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Chairman: Mr. V. OUTRATA (Czechoslovakia).

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

[Item 55]*

1. Mr. VALLAT (United Kingdom) expressed his delegation's appreciation of the Secretary-General's admirable report (A/1409), on the regulations to give effect to article III, section 8, of the Headquarters Agreement.

2. The United Kingdom Government supported the suggestions in the report, but he thought that, if the majority shared that view, it would also be advisable to adopt a resolution to implement the suggestions. Before indicating how such a resolution should be worded, he wished to comment in some detail on the question under discussion.

3. General Assembly resolution 169 (II) of 31 October 1947, approving the Headquarters Agreement, authorized the Secretary-General "to perform on behalf of the United Nations such acts or functions as may be required by that Agreement". Considering the provisions of the Agreement, it would seem that the resolution gave the Secretary-General certain general powers, but did not make their scope entirely clear. In that case, the rather special rights conferred upon the United Nations under article III, section 8, of the Agreement should be expressly stated in regulations.

4. An analysis of the Agreement showed that the rights and obligations of the United Nations fell into three categories.

5. In some cases, the Secretary-General was expressly mentioned as having authority to take steps on behalf of the United Nations. Thus, section 9, paragraph (a) prohibited officers or officials of the United States from entering the headquarters district to perform any official duties therein except with the consent of and under conditions approved by the Secretary-General. There could be no doubt that in such cases the Secretary-General was authorized to take any steps he deemed

necessary to give effect to the provisions of the Agreement.

6. In other cases, the United Nations had assumed obligations. He quoted, as an example, section 18 of the Agreement, which reads: "The United Nations shall . . . take all reasonable steps to ensure that the amenities of the land in the vicinity of the Headquarters district are not prejudiced by any use made of the land in the headquarters district by the United Nations." It was obvious that in such cases steps might have to be taken under the Agreement to discharge an obligation of the United Nations, and that the Secretary-General had the power to take them.

7. Lastly, other sections of the Agreement conferred certain rights and powers on the United Nations. Thus, under section 4, the United Nations could establish and operate, in the Headquarters district, short-wave radio broadcasting facilities. He wondered whether the Secretary-General was authorized under the resolution approving the Headquarters Agreement, as drafted, to establish a broadcasting station on his own initiative.

8. The right to make regulations, granted under section 8 of the Agreement, fell into the last category, and it therefore seemed necessary to clarify the Secretary-General's position. In that connexion, Mr. Vallat remarked that the possibility of the right of the United Nations to make regulations causing conflict with United States law should certainly be kept in mind, but the danger should not be exaggerated; the United Nations had been operating for five years without coming generally into conflict with the laws of the United States.

9. The right of the United Nations to make regulations was in fact limited. On the one hand, such regulations would be operative only in the Headquarters district, which was quite small; on the other, they would of necessity be few in number, since they could be issued only in order to enable the United Nations fully and efficiently to discharge its responsibilities and fulfil its purposes, as was made clear in section 27 of the Agreement. In practice, that limitation would restrict the scope of the regulations, which would be largely administrative.

* Indicates the item number on the General Assembly agenda.

10. As the regulations would apply mainly to United Nations staff, the Secretary-General was in the best position to judge what regulations were needed for the smooth working of the Organization. The United States representative had suggested, however, that the United Nations might follow the practice of many States where legislative regulations issued by the executive or by administrative authorities were subject to approval by the legislature.

11. In those circumstances, the United Kingdom representative suggested that the General Assembly should adopt a resolution to the effect that regulations under section 8 of the Agreement should be made by the Secretary-General, subject to the approval of the General Assembly. The resolution might also authorize the Secretary-General to make and apply emergency regulations, provided that any such regulations should be submitted to the next session of the General Assembly, which could annul them. He would suggest the use of the word "annulment" rather than "approval" because in his view a regulation already put into effect should be given every possible chance; mere failure to approve it might entail a serious risk.

