

GENERAL ASSEMBLY

SEVENTH SESSION

Official Records



AD HOC POLITICAL COMMITTEE, 42nd

MEETING

Friday, 12 December 1952, at 3 p.m.

Headquarters, New York

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Chairman: Mr. Alexis KYROU (Greece).

Admission of new Members: (a) Status of applications still pending: report of the Security Council (A/2208); (b) Request for an advisory opinion from the International Court of Justice: draft resolution submitted at the sixth session by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua (A/AC.61/L.29, A/AC.61/L.30, A/AC.61/L.31, A/AC.61/L.32)

[Item 19]*

1. Mr. URQUIA (El Salvador) recalled that, as a result of the request made at the sixth session by the delegations of Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador, the question of the admission of new Members had been placed on the agenda of the General Assembly's seventh session. Those five delegations had submitted a draft resolution (A/C.1/708) proposing that the International Court of Justice should be asked to give an advisory opinion on the following two questions: (1) What were the rules or criteria to be followed in interpreting the result of votes in the Security Council on recommendations for the admission of new Members? (2) Could the negative vote of one of the permanent members nullify a recommendation for admission which had obtained seven or more votes? By resolution 506 B (VI), the General Assembly had decided to refer that draft resolution to the next session for detailed study. The draft, which was before the Committee, had now been issued under the symbol number A/AC.61/L.29.

2. With the exception of Guatemala, the sponsoring delegations maintained their attitude on the question of the admission of new Members but they had come to the conclusion that, instead of making a new request for

an advisory opinion from the International Court of Justice, which had been consulted twice before on that subject, the Assembly should try to solve the problem itself, either directly or on the basis of a detailed study by a special committee composed of an appropriate number of Member States. That was why the four delegations in question had decided to replace the original draft (A/AC.61/L.29) by a new draft resolution (A/AC.61/L.31). The new text was based on the same motives and arguments and its sole purpose was to help in finding a solution which would break the dead-lock.

3. Mr. Urquia then proceeded to analyse the draft resolution of the four Central-American States.

4. The first three paragraphs of the preamble were sufficiently clear in themselves and required no comment; they simply set forth obvious facts which no one had ever denied. The fourth and fifth paragraphs of the preamble referred to the circumstances in which the unanimity rule for the permanent members of the Security Council had been adopted at the San Francisco Conference, when the sponsoring Powers had been obliged to issue the statement of 7 June 1945 which placed specific restrictions on the scope of the right of veto. Everyone was aware of the serious difficulties which, at the San Francisco Conference, had held up acceptance of the formula adopted at the Yalta Conference for the voting procedure in the Security Council. Many delegations, representing the medium and small States, had not been prepared to admit the privilege of the veto for the great Powers, or they had at least expressed certain doubts on the extent to which that privilege should be used.

5. In that connexion, Mr. Urquia recalled the question asked by the New Zealand representative in Committee III/1, on 17 May 1945, regarding the way in which the veto power of the permanent members of the Security

* Indicates the item number on the agenda of the General Assembly.

Council would operate. On that occasion, the New Zealand representative had expressed the hope that a full explanation of the procedure would be offered by the sponsoring governments, as it was felt that a great opportunity to lead the world toward a better security system had been lost in the form of the voting procedure proposed. That question had given rise to a lengthy debate with the active participation, on the one hand, of the delegations of the States which were to become the permanent members of the Security Council and, on the other hand, of numerous delegations which either strongly opposed the veto or else wished to have a sufficiently clear explanation of the scope of the unanimity rule. As the explanations given by the future permanent members of the Security Council had not been satisfactory, Committee III/1, at the request of Colombia, supported by Cuba and Peru, had set up Sub-Committee III/1/B composed of the future permanent members and five other delegations. Together with the Committee's Rapporteur, the representative of El Salvador, the Sub-Committee had been asked to study section C of chapter VI of the Dumbarton Oaks Proposals which set forth the unanimity rule.

