



Wednesday, 21 November 1951, at 3.25 p.m.

Palais de Chaillot, Paris

CONTENTS

	Page
Draft Declaration on Rights and Duties of States : report of the Secretary-General (A/1850) (<i>continued</i>)	25
Consideration of the Assembly's methods and procedures for dealing with legal and drafting questions (A/1897, A/1929)	26

Chairman : Mr. Manfred LACHS (Poland).

**Draft Declaration on Rights and Duties of States :
report of the Secretary-General (A/1850) (*continued*)**

[Item 48]*

1. The CHAIRMAN requested the Committee to resume the debate on the joint draft resolution contained in document A/C.6/L.172 and Corr.1, as modified by the French amendment (A/C.6/L.173) which had been accepted by the sponsors of the joint draft.

2. Mr. CHAUMONT (France), replying to the United States representative's remarks at the 255th meeting on the renewal of invitations to Member States to send in comments on the draft Declaration, said that he could not agree to regard his delegation's amendment to the joint draft resolution as useless, for those governments which had not replied to the Secretary-General's invitation might well have had sound legal and political grounds for not doing so. Moreover, he had felt that his amendment would make it easier for those who had favoured the Yugoslav proposal (A/C.6/L.171) to accept the joint draft resolution.

3. Mr. MOUSSA (Egypt) said that his delegation would be unable to support the joint draft resolution unless it was amended in the manner proposed by the Iranian delegation (255th meeting).

4. Mr. VAN GLABBEKE (Belgium) said that the sponsors of the joint draft resolution could not accept the Iranian amendment, because its adoption might have the effect of unnecessarily postponing discussion of the substance of the question; on the basis of that amendment the General Assembly could not proceed with such discussion, even if all but one of the majority at a particular time had made constructive replies to the Secretary-General's invitation.

5. The sense of the joint draft resolution was that a discussion of the substance of the matter could take place as soon as it was considered by the General Assembly that a sufficient number, and not necessarily a major-

ity, of governments had sent in their comments. It would be open to any delegation, when it felt that a sufficient number of States had replied—and he was thinking in terms of constructive replies—to advocate the inclusion of the item in the agenda of the General Assembly. That was the only basis on which a further discussion could proceed with regard to the desirability of opening a debate on the substance of the question. He therefore appealed to the representative of Iran, and to those delegations which had advocated an immediate discussion of the question but appeared to agree that the next best course was to take action to prevent the loss of the good work already done, to review their position in the light of his comments and of the desirability of the earliest possible solution to the problem.

6. It would be a mistake to provide in the joint draft resolution, as had been suggested by the Cuban representative (255th meeting), for reconsideration of the question at the General Assembly's next session, since if at that time the number of replies received was still insufficient, a similar undesirable procedural discussion would again take place.

7. Mr. COTE (Canada) held that legal texts should be precise. He consequently preferred the Iranian amendment.

8. Mr. MOUSSA (Egypt) suggested, for consideration by the sponsors of the joint draft resolution and in an attempt to reconcile the two opposing points of view, that the words "in any case if the majority has replied" should be added to the phrase "until a sufficient number of States have transmitted their comments and suggestions" in the first paragraph of the operative part of the joint draft resolution.

9. Mr. MAJID ABBAS (Iraq) said that, as his main concern was that the question should be discussed and not indefinitely set aside, he would vote for the Egyptian amendment and, in the event of its rejection, for the Iranian amendment.

10. Mr. VAN GLABBEKE (Belgium) stated that the sponsors of the joint draft resolution accepted the Egyptian amendment.

* Indicates the item number on the General Assembly agenda.

11. Mr. SAVUT (Turkey) proposed that the word "required" in the third paragraph of the preamble of the joint draft resolution be replaced by the word "requested".

That proposal was accepted.

12. Mr. MAKTOS (United States of America) believed that the joint draft resolution, as it stood, would be a sufficient incentive to governments to send in their comments and hoped that the French amendment would be rejected.