12. He emphasized that his remarks were intended merely as suggestions.

13. Mr. MAKTOŠ (United States of America) thanked the United Kingdom representative for a statement which had greatly clarified the issue.

14. He recalled that he had taken part in negotiating the Headquarters Agreement and emphasized that his government had made a very clear distinction in that connexion between the Secretary-General and the United Nations, as could be clearly seen in section 8 of the Agreement. When it had recognized the right of the United Nations to make regulations which would hinder or modify the application of United States law to delegations and staff of the United Nations, the United States Government had not intended that a single person — the Secretary-General — should be able to suspend the laws passed by Congress. The United States Government felt that a balance should be maintained and that only a legislative body should be able to set aside laws passed by Congress. The General Assembly seemed to be the appropriate body for that purpose, and he therefore supported the United Kingdom representative's suggestion that the Secretary-General's proposals should require the General Assembly's approval. In that connexion, he assured the Committee that the United States Government would not object to any reasonable suggestion by the Secretary-General.

15. He noted in passing that regulations of the kind contemplated might affect delegations to the United Nations, and it would seem natural to give those delegations the right to state their opinion of the Secretary-General's suggestions in the General Assembly.

16. Turning to his delegation's draft resolution (A/C.6/L.162), he felt, for reasons he had just explained, that such questions should be settled by a General Assembly resolution rather than by the Secretary-General. He would have considerable difficulty in explaining to the United States Congress that, by decision of the Secretary-General of the United Nations,

106 (5) (c) of the New York Alcoholic Beverage Control Act, which prohibited the sale of alcoholic beverages on election day, would be inapplicable to the United Nations Headquarters district.

17. While it could not be claimed that the application of such a law in the Headquarters district would affect the prestige of the United Nations, the United States Government, in a spirit of good will and understanding, was anxious to grant privileges to United Nations delegations and staff.

18. He repeated, however, that he failed to see how such a decision could be taken by the Secretary-General. The United States Government was ready to accord privileges to United Nations delegations and staff, but would prefer that such privileges should be approved by the General Assembly.

19. Mr. DE LACHARRIERE (France) said that his delegation agreed in principle with the view of the United Kingdom and United States representatives. The General Assembly itself should issue regulations for the Headquarters district. The best solution would be that in principle the regulations should be issued by the General Assembly, but that in cases of emergency — which he would explain when taking his decision — the Secretary-General could make provisional regulations which would be applicable pending the General Assembly decision.

20. As regards the United States draft resolution, he appreciated the good will of the United States Government and had no objection whatever to the substance of the draft. Yet he wondered whether it would not be better for the General Assembly to adopt a general resolution stating how the regulations for the Headquarters district should be made before adopting a resolution on a particular question of minor importance. He did not think it advisable as a first step to adopt a decision which did not involve the general interests of the Organization.

21. Moreover, there was an apparent lack of connexion between the first paragraph of the draft resolution, which dealt with the power of the United Nations to promulgate regulations for the more efficient administration of the Headquarters district, and the second paragraph, which abruptly went on to state that United Nations delegations and staff had the right to consume alcoholic beverages on election days. Consequently, while thanking the United States representative for his good will in submitting the draft resolution, he would abstain from voting on it.

22. Mr. TARAZI (Syria) thought that the question was simple and could easily be solved in accordance with the general principles of the public, constitutional and administrative law of most modern democratic States.

23. The Agreement authorized the United Nations, which was a legal entity, to promulgate regulations; the question was who in the Organization had the right to issue the regulations on behalf of that legal entity. To decide that, it was necessary to define the exact meaning of the word "regulation", as used in section 8 of article III of the Agreement, and to determine whether it referred to laws or to regulations proper.

