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CONTENTS

Chairman: Mr. Manfred LACHS (Poland).

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

[Item 63]*

1. Mr. FELLER (General Counsel and Principal Director, Legal Department), describing the functions of the Legal Department of the Secretariat with respect to legal and drafting questions, said that the greater part of the Department's work consisted in giving legal advice to the Secretary-General and other departments of the Secretariat. Its activities in the General Assembly consisted in assigning legal advisers to the various Main Committees, who were at the service of the Chairman and Secretary of the Committee to which they were assigned. The functions of those advisers were fourfold. Firstly, they gave formal advice to delegations which asked for it on the drafting of resolutions. Delegations usually asked for advice in cases where elaborate new administrative arrangements were to be established in a resolution, e.g., the resolutions creating a United Nations system of relief in Korea and the United Relief and Works Agency for Palestine Refugees in the Near East (410 (V) and 302 (IV)). Secondly, the legal advisers acted as representatives of the Secretary-General, participating in the debate, when the Secretary-General had a specific interest in the discussion as the chief administrative officer of the Organization, as in the case of the drafting of staff regulations, the statute of the Administrative Tribunal and the Headquarters Agreement, or in discussions on compensation for injuries incurred in the service of the United Nations, reservations to multilateral conventions, etc. Thirdly, they acted as secretaries of legal sub-committees and special committees of a legal character, such as the special committee for revising the General Assembly's rules of procedure. Fourthly, they gave formal advice either orally or in writing, at the request of a committee. The questions asked in the last case were more or less precise; they concerned, for example, the precedents governing colonial clauses and federal clauses in conventions. They were not questions of legal policy, which was a matter for the Sixth Committee. That fourth function was chiefly of service to organs other than the General Assembly, e. g., the Economic and Social Council and the Commission on Human Rights.

2. The Legal Department had to act in an advisory capacity and therefore did not normally take the initiative. It made a clear distinction between the legal and policy aspects of any matter referred to it and advised on the legal aspects only. It could not guide and direct, nor was it in a position to proceed with the deliberation of a court of law, since a few days were generally the maximum that could be allowed it for a reply.

3. Much had been said in the Sixth Committee about inconsistency in the form and style of General Assembly resolutions. It was, however, only necessary to compare the first volume of General Assembly resolutions with later volumes, to remark the very great improvement made in consistency, although more remained to be done. Much of the improvement could be ascribed to the Secretariat. In the first place, in each book of resolutions published, the Secretariat arranged resolutions in a certain order, under Committees, and numbered them. Secondly, it tried to give every resolution a title, for convenience of reference. Thirdly, it indexed the resolutions. Lastly, while resolutions were still under discussion, it endeavoured to introduce changes for the sake of stylistic clarity and uniformity. It might happen, for example, that a phrase in a draft resolution submitted in one of the working languages might be difficult to render in others; in that case the Secretariat would discuss the matter with the delegation responsible, and ask it whether it could find a phrase that could be translated more easily.

4. The Legal Department was already giving attention to the ideas embodied in the United Kingdom draft resolutions (A/C.6/L.175 and A/C.6/L.176) and, within the limits of its powers, doing what it could to improve the system.

5. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics), reviewing the statements made by the United Kingdom representatives when introducing the two United Kingdom draft resolutions (256th and 257th meetings), said that that representative had stated that the

* Indicates the item number on the General Assembly agenda.

preservation of peace depended on the rule of law, and that the cavalier treatment of legal matters might eventually harm the United Nations and lead to a dangerous situation contrary to the Charter, a danger which could be avoided if the General Assembly set up adequate machinery to deal with legal questions and questions possessing legal aspects.

6. It was indeed vital that States Members should observe the Charter and the rules of international law. It was unfortunate, therefore, that the United Kingdom representative had failed to draw attention to actual cases of such non-observance. Many such cases were to be found in General Assembly resolutions adopted at recent sessions. By failing to mention that fact and the reasons for it, the United Kingdom representative had reduced a question of the utmost importance to one of a purely technical character. It was not merely legal difficulties that were responsible for the existence of General Assembly resolutions which conflicted with the Charter.

7. What were the real reasons for the problems under consideration ? As the representative of Israel had pointed out (259th meeting), the rule of law was being replaced by the rule of the majority. As a background to his remarks Mr. Morozov would give a few examples of infringements of the Charter and the rules of international law.

8. First, General Assembly resolution 111 (II) of 13 November 1947, establishing an Interim Committee with powers not even possessed by the main bodies of the United Nations, was at variance with Article 7 of the Charter.

