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Chairman: Prince WAN WAITHAYAKON (Thailand).

Methods and procedures of the General Assembly for dealing with legal and drafting questions: report of the Special Committee (A/2174) (*continued*)

[Item 53]*

1. The CHAIRMAN invited the Committee to continue the general debate on the above item.

2. Mr. ROLING (Netherlands) commented on the various texts before the Committee. He thought that in the preamble to the United Kingdom draft resolution (A/C.6/L.234) the passage beginning "it is essential to establish" and ending "and to this end" was unnecessary and could be omitted. He supported sub-paragraphs (a), (b) and (c) of the operative part of the draft. The Egyptian and Polish amendments (A/C.6/L.235 and A/C.6/L.237) to sub-paragraphs (a) and (b) were unacceptable, as the only effect they would produce would be to change rules prescribing new methods into a statement of what was already possible under existing rules. Such a change would be worse than futile, for a rule had significance only when it was binding. He disagreed with the speakers who had criticized the provisions of the United Kingdom draft as being too rigid; under sub-paragraph (a) of the draft each Committee would be free to decide whether to refer a matter to the Sixth Committee or to an *ad hoc* sub-committee. Neither could he support the joint amendment of Argentina, Mexico and Peru (A/C.6/L.236) for it was impractical.

3. He had certain doubts regarding operative sub-paragraph (d) of the United Kingdom draft resolution, which left it to every committee to decide whether the legal aspect of a question was sufficiently important to justify reference to the Sixth Committee. Such a provision offered no guarantee that the legal aspects of a question would be evaluated in the way in which the Sixth Committee would evaluate them, and it would unduly restrict the number of questions in which the Sixth Committee's advice would be sought. Another

solution, which his delegation had proposed at the sixth session,¹ would be to provide that the Sixth Committee could be consulted at the request of a minority of another committee. A similar proposal had been made by the United Kingdom in the Special Committee, and while it had been rejected by the latter, he wondered whether some provision along those lines might not prove acceptable.

4. He also had some objection to sub-paragraph (e); the Chairman and Rapporteur of a committee were not as a rule competent to settle drafting questions, which was really a matter for the Legal Department of the Secretariat. At the sixth session the Netherlands delegation had planned to submit a proposal to the effect that the Secretariat should be asked to advise United Nations bodies on drafting matters.² The Assistant-Secretary-General in charge of the Legal Department had then said that, upon request, the Secretary-General would make arrangements for advice to be given to ensure consistency of language. True, the Secretariat was already giving advice while texts were still under discussion, but there was a considerable difference between the Secretariat merely having the right to make suggestions under rule 71 (III) of the rules of procedure if it considered that appropriate, and having the duty to do so under rule 47 as a matter of course. Some reluctance had been shown in the Special Committee to add to the duties of the Secretariat and so, indirectly, to its influence. But the danger of such a possibility was remote for the body concerned would be free to accept or reject the Secretariat's advice.

5. He would therefore support any amendment to sub-paragraph (e) requesting the Secretariat to advise committees on drafting questions.

6. Mr. IBRAHIM KAHN (Pakistan) said he could not support the recommendations contained in paragraph 40 of the Special Committee's report (A/2174) for a number of reasons. The provisions of sub-para-

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

¹ See *Official Records of the General Assembly, Sixth Session, Sixth Committee*, 261st meeting, para. 4.

² *Ibid.*, 263rd meeting, para. 38.

graphs (a), (b) and (c) would make the existing working methods of the General Assembly considerably less elastic and consequently, as the Indian representative had pointed out (306th meeting), would defeat their own purpose. They would also impair the prestige and autonomy of the other Main Committees, compelling them to refer certain matters to the Sixth Committee. Further, any attempt to draw a clear-cut line between law and politics was both impractical and dangerous. The recommendations would also have the effect of overcrowding the agenda, and so of endangering the efficiency, of the Sixth Committee. Accordingly, he saw no reason to change the existing methods which, on the Special Committee's own admission, were adequate for their purpose.