24. In most States, the power to promulgate laws was vested in the legislature, while the executive issued regulations to implement the laws. For example, under the Constitutions of the Soviet Union and of France, the Supreme Council and the National Assembly, respectively, had the power to make laws, and the Presidium of the Supreme Council and the President of the French Republic had the right to issue regulations for the implementation of the laws. The situation was slightly different in the United Kingdom, where Parliament could authorize the executive to promulgate or amend laws previously passed by Parliament; in such cases, however, the texts drawn up by the executive had to be submitted to Parliament.

25. If the United Nations was compared with a State where powers were thus separated, it would be seen that the General Assembly was the legislative organ of the United Nations, and the Secretary-General the executive, whose function it was to make regulations to carry out the laws promulgated by the Assembly. Consequently, the regulations provided for in the Headquarters Agreement, which were legislative in nature, must be adopted by the General Assembly itself, while those which, properly speaking, were regulations must be issued by the Secretary-General. That did not mean that in emergency and between sessions the Secretary-General could not issue other regulations. As he had already pointed out, that was an accepted practice in English law, and he could see no objection to adopting a resolution authorizing the Secretary-General to issue such regulations in similar circumstances.

26. Moreover, the Secretary-General would never be able to promulgate laws, impose penalties or set up judicial organs, as under the Charter neither he nor the General Assembly had the power to do that. He therefore agreed with the conclusions of the United Kingdom and United States representatives which he had merely wished to state in more general terms.

27. With regard to the United States draft resolution, he also appreciated its author's good intentions, but he thought that it should be examined in the light of section 8 of the Agreement. According to that section, only the regulations of the United Nations were operative in the Headquarters district; no federal, state or local law or regulation of the United States which was inconsistent with a regulation of the United Nations was applicable within the Headquarters district. Thus the extra-territoriality of the United Nations was tacitly recognized in that section.

28. He therefore thought that the United States draft resolution was unnecessary, and would abstain from voting on it.

29. Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the United States draft resolution had only just been circulated, and was not yet available in Russian translation. He could therefore only state his personal view of it and, if it were put to the vote during the meeting, he would have to invoke rule 119 of the rules of procedure.

30. The United States draft resolution seemed useless and unnecessary. Unfortunately, however—and that was the serious aspect—he feared that it was a hidden attempt on the part of the United States to

establish a precedent which would certainly prove dangerous in the future. He thought that the United States delegation was trying to modify section 8 of the Agreement by a decision that a law of the United States would not be applicable in the Headquarters district without a special resolution by the General Assembly. If section 8 of the Agreement was to be modified, it should be done openly and in accordance with the procedure provided for that purpose. The United States draft resolution was unacceptable because it was contrary to the spirit of the Agreement.

31. He reserved the right to speak again on any future proposals on the granting of powers to the Secretary-General in accordance with the recommendations in his report.

32. Mr. ROBERTS (Union of South Africa) thanked the United States and United Kingdom delegations for the help they had given his delegation in the consideration of the question, as of many other questions.

33. He had no criticism to make of any of the proposals made in the course of the meeting; however, he wished to have some additional information and to make a few suggestions.

34. First, as regards the general aspect of the question, he wondered whether it would be advisable to adopt a draft resolution at that session expressly authorizing the Secretary-General to issue regulations for the Headquarters district. Such a resolution should not be adopted unless absolutely necessary, that is, unless there were specific cases with which the Secretary-General could not deal without such powers. According to paragraph 7 of his report (A/1409), the Secretary-General appeared to think that such was the case. The South African delegation was therefore prepared to support the suggestions of the United States and United Kingdom representatives, but would like to have some clarification from the representative of the Secretary-General on that point.

35. Like the United States representative, he thought it was inadvisable to confer wide powers on any one person, whoever he might be. That should only be done in case of urgent need, and regulations made in such cases by the Secretary-General should of course be submitted to the General Assembly, which could approve, modify or annul them. It might also be desirable for the Secretary-General to consult the State Department of the United States before putting such regulation into effect.