9. Secondly, the establishment, on 21 October 1947, of the so-called United Nations Special Committee on the Balkans by resolution 109 (II) was contrary to Article 2, paragraph 7, of the Charter, since it constituted intervention in matters essentially within the domestic jurisdiction of certain European States.

10. Thirdly, the North Atlantic Treaty, signed by twelve States, including ten Members of the United Nations, on 4 April 1949, was of an aggressive character and in conflict with the purposes and principles of the United Nations.

11. Fourthly, the election of three non-permanent members to the Security Council on 20 October 1949 (231st plenary meeting of the General Assembly) had not been in accordance with the principle of equitable geographical distribution laid down in Article 23 of the Charter. The firmly-established practice according to which candidatures for non-permanent seats on the Security Council were put forward by States belonging to the corresponding geographical regions had also been disregarded.

12. Fifthly, the justification of the United States aggression in Korea by the Security Council on 25 and 27 June and 7 July 1950 [1] was contrary to Article 2, paragraph 7, and Articles 27, 32 and 33 of the Charter, and all United Nations decisions concerning Korea, including the disgraceful decision taken by the General Assembly in resolution 483 (V) of 12 December 1950, to institute a decoration for those who had fought in Korea, were illegal. It should be noted that that decision was adopted in accordance with the Sixth Committee's report [2] rejecting the USSR's objection that the adoption of such a decision was a new and flagrant violation of the Charter.

13. Sixthly, General Assembly resolution 498 (V) of 1 February 1951, which was a continuation, at variance with the Purposes and Principles of the Charter, of the General Assembly's justification of the United States' aggression against the People's Republic of China, contained the quite unwarranted finding that the Central People's Government of the People's Republic of China had engaged in aggression in Korea.

14. Seventh, the rejection by the General Assembly and the Security Council of resolutions for the exclusion of the Kuomintang group from the United Nations had constituted a breach of Chapters I and II of the Charter. The result of the illegal decisions of the Security Council on 13 January 1950 [3] and of the General Assembly on 19 September 1950 (resolution 490 (V)) and 5 November 1951 (332nd plenary meeting) was that a State with a population of 500 million inhabitants was deprived of the right of participation in the activities of the Organization.

15. Eighth, General Assembly resolution 377 (V) of 3 November 1950, entitled " Uniting for peace ", was incompatible with Article 11 and Chapters V and VII of the Charter. The purpose of that resolution was to undermine the Security Council and to enable the General Assembly to usurp its functions.

16. Ninth, General Assembly resolution 380 (V) of 17 November 1950, entitled " Peace through deeds ", was contrary to the Purposes and Principles of the Charter and was designed to camouflage the aggressive policy pursued by some countries including the United States.

17. The reason for such violations was not a technical reason; it was the policy pursued by ruling circles in the United States and the States which followed it, a policy which resulted in the subordination of " the rule of law to considerations of expediency and convenience ", as mentioned by the United Kingdom representative (256th meeting).

18. In spite of the omissions in the United Kingdom representative's statement, however, much that he had said deserved support. It was true that the preservation of peace depended also upon the observance of international law and the Charter; that the Charter was a legal document; that the cavalier treatment of legal questions, however innocent its intention, could damage the United Nations; and that the legal aspects of questions were of vital importance.

19. The Soviet Union delegation had always advocated observance of the Charter and of the generally recognized principles of international law, and consequently supported all the general theses advanced in the first part of the United Kingdom representative's statement. It would join with all other delegations which really desired to strengthen international co-operation. But the United Kingdom representative had not gone nearly far enough, and the technical remedies proposed in the second part of his statement were far from satisfactory.

20. If the Charter, international treaties and international law were to be strictly observed, the delegations

[1] See *Official Records of the Security Council, Fifth Year, Nos. 15, 16* and *18*.

[2] See *Official Records of the General Assembly, Fifth Session, Annexes*, agenda item 74, document A/1631.

[3] See *Official Records of the Security Council, Fifth Year, No. 3*.

of a number of countries must first renounce their practice of deliberately ignoring the basic principles of law and cease to pursue a policy of dictating to the rest of the world. The United Nations was an organization of equals.

21. Although the United Kingdom proposals did not take matters very far, he would examine them patiently and in detail, in order to determine what constructive contribution they had to offer.