7. Mr. WIKBORG (Norway), while appreciating the efforts of the Special Committee and the United Kingdom delegation, thought that the Sixth Committee should be wary of any proposal that might result in prolonging the sessions of the General Assembly, causing conflict between the Sixth and the other Main Committees, overlapping and duplication of effort, which in turn might cause loss of time. Nor was it easy to draw a clear line between the legal and the political aspects of questions. Legal interpretations were frequently used to serve political purposes; for example, it was most unlikely that the First or any other committee would accept, or that the Sixth Committee could usefully give, advice on any question involving the interpretation of Article 2, paragraph 7, of the Charter. All the Main Committees of the General Assembly enjoyed the same rights and none of them would want, or should be expected, to abdicate its competence on certain questions to another Committee.

8. For those reasons he was inclined to agree with the Polish amendment (A/C.6/L.237), under the terms of which consultation with the Sixth Committee on legal questions was optional, not mandatory. The only exception he would propose was that, to prevent overburdening the International Law Commission, the Sixth Committee should be consulted before any question was referred to the Commission.

9. In conclusion, he noted that he would vote for paragraph (c) of the United Kingdom draft as it stood, and for the Polish or Egyptian amendments to paragraphs (a) (d) and (e). If it was decided to retain subparagraph (e), he would vote for the Belgian amendment (A/C.6/L.238). He agreed with the Netherlands representative on that subparagraph and would support any amendment along the lines he had suggested.

10. Mr. McLEAN (Canada) said the United Kingdom had taken a most commendable initiative in raising the question of the General Assembly's methods and procedures at the sixth session.³ He had also been impressed by the views of the French representative.⁴

11. His delegation felt that while its competence was not confined to matters of a purely legal nature, the Sixth Committee was better qualified than any other committee of the General Assembly to deal with legal questions. That fact should be recognized in any recommendations that might be adopted.

12. In spite of the many arguments to the contrary, the proposed provisions could usefully be adopted and appended to the rules of procedure. Representing a compromise between opposing views, they recognized the special qualifications of the Sixth Committee, while leaving sufficient latitude to the other Committees. It was, however, desirable that any such provisions should be adopted unanimously, or at least by an overwhelming majority, in order to improve their chances of acceptance by the General Assembly.

13. In conclusion, he supported the recommendations of the Special Committee and would vote for the United Kingdom draft resolution subject to the deletion of sub-paragraph (2) of the last paragraph, which was unnecessary. If that draft resolution was not adopted, he would reserve the right to speak on the other proposals before the Committee.

14. Mr. MAJID ABBAS (Iraq) appreciated the United Kingdom's efforts to improve the working methods of the General Assembly. The need for review of legal texts by legal experts was generally recognized and most States appointed special bodies for that purpose; unfortunately, however, the United Nations had not yet reached a stage at which a similar procedure could be applied to its texts.

15. There were difficulties involved, such as distinguishing legal from non-legal aspects of questions and evaluating their respective importance; care had to be taken to avoid any encroachment upon the rights of the other committees or overloading of the Sixth Committee's agenda. Furthermore the other committees also had legal experts among their members, while the experts on the Sixth Committee were not always guided by legal considerations. The Sixth Committee should therefore merely offer its assistance to the other Main Committees, without forcing it on them, and draw the General Assembly's attention to the importance of proper drafting of legal texts.

16. Consequently, while sympathizing with the intent of the United Kingdom draft resolution, he thought it premature, and could support it only if it were amended in the manner proposed by the Egyptian or the Polish texts. If those amendments were rejected, he would reserve his position on the question.

17. Mr. MAURTUA (Peru) thought that some representatives had been unduly apprehensive as regards overburdening the Sixth Committee's agenda. Others had felt that to give the Sixth Committee the controlling role in legal matters would endow it with excessive powers at the expense of the other committees.

18. Nevertheless it should be remembered that the committees of the General Assembly were so organized as to permit a rational division of labour, and to ensure consideration of political, economic, social, financial and legal matters by government representatives best qualified to deal with them. However, the fact that items were allocated to specified committees did not mean that consultation with other committees was absolutely barred. The Sixth Committee could certainly be expected to give a more objective opinion than might be obtained by individual representatives from the legal experts on their delegations.