36. With reference to the United States draft resolution, he could not agree with the USSR representative that the United States delegation's generous offer would constitute a dangerous precedent. The decision would merely make operative one of those privileges derived from the extra-territorial status conferred upon the United Nations, the totality of which made possible the smooth and effective execution of the functions of the Organization.

37. The Secretary-General should not radically modify important federal, state or local laws of the United States but confine himself to making regulations relating to questions of detail. In that connexion, he shared the Syrian representative's doubts about the General Assembly's power to delegate the powers conferred upon

it. Section 8, article III of the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations expressly conferred upon the United Nations the right to make administrative regulations. Had the General Assembly the right to delegate this power?

38. Mr. TARAZI (Syria), in reply to the South African representative, wished to clarify his preceding remarks. He did not question the right of the General Assembly to delegate the power of regulation conferred upon it by the Agreement, or generally, the power of a State's legislature to authorize the executive to issue regulations for the implementation of laws. He had pointed out, however, when distinguishing between the power to make laws and the power to issue regulations, that the right of a legislative body to delegate its law-making powers might be questioned.

39. Summing up, there was no danger in giving the Secretary-General the right to make regulations on his own initiative in execution of more general provisions adopted by a legislative body.

40. On the other hand, if the right to make regulations was considered as including exclusive prerogatives of the legislature, it should be made clear that the Secretary-General could not take such measures without the authorization of the General Assembly.

41. Mr. BARTOS (Yugoslavia), on behalf of his delegation, thanked the Secretary-General for giving all delegations an opportunity of speaking on such an important question.

42. According to the Headquarters Agreement between the United Nations and the United States of America, and according to the Charter, the United Nations enjoyed extra-territorial privileges and, in the case of the United Nations Headquarters, that meant that it enjoyed a kind of autonomy. The danger to be avoided was anarchy; in order to avoid it, the General Assembly should be empowered to make regulations to ensure the smooth working of the Organization. The question to be decided was which organ should make such regulations.

43. He shared the Syrian representative's view, and even considered that the term "regulations" should be interpreted to mean laws, regulations properly so-called, and police ordinances. The General Assembly, in view of its competence, would obviously be the organ to make such regulations but, in view of the wide interpretation of the word, it was essential to provide that two authorities would have the right to make regulations. In addition to the General Assembly, the Secretary-General should have the power to take the measures necessary to maintain order, similar to police ordinances, in order to deal with specific cases which might arise between the sessions of the General Assembly. It should be specified whether or not such measures should be approved by the General Assembly.

44. The Yugoslav delegation was therefore in favour of adopting a resolution giving the Secretary-General the power to make regulations for the Headquarters district, when necessary, in accordance with section 8 of the Agreement. The attribution of that power was a logical consequence of the Agreement.

45. The United States draft resolution should be regarded merely as the natural reaction of the United States delegation to an incident the previous year, when the bar had been closed on election day and some delegations had protested. It would suffice, however, for delegations to note the United States delegation's statement. He therefore asked the United States representative to withdraw his draft resolution, which might lay the United Nations open to criticism.

46. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) pointed out that the question was extremely important. He had taken part in the negotiations at Washington which had resulted in the signature of the Headquarters Agreement; the fifteen members of the Advisory Committee assisting in the work had agreed that section 8 of article III was especially important. Although no difficulties had arisen so far from the application of local laws, the United Nations must safeguard itself in advance, especially against the possibility of emergency laws.

47. In reply to a question from the representative of the Union of South Africa, he stated that the only specific case that had arisen had been the closing of the bar on election day, which had brought about protests from the representatives of Poland and Colombia.

48. It had to be borne in mind, however, that more important cases might arise when the United Nations Headquarters was transferred to Manhattan. To settle such cases, it was essential to give the Secretary-General the power to make regulations in accordance with section 8 of the Agreement, when necessary.