22. In the first place, they contained nothing new. It was already the practice to refer all purely legal questions to the Sixth Committee, and if the legal aspects of an item appeared important any delegation was entitled to ask for their consideration by the Legal Committee. Furthermore, if any delegation felt that a question should be dealt with jointly by two committees it could make a proposal in the General Committee or in a plenary meeting to that effect. Consequently, there did not seem to be any need for the complicated procedure suggested by the United Kingdom delegation in its draft resolution I (A/C.6/L.175). Nor could he agree to the machinery suggested for determining the exact importance of the legal aspects of a given item (paragraph 4 of draft resolution I). The United Kingdom delegation appeared to believe that a legal committee of eleven members would be able to work out criteria of mechanical precision for deciding what questions should be dealt with by the Sixth Committee, although it was quite clear that no such criteria could be elaborated and that such decisions could never be reached mechanically.

23. It was further suggested in the United Kingdom proposal that certain items should first be dealt with separately by the Sixth Committee and the other committee concerned and should only subsequently be dealt with jointly by the two committees. Such an artificial splitting up of important items among two committees was quite impracticable. Experience in the United Nations had shown that items could not be regarded in their proper perspective unless they were considered as a whole. In addition, the proposal would involve much loss of time.

24. The United Kingdom proposal then recommended that whenever a legal point arose which might affect the ultimate decision of a committee, the legal elements involved should be referred for advice and report either to the Sixth Committee or to an *ad hoc* legal sub-committee set up for the purpose. But it must be remembered that the Sixth Committee was one of the Main Committees of the Assembly and was not simply an advisory organ for the convenience of the other committees. The analogy drawn between the Fifth and Sixth Committees was not valid, since the distinguishing characteristic of the Fifth Committee was that all its decisions were purely budgetary, and none political. The same could not be said of any other of the Main Committees. The items referred to the Sixth Committee nearly always involved, by reason of their very nature, political as well as legal considerations. As one of the Main Committees, the Sixth Committee could not be placed in a subordinate position, as it would be if it were asked to advise other committees and its advice were then rejected. Similarly, it could not be placed in a position of superiority, as would be the case if the other committees were bound to accept its advice.

25. If the United Kingdom proposals were adopted, the Sixth Committee would clearly be overburdened with work, since practically every item before the Assembly had certain legal aspects. The proposal for an *ad hoc* legal sub-committee to give advice to the Main Committees was quite inadmissible for the reasons he had advanced against the assignment of such functions to the Sixth Committee. In actual fact, the *ad hoc* legal sub-committee would not really be a sub-committee at all but rather a seventh Main Committee of the General Assembly. On the other hand, if the proposal simply meant that the Main Committees could set up sub-committees whenever the need arose, that suggestion was already met by rule 102 of the rules of procedure.

26. Turning to paragraph 2 of United Kingdom draft resolution I, he recalled that the United Kingdom representative had produced various concrete examples of cases in which the International Court of Justice had gone to considerable trouble in its advisory opinions to determine the import of the questions put to it. He himself could mention further instances in which the Court had found it necessary to interpret requests for an advisory opinion, but he did not think that was really due to the fact that the questions had not been drafted by lawyers. Indeed the Court had acted in exactly the same way in the case of a question drafted by the Sixth Committee itself, viz., that regarding the reservations to the Convention for the Prevention and Punishment of the Crime of Genocide.[4] It was not because the Court did not understand the questions put to it that it resorted to the practice of interpretation, but simply because it wished to exhibit quite clearly the exact way in which it understood the question. That was very natural. It was highly unrealistic to expect the Sixth Committee to deal with the form of a request for an advisory opinion, while some other committee took the decision of substance. Obviously, it would be impossible for the Sixth Committee to draft any question without first going into the substance. Then it would doubtless add something to the draft submitted to it, the original committee would take exception to the addition and the whole discussion would be reopened. If such procedure were adopted, the United Nations would be taking two steps backward for every one it took forward.

27. He fully shared the United Kingdom representative's concern that the requests for an advisory opinion should be drafted in a completely objective manner. Objectivity could not however be achieved by the procedure suggested in the draft resolution, but only through a change of heart in certain delegations. Although his delegation had not always agreed with the advisory opinions given by the Court in the past, it could be said to the Court's credit that, even when questions had not been drafted objectively, it had understood the basic issues involved.

