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Chairman: Mr. V. OUTRATA (Czechoslovakia).

Regulations to give effect to article III, section 8, of the Headquarters Agreement between the United Nations and the United States of America (A/1409) (*concluded*)

[Item 55]*

1. The CHAIRMAN invited the Committee to continue the discussion of the above item. He pointed out that the delegations of Canada, Denmark, Syria and the United Kingdom had jointly presented a draft resolution on the subject (A/C.6/L.163), which reads as follows:

"The General Assembly,

"Bearing in mind the provisions of article III, section 8 of the Agreement between the United Nations and the United States of America concerning the Headquarters of the United Nations, approved by resolution 169 (II) of the General Assembly,

"Having considered the report of the Secretary-General on the regulations to give effect to section 8 of the Headquarters Agreement (A/1409),

"Requests the Secretary-General to present from time to time to the General Assembly for approval such draft regulations within the provisions of the Headquarters Agreement as may in his opinion prove in all respects necessary for the full execution of the functions of the United Nations,

"Decides that, if in the opinion of the Secretary-General it is necessary to give immediate effect to any regulation within the provisions of the Headquarters Agreement, he shall have authority in the interval between any two regular sessions of the General Assembly to issue it, and it shall remain in effect unless disapproved by the General Assembly at the regular session following its issue."

2. Mr. ERICHSEN-BROWN (Canada) said that the Secretary-General had been right to ask the General Assembly for specific instructions before taking the responsibility of issuing regulations under the general provisions of article 3, section 8, of the Headquarters Agreement.

3. The Canadian delegation did not think that the Secretary-General should generally have the power, as proposed in the last paragraph of the Secretary-General's report (A/1409), to make regulations which would come into effect immediately and which might abrogate in certain cases the laws of the United States. His delegation agreed with the French and United Kingdom representatives that such a power should be limited to emergency cases only. He also agreed with the distinction drawn by the Syrian representative between regulations in regard to which the General Assembly could delegate powers in advance, and those which would not come into operation until approved by the General Assembly.

4. The joint draft resolution (A/C.6/L.163) of which the Canadian delegation was one of the sponsors, provided, as a compromise, for just that distinction. The first operative paragraph—the most important of the text—laid down the general principle that regulations within the provisions of the Headquarters Agreement should ordinarily be submitted to the General Assembly for approval. The second operative paragraph gave the Secretary-General the power to issue emergency regulations which would come into effect immediately and remain in effect unless disapproved by the General Assembly.

5. The Canadian delegation was prepared to accept the Secretary-General's judgment on whether it was necessary to give immediate effect to a regulation. The word "disapproved" had been used in preference to the word "annulled"—suggested by the United Kingdom representative—in order to protect the Secretary-General against unjustified claims on the grounds that regulations which he had issued in good faith had been void from the start.

6. He noted that after the draft had been circulated, the authors had agreed upon some other drafting changes. First, the words "in all respects" in the first operative paragraph, which were taken from section 8 of the Agreement, were superfluous and could be deleted. The words "in the interval between any two regular sessions of the General Assembly" in the second operative paragraph should also be deleted as they

* Indicates the item number on the General Assembly agenda.

might be construed as making it impossible for the Secretary-General to issue regulations during periods in which the General Assembly technically remained in session.

7. The United States representative, stating the view of his government, had suggested that it would be inappropriate for United States laws, which had been enacted after much deliberation and by due legislative processes, to be abrogated by the act of an individual, and that such action should be taken by the United Nations itself. The Canadian delegation fully appreciated that view and thought that, from the point of view of the United Nations too, all regulations other than purely administrative ones should, except in emergency cases, be issued by the General Assembly itself, in accordance with article III, section 8, of the Headquarters Agreement.

8. The Canadian delegation also thought that the Secretary-General should have the power, under the last operative paragraph of the draft resolution, to make regulations, as provided in section 10, to expel or exclude persons from the Headquarters district for violations of regulations adopted under section 8 or for other causes. Although the principle of that provision had been recognized by both the United Nations and the United States, special regulations defining the conduct of individuals and spectators would be desirable as they would facilitate expulsion of such persons when necessary. The Secretary-General should also have the power under the last paragraph of the draft resolution to issue regulations governing the conduct of the Secretariat staff; such regulations, of course, would in no way affect the operation of United States laws.

