



Seventh session
Agenda item 53

METHODS AND PROCEDURES OF THE GENERAL ASSEMBLY
FOR DEALING WITH LEGAL AND DRAFTING QUESTIONS

Report of the Sixth Committee

Rapporteur: Mr. E. WIKBORG (Norway)

1. The question of methods and procedures of the General Assembly for dealing with legal and drafting questions was placed on the agenda of the General Assembly at its sixth session at the request of the United Kingdom delegation, and was referred to the Sixth Committee, which on 18 December 1951 submitted its report.^{1/} The General Assembly, by resolution 597 (VI) of 20 December 1951, established a Special Committee of fifteen members to consider the documents, draft resolutions and amendments on the subject submitted to the Sixth Committee during the sixth session, as well as the records of its debates, to study the question further and to report thereon to the Assembly at its seventh session. The Special Committee met from 27 August to 4 September 1952, and prepared a report to the General Assembly (A/2174).

2. On 16 October 1952, the General Assembly at its 380th plenary meeting, decided to include the item in the agenda, and, at its 382nd plenary meeting on 17 October, referred it to the Sixth Committee for consideration.

3. The Committee discussed the matter at its 306th to 312th meetings from 20 to 28 October 1952. During the discussion the Committee had before it a draft resolution submitted by the United Kingdom (A/C.6/L.234), with amendments thereto by Egypt (A/C.6/L.235), by Argentina, Mexico and Peru jointly (A/C.6/L.236), by Poland (A/C.6/L.237), by Belgium (A/C.6/L.238), by Czechoslovakia (A/C.6/L.239), by El Salvador (A/C.6/L.240), later revised by the

^{1/} A/2004/Rev.1, Official Records of the General Assembly, Sixth Session, Annexes, agenda item 63, pages 8 and 9.

sponsor (A/C.6/L.240/Rev.1), and by Venezuela (A/C.6/L.243). The joint amendment of Argentina, Mexico and Peru was withdrawn in favour of a joint amendment by Argentina, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Panama and Peru (A/C.6/L.242), which was later revised by the sponsors (A/C.6/L.242/Rev.1). Oral amendments to the United Kingdom draft resolution were proposed by France and the Union of South Africa. Part of the amendment proposed by Poland (A/C.6/L.237) was applied to the eleven-Power joint amendment, and oral sub-amendments to the joint amendment were proposed by Syria and Australia. The proposal and amendments before the Committee, except for some revisions and withdrawals immediately prior to the vote, were tabulated in a working paper prepared by the Secretariat (A/C.6/L.244).

4. The United Kingdom draft resolution (A/C.6/L.234) in its first operative paragraph provided that the General Assembly should decide to follow the five recommendations in paragraph 40 of the report of the Special Committee, which were set out verbatim in five sub-paragraphs. Later in the discussion the sponsor orally substituted for the word "Decides" the words "Adopts the following recommendations of the Special Committee". In its second operative paragraph the United Kingdom draft directed that the foregoing decision should be embodied as an annex to the rules of procedure of the General Assembly and that the annex should also set out paragraphs 19, 20, 29, 30, 35, 36, 38 and 39 of the report of the Special Committee.

5. Amendments to the preamble of the United Kingdom draft resolution were submitted by Czechoslovakia (A/C.6/L.239) and Venezuela (A/C.6/L.243). The Czechoslovakian amendment was later withdrawn. The second paragraph of the Venezuelan amendment was withdrawn, and the first paragraph was accepted by the United Kingdom. The second paragraph of the preamble remained unchanged.

6. At the beginning of the first paragraph of the operative part of the United Kingdom draft, the amendment of El Salvador (A/C.6/L.240/Rev.1) proposed to substitute the word "Recommends" for the words "Adopts the following recommendations of the Special Committee".

7. Sub-paragraph (a) of the first operative paragraph of the United Kingdom draft, which reproduced the first of the recommendations of the Special Committee,

provided that whenever any Committee contemplated making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, the matter should, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee or to an ad hoc sub-committee established by the Committee concerned, for advice on the legal aspects and on the drafting of the request.

8. The Egyptian amendment (A/C.6/L.235) to this sub-paragraph proposed to replace the words "at some appropriate stage of its consideration by that Committee" by the words "if that Committee during its consideration thereof deems such action to be necessary and appropriate".

