

## EDITORIAL COMMENT

### IMPORTANT IMPROVEMENTS IN THE FUNCTIONING OF THE PRINCIPAL ORGANS OF THE UNITED NATIONS THAT CAN BE MADE WITHOUT CHARTER REVISION

In the last few years, many proposals have been made requiring either changes in the administration and financing of the United Nations or a revision of the Charter of the United Nations. While some progress has been made in the first category of problems, to the extent that they require primarily changes in the working of the United Nations Secretariat, it became quite obvious that a revision of the Charter is not likely to be made in the near future. It may be possible, however, to achieve important changes in the functioning of the principal organs of the United Nations—the Security Council, the General Assembly and the International Court of Justice—without revision. Pending a change in the international situation, various steps can be taken in the interim that would considerably improve the functioning of these organs, and achieve some of the desirable goals by measures that, while not ideal, will provide practical solutions for a few important problems. Several such solutions are investigated in the three sections of this essay.

#### I. THE SECURITY COUNCIL

There are two aspects of the Security Council that need to be improved: its composition and its procedure.

##### *Composition*

Any revision of the provisions of the Charter relating to the composition of the Security Council requires approval by a vote of two-thirds of the members of the General Assembly and ratification by two-thirds of the members of the United Nations, including all the permanent members of the Security Council. It has become obvious that none of the current proposals is likely to receive this amount of consensus. There is, however, a way to satisfy the desire of some contenders for additional seats, and of other states for more participation in the work of the Security Council, and a way to provide more transparency in its decision making.

While the five permanent seats on the Council are for all practical purposes untouchable, as no permanent member is likely to agree to abandon it, the division of the ten nonpermanent seats among the remaining members is at the discretion of the General Assembly, and can be changed at any time by a two-thirds majority of the members present and voting. For instance, when the General Assembly agreed in 1963 on the amendment to the Charter, which increased from six to ten the number of nonpermanent members of the Security Council, it agreed at the same time, by Resolution 1991A (XVIII), that these members “shall be elected according to the following pattern: (a) Five from African and Asian States; (b) One from Eastern European States; (c) Two from Latin American States; (d) Two from Western European and other States.” At any time, the General Assembly can agree on a different distribution of seats; the matter is entirely at its discretion, and no confirmation of this decision by the Security Council is required.

It has been forgotten, moreover, that the Charter, in Article 23(1) requires compliance by the electors with two qualifications for the election. In the election of the ten nonpermanent members, the Assembly shall pay due regard, “in the first instance to the contri-

bution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution." The clear intention of the drafters of the Charter was that, in the first place, attention should be paid to a member's contribution to the realization of the purposes of the United Nations; but that this should be done without neglecting equitable distribution. It was quickly agreed that equity requires that the number of seats granted to each regional group should depend on the number of its members. At the beginning it was also understood that the most important or most active members in each group should be more frequently elected. For instance, in the first twenty years Brazil represented the Latin American group in the Council for ten years. In other regions, there was a rotation among a few major states of each region. More recently, however, most seats have been assigned by each region by alphabetical rotation, and most members would have a chance to be on the Council only once or twice in a hundred years.

At this time, at least two states, Germany and Japan, have made clear their interest in obtaining permanent seats on the Council, while several other regional major powers would like to participate more frequently in the work of the Council. To accommodate all the principal contenders, at least ten permanent or semipermanent seats would have to be added altogether to the Council, as well as enough seats for other states, in order to balance the Council to some extent between large states and the almost 150 remaining states. In any case, a Council of some twenty-five or even thirty-five states is less likely than at present to be able to reach decisions on important issues, especially as the general tendency is to adopt decisions by consensus, if not of all the members, then of a majority of all members including a majority of each regional group. In addition, there is a constant threat of a veto by a permanent member, and the proposal to grant the veto right to additional permanent members is widely rejected.

A possible solution would be to adopt as a long-range goal a formula that would satisfy the major proponents of this change, with a clear understanding that it might take a long time to bring it into force; and in the meantime to adopt a compromise solution that would give more seats to the states able and willing to make a major contribution to the work (as well as in some instances to the finances) of the United Nations. This temporary solution would not require an amendment of the Charter but better compliance with the two requirements of the Charter mentioned above. The latest increases in the membership of the United Nations have diminished to some extent the discrepancy in membership among the five regional groups, and may facilitate the revision of the 1963 distribution of seats among these groups.

