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*Chairman:* Mr. Edvard HAMBRO (Norway).

*In the absence of the Chairman, Mr. Seaton (United Republic of Tanzania), Vice-Chairman, took the Chair.*

AGENDA ITEM 88

Question of methods of fact-finding (*continued*) (A/6686 and Corr.1 and Add.1-3; A/C.6/L.624/Rev.1, A/C.6/L.626)

1. The CHAIRMAN drew attention to two new documents before the Committee—the revised text of the draft resolution on the question of methods of fact-finding (A/C.6/L.624/Rev.1), incorporating the changes announced by the representative of Togo at the previous meeting, and some amendments to the original draft (A/C.6/L.626), proposed by the United Arab Republic.

2. Mr. DARWIN (United Kingdom) recalled that the history of the item under discussion dated back to 1963. Those wishing to contribute their views had had opportunities to do so in writing or in the course of debate, and the time had now come to draw conclusions on the subject. Almost all delegations in the Committee had recognized the importance of fact-finding; for serious and successful discussion of political, as well as legal, problems could best proceed on a clear and established view of the incidental facts.

3. The observations of the United Kingdom Government were contained in document A/6686, and it might be useful to compare them with the observations of other Governments. The United Kingdom believed that the reasons why little use was made of existing international machinery for fact-finding should be studied. Experience—especially that gained through the practice of the Security Council—showed that impartial fact-finding could contribute greatly to the improvement of relations between States. In the history of his own country, progress towards the amicable settlement of a serious incident had often become easier after the facts of the incident had been established by an authoritative and impartial commission of inquiry. It was therefore surprising, that, instead of using fact-finding procedures, Governments would engage in sterile and sometimes acrimonious debates on the facts of a particular incident. Some study of the unwillingness of Governments to proceed to impartial

investigation of the facts might suggest how fact-finding procedures could be made more readily available and be more freely used in the future.

4. As the Committee's time was limited, his delegation favoured the establishment of a working group which would be able to review all aspects of the proposals that had been made. Provided that the group was of suitably balanced composition, its report would be a most valuable document, and he hoped that it would achieve the same happy results as the Working Group on territorial asylum. In any event, the establishment of such a body would greatly facilitate the Committee's work. He suggested that, if a working group was established, the Rapporteur of the Sixth Committee should attend its meetings.

5. Mr. HOUBEN (Netherlands) said that it had been the explicit intention of the sponsors of the draft resolution, in revising their text, not to prejudge any decision the Committee might take after it had received the report of the proposed working group. They were grateful to the representative of the United Arab Republic for proposing amendments (A/C.6/L.626) that would render the draft more acceptable to some delegations. The sponsors were willing, in the interests of compromise, to accept the first amendment, but they wondered whether the second was necessary, in view of the changes which had been made in operative paragraph 3.

6. Mr. EL-ERIAN (United Arab Republic) thanked the sponsors of the draft resolution for accepting his first amendment. He agreed that his second amendment was now superfluous, and he accordingly withdrew it.

7. Mr. NACHABE (Syria) noted that all delegations seemed to be agreed on the importance of the impartial establishment of facts in the peaceful settlement of disputes. There were, however, differences of opinion as to the organ or organs that should undertake that delicate task—in other words, whether it should be done by existing organs, by subsidiary organs thereof, or by an entirely new permanent body. He would refrain from discussing the substance of the matter or explaining why his delegation did not think it necessary or timely to establish a special permanent organ for fact-finding. With regard to the revised draft resolution (A/C.6/L.624/Rev.1), Syria had initially doubted the advisability of establishing a working group without clear terms of reference, but it was prepared to support the proposal if the mandate of the working group was defined in accordance with the wording proposed by the United Arab Republic in document A/C.6/L.626.

8. Mr. SUCHARITKUL (Thailand) said that his delegation would confine its comments to the procedural

question under consideration. He had initially had some doubts about the proposal contained in the draft resolution, but they had now been dispelled. He appreciated the clarifications provided by the representatives of Jamaica and Mexico (989th meeting), whose positions as sponsors of the proposal did not seem to prejudice or prejudge the ultimate outcome of the Committee's deliberations on the item.