19. The legislative work of the United Nations had been hampered in many cases by the lack of a purely

³ *Ibid.*, 256th meeting.

⁴ *Ibid.*, 259th meeting.

legal approach. The draft covenant on human rights, many of the provisions of which encroached upon the domestic jurisdiction of States, was a case in point. It was the task of the United Nations to promote the development of international law while at the same time jealously safeguarding the principle of State sovereignty. That function required an objectivity and wisdom based on the knowledge and practice of the law, and the Sixth Committee was, or should be, best qualified to perform it. As government representatives, the members of the Sixth Committee had the duty to defend the integrity of their States against possible legislative excesses and at the same time to evolve legal principles which would be acceptable to the States Members of the United Nations. Consequently, the Sixth Committee had a technical rather than a political function, and was eminently qualified to advise the other committees.

20. Accordingly, his delegation welcomed the United Kingdom proposal, with an amendment (A/C.6/L.236) which it had submitted together with the delegations of Argentina and Mexico. The purpose of that amendment was to emphasize that the Sixth Committee should be consulted on any proposal to request an advisory opinion of the International Court of Justice, for such requests had to be most meticulously drafted.

21. Mr. HENAO Y HENAO (Colombia) said that at the sixth session the Colombian delegation had favoured the establishment of a subcommittee of the Sixth Committee rather than the appointment of the Special Committee.⁵ However, the latter had produced a very useful report and his delegation would support its recommendations as set forth in the United Kingdom draft resolution (A/C.6/L.234), subject to the joint amendment of Argentina, Mexico and Peru (A/C.6/L.236).

22. He felt that certain binding, and not merely optional, procedural rules should be prescribed. The Main Committees of the General Assembly already had the power to refer matters to the Sixth Committee if they so desired. To restate the existing situation without making the obligation to consult the Sixth Committee mandatory would be pointless. The Colombian delegation therefore opposed the amendments of Egypt (A/C.6/L.235) and Poland (A/C.6/L.237). It was also unable to support the amendment of El Salvador (A/C.6/L.240).

23. The Colombian delegation was not in agreement with the Belgian amendment (A/C.6/L.238) because it considered that rule 44 of the rules of procedure made the General Committee responsible for changes of form in General Assembly resolutions. It was therefore unnecessary for the Sixth Committee to be consulted on matters of form and style.

24. Mr. URQUIA (El Salvador) referred to his earlier comments (306th meeting) on the report of the Special Committee, of which El Salvador had been a member. He pointed out, however, that on several points his delegation had not been in complete agreement with the other members of the Special Committee.

25. The delegation of El Salvador was convinced that flexibility was essential if the methods and procedures for dealing with legal and drafting questions were to

be improved and harmony were to be maintained. The Main Committees of the Assembly should work together as equals, without any trace of subordination of one Committee to any other. He disagreed with the view that the Sixth Committee was an exclusively technical legal body; it also had political functions. The members of the Committee represented their governments and, as such, received instructions from their governments. Their position was therefore not comparable to that of judges on the International Court of Justice or other bodies, who were completely independent of governments. On the other hand, it was true that the Sixth Committee, the Legal Committee of the General Assembly, was called upon above all others to deal with legal questions. It should not, however, be assumed that it was the only Committee qualified to consider legal questions or that all legal questions could be described as exclusively legal in content. The truth was that most questions were complex and it was unrealistic to require the other Main Committees, most of which included legal experts among their members, to submit all legal questions to the Legal Committee.