The UN Charter, in Article 23(2), contains another restriction that can prove helpful. It provides that "[a] retiring [nonpermanent] member shall not be eligible for immediate re-election." The General Assembly can therefore agree that five pairs of states, each from a different region, would rotate in five seats, which might be called semipermanent seats. While this proposal would ensure to the major regional powers more frequent participation in the Council, it would avoid granting them a veto right, which can be obtained only by an amendment to the Charter and is clearly not acceptable to most members of the United Nations. At the same time, other states that are important regional states would be promised more frequent election to the remaining five regional seats. For instance, while Japan and India might rotate in a semipermanent seat, Pakistan and Indonesia would be eligible for a second Asian two-year term more frequently than other states in that region (e.g., for two years every ninth and tenth year). As we have learned in the last fifty years that the situations of various states can drastically change in that amount of time, it would also be desirable for the General Assembly to agree in advance that this distribution of seats would be subject to change after another forty

years. It is possible, of course, that even before that date, the more permanent solution that might be agreed upon simultaneously with the temporary formula, or a revised version of it, would enter into force, thus simplifying the situation.

To make the proposed change even more palatable, a small revision of procedure or the practice of the Security Council might be approved. There are precedents for it. Several international organizations, including the World Bank, the International Monetary Fund and the International Labour Organization, have avoided constant increases in the membership of their governing bodies by allowing each group of electors to select not only their representative in that body but also an alternate who would be the next representative and would be allowed to participate fully in the meetings, but without the right to vote. In this way they learn about the procedure of the body and the issues being discussed and can thus become more active members when they later become the main representatives of their groups.

The UN Charter already recognized, in Article 31, the right of any member of the United Nations that is not a member of the Security Council to "participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected." This provision enables the Council to decide that the representatives of states that would become its members in the next biennium should be entitled to participate in the Council in the preceding two years. This rule would apply not only to the member of a pair of semipermanent members that is not then a Security Council member, but also to any other member designated by an electoral group as a member-elect for the next biennium. Thus, in each two-year period the Council would be composed of fifteen voting members and ten members without vote. As many other members not members of the Council often participate in the Council in accordance with Articles 31 and 32 of the Charter—Article 32 also providing for parties to the dispute to participate in the Council, without vote—there can be no strong objection to a small broadening of that procedure. If the issue is raised that the cozy chamber in the United Nations building that is used for "private" meetings of the Council cannot accommodate such an enlarged group, it is quite likely that, with a small effort, some larger chamber can be adapted for twenty-five persons.

In this fashion, the important and influential states that now do not participate in decisions of the Council would be entitled to participate without vote for two years and then continue to take part more actively, and with better preparation, in voting on issues with which they have become acquainted. This would also give additional strength to the decisions of the Council and would make them more generally acceptable.

#### *Improving the Security Council's Ability to Deal with Issues*

The Council at present has a large agenda and meets almost constantly. Its procedure, developed for more leisurely days, needs to be adapted to the new circumstances. Several things can be easily done, though some require a few procedural changes. The rules of procedure of the Council are still only "provisional," as in the early days no agreement could be reached on some proposed additions. Since the Cold War is, however, over, it should be easier to adapt these rules to modern needs. The following two changes might be most helpful.

*The presidency of the Council.* The President of the Council changes every month. Most members of the Council have this privilege at most twice during their two years on the Council, and some of them do not enjoy this temporary, but often burdensome, honor. Presidents often feel that they are ending their term at the wrong time, e.g., at the very moment when it proved possible to get the two parties to the dispute to agree to sit down at a table to discuss a presidential proposal that might settle their dispute. Most

respectable international organizations have a six-month or one-year presidential term, and something like this should be possible here. This would also permit the selection as President for such longer period of a person best qualified for this difficult and exacting job, rather than putting the fate of some nations into the hands of a person selected only on the basis of an alphabetical order of countries. The Charter envisaged greater flexibility, and Article 30 grants to the Council the power to decide upon "the method of selecting its President."

*Preventive action.* "In order to ensure prompt and effective action by the United Nations," its members conferred on the Security Council "primary responsibility for the maintenance of international peace and security" (Article 24); and it is entitled, "when it deems [it] necessary," to call upon the parties to a dispute "likely to endanger the maintenance of international peace and security" to settle it (Article 33).