6. Sub-Committee III/1/B had taken the view that the best method of discharging its duty was to submit a list of questions regarding the exercise of the veto to the sponsoring Powers through the Secretariat. Thus it was that the sponsoring Powers had received a questionnaire containing twenty-three questions asked by many delegations, including that of El Salvador, which had submitted questions 20 and 21. El Salvador had asked whether the abstention from voting of any one of the permanent members of the Security Council would have the same effect as a negative vote by that member and whether the abstention of a permanent member which was a party to a dispute would prevent the Security Council from reaching a decision.

7. On 7 June 1945, the sponsoring Powers had issued their "Statement by the delegations of the four sponsoring governments on the voting procedure in the Security Council". That statement had been published as an annex to a communication from the Chairman of Committee III/1 announcing that the French delegation associated itself completely with the statement.

8. In the light of that statement, Committee III/1 had reopened its discussion on the structure and procedures of the Security Council with particular reference to the voting formula adopted at Yalta. The Committee had devoted five very animated meetings to the discussion of that question. When it appeared that the Organization's establishment depended upon the acceptance of that voting formula, the unanimity rule had been adopted, in the light of the assurances given by the great Powers and in particular the contents of the statement of 7 June 1945. Mr. Urquía recalled that the unanimity rule had been adopted at Committee III/1 by 30 votes to 2, with 15 abstentions, 3 members being absent. Colombia and Cuba had voted against the rule and El Salvador had been among those abstaining.

9. He explained that the history of the subject had been drawn from the information contained in volume XI of the *Documents of the United Nations Conference on International Organization, San Francisco, 1945* which reproduced, among others, the questionnaire submitted to the sponsoring Powers, the communication

from the Chairman of Committee III/1 and the statement of 7 June 1945¹.

10. Mr. Urquía then read paragraph 1 of the statement of 7 June 1945; that paragraph dealt with chapter VIII of the Dumbarton Oaks Proposals, which corresponded to Chapters VI and VII of the Charter. It contained a complete enumeration of the cases relating to the maintenance of international peace and security in which the permanent members could use the right of veto: the cases were exclusively those in which the Security Council had to make decisions which involved its taking direct measures in connexion with the settlement of disputes, the adjustment of situations likely to lead to dispute, the determination of threats to the peace, the removal of threats to the peace, and suppression of breaches of the peace. It also stated that the decisions of the Security Council, which did not involve the taking of such measures, would be governed by a "procedural vote", namely, the vote of any seven members. The fourth and fifth paragraphs of the preamble to the four-Power joint draft resolution reproduced the terms of that passage of the statement of 7 June 1945.

11. The sixth paragraph of the preamble recalled that, in the statement of 7 June 1945, the expression a "procedural vote" referred to subjects which might not be procedural in the strict sense of the term. Indeed, the statement did not say that the second category of decisions covered procedural questions; it simply stated that those questions would be governed by a procedural vote. In other words, any decisions which did not involve the taking of direct measures for the maintenance of international peace and security were, for voting purposes, held to be procedural. It was in that spirit that Article 27, paragraph 2, of the Charter had been drafted; it was a restatement of paragraph 2 of the Yalta formula.

12. Paragraph 1 of the statement of 7 June 1945 showed clearly that the great Powers had not intended the word "procedural" to be interpreted strictly. The validity of that interpretation of paragraph 1 became still more apparent if the text was read in conjunction with paragraph 2, which gave as an example a list of decisions which were to be taken by a procedural vote. From that list, it could be noted that the Security Council could, by a vote of any seven of its members, adopt or alter its rules of procedure, and establish such bodies or agencies as it might deem necessary for the performance of its functions. In both those cases it was obvious that the questions were not strictly procedural. For that reason the United States Government had proposed in the Interim Committee, in March 1948 (A/AC.18/41), the adoption of a list of decisions which the Security Council could take by an affirmative vote of any seven of its members, some of those decisions being related to procedural questions and others to questions which were not procedural. At the top of that list appeared the decision on the question of the admission of new Members, pursuant to Article 4 of the Charter.

