

President Brown Weiss announced the members of the Executive Committee: José Alvarez, Judith Bello, Larry Johnson, Ellen Lutz, Linda Mabry, Jane Stromseth, and Stephen Toope. She announced Arthur Rovine and Ruth Wedgwood as co-chairs of the 1996 Annual Meeting Program Committee.

Elections for the *AJIL* Board of Editors, and the *ILM* Editorial Advisory Committee were reported on at the Business Meeting. See page 12 in the Publications Section of this *Newsletter* for further details on these elections.

Towards the conclusion of the Business Meeting, ASIL member Endicott Peabody proposed adoption of the following resolution: "The ASIL looks with approval on the proposal to form a citizens committee for congressional action to preserve and invigorate U.S. participation in the UN, and urges its members to join said movement." Based on Article VIII of the ASIL Constitution, the resolution was referred to the Executive Council for study and report. On the recommendation of the Council, the President will appoint a committee to examine both this resolution and the general issue of position-taking by the Society. (See related story immediately following this article.) The meeting adjourned at 6:00 pm. ♦

### TAKING POSITIONS

The American Society of International Law, throughout its long history, has taken few positions on matters of policy. The Society's officers would like to hear from members as to whether or not the Society should now take a position on H.R.7 and S.5, and whether the general practice of taking positions should be reconsidered. Please check off your response and reply to the Executive Director at Tillar House.

ASIL should adopt the above-mentioned resolution and disseminate it appropriately.

I agree  I disagree

ASIL should reconsider its practice of generally not taking positions.

I agree  I disagree

Name \_\_\_\_\_

Further comments, if any, may be sent on a separate sheet.

## LEGISLATION TO RESTRICT U.S. INVOLVEMENT IN UNITED NATIONS PEACEKEEPING MOVING THROUGH CONGRESS

by Richard Hartzman

Legislation now pending in the U.S. Congress, if enacted, would mark a fundamental departure from the long-standing commitment by the U.S. to UN peacekeeping activities. Many commentators are of the opinion that it would essentially gut UN peacekeeping. In a speech at the ASIL's annual meeting in New York, Madeleine K. Albright, U.S. Ambassador to the United Nations, said that she, as well as the Secretaries of State and Defense, have recommended a Presidential veto.

The legislation currently exists in two versions, H.R.7, the "National Security Revitalization Act," and S.5, the "Peace Powers Act." H.R.7 was passed by the House on February 16 and has been referred to the Senate. The Foreign Relations Committee of the Senate held hearings on S.5 on March 21. That Committee, as well as the Senate Armed Services Committee, will be reviewing the legislation. Armed Services is seeking additional comments from the military. Further action has not yet been scheduled by either committee.

Although there are many differences between the two bills, the two core provisions concerning the financing of UN peacekeeping and the command of U.S. armed forces would have substantially the same effect in both versions.

With regard to financing, the bills would limit the U.S. financial contribution to UN peacekeeping. H.R.7 would (1) prohibit the U.S. from paying more than 25 percent of total UN peacekeeping assessments (the current U.S. contribution is 31 percent); (2) impose a credit against the UN peacekeeping assessment for U.S. expenditures in support of peacekeeping; (3) prohibit the payment of peacekeeping assessments until the UN has reimbursed the U.S. for in-kind contributions of goods and services; and (4) require the withholding of all voluntary and 50 percent of assessed contributions for peacekeeping, and 20 percent of assessed contributions for the regular UN budget, unless the President certifies to Congress that the UN has complied with a series of requirements relating to the creation and operation of an independent office of Inspector General. The primary provision in S.5 concerning financing is similar to the credit provision of H.R.7.

Peacekeeping is defined in both bills as "any international peacekeeping, peacemaking, peace-enforcing, or similar activity that is authorized by the

United Nations Security Council under chapter VI or VII of the Charter." However, H.R.7 would create an exception for those activities which the U.S. "would undertake unilaterally" if they were not authorized by the Security Council.

With regard to the command of U.S. armed forces, both H.R.7 and S.5 would prohibit the President from placing any forces participating in a UN peacekeeping activity under the command or operational control of any foreign national unless the President certifies to Congress that such command or control is necessary to protect national security interests. In addition, H.R.7 would prohibit the funding of U.S. forces serving under foreign command or control in a UN peacekeeping operation unless the President certifies to Congress that such command or control is necessary to protect national security interests. H.R.7 has exceptions from the foreign command and control prohibitions for those U.S. forces serving in NATO and in UNPROFOR in Macedonia and Croatia.

The Clinton Administration has taken the position that the provisions regarding the command of U.S. forces would be an unconstitutional intrusion into the President's authority as Commander in Chief, and that the financing provisions would violate U.S. treaty obligations under the UN Charter.

While there are many other elements in these two bills, three in S.5 are particularly striking. One provision would repeal the War Powers Resolution, substituting simple consultation and reporting requirements. A second would require prior notice to Congress of Security Council votes on peacekeeping activities 15 days in advance, except in the case of an emergency, in which case notice must be given within 48 hours after the vote.

A third provision makes it a crime for "any officer or employee of the United States Government who knowingly and willfully obligates or expends United States funds to carry out any" UN peacekeeping activity if the previously mentioned notice requirements have not been met. This provision creates a dilemma for military personnel. If they disobey the command of a superior with regard to peacekeeping activities because of an absence of the requisite notice, they may be subject to court-martial under the Uniform Code of Military Justice. If they obey their commander when the required notice has not been given, they would be subject to the criminal penalties of the provision.

Overall, some analysts see this legislation, if enacted, as signifying a shift from multilateralism to unilateralism in U.S. foreign policy. ♦

*(COURT continued from page 1)*

According to its Statute, which forms an integral part of the UN Charter, the Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States (contentious cases) and to give advisory opinions on legal questions referred to it by certain organs and agencies within the UN system.

#### I. Contentious Cases.

In contentious cases, only sovereign States may apply to and appear before the Court. The Member States of the UN (at present numbering 185), and two States not members (Nauru and Switzerland) which have become parties to the Court's Statute, are so entitled. The Court is competent to entertain a legal dispute only if the States involved have accepted its jurisdiction. Generally speaking, this may be done in one of three ways, namely by the conclusion between them of a Special Agreement to submit the dispute to the Court, by virtue of a jurisdictional clause in a treaty to which both are parties, or, finally, through the reciprocal effect of Declarations made by them under the Statute whereby each State has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar Declaration. In the latter two situations, the case is said to have been brought by one Party's "Application." The Declarations of some 58 States are now in force, a number of them having been made subject to the exclusion of certain categories of dispute.

States Parties in contentious cases presently pending before the Court represent many different regions of the world. They include Australia, Bahrain, Bosnia and Hercegovina, Cameroon, Guinea-Bissau, Hungary, Iran, Libya, Nigeria, Portugal, Qatar, Senegal, Yugoslavia (Serbia and Montenegro), Slovakia, and the United Kingdom. The United States is Respondent (the term used for the defendant) in three cases, two instituted by Iran and one by Libya.

The proceedings before the Court include a written phase, in which the Parties file and exchange pleadings (called "Memorial" and "Counter-Memorial" and, in case of a second round, "Reply" and "Rejoinder"), and an oral phase consisting of public hearings at which Agents and counsel address the Court. The cases, with their official names, in which the above-mentioned States are presently involved are:

1. East Timor (Portugal v. Australia). This case was brought by Portugal in its capacity as the Administering Power of East Timor. Portugal claims, *inter alia*, that Australia has breached international law, in particular East Timor's right to self-determination, by the conclusion with Indonesia, which is occupying East Timor, of a 1989 treaty concerning the exploration