9. In one respect, however, the Secretary-General's power should not be exercised: he should not issue any regulation which might have the effect of resolving any dispute between himself and a Member State regarding the expulsion of certain defined categories of individuals, such as representatives of Member States and their staff, journalists, observers present at the special invitation of the General Assembly, and representatives of various United Nations organs.

10. Subject to those observations, he thought that the joint draft resolution provided the most satisfactory basis for a decision, and he hoped it would be accepted by other delegations.

11. Mr. MAKTOŠ (United States of America) agreed with the Canadian representative that under the first operative paragraph of the draft, regulations should come into force only upon approval by the General Assembly, and that the Secretary-General should issue regulations which would take effect immediately only in emergency cases, as provided in the second operative paragraph.

12. He did not object to the deletion of the words "in all respects" in the first operative paragraph, as long as the meaning of the provision remained the same as in section 8 of article III of the Agreement where those words occurred.

13. Lastly, he withdrew the draft resolution of his delegation (A/C.6/L.162) as it was covered by the joint draft resolution now before the Committee.

14. Mr. ROBERTS (Union of South Africa) wondered whether it might not be desirable, as a matter of courtesy, to consult the United States Government before adopting the joint draft resolution (A/C.6/L.163) which was based on an extensive interpretation of the Headquarters Agreement, in order to see whether that government agreed to that interpretation.

15. Mr. MAKTOŠ (United States of America) said that his government by its own proposal on the subject had shown its liberal attitude, but it preferred to consider each case on its merits.

16. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said that the Headquarters Agreement had been concluded between two contracting parties—the United Nations and the United States of America. The Committee was now deciding how action should be taken by one of the parties in execution of the Agreement. If any difficulties should arise with United States authorities, they could be settled in accordance with section 21 of the Agreement which provided for the settlement of disputes between the United Nations and the United States over the interpretation or application of the Agreement. He noted that the United States Government would be informed of the provisions of the resolution if it was adopted.

17. Mr. TARAZI (Syria) said that the joint draft resolution was a compromise between the view that the Secretary-General should in all cases have the power to make regulations under the Headquarters Agreement, and the opposite view. It delegated certain powers of the General Assembly to the Secretary-General, a procedure acceptable under the constitutional law of many countries, including France, Switzerland and the United Kingdom.

18. With reference to the question raised by the representative of the Union of South Africa, he did not think that there was any need for prior consultation with the United States Government on the resolution, since under the Agreement the making of regulations was within the competence of the United Nations and it was for the United Nations to interpret that term.

19. He endorsed the Canadian representative's drafting suggestions, adding that, in accordance with a remark made to him by the Belgian representative, the words "from time to time" might also be deleted. He hoped that the draft resolution as amended would prove acceptable to the Committee.

20. Mr. VAN GLABBEKE (Belgium) said that in the main his delegation supported the joint draft resolution. He wished, however, to draw attention to a number of points in connexion with that draft.

21. The first operative paragraph of the draft laid down the general rule, namely, that legislative provisions issued by the executive must be approved by the legislative organ before they could come into effect.

22. The exception to that rule was provided for in the second operative paragraph; measures taken by the executive in cases of emergency would become effective immediately and would be approved retroactively by the General Assembly. His delegation agreed with those provisions, subject to the limitations noted by the rep-

representative of Canada, but thought that it should be made clear that when the Secretary-General took emergency measures under the second operative paragraph, he should submit them to the General Assembly for approval at the earliest possible moment.

23. With that understanding, he would support the joint draft resolution.

24. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department), in reply to the Belgian representative's remarks, said that if the draft resolution was adopted, the Secretary-General would interpret the last paragraph as an obligation laid on him to inform the General Assembly at its following session of any emergency measures he might have taken under that paragraph so that the General Assembly could act on them.