13. The words "procedural matters" in Article 27, paragraph 2, of the Charter should not be interpreted

¹ See *Documents of the United Nations Conference on International Organization*, III/1/19, III/1/22, G/1, III/1/B/2 (a), III/1/37 (1), III/1/48.

too strictly, although some were apt to adopt a strict interpretation. For evidence in favour of a liberal interpretation, it was sufficient to read paragraph 3 of the same Article which could not possibly be construed strictly. In that connexion, it was significant to recall the questions asked at the San Francisco Conference by Mr. Castro, the representative of El Salvador, who had asked what would happen if one or more of the permanent members of the Security Council abstained from voting, or if one of the permanent members was obliged to abstain because it was a party to a dispute. The statement of 7 June 1945 made no reference to that possibility, but Mr. Stassen, the United States representative, had said that Article 27, paragraph 3, should be interpreted to mean that the abstention of a permanent member could not by itself prevent the Security Council from taking a decision². Obviously that interpretation was not strictly in conformity with the literal terms of Article 27, paragraph 3. The Security Council had recognized that the abstention or the absence of a permanent member could not destroy the validity of the Council's decisions even if they were not concerned with procedural questions. Decisions had been taken on questions of world-wide historical importance in spite of the absence or abstention of one or more of the permanent members of the Council. Accordingly, it could be inferred from the foregoing considerations that Article 27 of the Charter had always been construed liberally.

14. To give a legal explanation of what had happened at the San Francisco Conference concerning the unanimity rule, it might be said that the great Powers had made what was known, in the law of contract, as an offer. That offer was defined in the statement of 7 June 1945 and it was on the basis of the explanations and assurances given in that statement that the other States had voted in favour of the unanimity rule, or had abstained.

15. The Charter of the United Nations was a contract. The main requirements of a valid contract were the capacity of the parties and consent. In the case of an international treaty, the consent arose out of the negotiations which led to the adoption of certain formulae, and the latter were embodied in a treaty or convention. Subsequently, the treaty had to be signed by the parties and then ratified in accordance with the constitutional processes of each State. It was clear that, when ratifying the United Nations Charter, the various governments had relied on the reports made by their delegations and, in the particular instance of Article 27, they must have taken into account the questionnaire submitted to the great Powers and the statement of 7 June 1945. Most governments had certainly studied the complete texts of the questionnaire and the statement.

16. As the United States representative had recalled at the General Assembly's fifth session during the discussion in the First Committee (354th meeting) of the draft resolution entitled "Uniting for Peace", the small Powers had agreed to the right of veto subject to certain reservations. There had been no unconditional acceptance on their part and they had insisted on specific guarantees which were to restrict the scope

of the privilege they were conferring on the five great Powers.

17. The delegation of El Salvador, like the other delegations from Central America, had always held that view. It had always considered that some had ventured beyond those agreed restrictions and abused the right of veto. For example, on 12 October 1950, the representative of El Salvador had recalled in the First Committee (361st meeting), that his Government had never approved of the way in which the unanimity rule imposed at the San Francisco Conference had subsequently been applied. He had added that the exercise of the right of veto could stultify a vote on critical issues and with that consideration in view Member States should try to formulate a procedure which would enhance the Organization's prestige.

18. The seventh paragraph of the preamble to the draft resolution stated that the admission of new Members was included among the cases which were dealt with by a procedural vote. The question was certainly not unconnected with the maintenance of international peace and security because, under Article 4 of the Charter, the General Assembly was to act upon the recommendation of the Security Council and both organs should express an opinion on the candidate State and decide in particular whether it was a peace-loving State and whether it was able and willing to carry out the obligations contained in the Charter. It could not, however, be said that the Security Council's recommendation was a decision that might entail the adoption of direct measures concerning the settlement of disputes, the adjustment of situations likely to give rise to disputes, the determination of the existence of threats to the peace, the removal of threats to the peace or the suppression of breaches of the peace. In other words, the question of the admission of new Members could not be considered as being one of the questions listed in paragraph 1 of the statement of 7 June 1945.