49. For instance, there was the question of compensation to United Nations officials for accidents suffered in the exercise of their duties. Although there were local laws on the subject, the United Nations could adopt a system of accident insurance which would take account of certain factors that were peculiar to the Organization and did not exist in the system provided by local legislation.

50. There was also the question of control of traffic in the Headquarters district. He quoted several more examples and concluded that the Secretary-General would have to make regulations. The Secretary-General merely wanted the question to be clearly defined and his own legal position to be specified. It was understood that, if such powers were conferred upon him, the General Assembly would still have the supreme authority.

51. He was sure that, after the exchange of views that had just taken place, the Committee would be able to take a decision at its next meeting.

52. Mr. MAKOTOS (United States of America) recalled that the Committee had to consider two questions, that of the competent authority which should be given the right to make regulations, and that of the draft resolution submitted by his delegation.

53. He assured the representative of the Soviet Union that the question to which the United States resolution referred was especially important. A judge in the state of New York would be faced with a serious problem if a person was accused of selling alcoholic beverages at the United Nations Headquarters on election day. On the one hand, he would have to apply local law,

and on the other hand he would have to take into account the Agreement between the United Nations and the United States of America.

54. He recalled section 7 (d) of that Agreement, which stated that the federal, state and local courts of the United States, when dealing with cases arising out of or relating to acts done or transactions taking place in the Headquarters district, should take into account the regulations enacted by the United Nations under section 8 of article III. He then read section 106 (5) (c) of the New York Alcoholic Beverage Control Act. In the absence of any express regulation, the judge would be obliged to convict a person who had sold alcoholic beverages at United Nations Headquarters on election day for an offence against the law of the state of New York.

55. The same problem would arise, as the Assistant Secretary-General had pointed out, in the case of offences against the laws of the state of New York on compensation for personal injury. The question was therefore highly important. In the absence of contrary regulations enacted by the General Assembly, the federal, state and local regulations of the United States would be applicable.

56. Thus, before the Committee voted on the United States draft resolution, it should decide whether the measure provided for in that resolution was desirable. If it was desirable, a regulation to that effect was indispensable. If, on the other hand, the Committee decided for any reason that the measure was not desirable, it would be useless to vote on the draft resolution, and the United States delegation was prepared to withdraw it.

57. It was also prepared to accept the French representative's suggestion that the Committee should take a general decision before deciding on the United States resolution. If they so desired, some delegations might draw up a general text giving the Secretary-General the right to enact regulations subject to the approval of the General Assembly.

58. Although he did not object to the grant of such powers, he could not see that the matter was especially urgent; the Assistant Secretary-General had himself admitted that there had been no clashes with local legislation in the five years of the Organization's existence. The problem which might arise over compensation for injury to United Nations staff and the transfer of Headquarters to Manhattan were not, therefore, urgent reasons for such a measure. That much said, however, there was no objection to granting the Secretary-General the right to enact regulations in case of absolute necessity and subject to the subsequent approval of the General Assembly.

59. With regard to the Syrian representative's arguments, it was generally agreed that the General Assembly of the United Nations was not a legislative body. The expression "operative regulations" in the Headquarters Agreement could not, therefore, be held to mean "legislative acts". Nevertheless, if an administrative or other regulation was intended to abrogate an act voted by a legislative body such as the Congress of the United States, it would be absolutely equivalent to a legislative act. It was therefore useless to raise

purely theoretical arguments. The fact was that any regulation of the United Nations which was inconsistent with a law should be supported by the prestige of a deliberative body such as the General Assembly. Thus, it was for the General Assembly to decide whether the laws of the state of New York on the sale of alcoholic beverages on election day and the laws on compensation for injury should be abrogated.

60. The draft resolution submitted by the United States delegation was not restrictive and had no hidden motives. The regulation concerned would not differ substantially if it was enacted by the General Assembly or by the Secretary-General. It might be stated simply that the sale of alcoholic beverages would be authorized throughout the year within the Headquarters district, without specifying that the law of the state of New York was thereby abrogated.