9. It was gratifying to find that all delegations acknowledged the importance and usefulness of fact-finding and consequently agreed on the desirability of improving the methods employed. It had been said, with some truth, that fact-finding was an essential part of the pacific settlement of disputes and an accepted principle of friendly relations and co-operation among nations. However, his delegation wished to emphasize the importance of some other aspects of fact-finding. The establishments of facts could help to clarify and prevent misunderstandings between nations and thus to promote not only the settlement, but also the elimination, of disputes. Disputes often arose out of a misunderstanding of the facts, elucidation of which could show that neither party was to blame and that the situation was the creation of an outside Power which had an interest in fostering ill will.

10. It had also been said, with less accuracy, that certain methods of fact-finding were already available but that little use was made of them because of the unwillingness of the parties to disputes. Thailand, for one, had made use of existing fact-finding procedures, both within and outside the United Nations and both as a party and as a fact-finding agent appointed by the parties to a dispute. Moreover, while the unwillingness of the parties concerned might inhibit the use of fact-finding procedures, it could be further inhibited or discouraged by outside Powers even in cases where the parties directly concerned were prepared to employ those procedures because of an inherent defect in the existing procedural devices which often required the concurrence or acquiescence of the big Powers.

11. Improved methods of fact-finding could contribute to the security and stability of certain troubled areas by serving to dispel misunderstandings between nations. Thailand did not therefore think that it would be helpful or constructive to seek to eliminate the item as a topic for further discussion. In view of the clarifications which had been provided concerning the terms of reference and composition of the proposed working group, his delegation could accept the revised draft resolution (A/C.6/L.624/Rev.1), as amended (A/C.6/L.626, first amendment).

12. Mr. CIASULLO (Uruguay) said that he did not intend to enter into the substance of the question of methods of fact-finding at the present time, since the Committee's immediate task was to decide on the procedure to be followed for the further consideration of the item.

13. As the Netherlands representative had shown, the topic involved many varied and complex problems. Firstly, there was the question whether the function of fact-finding should be separate from and independent of the function of conciliation. Secondly, there was the question whether it might be possible to harmonize

and centralize existing procedures. The documents prepared by the Secretariat—in particular, documents A/5694, 1/ A/6228 2/ and A/6686 and Corr.1 and Add.1-3—showed that there already existed many diverse systems which, as suggested by the United Kingdom (A/6686), could perhaps be improved or unified, without its being necessary to create any new body. The third problem was whether it would be best to make use of existing bodies, to create a new permanent body, or to establish a list of experts, as suggested by Finland (A/6686/Add.3). Fourthly, there was the question whether the system should be voluntary or compulsory. Whatever solution was decided upon, it would have to be brought into conformity with Chapter VI of the Charter of the United Nations, taking into consideration also Article 29 of the Charter, which provided that the Security Council might establish such subsidiary organs as it deemed necessary for the performance of its functions.

14. The foregoing considerations had led his delegation to the conclusion that a substantive debate in the Committee at the present time, without any clear idea of how to deal with the item, would not be very useful. Consideration of the subject by a specially established working group, as proposed in revised draft resolution A/C.6/L.624/Rev.1, did not seem very practical, since the proceedings of the working group would coincide with the discussion of the other important items on the Committee's agenda. Nevertheless, his delegation would vote in favour of the draft resolution, in the hope that some progress might be made and that there would thus be a more solid basis for discussion at the three other meetings of the Committee which were to be devoted to the item.

15. His delegation would set forth its position on the question more fully at a later stage. Uruguay had subscribed to many important instruments for the peaceful settlement of disputes, including The Hague Conventions of 1907, 3/ the Treaty for the Advancement of Peace 4/ concluded in Washington in 1914 between the United States and Uruguay, the treaty for the peaceful settlement of disputes concluded at Montevideo in 1915 between Uruguay and Chile 5/ and other bilateral and multilateral agreements, both regional and general.