25. Mr. ABDON (Iran) said he supported the joint draft resolution (A/C.6/L.163) as a whole. He had one or two comments to make, however, concerning the operative part. He thought the authors of the joint draft resolution had intended to adopt the wording of the Headquarters Agreement. He pointed out that the French translation did not reproduce the exact wording of the relevant phrase in section 8 and suggested that the sponsors might wish to correct the text.

26. He agreed with the Belgian representative's interpretation of the scope of the third and fourth paragraphs of the joint draft resolution. He was confident that the Secretary-General would use the powers conferred upon him only when necessary. It should be made clear, however, that the provisions of the fourth paragraph of the joint draft resolution would not authorize the Secretary-General in any circumstances to draft any regulation derogating either implicitly or explicitly from other regulations which had already been approved by the General Assembly.

27. Mr. MAURTUA (Peru) thought it essential that the Secretary-General should be authorized to make any regulations which might be required for the full execution of the functions of the United Nations, especially in connexion with the transfer to the permanent Headquarters.

28. The General Assembly should, however, be kept informed of the Secretary-General's actions and should approve the regulations he issued. That was particularly important as conflicts might arise between United Nations regulations and United States federal, state or local laws which might affect the legal personality of the United Nations.

29. Section 9 of the Headquarters Agreement already implied that the limitations referred to therein could be laid down in regulations, and the Peruvian representative therefore thought the Secretary-General could be authorized to issue any regulations necessary for the exercise of the functions of the United Nations. That was an urgent matter. The General Assembly could clarify the whole question of the Secretary-General's powers in the matter of regulations at a later date.

30. There was a tendency for the Organization to adhere to customary law. As a result, however, the legal personality of the United Nations and its rights and

obligations had never been fully defined. For that reason he was in favour of drafting a code of regulations which would be helpful in settling disputes involving conflicts of laws. In that connexion he endorsed the suggestion set forth in paragraph 6 of the Secretary-General's report (A/1409) that a compilation should be made of those United Nations regulations which might involve some inconsistency with the United States federal, state or local law.

31. Turning to the joint draft resolution, Mr. Maúrtua was in agreement with the two procedures proposed for approving regulations. The General Assembly should expressly approve regulations. Any regulations made in cases of emergency, however, should become effective forthwith. The action of the General Assembly on such measures would then be in effect a ratification of the regulations promulgated. He felt that would be sound legal procedure, and for that reason he would vote in favour also of the fourth paragraph. In implementing the resolution, however, due regard should be had to the sovereignty of the General Assembly.

32. Mr. BUSTAMANTE (Ecuador) supported the joint draft resolution. He pointed out certain errors in the Spanish translation, however, and asked that they should be corrected.

33. As to the substance of the resolution, at first he had shared the Belgian representative's doubts. He had been satisfied on that score by the Assistant Secretary-General's remarks as to the Secretary-General's obligation to inform the General Assembly regarding any regulations issued between its sessions, but he could not understand why the draft resolution did not explicitly state that obligation.

34. He interpreted the fourth paragraph to mean that regulations issued by the Secretary-General under that paragraph were of a purely provisional nature. Although they would be effective, they were still subject to approval by the General Assembly, remaining in effect only if that body did not revoke them. It should be clearly understood, however, that the General Assembly had the power to abrogate regulations at any time, regardless of how long they had been in effect. On that point, he did not think the fourth paragraph was sufficiently clear, for he felt it implied that if the General Assembly wished to disapprove such regulations it must take action at the first session after they had been issued.

35. For that reason he felt the fourth paragraph should make it clear that such regulations would be temporary until the General Assembly had acted upon them, regardless of when it decided to take such action.

36. He also agreed with the representative of Peru that the General Assembly should express its views on any regulations issued by the Secretary-General. The latter should report to the General Assembly on the purpose of the regulations he had issued, and on the circumstances which had compelled him to act without waiting for the General Assembly. In that connexion, he endorsed the Iranian representative's view that the Secretary-General should not issue any regulations which were contrary to previous decisions of the General Assembly.

