Some Provisions of the Statute of the International Court of Justice which Deserve Amendments

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I. Introduction

1. One of the signs of the precarious position of the United Nations (UN) in the contemporary international relations is the problems the World Organization faces whenever there are serious reasons for amending its Charter. The main obstacle to the necessary changes is the fear of the five permanent members of the Security Council of any amendment which could endanger their dominant role in the UN. Notwithstanding the basic principle of the Charter, that “The Organization is based on the principle of the sovereign equality of all its Members” (Art. 2, para. 1), and the various changes the original five permanent members have undergone since 1945, they consider that they have the eternal right to be more important than any others of the remaining 187 members of the UN! For this reason there is no change in the composition of the Security Council, and the necessary deletion of the provisions on the Trusteeship Council had to wait so many years.

2. Notwithstanding the above-mentioned problems in amending the UN Charter, there are two main reasons why I dare to engage in such a dangerous field. First, although the permanent members of the Security Council always manage to have each a member of the International Court of Justice (ICJ) to be of their national, they have no formal special rights either in the composition or

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in the functioning of the Court. Second, I do not propose any amendment to Chapter XIV of the Charter dealing with the Court, but to the Statute of the ICJ, which is annexed to the Charter and forms its “integral part” (Art. 92 of the Charter). In fact, I do not propose anything; I just indicate some doubts and problems I have in interpreting the Statute of the ICJ to my students.

II. Classes of Disputes

3. My first comment concerns Art. 36, para. 2, of the ICJ Statute. The hundred-year-long history of the origins of the present text of this provision is well known. Already in Art. XVI of the 1899 Hague Convention for the Peaceful Settlement of International Disputes, arbitration was suggested for settling disputes “in questions of a legal nature, and especially in the interpretation or application of International Conventions”. The same statement was repeated in Art. 38 of the 1907 Hague Convention.\(^1\)

To this category of disputes, Art. 13 of the Covenant of the League of Nations added three more classes of disputes “suitable for submission to arbitration or judicial settlement” (para. 1). They were:

Disputes… as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such break \(^2\)

It is understandable that this text was reproduced in the Statute of the Permanent Court of International Justice (PCIJ), but it is a question whether there are valid reasons for the insistence that 87 years after the adoption of the Statute, this list of disputes constitutes the contents of Art. 36, para. 2 of the Statute of the present Court.

There is no need for entering into the traditional discussions of the

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