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Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

Request by the Fourth Committee for an opinion by the Sixth Committee on the majority required for the adoption by the General Assembly of resolutions relating to matters referred to in Chapter XI of the Charter (A/C.6/355; A/C.6/L.408) (continued)

1. Mr. ALVAREZ AYBAR (Dominican Republic) said the question of the Committee's competence to deal with the Fourth Committee's request had to be examined in the light of General Assembly resolution 684 (VII) which was still in force. That resolution stated that when a Committee considered the legal aspects of a question important, it should refer the question for legal advice to the Sixth Committee. The implication was that the Sixth Committee was empowered to give legal advice on specific questions but not to give interpretations of a general character concerning provisions of the Charter.

2. The Fourth Committee had, in effect, asked for an interpretation in abstracto of Article 18, paragraphs 2 and 3, as read in the light of the terms of Chapter XI of the Charter. That Committee's resolution (A/C.4/L.501) referred to the discussions which had taken place in the General Assembly's 459th, 656th and 657th plenary meetings. Those discussions, however, had been concerned purely with questions of general legal interpretation. They offered no guidance in the specific points regarding which the Sixth Committee's opinion was being requested. In the absence of such guidance it had to be inferred that what was being requested was not an opinion on the law but general advice.

3. There was no precedent for such a request to the Sixth Committee. Even if one assumed that the General Assembly, in plenary session, had the power to interpret the Charter, it could not delegate that power to one of its Committees. The Sixth Committee could only do the preparatory work to enable the General Assembly to reach its decision.

4. In conclusion, he said that only two courses were open to the Committee: either it could decide that it was not empowered to deal with the Fourth Committee's request; or it could return that request to the Fourth Committee, asking the latter to state the specific question regarding which an opinion was required.

5. Mr. GLASER (Romania) said he could not agree with the suggestion made by the United Kingdom representative (539th meeting) that the question of competence should be decided after the general debate on substance. At times it happened that the issue of competence could not be decided without a prior debate on substance, but that was not the situation in the case before the Committee. The Sixth Committee was, by virtue of rule 101 of the rules of procedure, the Assembly's Legal Committee, and hence was competent to deal with the legal questions submitted to the General Assembly. To doubt the Committee's competence to deal with legal questions was to doubt its raison d'être. Secondly, for a particular legal question to be outside the Committee's competence it would have to be excluded by an express provision. In fact, no such provision existed. On the contrary, General Assembly resolution 684 (VII) specifically recommended the Main Committees to consult the Sixth Committee on the legal aspects of the questions before them.

6. Nor was the enumeration contained in resolution 684 (VII) exhaustive; the resolution had not given the Sixth Committee any new powers, but merely expressed in words the logical consequences of the very nature of the Sixth Committee.

7. In the particular case under discussion the request received from the Fourth Committee (A/C.4/L.501) was covered by operative paragraph 1 (d) of resolution 684 (VII). The objection raised by the Portuguese representative (538th meeting, para. 29), based on paragraph 1 (a) of that resolution, did not therefore apply.

8. The Brazilian representative had stated (*Ibid.*, para. 25) that the request of the Fourth Committee was not concerned with the legal aspects of a question, but rather with a new question which did not appear in the Assembly's agenda at all. The Romanian delegation could not accept that view; the agenda of the General Assembly rarely contained items of a purely legal nature, but every question on the agenda had its legal aspects, concerning which it was normal to ask for the Sixth Committee's advice. The Sixth Committee could no more refuse to give its advice than the Fifth Committee could refuse to advise on financial matters.

9. All items considered by the General Assembly involved, in addition to their aspects of substance, procedural questions, one of which was that of the majority necessary for a decision. In cases in which that question arose the Assembly, by virtue of its general powers, had to give a ruling. So far from being a new item, the question referred to in document A/C.4/L.501 constituted, in fact, one of the "legal aspects" within the meaning of resolution 684 (VII) of an item already before the Assembly.

10. Referring to the distinction drawn by the representative of the Dominican Republic between a legal

opinion and an interpretation of the Charter, he said that many important legal questions which arose in connexion with items on the Assembly's agenda were connected with the interpretation of the Charter.

11. The representative of the Philippines had suggested that if the General Assembly in plenary meeting did not accept the opinion of the Sixth Committee, the Committee's prestige would suffer (539th meeting, para. 12). But, surely, the essence of all advice was that it was not mandatory; the body requesting the advice was always free to take it or not. By virtue of the Statute of the International Court of Justice, that principle applied to the advisory opinions requested by the Assembly from the Court itself; and it could not be seriously contended that the prestige of the Court would be diminished if the General Assembly did not follow its advice on some question.