16. Mr. SECARIN (Romania) said that, at the twenty-first session of the General Assembly, his delegation had supported the draft resolution which had subsequently become General Assembly resolution 2182 (XXI) because it had considered, in principle, that a study by Governments of methods of fact-

1/ See Official Records of the General Assembly, Twentieth Session, Annexes, agenda items 90 and 94.

2/ Ibid., Twenty-first Session, Annexes, agenda item 87.

3/ See The Hague Conventions and Declarations of 1899 and 1907, edited by J. B. Scott (New York, Oxford University Press, 1915).

4/ See Treaties, Conventions, International Acts, Protocols, and Agreements between the United States of America and Other Powers, 1910-1923 (Washington, Government Printing Office, 1923), vol. III, p. 2860.

5/ See British Foreign State Papers, 1915 (London, H. M. Stationery Office, 1919), vol. CIX, p. 885.

finding would be useful. At the same time, it had made it clear that it could not subscribe to the idea, which was mooted in the preamble of that resolution, of establishing a permanent special international body for fact-finding or entrusting fact-finding responsibilities to an international organization. The documentation prepared by the Secretariat and the comments of Governments confirmed the rightness of his Government's position.

17. At the present stage, his delegation would simply question the necessity of establishing a working group, as proposed in revised draft resolution A/C.6/L.624/Rev.1. The draft resolution, even as revised and amended, did not make clear the terms of reference of the proposed working group, and his delegation hoped that further proposals which would make it possible to achieve a consensus might be submitted.

18. Mr. VIRALY (France) said that the question of methods of fact-finding was of prime importance in the context of the peaceful settlement of disputes, and existing procedures were, without question, sadly inadequate. Their improvement was essential to the promotion of world peace. Moreover, existing procedures for the peaceful settlement of international disputes were too often unknown or disregarded.

19. He commended the Netherlands initiative in placing the item on the agenda of the General Assembly, thus drawing the attention of Governments to a method of peaceful settlement which had been unduly neglected.

20. While in some cases the establishment of the facts at issue could contribute to the peaceful settlement of a dispute between States, there were other cases where the dispute turned not on the facts of the situation but on the legal or political interpretation of those facts. Thus, fact-finding procedures could not be usefully applied in all cases, and their utilization could therefore not be made compulsory. There seemed to be unanimous agreement among members of the Committee on that point.

21. In spite of the arguments so ably advanced by the Netherlands delegation in support of the establishment of a permanent organ for fact-finding, his delegation did not think that the creation of such an organ was desirable. The two reports of the Secretary-General (A/5694 and A/6228) served to confirm his delegation's conclusion that there already existed well-established procedures for fact-finding, which were used by States and adapted by them to suit the circumstances of each individual situation or dispute. The success of such procedures rested on their very flexibility and diversity, and his delegation considered that it would be a mistake to attempt to centralize or even to codify them.

22. On the other hand, it would be extremely useful to make a study of existing procedures, in order to facilitate their extension to new cases and to draw the attention of Governments to their potential. Much had already been done in that respect as a result of the Netherlands initiative, through the discussions which had taken place in the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States and in the Sixth Committee, and also through the documentation

prepared by the Secretariat. It would be most unfortunate if all those efforts and all the ideas and suggestions put forward came to naught for lack of adequate publicity to bring them to the attention of Governments.

23. His delegation considered that the best way to ensure that the experience gained was put to use was to follow the proposal in the revised draft resolution, as amended, which made the terms of reference of the proposed working group much clearer. The group could make valuable recommendations, on the basis of the document which the Secretariat was requested to prepare in operative paragraph 2 and of the views expressed during the Committee's debate. His delegation, which had had some misgivings about the original text, would vote in favour of the version now before the Committee, as modified by the amendment of the United Arab Republic.