13. Mr. ABDOH (Iran) withdrew his delegation's amendment in favour of that proposed by the Egyptian representative.

14. After a short discussion on the form which the Egyptian amendment should take, Mr. MOUSSA (Egypt) proposed the suspension of the meeting for a few minutes to enable the sponsors of the joint draft resolution and his delegation to consult on the matter.

It was so agreed.

The meeting was suspended at 4.30 p. m. and was resumed at 4.40 p. m.

15. The CHAIRMAN suggested that the Committee should vote on the first paragraph of the operative part of the joint draft resolution amended to read:

"Decides to postpone for the time being consideration of the draft Declaration on Rights and Duties of States, until a sufficient number of States have transmitted their comments and suggestions, and in any case to undertake consideration as soon as the majority of Member States have transmitted replies".

16. In answer to a question by Mr. BARTOS (Yugoslavia), Mr. VANGLABBEKE (Belgium) replied that the authors' interpretation of the draft resolution was that if the majority had submitted replies the Secretary-General was under an obligation to place the draft Declaration on the provisional agenda.

17. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the meaning of the amended resolution as he had heard it was not clear and, in accordance with the right accorded to members by the rules of procedure, asked to receive a written text before voting.

18. Mr. WYNES (Australia) proposed the insertion of the word "such" before the word "replies" in the amended first paragraph of the operative part.

The Australian representative's proposal was adopted.

19. The CHAIRMAN proposed that the meeting be suspended in order to allow time for the USSR representative to receive a written text of the paragraph in question.

The meeting was suspended at 4.50 p.m. and was resumed at 5 p.m.

20. The CHAIRMAN put to the vote the joint draft resolution submitted by Belgium, Luxembourg and the Netherlands (A/C.6/L.172 and Corr.1) as amended by Egypt and France, and with drafting amendments by Australia and Turkey, in four parts: (1) the preamble and the first paragraph of the operative part; (2) the second paragraph of the operative part, which consisted of the French amendment; (3) the final paragraph; and (4) the amended resolution as a whole.

The preamble and the first paragraph of the operative part of the joint draft resolution were adopted by 40 votes to 4, with 8 abstentions.

The second paragraph of the operative part was adopted by 34 votes to none, with 17 abstentions.

The final paragraph was adopted by 48 votes to none, with 4 abstentions.

The amended resolution as a whole was adopted by 39 votes to 4, with 9 abstentions.

21. Mr. MOROZOV (Union of Soviet Socialist Republics), explaining his vote, stated that his delegation had been in favour of the Ukrainian resolution (A/C.6/L.170), which proposed that comments on the draft Declaration already submitted or thereafter submitted should be transmitted to the International Law Commission for consideration. If adopted, that procedure might have resulted in the production of a draft document which could have been considered by the General Assembly.

22. His delegation had therefore voted in favour of the present resolution on the understanding that it did not predetermine the procedure for considering the question in the future if it appeared again on the General Assembly's agenda.

23. Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) explained that he had voted in favour of the resolution with the reservation indicated by the USSR representative.

24. Mr. BERNSTEIN (Chile) said that he had voted against the resolution because he considered that the Committee should have taken up the substance of the question instead of confining itself to a further useless discussion on procedure. The rejection of the motion for immediate discussion could not compel him to vote for the present motion to defer, of which he disapproved.

25. Mr. TOVAR CHAVES (Colombia) stated that he had abstained on the ground that the draft Declaration, although a carefully prepared legal document, covered only the principal rights and duties of States, omitting some others, such as the right of asylum. His delegation would have preferred discussion to have been postponed until other technical bodies had contributed their ideas, so that the Declaration would have been a complete document possessing the necessary breadth of concept.

26. Mr. CASTAÑEDA (Mexico) explained that at the previous meeting his delegation had voted in favour of immediate discussion and therefore had been logically obliged to vote against the present resolution. Although it had voted in favour of the French amendment and might have been able to agree to some other parts, it could not accept the resolution as a whole.