26. The recommendations of the Special Committee represented an admirable attempt to improve the methods and procedures of the General Assembly, provided that the character of those recommendations as envisaged in the report was maintained. If the five recommendations contained in the report were approved, they could be included as an annex to the rules of procedure of the General Assembly, in accordance with the precedent established in the case of the Special Committee on Methods and Procedures of the General Assembly set up under resolution 271 (III) of the General Assembly. But he could not agree to the substitution in the United Kingdom draft resolution (A/C.6/L.234) of the word "decides" for the Special Committee's original word "recommendations", as that would make the recommendations mandatory on all Main Committees of the General Assembly. In order to restore the sense of the original text, the delegation of El Salvador submitted an amendment (A/C.6/L.240) replacing "decides" by "recommends" and so ensuring an element of flexibility. In addition, the amendment proposed that in the last phrase of the United Kingdom draft resolution, an additional paragraph from the report of the Special Committee should be quoted verbatim in order to ensure clarity.

27. The Polish amendment (A/C.6/L.237) would serve no purpose. If action was to be left entirely to the discretion of the Main Committees, no resolution of any kind was needed. The position of El Salvador had the merit of being half-way between the extremes of seeking mandatory rules and advocating full discretion for committees. From all points of view it would be preferable to agree on a recommendation by the General Assembly to its Main Committees, thus achieving moral force without imposing rigid requirements.

28. He would like to have some explanation of the nature of the joint committee contemplated in the joint amendment of Argentina, Mexico and Peru (A/C.6/L.236). He was uncertain whether the intention was to have meetings of two entire Main Committees or of small working parties.

29. The delegation of El Salvador would support the Belgian amendment (A/C.6/L.238), which fully reflected the spirit of the Special Committee's report.

⁵ *Ibid.*, 263rd meeting, para. 44.

30. Mr. MOROZOV (Union of Soviet Socialist Republics) referred to the statements of position made by the USSR delegation during the sixth session of the General Assembly.⁶ Recent developments had clearly shown that breaches of international law were not caused by defective methods and procedures for dealing with legal and drafting questions and that the reasons for such violations were much more fundamental. Goodwill and the faithful implementation of the provisions of the Charter represented the key to the solution of the problem. Instead, the Committee now had before it merely a series of technical suggestions on legal and drafting matters. In that connexion he stressed the necessity of avoiding mandatory and rigid provisions.

31. In his opinion, the United Kingdom draft resolution represented a step backward because it attempted to retain and strengthen the mandatory element in the methods and procedures for dealing with legal and drafting questions. He considered that the proposal to embody the decisions agreed upon in an annex to the rules of procedure was inappropriate because of the general feeling that mandatory regulations were undesirable and that incorporation in the annex would complicate and confuse matters and give an impression of rigidity and obligation which was not intended. He was likewise opposed to the United Kingdom proposal that the annex should reproduce a number of paragraphs from the report of the Special Committee. Such a proposal was unprecedented and unnecessary. The USSR delegation would therefore support the Polish amendment (A/C.6/L.237) calling for the deletion of the last two provisions of the operative part of the United Kingdom draft resolution.

32. The desperate effort of the United Kingdom delegation to maintain its original and more rigid proposal of the sixth session⁷ was clearly revealed in the sweeping preamble which sought to convey the impression that technical suggestions were adequate to achieve "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". Obviously the methods and procedures for handling legal and drafting questions had no relation to the establishment of conditions of respect for international law. At the current stage it was too late to attempt to complete the operative part, which was inconsistent with the broad terms of the preamble. In the circumstances it seemed advisable to amend the preamble in order to bring it into accord with the limited scope of the operative provisions.

33. The USSR delegation would support the amendment of El Salvador (A/C.6/L.240), which sought to avoid rigidity.

34. The USSR delegation also supported point 3 of the Polish amendment (A/C.6/L.237). If the Committee failed to agree to delete sub-paragraph (d) as proposed by Poland, the USSR delegation would vote in favour of the Czechoslovak amendment to that paragraph (A/C.6/L.239). It would also support the Egyptian amendment (A/C.6/L.235).

35. The USSR delegation favoured the deletion of sub-paragraph (e), which contributed nothing new, the more so as rule 44 of the rules of procedure adequately covered the situation.

36. The USSR delegation could not agree to the second part of the amendment of El Salvador (A/C.6/L.240) calling for the inclusion of an additional paragraph of the report of the Special Committee in the annex to the rules of procedure. As he had already indicated, the entire section of the operative part of the United Kingdom draft resolution containing that proposal should be deleted.