9. The Polish amendment (A/C.6/L.237) proposed to replace the word "shall" by the word "may".

10. A South African oral amendment proposed to add the word "legal" before the word "sub-committee".

11. The joint eleven-Power amendment, in its revised form (A/C.6/L.242/Rev.1), proposed that, whenever any Committee contemplated making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, the matter should, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee for advice on the legal aspects and on the drafting of the request, or the Committee concerned should propose that the matter should be considered by a joint Committee of itself and the Sixth Committee.

12. The Polish sub-amendment (A/C.6/L.237) to the eleven-Power joint amendment proposed to replace the word "shall" by the word "may" in two places.

13. The Syrian oral sub-amendment to the joint amendment proposed to replace the words "at some appropriate stage of its consideration by that Committee" by the words "if that Committee during its consideration thereof deems such action to be necessary and appropriate".

14. The Australian oral sub-amendment to the joint amendment, as revised by its sponsors, proposed to insert the words "or to an ad hoc sub-committee established by the Committee concerned" after the words "be referred to the Sixth Committee".

15. Sub-paragraph (b) of the first operative paragraph of the United Kingdom draft, which reproduced the second of the recommendations of the Special Committee, was ultimately adopted without change by the Committee as sub-paragraph (b) of the first operative paragraph.

16. The Egyptian amendment (A/C.6/L.235) to this sub-paragraph proposed to replace the words "at some appropriate stage of its consideration" by the words "if, during its consideration of the matter, it deems such action to be necessary and appropriate".

17. The Polish amendment (A/C.6/L.237) to this sub-paragraph proposed to replace the word "shall" by the word "may".

18. Sub-paragraph (c) of the first operative paragraph of the United Kingdom draft, which reproduced the third of the recommendations of the Special Committee, was ultimately adopted without change as sub-paragraph (c) of the first operative paragraph. No amendments were proposed to this sub-paragraph.

19. Sub-paragraph (d) of the first operative paragraph of the United Kingdom draft, which reproduced the fourth of the recommendations of the Special Committee, provided that when a Committee considered the legal aspects of a question important, the Committee should refer it for legal advice to the Sixth Committee or to an ad hoc sub-committee of the Committee concerned.

20. The Polish amendment (A/C.6/L.237) proposed to delete this sub-paragraph.

21. The Czechoslovak amendment (A/C.6/L.239) proposed to replace the sub-paragraph with a provision that when a Committee considered the legal aspects of a question important, it might consult the Sixth Committee.

22. The French oral amendment, as revised by the sponsor, proposed to replace the words "or to an ad hoc sub-committee of the Committee concerned" by the words "or propose that the question should be considered by a joint Committee of itself and the Sixth Committee".

23. The South African oral amendment proposed to add the word "legal" before the word "sub-committee".

24. Sub-paragraph (e) of the first operative paragraph of the United Kingdom draft, which reproduced the fifth of the recommendations of the Special

Committee, provided that normally the Chairman of a Committee should, at the appropriate time, call upon the Vice-Chairman and the Rapporteur to join him for the purpose of proceeding, in consultation with the competent officials of the Secretariat, to examine the draft resolutions from the point of view of style, form and use of technical terms, and, when appropriate, to suggest to the Committee such changes as they deemed necessary.

25. The Polish amendment (A/C.6/L.237) proposed to delete this sub-paragraph.

26. The Belgian amendment (A/C.6/L.238) proposed to add the word "formal" between the words "such" and "changes".

27. The South African oral amendment proposed to add the word "legal" before the word "officials".

28. With respect to the second operative paragraph of the United Kingdom draft resolution, a Polish amendment (A/C.6/L.237) to delete the paragraph was withdrawn. An amendment of El Salvador (A/C.6/L.240/Rev.1) proposed to substitute the word "recommendations" for the word "decision", and to add paragraph 37 to the paragraphs of the report of the Special Committee to be set out in an annex to the rules of procedure. The United Kingdom accepted the insertion of this additional paragraph.

