

ASIL UN OBSERVER REPORT

- by Richard Hartzman

Sixth Committee. Maria del Lujan Flores, who was elected Chairperson of the Sixth Committee in September 1993, is the first woman to serve as Chairperson of the Committee. Flores has been the Deputy Permanent Representative from Uruguay to the UN since 1991. During the last session of the Committee, Flores, who has a distinguished career in international law, served as the Committee's Vice-Chairperson.

The 48th Session of the General Assembly has allocated a dozen items to the Sixth Committee for consideration and review. As part of its regular responsibilities, the Committee will review the annual reports of the International Law Commission (ILC), the UN Commission on International Trade Law (UNCITRAL), the Committee on Relations with the Host Country, and the Special Committee on the Charter of the United Nations and on Strengthening of the Role of the Organization.

The major item to be considered from the ILC report is the set of draft articles for an international criminal tribunal. Two key items to be considered from the report of the Special Committee on the Charter are a draft declaration submitted by the Russian Federation on the improvement of cooperation between the UN and regional organizations, and the effects of international sanctions on third-party States. The main item of consideration from the UNCITRAL report is a Model Law on Procurement of Goods and Construction which was adopted by UNCITRAL at its July 1993 meeting in Vienna.

The Sixth Committee will, in addition, consider the question of responsibility for attacks on UN and associated personnel, the draft convention on jurisdictional immunities of States and their property, measures to eliminate international terrorism, the progressive development of principles and norms of international law relating to the new international economic order, a proposed request for an advisory opinion from the ICJ relating to extraterritorial jurisdiction, and the procedure provided for under Article 11 of the UN Administrative Tribunal.

The Committee will also review the report of the UN Program of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, as well as the activities of the UN Decade of International Law. The latter agenda item includes a proposal for a congress on public international law to be held at the Headquarters in New York not earlier than 1995.

Election of Judges to the ICJ. Five members of

the International Court of Justice were elected by the UN General Assembly and Security Council on November 10, 1993. Those elected, Carl-August Fleischhauer (Germany), Geza Herczegh (Hungary), Shigeru Oda (Japan), Jiuyong Shi (China), and Abdul G. Koroma (Sierra Leone), will serve nine-year terms commencing February 5, 1994. Judges Herczegh and Oda were already serving on the Court. The three retiring members are Jens Evensen (Norway), Bola A. Ajibola (Nigeria), and Ni Zhengyu (China).

The election, which took place during three meetings of the General Assembly and the Security Council, is governed by the ICJ Statute, and by the rules of procedure of the Assembly and Council.

Article 13 of the Statute requires a triennial election of five of the fifteen members of the Court. Nominations are made in accordance with Articles 5 through 7. The Secretary-General invites members of the Permanent Court of Arbitration which are parties to the ICJ Statute to submit names of candidates. The Secretary-General then prepares a list of the nominees for submission to the General Assembly and the Security Council.

Article 10 of the ICJ Statute requires an absolute majority vote in both the General Assembly and Security Council for a candidate to be elected. The vote in the Security Council is taken without distinction between permanent and non-permanent members. Thus, eight votes are required in order to be elected in that body.

As for the General Assembly, there are presently 184 members. In addition, pursuant to Article 4, paragraph 3, of the Statute, and General Assembly Resolution 264 (III) of October 8, 1948, Nauru and Switzerland, parties to the ICJ Statute but not UN members, were allowed to participate in the balloting. Accordingly, ninety-four votes were needed to be elected by the General Assembly.

The election in each body proceeds independently, as required by Article 8 of the ICJ Statute. Neither body is apprised of the results of the other until balloting is concluded. Rule 151 and rule 61 of the rules of procedure of the General Assembly and Security Council, respectively, provide for balloting to continue until enough candidates are elected by each body as are required to fill all seats.

If the list of elected candidates from each body differ, only those are deemed elected who receive absolute majority votes from both bodies. If less than five are elected, Article 11 of the Statute requires a second and, if necessary, a third meeting to fill the remaining seats. If there remain unfilled seats after the third meeting, Article 12 provides for the creation of a joint conference of six persons, three appointed by the General Assembly and three by the Security

Council. The conference can choose by absolute majority vote a candidate for each remaining vacant seat. Those chosen are submitted to the Assembly and Council for their acceptance. Article 12 contains additional procedures for completing the election in the event of a deadlock.