37. Referring to the joint amendment of Argentina, Mexico and Peru (A/C.6/L.236), he stated that some explanation of the nature of the joint committee envisaged in the proposal was essential. The sponsors of the proposal seemed to have differing views regarding the nature and composition of the joint committee and, in the circumstances, it was difficult to arrive at a decision. The USSR delegation would be unable to support the joint amendment unless the text clearly stated that the joint committee was to be constituted in the usual way and made up of all of the members of the Main Committees concerned. If the joint committee was clearly defined in that way, the USSR delegation would not oppose the joint amendment.

38. Mr. HOLMBACK (Sweden) stated that, after due consideration, the Swedish delegation had decided to support the United Kingdom draft resolution (A/C.6/L.234).

39. With regard to sub-paragraph (a), he recalled that during the sixth session of the General Assembly the Swedish delegation had supported the proposal that any Committee proposing to make a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice should first refer the matter to the Sixth Committee.⁸ A sixty-member body, however, was perhaps a somewhat unwieldy body for the consideration of drafting questions, so that the present United Kingdom proposal, with its alternative suggestion of an *ad hoc* sub-committee, which could be a small group of jurists, was an improvement on the sixth session proposal.

40. With regard to sub-paragraph (b), the Swedish delegation shared the view of the Norwegian delegation that the United Nations should exercise extreme caution in referring any matter to the International Law Commission, which already had a very heavy agenda. It was quite right that the Sixth Committee should be consulted on the advisability of doing so, as provided in sub-paragraph (b).

41. Sub-paragraph (d), again, offered the suitable alternative of an *ad hoc* sub-committee to discuss the legal aspects of any question. The Swedish delegation could not, therefore, support the Czechoslovak amendment to that paragraph.

42. Mr. MITCHELL (Liberia) felt that the Special Committee had performed an able task, upon which it was to be congratulated. The report it had produced would lend itself to an extensive debate; the Liberian delegation, for its part, found that some of the recommendations, in particular that contained in paragraph

⁶ *Ibid.*, 260th meeting.

⁷ See *Official Records of the General Assembly, Sixth Session, Sixth Committee, Annexes*, agenda item 63, document A/C.6/175.

⁸ *Ibid.*, 258th meeting.

40 (e), might seem to detract from the legal functions of the Sixth Committee and might be regarded as a challenge to the competence of that body. In view, however, of the lengthy discussion that had already taken place, the Liberian delegation would refrain from further comment and would simply declare its support of the statement made by the United States representative at the preceding meeting, while reserving its position in any further discussion of the matter.

43. Mr. TOUS (Ecuador) said that a review of the records of the Committee's discussions at the last session, which had led to the adoption by the General Assembly of resolution 597 (VI), showed that there had been general dissatisfaction with the manner in which legal questions were dealt with in the United Nations. The Special Committee set up under that resolution had agreed that the attention of the various United Nations bodies must be drawn to the advisability of referring legal and drafting questions to the Sixth Committee or to some similarly competent body.

44. The discussion in process had brought forth a number of proposals: most members of the Committee agreed that something must be done to improve the present procedure, but there was considerable disagreement on the way in which that improvement was to be effected. Despite the remarks of the Israeli representative at the previous meeting, the Ecuadorean delegation maintained that the Sixth Committee was more fitted to deal with the legal aspects of various problems coming before the other Main Committees of the General Assembly than were those committees themselves.

45. Some members felt that the existing situation was quite satisfactory and that the recommendations of the Special Committee could be either deleted or, by the substitution of the word "may" for the word "shall", deprived of any trace of mandatory authority. Point 2 of the Czechoslovak amendments to the United Kingdom draft resolution would lead to that end in substituting for sub-paragraph (d) the statement that when a Committee considered the legal aspects of a question important it "may consult the Sixth Committee". Other members considered that all questions other than political questions were of secondary importance; yet it was clear from the United Nations Charter that there were far more aspects to any question than the purely political aspect and that all must be taken into account.