29. During the debates, some delegations were of the opinion that the General Assembly should adopt the recommendations of the Special Committee as binding rules. Those recommendations, in their view, might not go as far as was desirable, but they were a compromise solution which represented an irreducible minimum of necessary improvements in the General Assembly's procedures. It would be useless, in their opinion, to make those provisions less than obligatory, as optional provisions would make no change in the existing situation. They thought that the system proposed by the Special Committee would do much toward ensuring adequate consideration of legal questions, would be sufficiently flexible not to impair the efficiency of the General Assembly, and would respect the competence of Committees other than the Sixth.

30. Other delegations did not favour the adoption of the Special Committee's recommendations in an unmodified form. They thought that every Committee of the

General Assembly should be left completely free to decide whether or not to adopt the methods and procedures proposed in the report. To make it obligatory to refer legal questions to the Sixth Committee for advice would in some degree subordinate other Committees to the Sixth, would make the procedure of the General Assembly excessively rigid, would overburden the Sixth Committee and would consequently prolong the Assembly's sessions. Further, the attempt to separate the legal aspects from the political and other aspects of agenda items was futile, and might provoke extensive debates. The Sixth Committee, in their view, was not primarily a body of legal experts but rather a meeting of representatives of governments. Reference to the Sixth Committee would not, therefore, necessarily promote consideration of legal questions from a technical viewpoint.

31. Other delegations recognized the force of some of the arguments advanced by both those who favoured mandatory provisions and those who favoured optional ones. They proposed that the General Assembly should recommend that certain procedures should be followed; this course would preserve some flexibility while making an improvement in the existing situation.

32. With respect to the first of the Special Committee's recommendations, that relating to requests for advisory opinions from the International Court of Justice, some delegations favoured reference of proposals for such requests either to the Sixth Committee or to an ad hoc sub-committee of the Committee concerned. In their opinion, reference to an ad hoc sub-committee was a useful alternative, as technical tasks could best be carried out in small groups and as members of the Committee which had debated the substance of an item would be in a good position to formulate the legal issues for the consideration of the Court.

33. On the other hand, some did not support reference to an ad hoc sub-committee, and thought the only way to ensure adequate consideration of legal aspects and satisfactory drafting was to consult the Sixth Committee. In their view, proposals to request advisory opinions should either be referred to the Sixth Committee for advice or should be considered by a joint Committee of the Sixth and the other Main Committee concerned. Joint Committees of the type they envisaged had been often used in the practice of the General Assembly.

34. The second of the Special Committee's recommendations, concerning proposals to refer a matter to the International Law Commission, was supported by a number of delegations as a means of preventing disruption of the Commission's work by special assignments made by the General Assembly. The Sixth Committee, as the body charged with reviewing the annual reports of the Commission, would best be able to give advice on the effect of a contemplated reference on the Commission's programme of work.

35. Other delegations, however, opposed compulsory reference of such proposals to the Sixth Committee. They believed that Main Committees of the General Assembly could equally well be informed by other means of the effect that a particular assignment would have on the International Law Commission's work.

36. The third of the Special Committee's recommendations, relating to amendments to the rules of procedure of the General Assembly, was supported by a large majority of the Sixth Committee. It was thought useful to centralize the drafting of rules of procedure in one Committee, and proposals to amend the rules had usually been referred to the Sixth Committee in the past.

37. With regard to the fourth of the Special Committee's recommendations, that concerning the legal aspects of questions in general, some delegations favoured a modification which would allow a minority of any Committee, for example one-third of the members present and voting, to require reference of the legal aspects of a question to the Sixth Committee or an ad hoc sub-committee.

38. Other delegations, however, thought it impractical and undesirable to give a minority such a right. They were of the opinion that the recommendation of the Special Committee, under which a majority vote would be required for a decision that separate consideration should be given to the legal aspects of an item, was more in harmony with the Charter and United Nations practice.

39. A number of delegations wished to make the same alteration in this provision as had been proposed for the first of the Special Committee's recommendations, and to replace the mention of an ad hoc sub-committee by an alternative of consideration by a joint Committee of the Sixth and the other Committee concerned. The Sixth Committee, being the Legal Committee, could deal with legal matters better than a ad hoc sub-committee.

40. The fifth of the Special Committee's recommendations, that relating to drafting questions, was thought a useful contribution by some delegations. Others, however, thought that more assistance in drafting should be given by the Secretariat and by legal advisers to delegations, and that the officers of Committees were not necessarily expert in such matters.