28. The Sixth Committee was not the only one which had members competent to deal with legal questions; the other committees were adequately equipped to handle any legal issues arising during their discussions. Other representatives had pointed out that there were legal advisers on each delegation and that the Legal Department of the Secretariat could always be asked for advice. In support of his proposals, the United Kingdom representative had used the example of the draft International Covenant on Human Rights and had argued that it should have been referred to the Sixth Committee. But, as the Chilean representative had rightly pointed out

[4] See *Reservations to the Convention on Genocide, Advisory Opinion: I. C. J. Reports 1951*, p. 15.

(258th meeting), the deadlock reached in the work on the Covenant was not due to any lack of legal counsel, for many lawyers had in fact participated in the discussions. The difficulty had been and still was the United States' insistence on the elimination of social and cultural rights from the Covenant, which would thereby be rendered worthless. Had there been any hope that the United States delegation in the Sixth Committee would depart from the attitude it had taken in the Third Committee and in the Economic and Social Council, he would have agreed that the subject should be discussed in the Sixth Committee. However, as the delegations did not change their attitude from one committee to another, it was useless to seek artificial remedies.

29. As for the proposals in paragraph 3 of draft resolution I, it was quite inadmissible to suggest that any convention or declaration of the United Nations should be drafted by a body of experts rather than by representatives of Member States. He also believed that there was no reason to set up an *ad hoc* Legal Committee of eleven members, as was provided by paragraph 4 of the draft.

30. With regard to draft resolution II (A/C.6/L.176), he appreciated the way in which the United Kingdom representative had pointed out the drafting defects in some General Assembly resolutions, but, as the Chilean representative had stated, the remedy proposed might prove more dangerous than the ills it sought to cure. Defects in drafting were not of vital importance and those which had been revealed in the past had not distorted the substance of the resolutions. His delegation would naturally like to see improvements in the style and drafting of Assembly resolutions but felt that the existing machinery sufficed for that purpose.

31. Consequently, his delegation would not be able to support either of the two draft resolutions submitted by the United Kingdom.

32. Mr. ABDOH (Iran) said that, realizing the importance of legal considerations and the importance attached by the Charter to respect for legal principles, on the observance of which the maintenance of peace and security depended, his delegation's initial reaction to the United Kingdom draft resolutions had been to support them. It also agreed that the Purposes of the United Nations could only be fully achieved if the Organization's treatment of legal questions were methodical and objective, and that legal principles should not be subordinated to political considerations. It would thus support any attempt to stimulate respect for international law.

33. After more mature consideration, however, he now found the United Kingdom proposals to be cumbersome and likely to complicate the work of the General Assembly, and thus neither desirable nor practicable. Moreover, he doubted whether, by the procedure proposed, the aims of the United Kingdom delegation in submitting its proposals could be achieved either in cases where the legal aspect predominated or in cases where the legal and non-legal aspects were of equal importance, for it had to be remembered that the Sixth Committee was composed of representatives of States Members of a body that was essentially political in character; those representatives were therefore bound to reflect the views of their governments. He did not, for instance, believe that the Sixth Committee would have arrived at a solution different from that reached at the fifth session of the General Assembly on the question of representation in the United Nations (resolution 396 (V)). At that stage in history, political considerations had been regarded as more important than legal considerations. Moreover, the conception of justice was, unfortunately, not uniform throughout the world; some States which had obtained privileges which impaired the sovereignty of other States were today seeking to maintain them by allegedly legal considerations.

34. The proposal in paragraph 1 of draft resolution I, if adopted, could not but extend the duration of the General Assembly's debates, thus aggravating the irritation felt by world opinion at the Organization's already unduly protracted discussions. It would also be difficult to distinguish between the legal and political aspects of questions. He also agreed that the adoption of the United Kingdom proposal would greatly overload the Sixth Committee. Again, if the joint meetings suggested in paragraph 1 implied full representation of both main committees concerned, the arrangement would be thoroughly unwieldy; a joint meeting restricted in size would on the other hand signify the abandonment by the Sixth Committee of part of its duties and the absence of any guarantee that the political aspect would not enter into consideration. Experience had shown, moreover, that the representative character of such a body could not be assured.

35. Recalling the arguments already advanced with regard to sub-paragraph 1 (*b*), he wondered whether the proposed *ad hoc* legal sub-committee would be independent of the Main Committee, and stressed the disadvantage of referring a matter to a sub-committee where the latter's decision might affect the substance of the question. All in all, he felt that the establishment of such a legal sub-committee was undesirable.

36. He had no objection, in principle, to the retention of the basic idea in paragraph 2 but supported the USSR representative's view that the procedure suggested there in was no improvement on existing procedure.