46. Yet another group of members, which included the El Salvador delegation, while supporting the recommendations of the Special Committee, felt that any draft resolution presented to the General Assembly should open its operative part with the word "recommends" rather than "decides". The Ecuadorean delegation could not regard that point as a matter of any substance, since all General Assembly resolutions were in fact recommendations, and could not agree with the USSR delegation upon its importance.

47. The United Kingdom delegation had tried to bring its draft resolution closer to the spirit in which the Special Committee had been set up than had been its earlier proposal. It included the idea, which the Ecuadorean delegation could not accept, that certain paragraphs of the Special Committee's report should be embodied in an annex to the General Assembly rules of procedure.

48. The Ecuadorean delegation supported the joint amendment proposed by the delegations of Argentina, Mexico and Peru, which went rather further than the draft resolution in suggesting a joint committee to which matters could be referred if their submission to the International Court of Justice for an advisory opinion was contemplated. That, to his delegation, did at least constitute the minimum desirable; anything less would render the recommendations quite useless.

49. Turning to point 1 of the Czechoslovak amendments, he declared that without the clause, whose deletion it proposed, the preceding sentence in the preamble of the United Kingdom draft resolution lost all significance. The Czechoslovak and USSR delegations had seized the opportunity to make a political speech in the Committee, alleging that violations of the Charter did not spring from technical difficulties but from quite other reasons. He wished to point out that the Sixth Committee was not attempting to deal with the question of violations of the Charter but was simply trying to recommend ways and means of improving methods for dealing with legal and drafting questions.

50. In conclusion, he declared that the Ecuadorean delegation would not have supported resolution 597 (VI) adopted at the sixth session of the General Assembly if it had thought that it would result only in the formulation of pious wishes. The very minimum it could accept would be the recommendations contained in the United Kingdom draft resolution, as amended by the proposal of the delegations of Argentina, Mexico and Peru.

51. Mr. HERRERA BAEZ (Dominican Republic) said that the debate was following much more constructive and positive lines than the somewhat negative and pessimistic discussion of the same topic at the sixth session, a circumstance undoubtedly attributable to the excellent report prepared by the Special Committee. He was pleased to see that the idea underlying the United Kingdom proposal was about to materialize and, consequently, he looked forward to the day when law would have a greater influence and legal matters would be dealt with more efficiently by the General Assembly. Accordingly he supported the preamble to the United Kingdom draft, which gave prominence to that fundamental idea.

52. However, he had been impressed by certain warnings of caution that had been made in debate. Indeed, the item under discussion did not relate simply to a practical method for dealing with legal and drafting questions. The proposal before the Committee was bound in future to raise such far-reaching questions as how the legal nature of a question was to be determined or whether it was wholly or partly legal. Hence a rigid and mandatory text that would be generally applicable should be avoided, and for that reason his delegation sympathized with the comments of the representative of El Salvador. The Special Committee's recommendations as they stood were sufficiently flexible, though they could be made even more so.

53. The United Kingdom draft resolution was generally acceptable to his delegation, as was the joint amendment of Latin-American delegations to sub-paragraph (a), though it saw no reason why the same amendment should not also apply to sub-paragraph (d). He would vote in favour of sub-paragraphs (b) and (c), but

would reserve his position with respect to sub-paragraph (e) of the United Kingdom draft.

54. The CHAIRMAN declared the general debate on the item closed: henceforth comments should be confined to the various proposals before the Committee.

55. Mr. MOLINO (Panama) suggested that the Committee should decide whether it proposed to take any action on the recommendations of the Special Committee. If it decided to do so, its next decision should be whether its recommendations were to be mandatory or optional as far as the other Main Committees of the General Assembly were concerned.

56. The CHAIRMAN replied that those points would be considered before the Committee proceeded to the vote.

57. Mr. SALAMANCA FIGUEROA (Bolivia) proposed that the Secretariat should prepare a working paper for submission to the next meeting of the Committee embodying the various proposals and amendments.

58. The CHAIRMAN stated that that would be done.

The meeting rose at 1 p.m.