41. Other delegations thought it unnecessary to adopt this recommendation of the Special Committee, which was self-evident and had been to a large extent the existing practice.

Voting on sub-paragraph (a) of the first operative paragraph

42. The Committee first voted on the sub-amendments to the eleven-Power joint amendment (A/C.6/L.242/Rev.1) to sub-paragraph (a) of the first operative paragraph of the United Kingdom draft resolution (A/C.6/L.234).

The Polish sub-amendment (A/C.6/L.237) to replace the word "shall" by the word "may" was rejected by 24 votes to 22, with 3 abstentions.

The Syrian oral sub-amendment to replace the words "at some appropriate stage of its consideration by that Committee" by the words "if that Committee during its consideration thereof deems such action to be necessary and appropriate" was rejected by 22 votes to 21, with 7 abstentions.

The Australian oral sub-amendment to insert the words "or to an ad hoc sub-committee established by the Committee concerned" after the words "referred to the Sixth Committee" was rejected by 19 votes to 11, with 20 abstentions.

The eleven-Power joint amendment (A/C.6/L.242/Rev.1) was adopted by 20 votes to 18, with 13 abstentions.

Voting on sub-paragraph (b) of the first operative paragraph

43. The Committee then voted on the amendments to sub-paragraph (b) of the first operative paragraph of the United Kingdom draft resolution (A/C.6/L.234).

The Polish amendment (A/C.6/L.237) to replace the word "shall" by the word "may" was rejected by 24 votes to 21, with 4 abstentions.

The Egyptian amendment (A/C.6/L.235) was rejected by 24 votes to 23, with 5 abstentions.

Sub-paragraph (b) of the United Kingdom draft resolution was adopted by a roll-call vote of 26 to 4, with 22 abstentions. The voting was as follows:

In favour: Afghanistan, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, France, Greece, Honduras, Israel, Netherlands, Norway, Panama, Sweden, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland.

Against: Guatemala, India, United States of America, Yugoslavia.

Abstaining: Argentina, Byelorussian Soviet Socialist Republic, Czechoslovakia, Egypt, El Salvador, Indonesia, Iran, Iraq, Lebanon, Liberia, Pakistan, Peru, Philippines, Poland, Saudi Arabia, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yemen.

Voting on sub-paragraph (c) of the first operative paragraph

44. The Committee then voted on sub-paragraphs (c) of the first operative paragraph of the United Kingdom draft resolution (A/C.6/L.234). It was adopted by 45 votes to 2, with 2 abstentions.

Voting on sub-paragraph (d) of the first operative paragraph

45. The Committee then voted on the amendments to sub-paragraph (d) of the first operative paragraph of the United Kingdom draft resolution (A/C.6/L.234).

The Polish amendment (A/C.6/L.237) to delete the sub-paragraph was rejected by a roll-call vote of 24 to 24, with 4 abstentions. The voting was as follows:

In favour: Bolivia, Brazil, Byelorussian Soviet Socialist Republic, Czechoslovakia, Denmark, Egypt, Guatemala, India, Indonesia, Iran, Iraq, Lebanon, Norway, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Uruguay, Yemen, Yugoslavia.

Against: Argentina, Australia, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, France, Greece, Honduras, Israel, Liberia, Netherlands, Panama, Peru, Sweden, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Afghanistan, Belgium, Thailand, Venezuela.

A roll-call vote was then taken on the Czechoslovak amendment (A/C.6/L.239) to this sub-paragraph; the result was 27 votes in favour, 18 against and 7 abstaining. After the voting, it was pointed out that there was a discrepancy between the English original and the Spanish version of the amendment. The Chairman ruled that the discrepancy had led to a substantial misunderstanding on the part of Spanish-speaking representatives and that a new vote should be taken; this ruling was sustained by the Committee by 25 votes to 18, with 10 abstentions. On a new roll-call vote, the Czechoslovak amendment was rejected by 29 votes to 16, with 8 abstentions. The voting was as follows:

In favour: Afghanistan, Byelorussian Soviet Socialist Republic, Czechoslovakia, Denmark, Egypt, Iraq, Norway, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yemen, Yugoslavia.