24. Mr. BLIX (Sweden) said that the question of methods of fact-finding had been before the Committee for several years, and Governments had had ample opportunity to pronounce themselves on the matter. Valuable surveys of methods of fact-finding had been prepared by the Secretariat (A/5694 and A/6228). The time had come to try to draw some conclusions from all the material accumulated, and his delegation considered that the Committee would be wise to support the revised draft resolution, as modified by the amendment of the United Arab Republic which proposed the establishment of a working group to single out from the mass of ideas those proposals which seemed most useful and susceptible of gaining wide support. It had become clear from the debate that the working group's main task would not be to examine the Netherlands idea of a permanent fact-finding body. While appreciating the Netherlands initiative, his delegation had not been convinced of the arguments for the establishment of such a body. The Swedish Government had stated its doubts on that point in the written comments it had submitted in 1964 (see A/5725/Add.2).<sup>6/</sup> While his delegation did not share the view of some delegations that such a permanent body would be unconstitutional, it doubted the practical need for new procedures and methods and felt that it would be better to improve the existing ones. It noted that its attitude was shared by many delegations, and it trusted that a working group would devote its discussions mainly to proposals in that context.

25. In conclusion, he wished to reiterate two practical proposals which his Government had advanced in its written comments and which he hoped would be discussed, along with others, by a working group. They were, firstly, that an appeal might be made to States to consider acceding to the General Act for the pacific settlement of international disputes of 1928,<sup>7/</sup> which the United Nations had brought up to date through General Assembly resolution 268 A (III) and which offered States a ready procedure for fact-finding and conciliation, and, secondly, that Member States should be asked to present nominations for the

<sup>6/</sup> See Official Records of the General Assembly, Twentieth Session, Annexes, agenda items 90 and 94.

<sup>7/</sup> League of Nations, *Treaty Series*, vol. XCIII, 1929-1930, No. 2123, p. 345.

panel of persons available to serve on commissions of inquiry or of conciliation, in accordance with General Assembly resolution 268 D (III).

26. Mr. PEREZ CADALSO (Honduras) said that his delegation would vote in favour of revised draft resolution A/C.6/L.624/Rev.1, since it sought to resolve a procedural question without touching on the substance of the item. As a method of furthering the progress of the Committee's work, it deserved support.

27. While appreciating the efforts of the Netherlands and the concern displayed by its delegation, Honduras had doubts about the usefulness of establishing a new body with the specific function of fact-finding. A better course might be to set up a study group or some other body to examine the reasons why the existing fact-finding machinery did not work properly and why States failed to have recourse to it as often as might be desirable. The first task was to examine existing instruments, such as The Hague Convention of 1907 and the American Treaty on Pacific Settlement, called the "Pact of Bogotá", of 1948,<sup>8/</sup> which had not received the attention they merited. New institutions only arose when similar institutions were non-existent or ineffective.

28. Fact-finding was a difficult and complex matter, but his delegation hoped that it would be possible for States eventually to agree on a common methodology of fact-finding to serve in the peaceful settlement of disputes, just as they had managed to reach agreement on the question of the right of territorial asylum. His delegation therefore joined those of Uruguay and Thailand in commending the Netherlands initiative.

29. Mr. OGUNDERE (Nigeria) thanked the United Arab Republic delegation for its amendment (A/C.6/L.626) to draft resolution A/C.6/L.624 and commended the sponsors of the latter for their conciliatory spirit. The reformulation of the working group's terms of reference made the revised draft resolution (A/C.6/L.624/Rev.1) acceptable to his delegation.

30. It seemed from the discussion that many members of the Committee had grave reservations concerning the establishment of a permanent fact-finding body. In spite of the cogent and lucid arguments advanced by the Netherlands representative, his delegation had serious misgivings about the establishment of such a body, and shared the doubts expressed by the representative of France. Without prejudice to its statement at the previous meeting, his delegation could support the revised draft resolution, as amended, but it reserved its position with regard to whatever proposals the working group might make.

