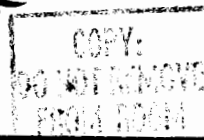


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FIFTH COMMITTEE
71st meeting
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Friday, 11 December 1981
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 71st MEETING

Chairman: Mr. ABDALLA (Sudan)

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The meeting was called to order at 10.55 a.m.

AGENDA ITEM 107: PERSONNEL QUESTIONS

(b) OTHER PERSONNEL QUESTIONS: REPORTS OF THE SECRETARY-GENERAL

Respect for the privileges and immunities of officials of the United Nations and the specialized agencies (continued) (A/C.5/36/31; A/C.5/36/L.16/Rev.1, L.36, L.37 and L.40)

1. Mr. van HELLENBERG HUBAR (Netherlands) introduced the revised draft resolution on respect for the privileges and immunities of officials of the United Nations and the specialized agencies (A/C.5/36/L.16/Rev.1), on behalf of the sponsors: Australia, Barbados, Belgium, Canada, Costa Rica, Denmark, Germany, Federal Republic of, Ghana, Liberia, Netherlands, New Zealand, Norway, Philippines, Portugal, Senegal, Singapore, Spain, Sweden and Thailand. The sponsors had decided to defer the introduction of the draft resolution until the current meeting because they felt that, if it was adopted, it would be of fundamental importance to the United Nations and its staff. He hoped the Committee would understand that, in proposing the draft resolution, the sponsors were not putting any particular country on trial. Nor, as was clear from the group's composition, did they represent the one-sided view of a particular group of countries. All of them, however, had strong feelings on the way in which the principles that Member States had adhered to in regard to respect for the status of staff members should be implemented. The subject was of great importance to the well-being of the staff and thus to staff members' effectiveness in exercising their functions in sometimes difficult circumstances.

2. When he had introduced the original draft resolution (A/C.5/36/L.16) at the 59th meeting, he had said that the sponsors hoped for a consensus. The representative of the Union of Soviet Socialist Republics had observed then that, in his view, the draft resolution needed considerable amendment. The sponsors had since held lengthy exchanges of views with various delegations and had tried, in a spirit of compromise, to accommodate the wishes of those delegations which had submitted formal amendments to draft resolution A/C.5/36/L.16 as well as those making other suggestions. The outcome of that negotiating process was now before the Committee.

3. The revised draft resolution struck a fair balance between the need to protect staff members and the obligations with which staff members must comply. The sponsors had accepted the idea that if Member States were to be asked to safeguard the physical security of the staff, the obligation incumbent upon staff members to refrain from activities which could not be regarded as compatible with their functions should also be stressed. Accordingly, the revised draft incorporated section 21 of article V of the 1946 Convention on the Privileges and Immunities of the United Nations.

4. The draft resolution introduced no new elements with legal consequences. It did not extend more or larger immunities to the staff, nor did it extend the

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(Mr. van Hellenberg Hubar, Netherlands)

range of staff to whom those immunities applied. It merely reaffirmed the existing commitments of Member States and the existing powers of the Secretary-General and the executive heads of the specialized and related agencies. According to the Convention on the Privileges and Immunities of the United Nations, it was for the Secretary-General to indicate to whom immunities and privileges were to be granted. That was done, for instance, in agreements between the agencies and the host countries. Since there were no new legal consequences, it was in complete conformity with the Fifth Committee's mandate to deal with the subject. Those delegations which alleged that, because of the legal implications involved, the Fifth Committee should take no decision on the draft resolution were perhaps seeking an excuse to avoid taking a position on the matter of principle.

5. He drew attention to the changes that had been made in the revised draft resolution. A minor correction should be made in the heading, which should read "Respect for the privileges and immunities of officials of the United Nations and the specialized and related agencies". The words "the consensus reflected in" had been deleted from operative paragraph 1 at the request of the delegation of the German Democratic Republic, which had pointed out that General Assembly resolution 35/212 had been adopted without a vote and not by consensus. The preamble to the draft resolution had been made much longer by the inclusion of a number of paragraphs from the General Assembly resolution of the previous session. In the third preambular paragraph, the reference in the original draft resolution to paragraph 6 of the Secretary-General's report (A/C.5/35/31) had been deleted, and a fourth preambular paragraph had been added: "Noting the position consistently upheld by the United Nations in the event of the arrest and detention of United Nations staff members by governmental authorities". Given the logical relationship between paragraph 6 of the Secretary-General's report and operative paragraph 1 of the draft resolution, that was a major concession. He noted that the sixth and seventh preambular paragraphs did not constitute prior conditions to the enjoyment of privileges and immunities.