In addition, the Council "may investigate" any dispute, as well as "any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security" (Article 34); and it may, "at any stage" of a dispute or situation of such nature, "recommend appropriate procedures or methods of adjustment" (Article 36). A broad power is thus conferred on the Security Council in order to prevent a dispute or situation from escalating into an armed conflict. Nevertheless, the Council has not provided clearly how it will exercise this independent authority. Instead, it waits in each case for somebody to bring the matter before it. Its Provisional Rules of Procedure make very clear that "only items which have been brought to the attention of the representatives on the Security Council" by the Secretary-General as a result of "communications from States, [or] organs of the United Nations," or from the Secretary-General himself, "may be included on the Provisional Agenda" of the Council (Rules 6–7). Of course, any state member of the Council can authorize its representative on the Council to present such a communication when it considers that a matter deserves the Council's attention. Council members are, however, reluctant to do it as long as a truly dangerous situation has not yet arisen; they are worried that one or both parties would consider this as unfriendly meddling. The Secretary-General is also likely to delay submitting such a communication until a clear danger to peace has arisen.

There is a need, therefore, to find a more neutral way to start the international machinery moving. The Council might establish, for each of the five regions used in United Nations practice, committees of three members of the Council, including in each regional committee at least one member from that region, but not more than two. Each such committee, as an organ of the United Nations, would be entitled to bring to the attention of the Council any situation within its region that is likely to lead to international friction or give rise to a dispute. Such a procedure was used successfully by the League of Nations in some categories of situations (e.g., those involving minorities), and might be used more broadly by the United Nations.

The Council's President should be kept informed by each committee of any situation it might be studying, and might decide to call a "private" meeting of the Council whenever he or she believes that the matter requires some consideration before it is put officially on the agenda of the Council. Should a committee find that a situation is seriously deteriorating, it could either ask for a "private" meeting or request that the matter be put on the Council's agenda. Similarly, if a matter comes to the attention of the Secretary-General, he or she may refer it to the appropriate regional committee for an investigation. In general, the Security Council should use more small committees or working groups to investigate in depth dangerous situations rather than refer everything to the Secretary-General, who not only is greatly overburdened by various peacekeeping

activities, but also has to supervise the many other United Nations activities relating to economic development, human rights, and the environment, which are helping member states and their peoples in more than a hundred ways.

## II. THE GENERAL ASSEMBLY

The General Assembly is considered by many as merely a forum for long-winded speeches by national dignitaries. Its many actual accomplishments are usually ignored. Like many national legislatures, it deals with too many subjects, and adopts at each session more than two hundred resolutions on topics from arms control to international waterways, from Albania to Zimbabwe. It prods the states to cooperate in dozens of areas; it guides the specialized agencies of the United Nations and more than two hundred other intergovernmental organizations, global and regional, in working together on a variety of issues; and it encourages thousands of international nongovernmental organizations to engage in humanitarian activities that benefit the peoples of the world. It develops slowly, step by step, international rules on hundreds of topics of international law, both public and private, civil and criminal. If some foundation should decide someday to assist the legal profession in collecting not only the major agreements but also the body of seemingly minor decisions, declarations, regulations and resolutions that approve hundreds of documents carefully prepared by international working groups of highly qualified experts, the world would suddenly discover that there is an international code not dissimilar to the various codes of the United States of America and its states, which also owe their existence to the patience of some American lawyers in putting together provisions scattered among hundreds, if not thousands, of laws and regulations, federal or state.

In fact, what the United Nations is doing is so diverse and so overwhelming that most officials and private lawyers have given up trying to cope with this tremendous output by the General Assembly and its many dozens of subsidiary bodies. Only students working on their dissertations and concentrating on as small a topic as possible are starting to learn how to use these materials to produce an amazing variety of long studies simply on the basis of the information that is hidden in these UN documents. (I know because, as a professor, I have to read them, and am always amazed at how much they are able to find in UN lawmaking materials relevant to their studies.)

Is it possible to diminish this chaos and to make the General Assembly more understandable, better coordinated and more useful to its member states? Here are a few suggestions.