12. The division of work between the Main Committees of the General Assembly was simply a convenient way of preparing for the debates in the plenary. The Assembly was free at any time to overrule one of its Main Committees, and in fact had done so frequently. If the Main Committees were to object to working under those conditions, all the work of the Assembly would have to be done in plenary meetings.

13. Some delegations had suggested that under rule 99 of the rules of procedure the Sixth Committee was not competent to deal with the Fourth Committee's request. He disagreed. Rule 99 stated that Committees should not introduce new items on their own initiative; the request before the Sixth Committee, however, had been made by the Fourth Committee, which, in turn, had not introduced a new item but had formulated a request relating to an item already before the Assembly, that concerning information from Non-Self-Governing Territories.

14. Concluding, he said the Sixth Committee had no valid reason for refusing to comply with the Fourth Committee's request; indeed, the Sixth Committee had not only the right but also the duty to express an opinion on the legal points referred to it.

15. Mr. ALVES MOREIRA (Portugal) said that the Fourth Committee's request, besides being questionable from the point of view of procedure, was liable to start a movement which, unless contained within the juridical limits of the Charter, could have extremely serious consequences. Ostensibly, the Committee was only being asked to formulate an opinion on the voting procedure applicable to resolutions on matters concerning Non-Self-Governing Territories; in reality, however, the request had much more far-reaching implications. The Sixth Committee was being asked to state, as a matter of principle, whether a question could be regarded as important, within the meaning of Article 18, paragraph 2, of the Charter, if it did not fall within a predetermined category.

16. The Fourth Committee's questions could be summarized very simply: were the problems which might arise in connexion with Chapter XI of the Charter to be considered important or unimportant? Nothing in the Fourth Committee's request suggested that the importance of specific questions might vary, and hence whatever answer the Sixth Committee gave would apply to all such problems without exception. In that connexion, he said it was worth noting that there was no provision of the Charter or general principle of law

which would justify the creation of a category of "unimportant" questions.

17. The second request also seemed to contain some very faulty reasoning. It implied that, pending the establishment of additional categories of questions pursuant to Article 18, paragraph 3, any question not expressly mentioned in Article 18, paragraph 2, would inevitably have to be decided by a simple majority. Such a conclusion was erroneous in law, since the General Assembly could decide to apply the two-thirds majority rule whenever it considered that procedure warranted.

18. If the Sixth Committee were to give a ruling uniformly applicable to every question regarding Non-Self-Governing Territories, all such questions would naturally have to be declared important. Since Article 18, paragraph 2, listed, among the category of important questions, those relating to the operation of the Trusteeship System, the Committee would have to recognize that matters affecting territories voluntarily placed under the régime of Article 73 were at least of equal importance. The Portuguese delegation believed, however, that a uniformly applicable rule and the establishment of categories of important questions were both unnecessary. The Assembly should merely continue its practice of deciding on the relative importance of each individual problem in the light of all the surrounding circumstances.

19. The Fourth Committee had somehow assumed that the expressions "important questions" and "Non-Self-Governing Territories in accordance with Chapter XI of the Charter of the United Nations" were unambiguous and clear. In reality, however, the significance of those expressions was exceedingly obscure. As far as Non-Self-Governing Territories were concerned, the Sub-Committee appointed by the Fourth Committee in 1946 to study questions arising in connexion with Article 73 had expressly refrained from attempting a definition of the expression "peoples who have not attained a full measure of self-government". The Fourth Committee was thus asking for a ruling on the voting procedure applicable to notions which it had itself failed to define.

20. The authors of the Charter had clearly realized that exhaustive enumerations were wholly impossible. They had made no attempt, for example, to list the matters "essentially within the domestic jurisdiction of any State", for the purposes of Article 2, paragraph 7. They had similarly refrained from drawing up an exhaustive list of "important questions". The elaboration of any such list would be even more absurd now, since experience showed that new matters could acquire great importance overnight, and that many complex and vital questions could not be fitted into any of the categories which Article 18, paragraph 2, mentioned by way of illustration. One such question, for example, was the question of slavery, which had taken up much time in various United Nations bodies; it was not expressly classified as important in Article 18, paragraph 2, yet the issues which it raised, from the point of view of both human rights and freedom of navigation, were so great that any decision connected therewith would inevitably require the support of a two-thirds majority. The same could be said of problems which arose when one country sent troops into the territory of another in order to protect a certain form of government against the public will.

21. The practice of the General Assembly, which had

always decided on the importance of each case in the light of all the circumstances, was fully consistent with the text of Article 18. The very words of the first sentence of paragraph 2 clearly implied that it was for the Assembly to decide what questions were "important". The list which followed in that paragraph only mentioned questions regarding the importance of which there could never be any doubt.