6. The ninth preambular paragraph reaffirmed the relevant staff regulations. Those regulations included obligations for staff members to respect the character of their official capacity as international civil servants. The inclusion of that reaffirmation would preserve the balance between the rights and the duties of the staff, about which a number of delegations had expressed concern.

7. In the operative part, paragraph 1 had been slightly changed. The phrase "in accordance with the rights inherent under the relevant Conventions", had been inserted, in order to make it clear that the paragraph was not intended to give the Secretary-General or the executive head of the organization concerned more sweeping powers than were allowed for in the relevant Conventions mentioned in paragraph 2 and by the legal interpretation of those Conventions. The sponsors had no wish to go beyond established practice and the position consistently upheld by the United Nations. In his report, the Secretary-General had indicated

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the legal grounds for that position, which was supported by an advisory opinion of the International Court of Justice in accordance with section 30 of article VIII of the Convention on the Privileges and Immunities of the United Nations. The phrase "in conformity with international law", relating to the appeal to Member States to recognize the functional immunity of a staff member asserted by the Secretary-General, had been inserted at the end of the last sentence of operative paragraph 1.

8. Operative paragraph 2 was new and had been included in order to answer the concern of many delegations that, in reaffirming their intention to grant the necessary protection to staff members, Member States should be given an assurance that the Secretary-General and the executive heads of the agencies would ensure that the staff observed the obligations incumbent upon them. Together with the ninth preambular paragraph, which reaffirmed the relevant staff regulations, it created a better balance within the draft resolution and would, the sponsors hoped, remove most of the concern that had been expressed in that regard.

9. In operative paragraph 3, the words "prima facie" in the original draft resolution had been replaced by the words "where there are clear indications", thus bringing it into line with operative paragraph 2 of General Assembly resolution 35/212. There were no substantial changes in operative paragraph 4, which had two important elements. First, the Secretary-General was requested to submit a report on behalf of the Administrative Committee on Co-ordination. The implication was that the report would be approved by the ACC prior to its submission to the General Assembly. The intention was to make sure the report truly reflected the opinions of the executive heads as well as the opinion of the Secretary-General. It was hoped thus to avoid future disputes about whether the Secretary-General's report faithfully reflected the reports submitted to him by the executive heads and to allay political antagonism. The second important element, the request for an annual report, did not automatically assume that there would be serious cases to report on, but merely that there might be. However, the existence of an obligation on the part of the Secretary-General to report annually would ensure continuing vigilance on his part and would also avoid the ad hoc politicization of the cases under review. The current report (A/C.5/36/31) had already had a benign effect on certain cases. Also, an annual report should make it unnecessary for the General Assembly to have to draft and debate a similar resolution, year after year. One of the main purposes of the revised draft resolution was to take the political heat out of the issue before the Committee.

10. Turning to the proposed amendments, he noted that the new operative paragraph 2 proposed by the USSR (A/C.5/36/L.37) requested that an official of the Member State of which an arrested or detained staff member was a national should be allowed to visit him at his place of arrest or detention. That was a matter which should be dealt with through bilateral consular contact between the host State and the country of which the staff member concerned was a national, and was adequately dealt with in the 1963 Vienna Convention on Consular Relations.

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(Mr. van Hellenberg Hubar, Netherlands)

Furthermore, the proposal related to a question which did not fall within the scope of the subject under discussion. The same was true of the second amendment in document A/C.5/36/L.37; the question raised in the new paragraph 3 was a new element, and could best be dealt with in a separate draft resolution.