19. The eighth and last paragraph of the preamble was of capital importance. It stated that the General Assembly had the right and also the duty to decide on the cases pending and in so doing could and should apply the criterion maintained in the statement of 7 June 1945, according to which the Security Council was to act on that subject by a procedural vote. Some might claim that that provision ran counter to rule 135 of the General Assembly's rules of procedure and to the second paragraph of rule 60 of the Security Council's rules of procedure. Nevertheless, there was no denying that the primary responsibility for the admission of new Members lay with the General Assembly and not with the Security Council. If the Security Council was asked to settle the question—and there were those who advocated that method—it was a moral certainty that such a proposal would meet with the all-out opposition of the USSR, which would not agree to any limitation whatever of the sphere of application of the veto.

20. If the Security Council were able to deal with the question of the admission of new Members in an objective manner, without introducing the unanimity rule, it would not be necessary to consider the procedure recommended in the draft resolution. Such a

² *Ibid.*, III/1/48.

hope was, however, vain. If the General Assembly asked the Security Council to revise the rules for the application of the veto, one of the permanent members might abuse that right and take advantage of it to prevent the Council carrying out the desired examination. Since the problem could not be solved that way, and since the responsibility for the admission of new Members lay not with the body that made the recommendation but with the body that made the final decision, Mr. Urquía was convinced that the General Assembly would be acting with complete legality and would not violate a single principle if it followed the suggestion made in the eighth paragraph of the preamble. On the contrary, by so doing the United Nations would ensure the application of a declaration that was an integral part of its legal structure.

21. It was inadmissible that the action of the United Nations in a question of such importance should be indefinitely paralysed because of the immovable opposition of one member of the Security Council, which made use of untenable arguments, such as the argument it had invoked in the cases of Ireland, Portugal and the Hashemite Kingdom of Jordan, to the effect that those countries did not maintain diplomatic relations with the USSR. It was a pity that the United Nations could not place more confidence in the Security Council or, to be more precise, in one of its members. The Central-American delegations did not blame China, France, the United Kingdom and the United States for the attitude of the Security Council; the delegations of those four States had expressly stated that they would not use the veto in dealing with the admission of new Members.

22. The operative part of the draft resolution was the logical result of the preamble, particularly of its last paragraph, which stressed the fact that it was the right and the duty of the General Assembly to decide on the outstanding applications for admission. Under its terms, the General Assembly would decide to consider each application separately and to make its decision in accordance with the merits of each case and the results of a vote taken in the Security Council in conformity with Article 27, paragraph 2, of the Charter.

23. In short, the object of the draft resolution of the four Central-American States was to settle the question of the admission of new Members in those cases where at least seven of the members of the Security Council had voted for the admission of the State in question. In every one of such cases, the General Assembly would have to decide for or against admission after having determined whether or not the State in question fulfilled the conditions laid down in Article 4 of the Charter.

24. The Central-American delegations wished to emphasize that their concept and their efforts had had the support of eminent jurists. When the question of what body should be given the right to interpret the Charter had arisen at the San Francisco Conference, a number of delegations had proposed that that right should be conferred on the International Court of Justice; that proposal had, however, met with opposition from the great Powers and it had been decided that each United Nations body should have the right

to interpret those provisions of the Charter for the application of which it was responsible. If the Security Council informed the General Assembly that seven or more of its members had voted in favour of the admission of a State but that one of the permanent members of the Council had voted against such admission, it would be for the General Assembly, and not for the Security Council, to interpret and apply the provisions of Article 27 of the Charter and to decide whether or not there was a favourable recommendation by the Security Council. If the Assembly considered that the question was one to which the veto could apply, it would decide that there was no recommendation; if, on the other hand, it regarded the question as procedural, it would decide that the affirmative vote of seven members of the Security Council authorized it to examine the application and take its own decision in the case.

25. Mr. Urquía then quoted an extract from the message the President of the United States had delivered before the United States Senate on 2 July 1945, when he had submitted the United Nations Charter for ratification by the Senate. In his message, Mr. Truman had pointed out that the points of disagreement that had arisen at the San Francisco Conference had been less numerous than the points of agreement and that they had been more closely related to the methods to be applied than to the principles to be drawn up.