### *Splitting the Sessions by Groups of Topics*

The General Assembly's September to December annual sessions have become unmanageable, and both the members of the UN staff and the delegations have to be satisfied with doing their small bits, without trying any longer to understand what is going on outside their little corner. Other international organizations have devised a variety of ways of dealing with similar problems, and the General Assembly may wish to adapt them to its needs. Some, like the International Labour Organization, limit each annual session to only a few topics, and try to finish them at one session (of course, after years of careful preparation). Others, like the Council of Europe and the new European Union, have devised a new model for international assemblies. They meet at three or four short sessions during the year, for a week or two, each devoted to a small list of related topics. Committees of experts on these topics meet between these sessions and try to hammer out a consensus. On a few points, a political decision is needed, and the organization's assembly either decides them or asks the experts to come up with another proposal.

Similarly, the United Nations might abandon the Assembly's annual marathon, where the leaders make long speeches, listened to by only a few persons, while others slave at preparing final texts of many documents in a legion of small working groups. The six main committees of the General Assembly discuss the prepared documents and usually adopt them by consensus or large majorities. Then at the plenary session the item is disposed of usually in less than an hour, and often in a few minutes. If there is a controversy, the matter is generally not pressed to a vote but postponed to the next Assembly. After many years of pushing things through by a majority, first against the Soviet bloc, and later against the major Western states, the Assembly discovered that it does not pay to have a pyrrhic victory that not only is costly but also produces no lasting solution, as it is not enforceable against strong opposition by one important group or another. If consensus cannot be reached, postponement is the best solution.

It would be better and more economical to split the sessions. Instead of every delegation having to send all its experts to New York for three months and work hard for a part of the session and wait for the final solution in the last few hectic days, one can envisage four one- or two-week Assembly sessions, e.g., in March, June, September and December. Each of them would deal with a different group of topics that would be prepared during the preceding two months by appropriate groups of experts. The Assembly would dispose of these topics and adjourn until the next session. This way only one-quarter of the present crowd would have to be present at a particular session, and the decision makers might be willing to come for a week and dispose of the well-prepared documents, instead of coming in September, making speeches, and having nothing to do with the final results of the session. Of course, if there is a crisis, a short special session can be called, as happens even now, during the nine months between sessions; the Assembly only adjourns in December, and terminates the session officially one day before the next Assembly in September of the next year.

#### *Providing a Better Link with National Parliaments*

A change that might be proposed with respect to a link with national parliaments would be more difficult, although it might be easier to execute this proposal should the idea of short sessions be adopted. It relates to the problem of establishing a viable connection between the Assembly and the national parliaments. At present, some governments, including the United States, attach to their delegation one or a few token members of the national parliaments. They come, participate for a few weeks in the delegation, and sometimes even sit in on negotiations with other delegations or make a speech prepared for them, on a subject usually of marginal knowledge and of little interest to them. It would be much more fruitful to have a Consultative Conference of Members of Parliament interested in topics being discussed at the particular session of the General Assembly, which would meet for a week before the Assembly, discuss the same papers to be considered by the Assembly, and adopt some suggestions with respect to them.

As the General Assembly is entitled to create any subsidiary body that may help it in better performing its functions, such a consultative body can be established by it in the same way as it created the United Nations Conference for Trade and Development—with a large staff and a panoply of subsidiary bodies, including the very useful special committees on trade in various commodities. This organization was established in 1964, during the nineteenth session of the General Assembly, despite the fact that no votes could be taken because of efforts to avoid having to deprive the Soviet Union of its vote as a result of its being in arrears for two years' worth of United Nations dues. Though we are now having another financial crisis, we can still establish any needed institutions by a regular vote of the General Assembly.

There are also several precedents for such parliamentary bodies. They have functioned for a long time in the Council of Europe, the Western European Union, the European Economic Community and its successor, the European Union. The United States Congress has been participating in several semiofficial international parliamentary bodies such as the Inter-Parliamentary Union, and in recent years in such regional bodies as are connected with NATO (the North Atlantic Assembly) and the inter-American system. In addition, in 1991, the parliamentarians from thirty-four members of the Conference on Security and Co-operation in Europe (CSCE, now changed to OSCE) established a CSCE Parliamentary Assembly at a meeting in Madrid. The membership of such bodies is usually roughly proportioned to population. For instance, in the OSCE body the United States and Russia are represented by seventeen parliamentarians each, while such small countries as Liechtenstein, Monaco and San Marino have only two each. In all these parliamentary bodies an effort is usually made for all the main parties in a national parliament to be appropriately represented in its delegation to the international body. As might have been expected, these international organizations anticipated that by becoming better acquainted with the working of each such organization and by participating in the discussion of its financial problems, the national parliamentarians on their return home would be more sympathetic to ensuring that the country concerned would pay its contribution to the organization fully and promptly.