11. The alterations proposed in the joint amendments of Ethiopia and the German Democratic Republic (A/C.5/36/L.36) would completely reverse the thrust of the revised draft resolution. The proposed fourth preambular paragraph was quite the opposite of the fourth preambular paragraph of the draft resolution, and the sponsors could not accept it. The proposal to replace the eighth preambular paragraph of the draft resolution would partly undermine the foundation on which the Secretary-General based his duties in regard to the protection of the status of staff members. Clearly, the aim of the amendment was to deprive the Secretary-General or the executive head involved of any opportunity to be active and dynamic in supporting the staff. The reaffirmation of the obligations of the staff had already been incorporated in the revised draft resolution. Amendment 3, proposing to replace operative paragraph 1, simply repeated operative paragraph 1 of General Assembly resolution 35/212. But operative paragraph 1 of the revised draft resolution was also based on that paragraph and simply stated in more specific terms what was implicit there. Amendments 4 and 5 of document A/C.5/36/L.36 would seriously affect the revised draft resolution and were therefore unacceptable. Unless an annual report was requested, the Secretary-General would be without firm guidelines and might possibly be subjected to outside pressure.

12. The sponsors of the draft resolution were aware of the wish of some delegations to defer the item to the thirty-seventh session of the General Assembly. The implication was that the same matter would be discussed all over again, but in the meantime the Secretary-General would not have been given the guidelines and support he was entitled to expect from the General Assembly. That would seriously affect the morale of the staff. As the Committee which dealt with administrative questions, the Fifth Committee was also responsible for creating the necessary conditions for the well-being and effective functioning of the staff. If it did not take a decision, it would disappoint the staff and the Committee would either look evasive or give the impression that its members had reasons for not wishing to express themselves on respect for privileges and immunities. He believed that, after the debate that had already taken place on the subject, and after the statement by the representative of the Secretary-General, the Committee was in a position to take a decision in conformity with its responsibilities. The sponsors hoped, therefore, that the draft resolution would meet with broad approval.

13. Mr. RICHTER (German Democratic Republic), introducing the amendments to the revised draft resolution submitted by Ethiopia and the German Democratic Republic (A/C.5/36/L.36), said that those delegations had had to proceed from the fact that the revised draft resolution was virtually a new text that had not been discussed or agreed upon by the sponsors and the delegations which

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(Mr. Richter, German Democratic Republic)

had submitted amendments to the original draft. Some of those early amendments had been taken into account, but others which were more important had not been accepted. Amendments 1 and 2 of document A/C.5/36/L.36 referred to that part of the preamble which was closely related to the operative part, and in particular to operative paragraph 1. The text suggested for the fourth preambular paragraph was a compromise that would reflect the various positions expressed in the Committee. After all, the United Nations was first and foremost the Member States. Amendment 2, which would replace the eighth preambular paragraph, spoke for itself. He stressed that an advisory opinion of the International Court of Justice could not serve as the basis for a resolution to be agreed upon by all members of the Committee.

14. Amendment 3, replacing operative paragraph 1, had already been put forward in document A/C.5/36/L.20. It had been resubmitted because the procedure provided for in operative paragraph 1 of the revised draft resolution was not part of the Charter or of the relevant Conventions, nor was it international law as such. Accepting that procedure would be a near violation of the sovereignty of Member States and it was certainly outside the Committee's mandate to propose it. The proposed amendment, therefore, referred only to the Convention on Privileges and Immunities. The proposed deletion of operative paragraph 4 and the rewording of operative paragraph 3 of the revised draft resolution were necessary to bring the text into conformity with operative paragraph 1 as proposed in the joint amendment.

15. In conclusion, he noted that the delegations of Ethiopia and the German Democratic Republic would have preferred to continue the negotiations in order to reach a compromise satisfactory to all the members of the Committee.

16. Mr. KUDRYAVTSEV (Union of Soviet Socialist Republics) said that his delegation believed that the revised draft resolution needed still further refinement and on that basis had suggested a number of amendments. He regretted that the sponsors had not seen fit to accept any of them. By so doing, they had failed to demonstrate any real interest in an objective and effective decision on the question of the over-all safeguarding of the privileges and immunities of international staff.