26. Lest the short time left before the closing of the present session should prevent the Committee from giving the question the thorough examination it merited and taking a decision on the matter, the delegation of El Salvador, together with the delegations of Costa Rica, Guatemala, Honduras and Nicaragua, was submitting another draft resolution (A/AC.61/L.32).

27. The draft resolution of the five Central-American States provided that the General Assembly should appoint a special committee to make a detailed study of the question, examining the proposals and suggestions which had been made in the General Assembly and its Committees, namely, the proposals contained in the Peruvian draft resolution (A/AC.61/L.30) and the draft resolution of the four Central-American States. The sponsors of the five-Power draft resolution had no desire to prevent the question being discussed; on the contrary, they were anxious that there should be a full discussion of the matter. The five-Power draft resolution would be taken up only if the Committee found itself unable to reach a decision of substance on the question.

28. In conclusion, the representative of El Salvador stressed his delegation's desire that a solution should be found for the problem of the admission of new Members. The grave problems threatening world peace called for nothing less than the sustained efforts of all peace-loving States that accepted the obligations of the Charter and were willing and able to carry them out.

29. Mr. SOTO (Chile) asked which of the draft resolutions before the Committee were to be taken as the basis for discussion.

30. Mr. URQUIA (El Salvador) pointed out that the only draft resolutions that dealt with the substance of the question were that of Peru and the draft resolution of the four Central-American States; those two should therefore serve as a basis for discussion.

31. Mr. BELAUNDE (Peru) thought it desirable that the Committee should discuss all aspects of the problem and should examine thoroughly the various possible solutions, even if the short time that remained made it impossible for a decision of substance to be taken. Although drafted in different terms, the two proposals of substance were inspired by the same principle. The proposal in the draft resolution of the five Central-American States had a certain value, because it was quite likely that the Committee would not be able to come to a decision before the end of the current session. The Peruvian delegation would not press for a vote on its draft resolution if circumstances did not allow of it, but it would take part in a general discussion of the two proposals of substance and would be glad to hear the other delegations' comments on its own draft. In the event of the Committee being unable to take a decision on the substance of the question, the comments that would be made on the various draft resolutions would be of great benefit to the proposed special committee.

32. Mr. CARPIO (Philippines) pointed out that if the Committee was not to take a decision on the substance of the question and if the Peruvian draft resolution and the four-Power draft resolution were only to be referred to the proposed special committee, it was illogical for the two draft resolutions to contain an operative paragraph in which the General Assembly took certain decisions on the substance of the question. Only after a vote was taken could a decision be made.

33. The CHAIRMAN said that, in the eventuality contemplated by the representative of El Salvador, the Committee would vote in due course on the five-Power draft resolution and could also decide to submit the Peruvian draft and the four-Power draft resolution to the proposed special committee. If the special committee endorsed those proposals, they would be included in the report it was to make to the General Assembly's eighth session.

34. Mr. BELAUNDE (Peru) urged that in any case the question should be discussed thoroughly in the Committee. It was a particularly important question, the solution of which might have political repercussions of great significance. Moreover, the Peruvian draft resolution had been submitted first and should be examined first.

35. Mr. CASTILLO ARRIOLA (Guatemala) shared the Peruvian representative's point of view. The delegations of the Central-American States had just withdrawn the draft resolution that they had submitted to the sixth session of the General Assembly (A/AC.61/L.29). They were now submitting, on the one hand, a new draft resolution, which must be the subject of a thorough discussion, and, on the other hand, a second draft resolution in case the first draft could not be put to the vote. Those delegations wished to ensure that the question would not simply be postponed to the General Assembly's eighth session with-

out any useful decision having been taken at the current session.

36. Mr. CARPIO (Philippines) saw no major difference of substance between the Peruvian draft resolution and the four-Power draft resolution, although the preamble in the two drafts noted facts about which there might be some disagreement. The sponsors of the two drafts could perhaps confer with a view to submitting one single draft, which would simplify the discussion considerably.