It is also likely that, if such a body is created by the United Nations, the parliamentarians participating in it on a regular basis will better understand the tremendous job the United Nations is doing in a multitude of areas that are of concern to all states of the world, whether large or small, and that are distinguished from the peacekeeping operations, which deal with a few very difficult matters that should be of concern to all states, but in fact are not.

### III. THE INTERNATIONAL COURT OF JUSTICE

#### *The Court's Jurisdiction to Render Binding Judgments*

The International Court of Justice is the principal judicial organ of the United Nations, and all member states have accepted to some extent its obligatory jurisdiction to render binding judgments in specified categories of cases. Most of that jurisdiction is related to various bilateral or multilateral agreements, and only a minority of UN members are bound by a broader jurisdiction under the so-called optional clause in Article 36(2) of the Statute of the Court. As the United States is more likely to have claims against other states than they are to have against it, the United States is considerably disadvantaged by having denounced its acceptance of the clause, instead of substituting an improved version for the badly drafted previous declaration of acceptance.

#### *Advisory Opinions of the Court*

As the acceptance of the obligatory jurisdiction of the International Court of Justice is one of those controversial topics that this memorandum is trying to avoid, this section of the paper will consider instead a different kind of jurisdiction that is generally more acceptable, namely, advisory jurisdiction. The Charter of the United Nations authorizes the General Assembly and the Security Council to request the Court's advisory opinion on "any legal question," and both of them have made such requests, several as a result of an initiative by a group of states of which the United States was a member. The Charter, in Article 96(2), also allows the General Assembly to authorize other organs of the United Nations and specialized agencies of the United Nations to request advisory opinions of the Court on "legal questions arising within the scope of their activities." All the specialized agencies have been authorized to present such requests, and several

of them have made such requests. As far as organs of the United Nations are concerned, the General Assembly has authorized a number of them to request such opinions, including the Economic and Social Council, the Trusteeship Council and the Interim Committee (the last two no longer functioning). As the UN Secretariat is also one of the principal organs, the Assembly can, without an amendment, authorize the Secretary-General to request advisory opinions.

When an issue was raised in 1954 about the validity of certain decisions of the UN Administrative Tribunal, which has jurisdiction over disputes between the United Nations and its employees, the International Court of Justice, at the request of the General Assembly, rendered an opinion on that subject. The General Assembly then established a special Committee on Applications for Review of Judgments of that Tribunal, and several requests for advisory opinions were sent by that committee to the Court, which, after a slight hesitation, decided that it could deliver such opinions, regardless of the fact that private individuals were parties to these disputes with the United Nations. A procedure was devised to allow not only the United Nations, but also the lawyer for the individual concerned, to present briefs to the Court in each instance. While this particular procedure was abolished recently, as no longer necessary, it nevertheless created a useful precedent.

Another procedure was devised in the 1947 Agreement between the United States and the United Nations regarding the UN headquarters in New York City, which allows the UN Secretary-General to ask the General Assembly to request an advisory opinion of the Court should a legal question arise in the course of proceedings before an arbitral tribunal that may be established under that Agreement to decide a dispute concerning the interpretation of that Agreement. The Court was asked to interpret this provision when an issue arose in 1988 in connection with the proposed closure of the Palestinian Mission to the United Nations. There is also an interesting provision in the 1946 Convention on the Privileges and Immunities of the United Nations, to which the United States finally acceded in 1970. It provides, in section 30, that “[i]f a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved,” and that “[t]he opinion given by the Court shall be accepted as decisive by the parties.” There is a similar provision in the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, in section 32.

These examples of the practice of the General Assembly open the door to several kinds of advisory opinions. In the first place, as the General Assembly is free to decide in advance in what situations it would be willing to request an advisory opinion, it might consider using this power whenever its jurisdiction to deal with a particular matter or its power to make a particular decision is challenged by a considerable number of members. A decision adopted regardless of such a challenge is not likely to be generally implemented. If, however, the Court should decide that an exercise of the Assembly's powers is consistent with the Charter, the implementation of the decision would be greatly facilitated. To obtain such support, the Assembly might, for instance, approve a resolution modeled on Article 159 of the UN Convention on the Law of the Sea, which obliges the Assembly of the International Sea-Bed Authority to request that the Sea-Bed Dispute Chamber of the International Tribunal for the Law of the Sea give an advisory opinion “on the conformity with the Convention of a proposal before the Assembly on any matter,” upon written request addressed to the President of the Assembly and “sponsored by at least one fourth of the members of the Authority.” Similarly, the General Assembly might agree that it will request an advisory opinion of the Court in any case in which at least one-fourth of the member states submit a written request for such an opinion on the conformity with the UN Charter of a proposal before the