27. Mr. BARTOS (Yugoslavia), though in agreement with some parts of the resolution, did not consider that as a whole it served a useful purpose; his delegation was convinced of the necessity of immediate discussion of the subject.

Consideration of the Assembly's methods and procedures for dealing with legal and drafting questions (A/1897, A/1929)

[Item 63]*

28. The CHAIRMAN invited the Committee to consider the second item on its agenda, consideration of the Assembly's methods and procedures for dealing with legal and drafting questions.

29. Mr. HEALD (United Kingdom) hoped that the item would be sympathetically considered by the Com-

mittee. It had become urgently necessary to strengthen the Assembly's existing methods and procedures for dealing with legal matters, and to ensure that legal considerations were given their due weight in arriving at decisions and recommendations on international questions.

30. Although the item was essentially a legal one, his remarks were mainly intended for a wider audience, namely the non-legal committees; in the Sixth Committee he was preaching to the converted.

31. Of recent years many representatives had grown uneasy about the attitude and methods of the Assembly with regard to legal matters. It was clearly wrong that items which were at least half legal in character were not only allocated to a non-legal committee, but dealt with and decided on in that committee without any kind of reference to the Sixth Committee, which was the Legal Committee of the Assembly; that requests to the International Court of Justice for advisory opinions should be formulated, and their terms drafted by non-legal committees, sometimes so inexactly that the Court was obliged to edit or interpret the question before it could answer it; and that matters could be referred to the International Law Commission directly on the recommendations of one of the non-legal committees of the Assembly, without the appropriateness of the reference from the legal point of view, or its terms, ever having been considered by the Sixth Committee.

32. In bringing up this matter his delegation had not been actuated by *amour-propre* on its own or the Sixth Committee's behalf, nor by a desire to secure additional work for that hardworked Committee. Not only the Sixth Committee, but the General Assembly, and the United Nations as a whole, suffered from the present situation. Nor did his delegation wish to suggest that legal considerations should be given more than their proper place, or to force political questions into legal channels.

33. His delegation recognized that the United Nations was a political institution in which political considerations must predominate. But it was also concerned with legal questions, and those must not be neglected or mishandled. The Charter itself was a legal instrument, and required legal interpretation. The rule of law, upon which the preservation of peace depended, could only prevail if the organization mainly responsible for upholding it, the United Nations, was fully equipped to deal with legal questions. An institution that handled legal problems in an objective and orderly manner, moreover, would usually also be one in which the rule of law was respected both within itself and by its members; whereas an organization which dealt with legal matters in a cavalier manner, however innocent its intentions, would tend to subordinate the rule of law to considerations of expediency and convenience. An exclusive concentration on the political aspects of a subject to the detriment of legal aspects meant that every question would be dealt with in a manner and at a level calculated to engender the greatest possible psychological and emotional tension. Any such lack of objectivity must, in the long run, be harmful to the United Nations work. In addition, neglect of the legal aspects of a subject, since they were usually an essential part of it, meant that the solution arrived at might be inadequate or incorrect, and could bring the law itself into disrepute. Lastly, the Charter laid peculiar stress on law and the rule of law, as witness the third paragraph of the Preamble, Article 1, paragraph 1, and Article 13. It placed the International

Court of Justice in a more powerful position than the old Permanent Court of International Justice of the League of Nations. In face of the provisions of the Charter to which he had referred it could hardly be maintained that the Assembly was properly performing its functions unless it made satisfactory provision, and instituted appropriate techniques, for the handling of legal matters, and made proper use of those techniques. In practice it was not doing so.

34. In the first place there was a question of the allocation of items to committees. There was a strong tendency to assign any item that contained a non-legal element to one of the non-legal committees, even when it was of a predominantly legal character. The practice seemed quite wrong in principle and must result in a complete distortion of the item or of the method of its consideration.