31. Mr. YASSEEN (Iraq) said that international disputes often arose because of a misunderstanding as to the facts; in such cases, if there was goodwill, simple fact-finding could lead to a solution. Fact-finding was, therefore, a valuable method of settling disputes. However, the main issue raised by the question of fact-finding was political, rather than legal; for resort to fact-finding methods depended upon the will of States. If States wished to establish

the facts of a dispute, they would find no difficulty in agreeing on the body and the procedures for performing that task. They could make use of the machinery provided by the 1907 Hague Convention for the Pacific Settlement of International Disputes,<sup>2/</sup> or they could establish ad hoc fact-finding bodies. That being so, the most appropriate action that the General Assembly could take would be to invite States to make as much use as possible of fact-finding procedures when a dispute arose out of a misunderstanding as to the facts. His delegation, for technical reasons, could not support the proposal for the establishment of a permanent fact-finding body. In view of the infinite variety of facts, the membership of a fact-finding body could not be determined in advance; the nature of its task required that it should be composed of experts selected in the light of the facts of a given dispute.

32. His delegation would have had some difficulty in voting for revised draft resolution A/C.6/L.624/Rev.1 because the terms of reference of the working group had not been made very clear in paragraph 1. However, since the sponsors had accepted the United Arab Republic amendment (A/C.6/L.626, first amendment) making the terms of reference more precise, his delegation would be able to vote for the revised draft resolution.

33. Mr. YANKOV (Bulgaria) said that his Government's position on the item under discussion had been set out in the Committee at past sessions and in its written comments (see A/6686/Add.2). His Government had always attached particular importance to all efforts to promote the peaceful settlement of international disputes and, in particular, to endeavours to strengthen the effectiveness of the United Nations as an instrument for the maintenance of international peace and security. Recourse to procedures for the peaceful settlement of disputes, including fact-finding procedures, must be based on the consent of the parties concerned. States should be allowed freely to choose the most appropriate methods of fact-finding. Fact-finding procedures and the institutions by which they were to be applied should be determined by the free will of the parties concerned, taking into consideration the specific nature and characteristics of the disputes, their causes, and the circumstances leading up to and resulting from them. Thus, the most appropriate and efficient procedure was to establish an ad hoc body for each case. It was impossible to envisage a central and universal permanent body which could be used in all disputes. There were a number of existing institutions which could be used for fact-finding, and the Committee's efforts should be directed towards the full use of such institutions, in conformity with the principles of international law and the Charter of the United Nations. It was clear that the majority of Governments did not favour the Netherlands proposal for the establishment of a permanent centralized fact-finding body. The Netherlands delegation had shown commendable initiative and persistence in seeking to win the Committee's support for its proposal, but the time had come for it to appreciate the opposite point of view.

<sup>8/</sup> United Nations, *Treaty Series*, vol. 30 (1949), No. 449, p. 84.

<sup>2/</sup> See footnote 3.

34. With regard to the proposal for the establishment of a working group in revised draft resolution A/C.6/L.624/Rev.1, he observed that the analogy which had been made to other working groups was inappropriate. Working groups were useful as a means of expediting the Committee's deliberations, but only in the proper circumstances. For instance, the Committee had discussed the draft declaration on the right of asylum and had then appointed a working group to prepare a final draft and to make a detailed study of certain aspects of the problem. In the present case, however, the working group, according to the original version of the draft resolution (A/C.6/L.624), would have been entrusted with the study of a policy decision concerning "further action". His delegation was pleased that the inappropriate wording in paragraph 1 had been revised, but, even though the terms of reference of the working group were now more precise and specific, it still considered that the establishment of a working group was not justified in principle. The core of the item had always been the establishment of a permanent central fact-finding body, and a working group could not reconcile the directly opposed views on that issue. His delegation doubted the necessity for a working group which would report to the Committee what it already knew and was pessimistic about the results such a group could achieve, since it might enlighten the Committee on details but could not overcome the divisions in the Committee.

35. His delegation also had strong reservations concerning paragraph 2 of the draft resolution. That paragraph reflected a preconceived judgement that the Committee would take further action, as proposed in the original paragraph 1. Since the suggestions referred to in paragraph 2 were already available in the documents before the Committee, the additional document, the preparation of which was requested in paragraph 2, was not needed by any United Nations organ, and the time and money to be spent on it would not be justified, particularly as the Secretariat was overburdened by preparations for the Conference on the Law of Treaties and work on the draft convention on special missions. His delegation could not, therefore, support paragraph 2.