37. As the explanations given in the Committee had clarified the scope of the joint draft resolution, the representative of Ecuador would support it even if the changes he had suggested were not accepted.

38. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said that the Secretary-General would ensure that the French and Spanish translations of the joint draft resolution corresponded with the English text, which was the original.

39. With regard to the remarks of the representative of Iran, he agreed that the French version of the third paragraph did not use the exact wording of the Headquarters Agreement which read: "les conditions nécessaires au plein exercice de ses attributions". The existing French text seemed less unwieldy than the wording of the Headquarters Agreement, but if the representative of Iran insisted, the translation could be changed as he had suggested.

40. Mr. ABDON (Iran) said he did not insist on having the French translation changed to conform to the wording of the Headquarters Agreement. He would, however, like to hear the views of his French-speaking colleagues, the representatives of France and Belgium, on the matter.

41. Mr. DE COMMINES (France) thought it was not of first importance to follow the exact wording of the Headquarters Agreement.

42. He supported the joint draft resolution, on which his views coincided with those of the Belgian representative.

43. He thought there were certain inconsistencies between the provisions of the third and fourth paragraphs as they stood. In particular, the last lines of the fourth paragraph were not very clear. He therefore suggested that the fundamental idea would be expressed more clearly in the following words: "he shall have authority to issue it without awaiting the approval of the General Assembly which shall be given at the regular session following its issue".

44. The Assistant Secretary-General's explanation had satisfied him, however, and if the Committee preferred, he would not press his amendment.

45. Mr. VALLAT (United Kingdom) agreed that the phrase "from time to time" in the third paragraph was not particularly clear. He felt these words could not simply be deleted, however, for that might imply that the Secretary-General was to put forward a complete code of regulations forthwith. To meet the objections which had been raised, he suggested that the phrase "as circumstances require" should be inserted in the third paragraph after the words "Requests the Secretary-General" and that the words "from time to time" should be deleted.

46. He thought that there was no need to adhere very closely to the wording of the Headquarters Agreement in the third paragraph. He thought the phrase "in all respects" in the third line of the paragraph had been included inappropriately out of excess of concern to follow the text of the Agreement. The essential idea was contained in the phrase "within the provisions of the Headquarters Agreement" which, in his view, made the words "in all respects" superfluous.

47. Regarding the fourth paragraph, he endorsed the Assistant Secretary-General's interpretation of the Secretary-General's responsibilities. He also supported the remarks of the representative of Iran. He therefore hoped that in view of the explanations which had been made, the existing text of the draft resolution could be maintained.

48. Turning to the fourth paragraph, he said that the words "unless disapproved by the General Assembly" had been purposely chosen so that no possible doubt could be cast upon the status of regulations put into effect under the terms of that paragraph. As the joint draft resolution stood, if the General Assembly took no action on a particular regulation for some time, that regulation would remain valid. Of course the General Assembly could still disapprove that particular regulation at any time.

49. He therefore urged that the text should be adopted as it stood.

50. Mr. TARAZI (Syria) thought the joint draft resolution could not be interpreted as authorizing the Secretary-General to derogate from regulations which had previously been approved by the General Assembly. Usually, in accordance with the principles of parallelism and hierarchy, when a regulation had been adopted by an authority, only that same authority could change it. If the Committee intended to authorize the Secretary-General to derogate from regulations approved by the General Assembly, it would have to include an express authorization in the draft resolution.

51. With regard to the French observations on the fourth paragraph, he recalled that in his previous speech, he had stressed that the existing text was a compromise. If the suggestions of the representative of France were accepted, it would be tantamount to stating that the Secretary-General had the power to make regulations under the Headquarters Agreement, a view which Mr. Tarazi himself supported.

52. There were other delegations, however, who felt that the Secretary-General did not have such power, and the existing text had been carefully drafted to satisfy both views. The fourth paragraph merely meant that the Secretary-General could issue provisional regulations which would remain in effect until the General Assembly either approved or disapproved them. He felt that as it stood, the text was clear and precise.