In the November election, the voting was completed during the third round of meetings so that use of the extraordinary Article 12 procedures did not become necessary. At the first meeting of the Security Council, Messrs. Fleischhauer, Herczegh, Jesus, Oda, and Shi received absolute majority votes on the first ballot.

In the General Assembly there were three ballots at the first meeting. Messrs. Fleischhauer, Oda, and Shi received the requisite majority on the first ballot. Prior to the second ballot, Messrs. Vassylenko and Ssekandi withdrew their candidacy. The second ballot was inconclusive. Before the third round of balloting, additional names were withdrawn—Adede, Asante, Chongwe, and Yankov. On the third ballot Messrs. Koroma and Herczegh received the needed majority vote. However, since the Assembly and Council did not agree on one of the candidates, the first round of voting resulted in the election of only four members to the Court: Fleischhauer, Herczegh, Oda, and Shi.

The Security Council and General Assembly remained split in the voting for the remaining seat during their second meetings, the Council again voting for Jesus of Cape Verde, and the Assembly again voting for Koroma of Sierra Leone. After this vote, Jesus withdrew his candidacy. At the third meeting of both bodies, Koroma received an absolute majority vote and was thus elected to fill the fifth vacant seat.

1994-1995 Budget for Law and Justice Activities. The 48th Session of the General Assembly will be considering the UN program budget for the 1994-1995 Biennium. The proposed budget for International Law and Justice (UN Doc. A/48/6 - Part III) in thousands of U.S. dollars includes the following: the International Court of Justice was allocated \$19,427. \$3,731 was allocated for policymaking entities such as the International Law Commission, the UN Commission on International Trade Law, the UN Administration Tribunal, the Commission established by Security Council Resolution 780 (1992), and the Conference on Straddling and Migrating Fish Stocks. The program of work in international law and in Law of the Sea and Ocean Affairs was allocated \$30,565. The total, including the ICJ and extrabudgetary resources, would be \$57,281. ♦

ASIL CAPITOL HILL BRIEFING HELD ON U.S. ROLE IN UN PEACEKEEPING - by Phillip J. Collins

Continuing its series of Capitol Hill briefings, on October 5 the Society convened a panel of three experts, David Scheffer, Senior Advisor and Counsel to the U.S. Ambassador to the UN; Colonel James P. Terry, U.S. Marine Corps, Legal Counsel to the Chairman of the Joint Chiefs of Staff; and Steven Dimoff of the United Nations Association of the United States, to discuss the role of the United States in UN peacekeeping operations.

Scheffer began the discussion by noting that President Clinton, Secretary of State Christopher, and UN Ambassador Albright had all spoken on peacekeeping recently. The United States is committed to promoting democracies and market-oriented economies. Conflicts are increasingly being brought to the UN. Chapter VI of the UN Charter has been applied for classic UN peacekeeping, such as in the Middle East and Cyprus. Recent actions by the UN in Desert Storm, Somalia, and, to some extent, in Yugoslavia, have taken place under the UN's Chapter VII mandate to maintain international peace and security. The U.S. is seeking to focus on the cases it considers appropriate for peacekeeping and peace enforcement.

The Secretary-General's report, "An Agenda for Peace" contributed to an inter-agency review of peace operations. The inter-agency group had reached a consensus and prepared a draft, which will be finalized after consultation with Congress, and then be ready for the President's signature. Finance issues are being ironed out to reflect reality. There is no artificial deadline for completing the review.

As Ambassador Albright pointed out in a speech on September 23 at the National War College, U.S. policy on UN peacekeeping and humanitarian relief provides that UN peacekeeping is never a substitute for national defense. The U.S. views participation in UN actions with other forces as a "force multiplier," allowing it in the end to commit fewer American troops. It is looking for burden sharing for policies and support and windows of opportunity to address conflicts—not endless commitments of troops abroad. U.S. entry into UN peacekeeping efforts requires consideration of several factors, including: whether international aggression or a humanitarian disaster or atrocity coupled with violence has occurred; a community of interest in the operation; clear objectives; availability of resources; and an identifiable endpoint. For Chapter VI operations, the U.S. will require a cease-fire by the parties. For the Chapter