37. Mr. URQUIA (El Salvador) said that the sponsors of the two draft resolutions would study the Philippine representative's suggestion. For the moment, however, the Committee had before it two draft resolutions on the substance of the question, which must be thoroughly discussed and, if possible, put to the vote. If they were voted upon, the five sponsoring delegations would withdraw their second draft resolution.

38. Mr. BELAUNDE (Peru) said that the present dead-lock on the question of the admission of new Members was but one aspect of the serious crisis in the United Nations. Lord Halifax, United Kingdom representative, had declared at the San Francisco Conference³ that if the principle of unanimity of the permanent members of the Security Council was not adopted the world would be divided into two rival blocs. The principle had been adopted, yet his fears had been realized. It was really more a political than a legal problem. The crisis was due to deep-seated causes. Had the USSR not adopted the attitude that had characterized it ever since the San Francisco Conference, the present situation, where one-fifth of the countries of the world were excluded from the United Nations, would not have arisen. The main responsibility for the situation clearly lay with the USSR. The other four great Powers, however, were not entirely free of responsibility: if China, France, the United Kingdom and the United States had declared flatly that the veto could not be used in the question of the admission of new Members, instead of simply stating that they themselves would not use it in that connexion, the present dead-lock would not have occurred.

39. The Security Council's practice conflicted with the principle of universality. It had interpreted the voting procedure adopted at the San Francisco Conference in a manner extending beyond its own jurisdiction and affecting indirectly other principal organs of the United Nations. The Security Council was not the whole United Nations and the General Assembly also had something to say in the matter, for it had received its mandate directly from the peoples whose representatives had drafted the Charter at San Francisco, and the Security Council was their representative only in second place. Hence, the interpretation of the Charter was a matter primarily for the General Assembly. Admittedly, the Security Council was an independent organ but, under Article 10 of the Charter, the General Assembly exercised a right of supervision over the Security Council since it could make recommendations to the Council on any matters within the scope of the Charter, except as provided in Article 12.

³ *Ibid.*, III/1/45.

40. The General Assembly had failed to appreciate the seriousness of the problem and instead of attacking the evil itself, had tackled merely the symptoms. That was how it had dealt with the abnormal situation created in the Security Council by the USSR's exercise of the veto on the question of the admission of new Members. It was, indeed, abnormal for a State to pronounce itself in favour of another and then, at the time of voting, to refuse it the right already recognized. After recognizing the qualifications of applicants such as Italy and agreeing that other countries such as Portugal, Ireland, Nepal and Ceylon should be admitted to membership on condition that other applicants supported by the USSR were admitted at the same time, the USSR had vetoed their admission. The General Assembly had then asked the International Court of Justice for an advisory opinion on the question whether, in the matter of the admission of new Members, a State could make its consent dependent on conditions other than those expressly provided in the Charter.

41. The real issue, however, was whether the Security Council was competent to decide a matter which pertained to both the Council and the General Assembly concurrently. The Court had given an excellent reply to the question by stating that a Member State, voting on the application of a State for membership in the United Nations, was not juridically entitled to make its consent to admission dependent on conditions not expressly provided by Article 4, paragraph 1, of the Charter. Hence the Court had held that such an attitude constituted a violation of the Charter. At the sixth session, in particular by a draft resolution (A/C.1/702/Rev.3) submitted in the First Committee, the Peruvian delegation had endeavoured to persuade the General Assembly to adopt that opinion, and it had subsequently been incorporated in resolution 506 A (VI). In that respect the resolution had represented a considerable step forward.

42. Long before the General Assembly's sixth session, the Argentine delegation had maintained that the final decision on the admission of new Members lay with the Assembly. In its view, the Security Council merely weighed the evidence, a process which could not determine the decision of the General Assembly; the latter remained free to decide entirely at its discretion. That had been a perfectly sound argument. The Argentine representative had, unfortunately, tried to differentiate between the Security Council's affirmative and negative recommendations. That had led him to submit, at the General Assembly's fourth session, a draft resolution (A/AC.31/L.18) to the effect that the General Assembly should ask the International Court of Justice to decide whether or not a recommendation from the Security Council necessarily had to precede action by the General Assembly. In that respect, however, the provisions of the Charter were very clear and once again the real issue—the value of the Security Council's recommendations on the question and the procedure by which it was to vote—had not been raised.