53. Mr. DE COMMINES (France) fully agreed with all that the representative of Syria had said. There must have been some misunderstanding about his own previous remarks since he had only meant to say that the negative wording of the final phrase of the draft resolution might give rise to some confusion. The words "unless disapproved by the General Assembly . . ." seemed to imply that in fact it was not necessary for the Assembly to take any action in the matter unless it disapproved of a regulation. In his opinion, it would be better for the Assembly to take some positive action in any case, either approving or disapproving regulations issued by the Secretary-General.

54. Mr. VAN GLABBEKE (Belgium) said that the discussion appeared to be complicating rather than clarifying the issue. The third paragraph of the draft resolution set forth the general principle to be followed.

It did not oblige the Secretary-General to issue a general code of regulations but simply requested him to submit draft regulations to the Assembly in cases where the matter was not particularly urgent. In those cases, the draft regulation would not come into effect until it had been approved by the General Assembly. Instead of inserting the words "as circumstances require" as suggested by the United Kingdom representative, he thought it would be better to amend the latter part of the paragraph to read "any draft regulation . . . which may in his opinion be necessary . . .".

55. As regards the fourth paragraph, it provided for exceptional cases and authorized the Secretary-General to issue regulations without the prior approval of the General Assembly, in cases of particular urgency. Those regulations would not be provisional, however. When the General Assembly considered such regulations, three courses would be open. The Assembly could either approve the regulation in question, which would then remain in force; or disapprove it and it would then cease to have effect; or else propose its amendment. It was essential that regulations issued under the fourth paragraph should be communicated to the General Assembly as soon as possible, and on that understanding Mr. van Glabbeke would support the draft resolution.

56. Mr. BALLARD (Australia) proposed that the final phrase of the fourth paragraph should be amended to read ". . . and shall inform the General Assembly thereof as soon as possible. Any such regulation shall be effective unless and until it is disapproved by the General Assembly".

57. Mr. ANTUENO (Argentina) drew attention to some discrepancies between the Spanish and English texts of the draft resolution.

58. Mr. VAZQUEZ (Uruguay) was prepared to accept the draft resolution in principle, although he felt the final paragraph should be redrafted. The regulations issued under the fourth paragraph would be provisional until approved by the General Assembly, but they would have the effect of a final regulation pending their discussion by the Assembly.

59. That point should be made clear in the draft resolution, and it should also be clearly stated that provisional regulations should be submitted as soon as pos-

sible to the General Assembly for approval. He proposed a redraft for the fourth paragraph to take those two points into account.

60. As so many drafting changes had been submitted, he suggested that the meeting should be suspended for a few minutes to enable the sponsors of the draft resolution and of the suggested amendments to agree on a final text.

The meeting was suspended at 12.40 p.m. and resumed at 1 p.m.

61. The CHAIRMAN announced that the sponsors of the draft resolution had agreed on the following text for the third and fourth paragraphs:

"Requests the Secretary-General to present to the General Assembly for approval any draft regulation within the provisions of the Headquarters Agreement which may in his opinion be necessary for the full execution of the functions of the United Nations,

"Decides that, if in the opinion of the Secretary-General it is necessary to give immediate effect to any regulation within the provisions of the Headquarters Agreement, he shall have authority to make such regulations. The Secretary-General shall report any action so taken to the General Assembly as soon as possible."

62. Mr. MAKOTOS (United States of America) assumed that the phrase providing expressly that regulations would remain in effect unless disapproved by the General Assembly had been omitted from the final text because it was obvious that the Assembly had the power to disapprove such regulations if it thought fit.

63. He was prepared to support the resolution in its new wording provided that it did not in any way derogate from the powers of the General Assembly in that respect.

64. Mr. MAURTUA (Peru) and Mr. VAZQUEZ (Uruguay) said that they, too, would support the draft resolution with the interpretation given by the United States representative.

The joint draft resolution (A/C.6/L.163), as amended, was adopted unanimously.

The meeting rose at 1.10 p.m.