35. In the case of an item in which legal and non-legal considerations were evenly balanced, there was no particular reason why it should, as was the common practice, be referred as a whole to a non-legal committee rather than to the Sixth Committee. Even the legal aspects of such an item were frequently not referred to the Sixth Committee. As an example he mentioned agenda item 61 of the fifth session, proposed by Cuba, on the representation of Member States in the United Nations, upon which the Sixth Committee had not been consulted at any stage of the proceedings. The final resolution 396 (V) on that item was so general as to be meaningless, or capable of any construction anyone liked to put on it. It was at least possible that dispassionate consideration of the legal elements in a legal committee might in that case have led to something more constructive, and the procedure followed was wrong in principle. His delegation believed that when questions of a mixed character arose, there should be a rule by which the legal aspects could, in the first instance, be separated from the other aspects and referred to the Sixth Committee. After the legal and non-legal aspects had been separately considered in the appropriate committees, the final resolution on the subject should be framed at joint meetings of the two committees.

36. A third possible case was that of an item unquestionably of a predominantly political, economic or social character, but containing legal elements, or concerning which legal points emerged in the course of the debate. Clearly it must be assigned to a political, economic or social committee; and equally clearly the legal elements should be referred for consideration and advice to the Sixth Committee, or to an *ad hoc* legal sub-committee set up for the purpose, and there should be a definite rule to that effect. The decision as to whether or not it should be so referred, however, was in practice usually left entirely to the discretion of the committee concerned, which very frequently refrained from making any such reference. An example of such an item was the draft International Covenant on Human Rights, concerning which neither the Sixth Committee nor any other legal committee had been consulted. The Assembly appeared in such cases to be deliberately refusing to use the facilities at its disposal.

37. A further case was that of proposals for the reference of matters to the International Law Commission. Since that Commission was a purely legal body, which could consider only legal questions, or alternatively could consider questions only in their legal aspects, it was wrong in principle that matters should be referred to it directly on the recommendation of a non-legal

committee, as had occurred on one occasion, without any legal committee having even reviewed the terms in which the matter was to be referred to the Commission. It was right for political or other committees of the Assembly to be able on their own initiative to make proposals for referring matters to the International Law Commission, but not for such proposals to be adopted without at some appropriate stage being referred to the Sixth Committee, for consideration of the question how far they were suitable for examination by the International Law Commission from the legal point of view, and also for advice as to how the reference should be framed and drafted.

38. Secondly, in addition to the question of the allocation of items to committees and the particular case of the International Law Commission, there was the question of the Assembly's methods and procedures for dealing with drafting questions.

39. What he had said concerning the International Law Commission applied still more strongly to requests to the International Court of Justice for advisory opinions. Since the International Court was a purely juridical body which would only answer legal questions correctly framed from the legal point of view, any request to the Court for an advisory opinion, even if made on the initiative of one of the non-legal committees, would, it might be supposed, normally be passed to the Sixth Committee for advice as to how the question should be framed and for drafting. Such, however, was not the practice. The Sixth Committee framed only the questions which it itself proposed to address to the Court. That was not only wrong in principle but it might be harmful to the work of the Assembly. It was essential that the questions put to the Court should be so framed as to state the legal issues correctly, and to ensure that the answers given would elucidate those issues and no others, a task which could be performed only by qualified legal experts. If a question were framed and drafted by the Political Committee or another non-legal committee dealing with the substance of the matter, it would inevitably be treated as a political issue. Attempts would be made by members of the Committee to frame it in such terms as would be most likely to elicit an answer favourable to their views. Questions framed in such a tendentious manner lost all value.

40. In point of fact the Court had in a number of cases been obliged to edit or interpret questions before it could answer them. That had occurred in the *Peace Treaties* case,¹ the *South-West Africa* case² and the cases on the *Admission of New Members*.³ No doubt the Court could normally be relied upon to perceive with fair accuracy what the real intention of the question was and to address itself to that matter, but it was obviously wrong that the Court itself should have, as it were, to review or reframe the question. The chances of questions being correctly and objectively framed were far greater if their final drafting were carried out by the Sixth Committee, a legal committee outside the political arena, than if it were carried out by the non-legal committee concerned. The Court's answer to the question (i.e., its advisory opinion, when given) should equally, of course, be considered by the Sixth

Committee as well as by the non-legal committee that had asked for it. In fact that never occurred, except where the original request to the Court came from the Sixth Committee itself.