43. A very interesting suggestion had been put forward by the Lebanese delegation. After acknowledging that a recommendation by the Security Council was essential as being expressly required by the Charter, the Lebanese delegation had pointed out that in the procedure for

the admission of new Members such a recommendation represented only a preliminary and indecisive stage, since the final decision rested with the General Assembly. The Lebanese delegation had considered that a recommendation was a preliminary act which, while raising substantive questions such as a State's qualifications for membership, was nevertheless essentially of a procedural nature. Since procedural matters did not require the affirmative vote of the permanent members of the Council, such a vote should not be required in the question of the admission of new Members. It was difficult, however, to challenge an established precedent. One of the advisory opinions of the International Court of Justice had complicated matters further and the Court had remained silent on the principal issue, which was the procedure by which the Council should adopt recommendations on that question.

44. In a desire to make a new effort and to attack the problem from a new angle, the Peruvian delegation had made a detailed study of Article 4 of the Charter. Under that Article, applicants were required to satisfy two categories of conditions: firstly, they had to be peace-loving and accept the obligations contained in the Charter; secondly, they must, in the judgment of the Organization, be able and willing to carry out those obligations. The first category of conditions applied only to the applicant State itself, whereas the second category called for a judgment by the Organization; the United Nations had to decide not only the applicant's present attitude, but also its future international conduct.

45. Such a judgment as to the future could not be discretionary, still less arbitrary. Mr. Belaúnde disagreed with Kelsen's theory that States had the right to make an absolute, discretionary and arbitrary decision. When a State furnished objective proof that it had pursued a peaceful policy and had behaved in accordance with the standards of international law, it was contrary to the spirit of the Charter to attempt to prove on the basis of a purely subjective judgment that that State would be unable or unwilling in the future to carry out the obligations contained in the Charter. In modern law the scope of discretion had narrowed to the point where it covered only cases where the law had not explicitly provided for the complications of modern life. In all other cases, reasons were required for a judgment and proof was essential. In that connexion, General Assembly resolution 506 A (VI) introduced a new factor in that it provided that candidates for membership in the United Nations were allowed to submit proofs. Clearly, a vote determined by conditions which were not provided in the Charter or which was at odds with evidence that had not been disproved was an arbitrary act. In such a vote the unanimity rule could not apply, as it had been designed solely for legitimate purposes.

46. Mr. Belaúnde had repeatedly referred to the spirit in which the unanimity rule had been interpreted and adopted at the San Francisco Conference. It was wrong to claim that that Conference had confirmed the principles established at Yalta. The hostility to the unanimity rule displayed at San Francisco, the number of abstentions, and the explanatory statements of the delegations which had voted for that rule as a result of the statement of 7 June 1945, all made it clear that the unanimity rule had never had the meaning that

the USSR ascribed to it. He recalled the lively discussions on the question and the efforts of the Australian representative, supported by the overwhelming majority of delegations, to determine clearly the cases to which the unanimity rule would apply, and especially to prevent it from being applied to matters relating to the settlement of disputes, investigations and even mere discussions. President Roosevelt had had to send his personal representative to persuade Marshal Stalin to agree that the unanimity rule would not apply to mere discussion.

47. At that time the Peruvian delegation had opposed the unanimity rule but after hearing the French delegation's argument that without the unanimity rule there could be no Charter and that the rule would apply only to exceptional cases, and after receiving other assurances, it had interpreted the unanimity rule in the same manner as many other delegations, in a way which restricted the USSR's interpretation of the rule at Yalta. The concept of the veto had changed radically. It had ceased to be a privilege and had become an obligation: no longer could a great Power take up an *a priori* position, no longer could it state that it entertained only one specific solution to a problem open to several solutions, and its primary duty was to seek agreement so that the solution might represent a unanimous view.