37. Nor could he agree to the proposals in paragraph 3 since, in his view, and according to the statement of Mr. Feller, such work could be assigned with advantage to the Legal Department of the Secretariat.

38. Again, he felt that the procedure proposed in paragraph 4 was asking too much of the Committee and that the best course might be for the Committee to decide what should be retained of the United Kingdom proposals and then to request the Secretary-General to report to the seventh session of the General Assembly on the basis of the resolution finally adopted.

39. In the light of the amendments submitted to the United Kingdom proposals and of the general sense of the Committee as to which parts of those proposals should be retained, he felt that a more suitable preamble would have to be devised; the first paragraph of the preamble to draft resolution I would be inappropriate; as to the second, there were surely other ways of achieving the objective set forth in the first paragraph; and the statement in the third paragraph was not altogether true.

40. With regard to draft resolution II (A/C.6/L.176) he supported its basic ideas, for the style, form and terminology of resolutions adopted in the past had left something to be desired. He could not, however, accept the solution proposed, feeling as he did that a co-ordination committee, including, presumably, representatives of the great Powers, and with the terms of reference suggested in the draft resolution, would inevitably delay the work of the General Assembly. In the circumstances, the Swedish amendment (A/C.6/L.178) was worthy of

support, although he would later submit a small amendment in writing.[5]

41. Mr. ITURRALDE (Bolivia) commended the United Kingdom delegation on its important contribution to the consideration of the question under discussion. There had been in the past many instances of legal weaknesses and faulty drafting in the General Assembly resolutions and other documents and of improper allocation of items to the Main Committees. The members of the Committee seemed to agree on both those points and on the need for remedying the situation.

42. The six main proposals in the draft resolutions, however, seemed to imply a considerable addition to the number of bodies dealing with such problems and might consequently end by obstructing the work of the General Assembly. They also appeared to place the Legal Committee in a position of superiority with regard to practically all questions coming before the General Assembly, most of which had legal aspects, though not necessarily connected with the normal work of the Committee.

43. Care had to be exercised in dealing with the question of the Main Committee's powers. After all, the General Assembly covered a broad field of political, economic and other problems affecting the international relations of States and its jurisdiction was very broad. Within that framework, each Main Committee was assigned, and was competent to deal with, a certain number of items submitted to the General Assembly as a whole, so that adoption of the United Kingdom proposals would involve impingement by the Sixth Committee on the field of work of the other Main Committees. Apart from that question of distinguishing clearly between the powers of the various Committees, it was essential to avoid any overlapping in the discussions, and so to avoid setting up further bodies, where there might be a repetition of discussions already held. It would be equally inadvisable for items to pass through four phases of consideration, as would result from adoption of the United Kingdom proposals, instead of through the existing Committee and plenary stages, since such a procedure would retard the work of the General Assembly, prolong its session and overload the Sixth Committee.

44. Nor was it certain that a matter referred by another Committee to the Sixth Committee would be considered from a purely legal point of view, because most of the problems before the General Assembly had political as well as legal aspects. Besides, he could not agree that certain legal questions could not be solved in the Main Committees. The adoption of the United Kingdom draft resolution would seriously affect the powers of the various Committees and give rise to substantive as well as legal discussions in the Sixth Committee on the problems referred to it by the other Committees. He also agreed that it would be wrong to overlook the existence and services of the Legal Department of the Secretariat.

45. As to the proposal (A/C.6/L.176) for a co-ordination committee, he felt that, although that procedure had been successful at Pan-American conferences, the number of resolutions with which a co-ordination committee set up by the General Assembly would have to deal, would be so large as to render the proposition somewhat impracticable.

46. In conclusion, he was in favour of the retention of the proposals in paragraph 2 of draft resolution I and of the Secretary-General's being requested to report on the best means of reorganizing the procedural aspects of the General Assembly's work, taking into account the United Kingdom proposals.

47. The CHAIRMAN, after calling on representatives to give notice of their desire to speak in the general debate, declared the list of speakers closed.

48. Mr. WANG (China), speaking on a point of order, protested against the use by the USSR representative of the term Kuomintang representative. He (Mr. Wang) was the representative of the Republic of China and his Government was recognized by most Member States of the United Nations and was the only Government of China recognized by the United Nations.

The meeting rose at 1.15 p. m.

[5] The Iranian amendment to A/C.6/L.176 was issued as document A/C.6/185 on 30 November and Corr.1 on 5 December 1951.

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