Against: Argentina, Australia, Belgium, Bolivia, Burma, Canada, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, France, Greece, Guatemala, Haiti, Honduras, India, Israel, Liberia, Mexico, Netherlands, Nicaragua, Panama, Sweden, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Brazil, Chile, Indonesia, Iran, Peru, Thailand, United States of America, Venezuela.

The French oral amendment to substitute the words "or propose that the question should be considered by a joint Committee of itself and the Sixth Committee" for the words "or to an ad hoc sub-committee of the Committee concerned" was adopted by 19 votes to 8, with 14 abstentions.

Sub-paragraph (d), as amended, was adopted by 20 votes to 12, with 11 abstentions.

Voting on sub-paragraph (e) of the first operative paragraph

46. The Committee, by 23 votes to 22, with 7 abstentions, adopted the Polish amendment (A/C.6/L.237) to delete sub-paragraph (e) of the United Kingdom draft resolution (A/C.6/L.234).

Voting on the preamble

47. The Committee then voted on the preamble of the United Kingdom draft resolution (A/C.6/L.234).

The first paragraph of the preamble of the United Kingdom draft resolution, as modified by the acceptance of the first paragraph of the Venezuelan amendment (A/C.6/L.243), was adopted by 36 votes to none, with 15 abstentions.

The second paragraph of the preamble was adopted without dissent.

Voting on the beginning of the first operative paragraph

48. The amendment of El Salvador (A/C.6/L.240/Rev.1) to substitute the word "Recommends" for the words "Adopts the following recommendations of the Special Committee" at the beginning of the first operative paragraph was adopted by 22 votes to 15, with 11 abstentions.

Voting on the second operative paragraph

49. The Committee then voted on the second operative paragraph of the United Kingdom draft resolution (A/C.6/L.234) and the amendments thereto. The Polish amendment (A/C.6/L.237) to delete the paragraph was withdrawn by its sponsor.

The amendment of El Salvador (A/C.6/L.240/Rev.1) to substitute the word "recommendations" for the word "decision" in the first sub-paragraph was adopted by 27 votes to 4, with 16 abstentions.

The second sub-paragraph as modified by the acceptance of the amendment of El Salvador (see paragraph 28 above) was adopted by 17 votes to 14, with 18 abstentions.

Voting on the whole draft resolution

50. The amended United Kingdom draft resolution as a whole was adopted by 29 votes to 9, with 10 abstentions.

51. The Sixth Committee therefore recommends to the General Assembly the adoption of the following resolution:

METHODS AND PROCEDURES OF THE GENERAL ASSEMBLY
FOR DEALING WITH LEGAL AND DRAFTING QUESTIONS

The General Assembly,

Considering that it is desirable to introduce adequate methods and procedures for dealing with the legal questions with which it is concerned, while leaving its Committees sufficient latitude for conducting their proceedings concerning matters within their competence,

Taking note of the report and recommendations of the Special Committee established under resolution 597 (VI) of 20 December 1951,^{1/}

1. Recommends:

(a) That, whenever any Committee contemplates making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, the matter shall, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee for advice on the legal aspects and on the drafting of the request, or the Committee concerned shall propose that the matter should be considered by a joint Committee of itself and the Sixth Committee;

(b) That, whenever any Committee contemplates making a recommendation to the General Assembly to refer a matter to the International Law Commission, the Committee shall, at some appropriate stage of its consideration, consult the Sixth Committee as to the advisability of such a reference, and on its drafting;

(c) That, whenever any Committee contemplates making a recommendation for the adoption by the General Assembly of any amendment to the rules of procedure of the General Assembly, the matter shall, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee for advice on the drafting of such amendment and of any consequential amendment;

(d) That, when a Committee considers the legal aspects of a question important, the Committee should refer it for legal advice to the Sixth Committee or propose that the question should be considered by a joint Committee of itself and the Sixth Committee.

^{1/} A/2174.

2. Directts:

(a) That the terms of the foregoing recommendations shall be embodied as an annex to the rules of procedure of the General Assembly; and

(b) That the said annex shall also set out, verbatim, paragraphs 19, 20, 29, 30, 35, 36, 37, 38 and 39 of the report of the Special Committee.