41. There were other instruments drawn up by the Assembly, besides requests to the Court for advisory opinions, the procedure for the drafting of which could be improved. The drafting of the Assembly's rules of procedure, or of amendments thereto, should be the task of the Sixth Committee, whereas sometimes a non-legal committee made proposals for amendments to the rules and those proposals went direct to the Assembly and were adopted without any reference to the Sixth Committee whatever. Three further main classes of instruments for which the Assembly was responsible ought either to be drafted or to have their drafting at some appropriate stage reviewed by a body of legal experts: rules and regulations of various kinds other than rules of procedure, such as staff and financial regulations; the terms of reference, powers and functions of fact-finding or other commissions, organs or tribunals which the Assembly might set up for particular purposes; and lastly, the international conventions, agreements and declarations or other similar instruments which were drawn up under the auspices of the Assembly and drafted by the Assembly itself. While the substance of many of the last category of instruments might be non-legal in character, they almost all involved legal elements, and their final drafting at least ought to be treated as a legal matter and entrusted to the Sixth Committee or a legal committee of some kind.

42. The point with which he was concerned was not so much that the courses hitherto followed had necessarily had bad results, as that sooner or later they would do so.

43. Particular examples of the type of drafting matters he had in mind were provided by the following resolutions of the previous session of the Assembly: resolutions 377 (V), 388 (V), 390 (V), 415 (V), 428 (V), 429 (V), 454 (V), 456 (V) and 470 (V).

44. It was difficult to see why the Assembly should have adopted the attitude it had taken on legal matters. Not only the rules of procedure, but custom and opinion, prevented financial or budgetary questions, for example, being dealt with by non-financial committees acting entirely on their own, or such committees being empowered to make direct proposals which the Assembly would adopt without any reference to the Fifth Committee. Proposals involving expenditure had to be considered at some appropriate stage by the Fifth Committee from a purely financial and budgetary point of view. Failure to treat the Sixth Committee, in its own field, as the Fifth Committee was treated, had a highly undesirable indirect implication. If the Sixth Committee were not adequately consulted, and if important legal matters were habitually dealt with in non-legal committees, delegations would increasingly be obliged to remove their principal lawyers and legal advisers from the Sixth Committee and to put them in other committees as representatives or advisers. Many delegations would then have difficulty in being adequately represented on the Sixth Committee and that Committee would have difficulty in carrying out its work. Such a tendency was already to be observed.

¹ See *Interpretation of Peace Treaties, Advisory Opinion: I. C. J. Reports 1950*, p. 65.

² See *International Status of South-West Africa, Advisory Opinion: I. C. J. Reports 1950*, p. 128.

³ See *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion: I. C. J. Reports 1948*, p. 57.

45. The matters with which he had dealt were covered by draft resolution I of his delegation (A/C.6/L.175), which was before the Committee. That draft resolution related only to items which were predominantly non-legal or equally legal and non-legal, since his delegation felt that the judgment of the Assembly could be relied on in the case of items which were predominantly legal. In the next place, since further study was probably required before the appropriate procedure could be determined regarding certain drafting matters, such as the functions and powers of fact-finding and other commissions and organs set up by the Assembly, the draft resolution included only a statement of principle

on the subject of drafting questions, and paragraph 4 (b) of part B proposed that it be left to the legal committee mentioned in the draft resolution to give the matter further study and to make proposals. Finally, proposals were made in the last part of the draft resolution to ensure that the matters dealt with in the resolution should come before the Sixth Committee annually and thus not be lost to sight.

46. The statement of his delegation on draft resolution II (A/C.6/L.176), would be made at the next meeting.

The meeting rose at 6 p.m.