36. His delegation considered that the Committee, after a general debate, should draft a resolution reflecting all the views expressed, terminating the consideration of the item for the time being, and addressing an appeal to all States to make use of existing fact-finding institutions, both within and outside the United Nations. Consequently, it could not support paragraph 1, as revised and amended, although in a spirit of compromise it would not vote against it.

37. Mr. ROSENNE (Israel) expressed his appreciation to the Netherlands delegation for the initiative it had taken and to the sponsors of the draft resolution for the spirit of accommodation they had shown. His delegation was prepared to vote for the revised draft resolution. The discussion, in part at least, had related to generalized or institutionalized aspects of fact-finding at the international level; he would, therefore, have to repeat the reservation which his delegation had made at the 940th meeting of the twenty-

first session, namely, that it should be clearly understood that the application of any new methods of fact-finding would in no way affect the functioning of bodies set up under bilateral or multilateral agreements still in force. He would reserve his delegation's position on the broader issue until the working group had submitted its report.

38. Mr. RAWN (Pakistan) said that the incorporation of the United Arab Republic amendment (A/C.6/L.626, first amendment) in the revised draft resolutions (A/C.6/L.624/Rev.1) was in the Committee's tradition of seeking unanimity and reconciling differing views. The intention of the draft resolution, of which his delegation was a sponsor, was simply to establish a working group to consider the problems of fact-finding—a subject which his delegation regarded as important enough to deserve further investigation. No one would deny that fact-finding must precede the settlement of every dispute and was perhaps the most important element in the settlement of international disputes. However, some delegations had opposed the establishment of a working group, on the ground that the present methods and existing institutions available for fact-finding were adequate. In his view, those delegations were prejudging the issue; a decision on the substance of the matter should be taken only after a working group had fully investigated the matter and reported to the Committee.

39. Mr. COLE (Sierra Leone) recalled that his delegation, while welcoming the proposal that a working group should be established, had expressed concern regarding its terms of reference. However, the United Arab Republic amendment to paragraph 1 (see A/C.6/L.626), which made the terms of reference more specific and precise, was acceptable and his delegation would vote for the revised draft resolution, as amended.

40. Mr. MUSA (Somalia) said that his delegation had co-sponsored the procedural draft resolution before the Committee because it believed that the important problem of fact-finding methods could best be dealt with by a small group representing all geographical regions. It had been encouraged in that view by the success of the Working Group on the draft declaration on territorial asylum. His country's views on the substantive issues would be made known after the report of the working group had been received. At the present stage, he would simply endorse the view, expressed by the United Arab Republic representative, that what was needed was the development of confidence in the existing fact-finding machinery by using it. The Committee could induce such confidence if fact-finding methods were viewed in their entirety and were brought to the attention of States.

41. Mr. HOUBEN (Netherlands) said that the sponsors of revised draft resolution A/C.6/L.624/Rev.1 and the representative of the United Arab Republic had agreed that the text of the revised paragraph 1 should read:

"Decides that a working group shall be established as soon as possible whose task will be to report and to make recommendations on the possibilities of reconciliation of different views in order to expe-

dite the consideration of the item by the Sixth Committee, in the light of the reports of the Secretary-General, the views expressed and the proposals made."

42. The CHAIRMAN invited the members to vote on the revised draft resolution (A/C.6/L.624/Rev.1), as orally revised by the co-sponsors to incorporate the first of the amendments submitted by the United Arab Republic.

*The revised draft resolution, as orally revised, was adopted by 72 votes to none, with 12 abstentions.*

43. The CHAIRMAN noted that the Committee was in general agreement on the United Kingdom suggestion that the Rapporteur should attend the meetings of the working group, in addition to its fifteen members.

44. Mr. E. SMITH (Australia) said that, while his delegation had voted for the revised draft resolution as amended, he wished to make it clear that his delegation's support for that text was entirely without prejudice to its views on any substantive proposal which might be put forward by the working group.

*The meeting rose at 5.10 p.m.*