22. For those reasons, the Portuguese delegation believed that, in dealing with problems concerning Non-Self-Governing Territories, the Assembly should remain absolutely free to decide on the relative importance of each particular case. If the Committee decided, however, to give a ruling on the specific points asked, all questions arising in connexion with Chapter XI would have to be declared important; that was the only ruling which would be consistent with the reference to the Trusteeship System in Article 18, paragraph 2. On the other hand, he pointed out that it would be inadmissible to hold that such questions were all unimportant, regardless of circumstances, since there was nothing in the Charter authorizing the determination of categories of unimportant problems.

23. Mr. SECADES Y MANRARA (Cuba) said that the Fourth Committee had acted quite properly in asking for the Sixth Committee's opinion on the points specified in document A/C.6/L.501, as General Assembly resolution 684 (VII) authorized that procedure. However, the fact that the Fourth Committee had acted in accordance with a General Assembly resolution did not mean that it had adopted the wisest course. It would have been preferable had the Fourth Committee requested the International Court of Justice, through the General Assembly, to give an advisory opinion on the particular points.

24. As the Fourth Committee's request was in fact addressed to the Sixth Committee, the latter should comply. He did not share the anxiety of the Philippine representative who thought that the Sixth Committee would be placed in an awkward position if the General Assembly decided not to heed its opinion. The Committee was simply being asked to advise on a legal aspect of a question. The General Assembly would in time consider the question as a whole, and its decision might or might not agree with the legal advice of the Sixth Committee.

25. At the request of the Sixth Committee the Secretariat had prepared an excellent working paper (A/C.6/L.408) which threw a great deal of light on the two points referred to in paragraphs (a) and (b) of the Fourth Committee's resolution. So far as paragraph (a) was concerned, the working paper showed that the General Assembly had not invariably observed an identical voting procedure on questions connected with the Non-Self-Governing Territories, though it showed that the vast majority of the Assembly's resolutions concerning the Territories in question had been adopted by a vote of two-thirds or more. Accordingly, the Sixth Committee could reply that, while the request in paragraph (a) should have been transmitted to the International Court of Justice through the General Assembly, its view was nonetheless that, in keeping with precedent, a two-thirds majority was normally required.

26. So far as the point contained in paragraph (b) of document A/C.4/L.501 was concerned, he said that the practice of the Assembly was not consistent. At times it had declared a specific question "important" within the meaning of Article 18, paragraph 2, of the Charter and had accordingly ruled on those questions by a two-thirds majority. At others it had adopted resolutions by a two-thirds majority, without expressly declaring the matters to which the resolutions had related "important". Hence, he considered that the answer to paragraph (b) could be given by no body other than the Assembly itself, and that in attempting to do so the Sixth Committee would be invading the functions of the General Assembly in plenary session.

27. Mr. AZNAR (Spain) said that in the discussion of document A/C.4/L.501 some delegations had touched on substance and others had raised questions of procedure. As he was particularly interested in determining whether the Fourth Committee had acted properly in transmitting the request, he would discuss only incidentally the Sixth Committee's competence to deal with it.

28. A strict interpretation of the rules of procedure demanded that the Sixth Committee should not entertain the request. Article 18 of the Charter said nothing about Non-Self-Governing Territories, while paragraph 3 of that Article stipulated that decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, should be made by a majority of the Members present and voting. Article 18 of the Charter appeared in Chapter IV which was entitled "The General Assembly"; it was therefore clear that the General Assembly should decide the matter and not the Sixth Committee.

29. If the Fourth Committee had requested an advisory opinion from the International Court of Justice, the Sixth Committee could have been asked to advise on the legal aspects and the drafting of the request in conformity with resolution 684 (VII). But that resolution clearly implied that each Committee was not to ask for advice on questions outside its terms of reference. A Committee could not trespass on the preserves of another Committee or of the General Assembly. In his opinion, the Fourth Committee's request was misconceived and contrary to the Charter and to the rules of procedure; the General Assembly alone was competent to decide whether a two-thirds majority was required for matters concerning Non-Self-Governing Territories. Any other course would upset the normal procedure of the United Nations, and the General Assembly would be the first to call attention to that fact. The Spanish delegation considered therefore that the Fourth Committee's request should not be discussed in the Sixth Committee.

30. The representative of Israel had expressed the fear that political passion might envenom the debates of the Sixth Committee. Everyone was on occasion guilty of political passion, and, in its proper context, that was not to be despised. Mr. Aznar expressed the hope, however, that political considerations would continue to be barred from the debates of the Sixth Committee as being unsuitable to the objective discussion of legal questions.

The meeting rose at 12.55 p.m.