17. The amendments in document A/C.5/36/L.37 spoke for themselves. They were directed towards a consistent and practical strengthening and enhancement of the level of privileges and immunities of international staff, especially those serving at United Nations Headquarters and the headquarters of the specialized agencies. The position of the Soviet Union in that regard had been set out in detail in its statement of 1 December 1981 (A/C.5/36/SR.59). In addition to the three operative paragraphs in document A/C.5/36/L.37, the Soviet delegation wished to propose a final operative paragraph which would read: "Decides that, starting from its thirty-seventh session, the item entitled 'Respect for the privileges and immunities of officials of the United Nations and the specialized agencies' should be considered by the Sixth Committee of the General Assembly". He stressed again that the proposed amendments were based

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(Mr. Kudryavtsev, USSR)

on the need to improve the draft resolution in order to enhance the level of the privileges and immunities accorded to international staff.

18. Mr. BOUSHEV (Bulgaria) said that, given the agenda item, it was natural that the main theme of the revised draft resolution should be the privileges and immunities of United Nations officials. However, that was not an abstract notion and must be viewed in relation to the political, social and economic realities of Member States. The Bulgarian delegation felt that, as it stood, the draft resolution reflected only one side of the interaction between the staff and Member States. The resolution should, however, regulate both sides, and the observance of the privileges and immunities of the staff should not be at the expense of the rights of Member States. Accordingly, the Bulgarian delegation had submitted an amendment (A/C.5/36/L.40) reaffirming the right of Member States to decide matters within their domestic jurisdiction. Taken in conjunction with Article 100 of the Charter, that would create the necessary balance. Since the tenth preambular paragraph of the revised draft resolution was identical in substance to the sixth preambular paragraph, it should be deleted. The sixth paragraph was preferable because it referred specifically to Article 100 of the Charter.

19. Mr. FARIS (Jordan) said that he wished to make some minor oral amendments to draft resolution A/C.5/36/L.16/Rev.1. He proposed the replacement, in the third preambular paragraph, of the words "Having considered" by the word "Noting" and the addition, at the end of the eleventh preambular paragraph, of the words "in accordance with the provisions of the Conventions and agreements specified in the second preambular paragraph above".

20. In operative paragraph 1, he proposed the deletion from the second and third lines of the words "whether internationally or locally recruited". He proposed the replacement, in the fifth line of the same paragraph, of the word "Conventions" by the words "multilateral Conventions and bilateral agreements" and the addition, at the end of that paragraph, of the words "and in accordance with the provisions of the applicable bilateral agreements between the host country and the United Nations or the specialized or related agency concerned". He proposed, in the fifth line of operative paragraph 4, the replacement of the words "inherent right and duty" by the words "responsibility in accordance with the multilateral Conventions and applicable bilateral agreements".

21. The reason for the amendment to the third preambular paragraph was his delegation's reservations with regard to document A/C.5/36/31, because it used ambiguous terms not recognized by the United Nations.

22. Mr. LAHLOU (Morocco) said that his delegation supported the oral amendments of Jordan.

23. Mr. YOUNIS (Iraq) said that document A/C.5/36/31 contained many contradictions. Many countries were mentioned in it, including three Arab countries, while no reference was made to the capitalist countries. Some parts were characterized

(Mr. Younis, Iraq)

by political connotations that were misleading.

24. The Committee had gone beyond its framework. There were political aspects involved in the preparation of draft resolution A/C.5/36/L.16/Rev.1, which represented an attempt to impose the view of a certain group. Some delegations felt that it was not possible to adopt the draft resolution by consensus, while others insisted on adding amendments with legal aspects and political connotations. Haste should be avoided in adopting such an important resolution on a very intricate and sensitive topic. It would, moreover, create problems for Governments in the implementation. While he shared the concern for the welfare and safety of United Nations staff members, he felt that the Committee should not insist on adopting the draft resolution now as it would be better to adopt a resolution in a quieter atmosphere, for example in the Sixth Committee at the next session of the General Assembly.

25. Accordingly, his delegation formally proposed that the whole question should be postponed until the thirty-seventh session of the General Assembly.

