than judgements in contentious cases.

37. Mr. MAGENGE (Burundi) noted that international law had not developed sufficiently rapidly to reflect the considerable changes which had taken place in the international community, particularly as a result of decolonization. The Court should, for example, in applying the principles of law recognized by civilized nations, take into consideration the increasingly important role played in the international community by the principle of the sovereign equality of States; as had been said in the debate, moreover, no State or group of States had a monopoly of civilization in the modern world. It therefore seemed to his delegation that international customary law provided the Court with a source of law which would be less controversial.

38. He criticized the judgement handed down by the Court in the South West Africa case, in which the concept of interest in private law and not in public international law had been used to dismiss the case of the countries which had pleaded the cause of decolonization in that case. While in the former instance the interest had to be individual, limited, financial or moral, in the latter instance a general and, so to speak, collective interest was involved. While it was true that the applicants had not had a personal interest in the matter, it could nevertheless have been considered that, since South Africa had shirked its obligations as a Mandatory Power on that occasion, any State Member of the United Nations had been entitled to assume the status of representative of the entire Organization and bring a case against that country. Indeed, there could have been no doubt that the action of Liberia and Ethiopia had been in the interest of the Organization, since the idea had been for a Member State which had failed in its obligations towards the Organization to be condemned by an organ of the United Nations. Their interest in the matter had therefore been, strictly speaking, the interest of the United Nations as a whole and had, moreover, been derived from the solidarity which States Members of the United Nations should display and which, more specifically, obliged an African country to promote the accession to independence of any African territory which did not yet enjoy autonomy. Since the Security Council had recently asked it for an advisory opinion on the subject of Namibia, the Court was presented with a unique opportunity to play the role in which it had been cast and, by reconsidering its 1966 decision, to be the faithful exponent not of private interests but of the general interest—that of the Organization.
39. The establishment of regional chambers, which had been suggested, might detract from the consistency of the decisions handed down by the supreme judicial organ of the United Nations. Not until the ideal of the Organization became a reality would it be possible to consider judicial decentralization.

40. Mr. CHAMMAS (Lebanon) said that the existing title of the question under discussion did not reflect the real issues involved; he therefore proposed that the title should be: “Study of obstacles to the satisfactory functioning of the International Court of Justice and ways and means of removing them”.

41. A judicial organ such as the International Court of Justice should be capable of developing so as to reflect current realities. It was therefore encouraging that the Court itself had recognized the need to review its Rules. His delegation agreed with the representative of Iraq (1211th meeting) that the composition of the Court and the law to be applied by that organ were two of the principal obstacles to its effective functioning. It believed, however, that the main reason for the difficulties currently experienced by the Court should be sought in the attitude of States towards it. That attitude was the direct consequence of the political failures of the United Nations and more particularly of the Security Council, whose repercussions were felt by the Court, as an organ of the United Nations. The strengthening of the United Nations would therefore help to strengthen the Court.

42. The law of any community, national or international, should reflect its structural transformations. Various speakers had explained the reasons why the existing composition of the Court and, above all, the law which it applied caused certain States to be mistrustful; while those reasons were valid, it was also true that the provision in Article 38(1.c), of the Court’s Statute seemed to be an irritating relic of the colonial era and should be amended.

43. His delegation would support the proposal for the establishment of an ad hoc committee to study obstacles to the satisfactory functioning of the Court and ways of removing them (A/C.6/L.800), provided that the powers of the committee were clearly defined. Since the Sixth Committee had not had time to consider that question, he suggested that any decision concerning the establishment of such a body should be postponed until the next session and that meanwhile Governments should be invited to state their views on the substance of the question. With regard to the French proposal (A/C.6/L.801), he observed, with reference to paragraph 2, that more details should be given about the views which the Court was to state, for example, whether they should be given in the form of an advisory opinion.

The meeting rose at 1.15 p.m.