48. Thus, the unanimity rule imposed on the permanent members of the Security Council both a moral duty and a legal obligation: their primary duty was to seek agreement and it was only when agreement had proved impossible that the right of veto came into play and no decision was taken. In other words, before the permanent members could exercise their right of veto they first had to seek agreement and then it had to be shown that agreement was impossible, though solely for legitimate reasons. To illustrate his argument, Mr. Belaúnde assumed the hypothetical case of two permanent members, one of whom recommended an investigation into a particular question, while the other considered that such an investigation and the attendant publicity might prove prejudicial to the cause they wished to serve and might have dangerous or unfortunate political repercussions. In such a case there would be legitimate reasons for the second member's position and by using its right of veto it would not be violating the Charter. By contrast, no State could be held to be entitled or empowered to use its veto in order to impose a solution in conflict with the Charter.

49. It might admittedly be asked who or what would determine whether or not the reasons prompting a permanent member's negative vote were legitimate. The answer was clear: common sense. Surely, it was not arguable that the USSR's veto on the admission of certain States was legitimate when the USSR had itself conceded that those States qualified for admission and had proposed that they should be admitted on condition that other candidates it supported were also admitted. That was not the spirit in which the unanimity rule had been adopted at the San Francisco Conference. Moreover, by adopting General Assembly resolution 377 (V) entitled "Uniting for Peace", the United Nations had shown that it would not accept an interpretation of the veto which paralysed the implementa-

tion of the Charter. It had thereby established a precedent of which it could be proud. The question then at issue had been the vital question of peace. But the question of the admission of new Members could not really be dissociated from that of peace. The United Nations was entitled to require applicants for membership to satisfy certain conditions, but once those conditions were fulfilled it was intolerable that one single State should, by abusing its privileges, refuse admission to peace-loving States and so deprive the Organization of the universality which it should enjoy and which would alone enable it to ensure the maintenance of an equally universal peace.

50. Those were the points to which the Peruvian draft resolution provided the answer. It challenged the practice of the Security Council and introduced a number of new factors, such as the legitimacy of the veto. One of its basic arguments was that the United Nations should be neither a political alliance nor a sort of club from which those not approved by the USSR would automatically be excluded. Peace, equality of rights and resistance to aggression, which were the highest purposes of the United Nations, could not be subordinated to economic or political interests, or to ideological or racial affinities.

51. The problem should be considered from every angle and in the light of all the possible political consequences. The crisis with which the United Nations was at present faced reflected the crisis through which mankind was passing and which was foreshadowed as early as the San Francisco Conference. The USSR had not come to that Conference in a spirit of peace. Already then it had been preparing for the "cold war" which had made its appearance soon after and which had degenerated, in Korea, into a conflict for which the USSR alone was responsible.

52. For all those reasons, it was the object of the Peruvian draft resolution to make it clear that, in conformity with the debates at the San Francisco Conference, the Security Council's vote on the question of the admission of new Members should be a procedural vote to which the unanimity rule did not apply, to determine the circumstances in which the veto was legitimate, and to ensure, by referring to the precedent of the "Uniting for Peace" resolution, that the application of the Charter was not paralysed.

53. The United Nations could consider various solutions to the serious problem before it: it could convince the USSR, which would be something of a miracle; it could amend the Charter, which was impossible without the consent of the USSR; or it could appeal, as the final instance, to the human intelligence against the inadequacy of the law, against the dead letter which was contrary to the spirit. Where the law was conflicting, inapplicable, or contained no provision covering a specific problem, the judge searched his conscience and decided in accordance with the dictates of a supreme justice which transcended human law. The United Nations could not accept a situation whereby fifteen States, some of which should be prominent in its ranks, were not admitted to membership solely because Article 4 was not clear or because the Security Council had bowed to the will of the USSR. The States had known how to resist the USSR in Berlin and Korea. They

could not allow the USSR to win the legal battle because of their own legal scruples.

54. Mr. Belaúnde hoped that the States which had championed the same causes as the Peruvian delegation at the San Francisco Conference would follow him in

the path he recommended and that the Committee would thus make it possible to admit to the United Nations fifteen States which would bring to it the riches of their civilization.

The meeting rose at 6 p.m.