

**GENERAL
ASSEMBLY****ASSEMBLEE
GENERALE**TERMS OF OFFICE OF MEMBERS OF COUNCILSREPORT OF THE SIXTH COMMITTEE TO THE GENERAL ASSEMBLY

Rapporteur: Mr. W. E. Beckett (United Kingdom)

1. The General Assembly, at its second plenary meeting held on 11 January 1946, referred to the Sixth Committee the Provisional Rules of Procedure for the General Assembly together with all amendments that might be proposed. The Sixth Committee, at its ninth and tenth meetings on 5 February 1946, considered the report of its Sub-committee which it had appointed to consider the rules of procedure (A/C.6/25) concerning an amendment to Rule 78 and Supplementary Rule S of the provisional rules of the procedure proposed by the Delegation of Egypt (A/C.6/14).

2. The Sixth Committee adopted by substantial majority the amendment proposed by the Delegation of Egypt and recommends that the General Assembly should amend the provisional rules of procedure as follows:

(a) Rule 78 should read as follows:

"The term of office of each member shall begin immediately on election by the General Assembly, provided the seat to which such member has been elected is vacant, or, if the election takes place before the expiry of the term of office of the member previously elected, immediately it becomes vacant;" - and

(b) Supplementary Rule S should be deleted.

3. (a) Those who supported the amendment pointed out in the Sub-committee and the Sixth Committee that under the present

provisional rules members elected for one year on the Security Council or the Economic and Social Council would not serve for more than eight months and that the term of members elected on the Trusteeship Council would be in effect cut down by at least nine months. Rule 78 and Supplementary Rule S, under which this was possible, were in direct conflict with Articles 23, paragraph 2; 61, paragraph 3; and 86, paragraph 1, of the Charter. Moreover, Rule 78 violated the Charter inasmuch as the Rule provided that the term of office of each elected member should end on the election of a member for the next term. Thus under the Rule the General Assembly could, at its own discretion, extend or reduce the term according to the date on which the elections were held and this was contrary to the provisions of the Charter.

(b) The amendment, it was urged by those who supported it, provided a solution which was fully in accordance with the Charter. It introduced, it is true, an interval between the election and the date of taking of office by the elected member, but there was no objection to this because no real connection existed between the Sessions of the General Assembly and the work of the Councils, making the synchronization of an election and the beginning of the term of office imperative. Intervals between the appointment or election of office holders and the beginning of their terms of office were not unknown to the constitutions of many countries. Further, the Delegations who supported the amendment emphasized that they were actuated by the desire to see the provisions of the Charter fully implemented and that they felt that where rules of procedure were in conflict with

the Charter, the Charter must prevail.

4. Those who opposed the amendment felt strongly that the elections held during the first part of the First Session of the General Assembly had taken place after the rules of procedure in question had been adopted by the General Assembly and that they had been held on the basis of these rules. These rules must have been in the minds of most of the Delegations at the time. As political considerations were involved, the results of the elections might have been different if the terms of office would have to be construed according to other rules than Rule 78 and Supplementary Rule S. The adoption of the amendment would stultify the actions of the General Assembly.

5. In reply to these arguments it was pointed out that the rules of procedure as they stand were of a provisional nature and had already been amended in several important respects in the meantime. It was also argued that no rules of procedure, whether provisional or permanent, could be accepted which were in conflict with the Charter which is the supreme constitutional law of the United Nations. Moreover, the argument that the rules in question had formed the basis for the elections held at this part of the First Session and that they had been in the minds of the Delegations at the time, was disputed. It seemed more likely that it was the provisions of the Charter which had been in the minds of the Delegations.

6. (a) In the course of the discussion, serious doubts were expressed as to whether it would be advisable to introduce an interval between the election and the beginning of a term of office. Though there was no provision in the Charter which made their synchronization necessary, it was felt by some Delegations that weighty practical considerations could be

adduced in favour of such synchronization. In the first place, regular sessions of the General Assembly would, as a rule, coincide with the sessions of the Councils. Secondly, if the amendment was adopted, members who had been elected for a one year term would have to work for one third of their total term as "lame ducks". During this period their position would be weakened. Thirdly, during this interval members of the Council might be forced to consult with those members who had been elected, but whose term of office had not yet begun. This again was undesirable. Fourthly, the election of the members of the Council represents, in a sense, an expression of opinion by the members of the United Nations on the policy pursued by the members of the Council. There should therefore be no unduly long interval to make the election effective with regard to the composition of the Council.

(b) Other Delegates, however, felt that an interval would be useful and others did not agree that the objections were of a serious nature.

7. (a) The argument that Rule 78 and Supplementary Rule S were in conflict with the Charter clearly impressed many members of the Sub-committee and of the Sixth Committee, including some Delegates who opposed the proposed amendment. Some of the latter described the position as embarrassing and saw the only perfectly constitutional solution in an amendment of the Charter.

(b) Others felt that the approach to the problem should be less legalistic and urged that a solution should be sought in a manner which was in accord with the real spirit of the constitution considering that, in view of the political

considerations involved, it was for the General Assembly - possibly at its Second Session - rather than for the Sixth Committee, to consider the main issue namely whether Rule 78 should be modified and Supplementary Rule S should remain in force in the meantime.

(c) This last view was one influence which led the Subcommittee to adopt the recommendation rejected by the Sixth Committee proposing that under Rule 77 the General Assembly should each year, in the course of its regular session, elect the members of the Councils by secret ballot; that for reasons of practical convenience Rule 78 should be maintained; and that the General Assembly should decide whether the term of office of states elected to Councils in January 1946 should be in accordance with the Supplementary Rule S or whether it should be extended by one year in each case.

8. Several Delegations sought a solution of the problem by advancing suggestions, the adoption of some of which would result in an alteration in the duration of terms of office as compared with those contemplated by Supplementary Rule S. One group felt that a solution may be found by interpreting the period of one year as envisaged by the Charter when it defines the terms of office, as meaning a "working year". This "working year" could begin, for example, on 1 September. Another suggestion was that the term of office of a member should begin on 1 January after its election by the General Assembly and should end on 31 December of the year of election of a member for the ensuing term. Another proposal was that the term of office should be extended by one year in each case, a proposal which evoked the reply that in view of the political considerations involved in the

elections which had been held, the terms of office should, if anything, be reduced rather than extended.

9. Most of the Delegates, whether they supported or opposed the amendment, thought that the elections held last January should be considered as valid. But probably the argument which weighed most in favour of the amendment was that Rule 78 and Supplementary Rule S were not in accordance with the Charter.

10. I have the honour, therefore, on behalf of the Sixth Committee, to propose that the General Assembly adopt the following resolution:

RESOLVED THAT:

(a) Rule 78 of the Provisional Rules of Procedure is amended to read as follows:-

"The term of office of each member shall begin immediately on election by the General Assembly, provided the seat to which such member has been elected is vacant, or, if the election takes place before the expiry of the term of office of the member previously elected, immediately it becomes vacant."

(b) Supplementary Rule S of the Provisional Rules of Procedure is deleted.