Assembly. In such a case, the Assembly would defer voting on the questioned proposal pending receipt of the advisory opinion by the Court. Proper arrangements might also be made for representatives of member states having different views on this issue to present written or oral statements to the Court.

Second, the practice of the United Nations also makes clear that the General Assembly has a large amount of discretion in broadening the advisory jurisdiction of the Court, and that it can establish a special committee for that purpose. It would serve as a channel for sending questions for advisory opinions to the Court. Like the committee on requests relating to the UN Administrative Tribunal, this new committee, with a broader mandate, should be composed of legal experts nominated by states members of the General Committee of the Assembly, which, in addition to the six or seven chairpersons of the main committees of the General Assembly, always includes the five permanent members of the Security Council among the seventeen Vice-Presidents who complement the composition of the General Committee. This new committee would have discretion to decide which requests should be forwarded to the Court, taking into account the importance of the case and its urgency, as well as the need not to overburden the Court with too many requests, especially when the docket of the Court is already full. Assuming that this gate for requests for advisory opinions would be opened by the Assembly, how might it be broadened? Several regional organizations would like to be able to submit legal issues to the Court for an advisory opinion, as well as other global intergovernmental organizations with which the United Nations has established cooperative relationships.

Third, as the number of international tribunals is rapidly increasing, and some fears have been expressed that this might lead to conflicting interpretations of important rules of international law, the Assembly might also open the door for these tribunals to be able to request an advisory opinion on legal issues, especially when they involve an interpretation of a general, rather than a regional or technical, rule.

Fourth, the 1964 American Convention on Human Rights has pioneered, in Article 64, in allowing any member state of the Organization of American States to consult the Inter-American Court of Human Rights regarding "the interpretation of this Convention or of other treaties concerning the protection of human rights in the American States." In addition, any such state may request that the Inter-American Court provide it "with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments." Several states, including the United States, have taken advantage of these provisions, and received helpful advisory opinions. The International Court of Justice might also be willing to provide this service, if it could be done through the proposed special committee of the General Assembly.

Fifth, it has been suggested that some states might prefer to submit a case to the Court for an advisory opinion rather than a binding judgment. As long as it is done by agreement between the parties, and is submitted to the Court through the special committee, there should be no objections.

Finally, another precedent that has proved successful in the European Economic Community might be followed by the United Nations. It is generally recognized that national courts have trouble with the interpretation of international agreements, and a wrong interpretation can lead to a dangerous international dispute. For that reason, the 1957 Treaty Establishing the European Economic Community, in Article 177, which appears in all successor treaties, endowed the European Court of Justice with jurisdiction "to give preliminary rulings concerning: (a) the interpretation of the treaty; (b) the validity and interpretation of the acts of the institutions of the Community; (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide." A national court or tribunal before which such a question is raised may, when it is a lower court, or must, if it is a court against whose decision there is no

judicial remedy, ask the European Court of Justice to give a ruling thereon. There is a parallel case in the United States. For instance, Florida allows the courts of other states that have a case before them involving the law of Florida to ask the Supreme Court of Florida to interpret the provision of its law that is in dispute before the other state's court. The Supreme Court of the United States has found this procedure very useful, avoiding a conflict between different states. This might be a useful approach, and the Assembly might allow its special committee to present to the International Court of Justice for an advisory opinion issues relating to a provision of an international agreement that have arisen in a domestic court, when that court needs to know how that provision should be interpreted.

The list presented here is a long one, and it might be desirable first to try a few of the proposals that seem most useful, and then broaden to others once the first experiment proves successful.