26. Mr. EL SAFTY (Egypt) said that, whereas the Fifth Committee was a financial committee, draft resolution A/C.5/36/L.16/Rev.1 dealt with political and legal questions and required the expertise of the Sixth Committee. His delegation therefore agreed with Iraqi proposal. Although some aspects of the item related to personnel questions, a matter within the purview of the Fifth Committee, the latter could always give advice on those aspects without becoming involved in political and legal questions.

27. Mr. QUTASH (Democratic Yemen) said that he supported the Iraqi proposal, because the question presented legal aspects relating to international conventions and treaties. There was a need for further study of all questions relating to the privileges and immunities of officials of the United Nations and of the specialized agencies, in order to assure the necessary protection of staff members while guaranteeing non-infringement of the sovereignty of Member States. Since the Committee was unable to reach consensus, all parties should be given an opportunity to refer back to international treaties and the legislation of Member States. The item should therefore be referred to the Sixth Committee.

28. Mr. van HELLENBERG HUBAR (Netherlands) said the fact that the Committee had before it draft resolution A/C.5/36/L.16/Rev.1 and the item had been under consideration for several weeks showed that the Committee was not acting in haste. He felt that the Iraqi representative had been jumping to conclusions when he had said that it would not be possible to reach a consensus in the Committee. The Jordanian amendments, for example, had been considered by the sponsors, and he did not exclude the possibility of incorporating them or others in the text.

29. Since Iraq's formal proposal was a substantive one, which, in accordance with the rules of procedure, should be taken up after a decision on draft resolution

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(Mr. van Hellenberg Hubar, Netherlands)

A/C.5/36/L.16/Rev.1, he proposed that the meeting should be suspended for consultations among the sponsors of draft resolution A/C.5/36/L.16/Rev.1 and the delegations which had submitted amendments.

30. Mr. FARIS (Jordan) supported the Netherlands proposal.

31. The Netherlands proposal was adopted.

The meeting was suspended at 12.10 p.m. and resumed at 12.45 p.m.

32. Mr. van HELLENBERG HUBAR (Netherlands) said that, in the light of the consultations just held, he moved that debate on the matter be adjourned until the Committee's next meeting.

33. The CHAIRMAN said that, in accordance with rule 116 of the rules of procedure, two representatives might speak in favour of and two against the motion for adjournment of discussion on draft resolution A/C.5/36/L.16/Rev.1.

34. Mr. RICHTER (German Democratic Republic), speaking against the motion, said that under the rules of procedure the proposal made by the representative of Iraq should be given priority. The Committee should therefore vote on that proposal immediately instead of adjourning the discussion until its next meeting.

35. Mr. GEBRE-MEDHIN (Ethiopia) said that although the Netherlands delegation had indicated that the sponsors of draft resolution A/C.5/36/L.16/Rev.1 would consult delegations which had proposed amendments, his delegation had not been consulted. A decision on the question had already been postponed several times, and his delegation believed, therefore, that the Iraqi proposal should be voted on immediately.

36. Mr. FARIS (Jordan) and Mr. PEDERSEN (Canada) said that their delegations endorsed the Netherlands motion for the adjournment of discussion of the matter until the Committee's next meeting to allow time for further consultations.

37. The Netherlands motion was adopted by 73 votes to 18, with 2 abstentions.

38. Mrs. DORSET (Trinidad and Tobago) said that her delegation had not participated in the vote because the Committee had not abided by the rules of procedure.

39. Mr. BUNC (Yugoslavia) said that his delegation had abstained during the voting because it had not understood whether the purpose of the Netherlands motion was to allow for consultations among all interested groups, or merely within a single group.

40. Mr. RUGWIZANGOGA (Rwanda) said that his delegation had not participated in the vote because the representative of the Netherlands had stated that he would

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(Mr. Rugwizangoga, Rwanda)

consult all delegations which had proposed amendments but had not done so. In view of that breach of procedure, it was doubtful whether the results of further consultations would be more conclusive than those of past ones had been.

41. Mr. EL SAFTY (Egypt) said that his delegation had voted against the Netherlands motion because the sponsors seemed reluctant to consult other interested delegations. His delegation hoped that the next round of consultations would be fruitful. If it was not, however, further consideration of the matter should be deferred until the thirty-seventh session of the General Assembly.

The meeting rose at 1.05 p.m.