61. The main purpose of his remarks had been to show, as the Assistant Secretary-General had also done, that the problem at issue was of great importance.

62. In conclusion, he repeated that it would be possible, while in principle conferring on the General Assembly itself the right to enact regulations, to give the Secretary-General the right to take any necessary measures in exceptional circumstances.

63. Mr. ORIBE (Uruguay) after thanking the United States delegation for the good intentions which had led it to submit its draft resolution, nevertheless felt that the draft raised a question of paramount importance. For, while it invoked article III of section 8 of the Headquarters Agreement, it was inconsistent with that section. Article III of section 8 specifically conferred upon the United Nations "the power to make regulations, operative within the Headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, State or local law or regulation of the United States which is inconsistent with the regulations of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the Headquarters district".

64. It followed from that text that any abrogation of the laws of the United States effected by the United Nations was a tacit, not an express, abrogation; in other words, any law of the United States that was inconsistent with the regulations of the United Nations authorized by the section in question was automatically inapplicable.

65. In the light of those remarks, Mr. Oribe asked the United States representative whether he would agree to alter the draft resolution to read that the sale of alcoholic beverages at the United Nations Headquarters was authorized throughout the year without exception. He also asked the United States representative to be good enough to distribute the text of the New York Alcoholic Beverage Control Act so that the delegations might acquaint themselves with the provisions it had been proposed to abrogate.

66. Mr. MAKTO (United States of America) agreed to amend his draft resolution as suggested by the representative of Uruguay, or in any other manner that the Committee would approve. He requested that

the Secretariat be asked to distribute the text of the Alcoholic Beverage Control Act to delegations.

67. Mr. SHAHI (Pakistan) said that his delegation was opposed to the United States draft resolution proposing that the New York Alcoholic Beverage Control Act should be rendered inapplicable with respect to the United Nations.

68. The draft resolution raised two questions, a legal question and a question of principle to which a large part of world opinion attached great importance.

69. The legal question related to the delegation of legislative power. It had been proposed that the Secretary-General should be empowered to promulgate regulations, which under the Headquarters Agreement should be promulgated by the General Assembly. The Pakistan delegation considered that there was no objection to granting the Secretary-General such powers. It was true that many jurists opposed the idea of delegating legislative or quasi-legislative power to administrative organs. Lord Hewart, former Lord Chief Justice of England, for example, had called the practice of delegating legislative powers the new despotism.

70. That practice was more in harmony with the doctrine of the "laissez-faire" period than with present times. Most experienced modern jurists favoured the idea of enriching the concept of the State by granting it more positive functions in the sphere of social welfare. In order to accomplish those functions in an effective manner, the State was obliged to delegate

certain regulatory powers to its administrative organs. In his opinion, any danger of abuse could be avoided by reserving to the legislative organs the right to review the use which administrative organs made of the powers granted them.

71. The second question raised by the draft resolution under consideration related to the possible reaction of a large part of world public opinion to a proposal suggesting that the sale of alcoholic beverages would help the United Nations to perform its task more effectively. He urged Committee members to consider what a deplorable effect the adoption of such a proposal would have on world public opinion, particularly in Asian countries.

72. The Government of Pakistan, which was founded on the will of the people in accordance with the Universal Declaration of Human Rights, had to take into consideration the people of Pakistan, the great majority of whom favoured prohibition. Not only the Moslems, whose religious laws forbade the use of alcoholic beverages, but the Hindu minorities and others insisted upon the adoption of measures of prohibition. Consequently, the Government of Pakistan had stated that prohibition was one of the guiding principles of its social policy.

73. For those reasons, and since the Government of Pakistan, as a democratic government, must yield to the will of the people, the delegation of Pakistan would vote against the United States draft resolution.

The meeting rose at 1.10 p.m.