*Facilitation of the Use of Existing Procedures for Preventing, Mitigating and Settling Disputes*

The International Court of Justice (ICJ) observed its fiftieth anniversary last year and its sister institution, the Permanent Court of Arbitration (PCA), will in 1999 have its one hundredth anniversary. The ICJ in 1946 joined the PCA in the building that Andrew Carnegie gave to the PCA, which is a complementary institution to the ICJ, as its functions include not only arbitration but also the other methods for settling disputes, such as consultations, good offices, mediation and conciliation. The remaining interval between the two anniversaries should be used for combining the preparation for the end of the United Nations Decade of International Law, which also ends in 1999, with a codification of instruments of international law for the settlement of international disputes. Any dispute that is prevented, mitigated or eliminated by the means available for that purpose makes the job of the United Nations and its leading nations much easier, and the work of the United Nations less costly. In particular, the cost of settling a dispute by appropriate means is usually much less than the cost of one week of peacekeeping or one day of hostilities. Consequently, those who worry about the cost of peacekeeping or even minor hostilities should pay more attention to the means for avoiding these desperate remedies. What needs to be done is to substitute the use of peaceful means for military ones to the greatest possible extent.

Again, this can be done without forcing the states to accept unwelcome solutions. The basic international agreement dealing with dispute settlement is the 1899 Hague Convention for the Pacific Settlement of International Disputes, slightly revised in 1907. Some eighty members of the United Nations are parties to one or the other of the Hague Conventions and some are parties to both. They are, or ought to be, familiar with what these instruments offer, especially as the PCA recently adopted new sets of supplementary arbitration and conciliation rules not only for disputes between states, but also for disputes between states and entities that are not states. But what matters much more is that there are still more than a hundred UN members that are not parties to them and are reluctant at this time to ratify these—to them—ancient documents, however good they might be. Most of these states are new states that are familiar only with the United Nations that helped them achieve statehood, welcomed them, and is trying, together with the specialized agencies, to help them adapt to their independent status, when they can no longer rely on the foreign office of a former colonial power to assist them in solving a dispute. The United Nations, in its usual fashion, has been working on acquainting them with various means for settling disputes by preparing instruments on one topic after another, and getting them involved in their preparation. At this time, for instance, the United Nations has been working with them on conciliation and a final draft was approved in 1995. The older members became bored with the

whole process and did not take it seriously enough. Nevertheless, the time has arrived to combine all these new documents with the venerable Hague Conventions. One could do it by redrafting the old ones in the light of the new ones, but some of the parties to the old conventions seem to regard that as sacrilege.

The solution might be to adopt at the 1999 commemorative meeting for the Hague Conventions what in United Nations parlance is called a framework convention or declaration. This meeting might be combined with a special session of the General Assembly designed to end the Decade of International Law. This joint session could be used to approve an arrangement of the various texts already adopted by the United Nations into one properly organized document. Each state would be asked to accept only the framework convention, which would include both the collected documents of the United Nations and the documents of The Hague, with recent supplements, as annexes to it. These annexes would be subject to amendment by easier processes than have often been applied to a variety of international regulations being adopted by such organizations as the International Civil Aviation Organization, the International Maritime Organization and the World Health Organization (each revision comes into effect automatically on a specified date, except that states may notify the organization that they are not yet ready to be bound by some provisions). In approving the new framework convention, states would be considered bound to make use, to the greatest extent possible, of the various provisions relating to the settlement procedures that do not result in binding decisions. They would have the additional option to declare that until further notification they will not be bound to resort to arbitration, a tribunal or a court, except for advisory opinions where available. As far as various procedures are concerned, they would have the choice of utilizing either the Hague model or its supplements, or the procedures provided by the new United Nations instrument. The framework convention might also contain a clause allowing states that have not ratified the Hague Conventions to use the services and facilities of the Permanent Court of Arbitration and its new procedures as if they were parties to these Conventions.

The purpose of the whole enterprise would be to put together all the procedures available, allow their easy use, and make it possible for the new states to become welcome members of the Hague family. While some preparatory work would be required, it would not be too onerous, and the Hague Conference and the General Assembly should be able to approve the joint document, the framework convention and the annexes, in a few days.

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As I indicated in the introduction, I have limited myself to proposals that can be implemented without any revision of the Charter of the United Nations or the Statute of the Court. Of course, all these measures can also be presented in the form of amendments to these documents. Experience shows, however, that amendments are not easily ratified, unless there is overwhelming support for them and all the major powers and their legislatures are willing to ratify them. In any case, while the amendments await ratification, it would be extremely helpful to explore by provisional arrangements how they might work in practice. If they prove successful, their ratification would be that much easier. The full range of options made available by the Charter should be used to achieve these goals.

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