



CONTENTS

Agenda item 63:

Consideration, at the request of the Third Committee,
of articles 4 to 11 of the draft convention on the
nationality of married women..... 145

Chairman: Mr. Manfred LACHS (Poland).

AGENDA ITEM 63

Consideration, at the request of the Third Committee, of articles 4 to 11 of the draft convention on the nationality of married women (annex A of resolution 587 E (XX) of the Economic and Social Council, A/C.6/349, A/C.3/L.490 and Corr.1, A/C.6/L.372)

1. The CHAIRMAN drew attention to a letter dated 22 November 1955 from the President of the General Assembly to the Chairman of the Sixth Committee (A/C.6/349), requesting the latter to study articles 4 to 11 of the draft convention on the nationality of married women (annex A of resolution 587 E (XX) of the Economic and Social Council), which had been referred to it by the Third Committee in view of the legal aspects of the question.
2. Mr. TREJOS (Costa Rica) said that the item should normally have been referred to the Committee by the General Committee of the Assembly. Moreover, annex II, part I, paragraph 1 (d) of the rules of procedure, (A/520/Rev.3), adopted in pursuance of General Assembly resolution 684 (VII), did not authorize the Sixth Committee to report direct to the General Assembly on a question which had originally been on the agenda of the Third Committee. The Sixth Committee could only give its legal advice to the Third Committee, which would report to the General Assembly.
3. There was also the practical question of whether the Committee had time to deal with the new item referred to it by the Third Committee. Moreover, the Third Committee had already concluded its meetings and the Sixth Committee could no longer report to it.
4. He therefore proposed the adjournment of the discussion of the item.
5. The CHAIRMAN said that the Costa Rican representative had raised two questions: firstly, the interpretation of General Assembly resolution 684 (VII) and, secondly, the question of time.
6. Miss BERNARDINO (Dominican Republic) requested the opinion of the Legal Counsel on the issues raised by the Costa Rican representative.
7. Mr. MAURTUA (Peru) supported that request.
8. Mr. EVANS (United Kingdom) recalled that it was the United Kingdom delegation which, at the 665th

meeting of the Third Committee, had proposed that the final clauses of the draft convention on the nationality of married women should be referred to the Sixth Committee for consideration of the legal aspects involved. That proposal had been made on the basis of paragraph 1 (d) of resolution 684 (VII), which laid down that when a Committee considered the legal aspects of a question important the Committee should refer it for legal advice to the Sixth Committee.

9. It was true that the General Assembly allocated items to the various Committees, but its decisions in the matter had to be interpreted in the light of resolution 684 (VII). Paragraph 1 (d) of the resolution did not lay down that the Sixth Committee's legal advice necessarily had to be given to the Committee which had requested it; that course might be desirable on occasions but there was nothing in the provision itself which barred the Sixth Committee from reporting direct to the General Assembly on a legal question upon which its advice had been sought by another Committee.

10. Before making a formal proposal in the Third Committee for the reference of the matter to the Sixth Committee, the United Kingdom delegation had consulted the Chairman, who had in turn consulted the Chairman of the Sixth Committee. The latter had said that the Sixth Committee was willing to deal with the matter but that he could not promise that the work would be completed by the end of the present session. Finally, the President of the General Assembly had been consulted on the subject and the United Kingdom delegation could not accept the suggestion that the President of the General Assembly had acted contrary to the rules of procedure.

11. With reference to the Costa Rican proposal for adjournment owing to lack of time, he felt that the consideration of the final articles was not a very difficult task. It was a technical question and most of the members of the Sixth Committee were legal experts familiar with the task of drafting international conventions and final clauses in particular. The Sixth Committee would bring itself into disrepute if it did not even attempt to deal with a legal question on which, with the consent of the President of the General Assembly, its advice had been requested.

12. In view of those considerations, he appealed to the Costa Rican representative to withdraw his proposal for adjournment.

13. The CHAIRMAN pointed out that when the Chairman of the Third Committee had consulted him, the question of whether the Sixth Committee's advice would be transmitted to the General Assembly or to the Third Committee had not been raised.

14. Mr. STAVROPOULOS (the Legal Counsel) outlined the practice hitherto followed by the General Assembly.

15. Firstly, the President of the General Assembly could and did refer items to the Sixth Committee, without the intervention of the General Committee. In fact, it had recently been suggested that the Chairman of the Fifth Committee should request the advice of the Sixth Committee on the question of the registration and publication of treaties and international agreements without even going through the President of the General Assembly.

16. The Costa Rican representative's interpretation of paragraph 1 (*d*) of General Assembly resolution 684 (VII) was too narrow. That text did not specify to whom the Sixth Committee was to transmit its legal advice. Unfortunately, the preparatory work leading up to the adoption of resolution 684 (VII) did not cast any light upon that question. The prevailing idea behind the resolution had been that the Sixth Committee was to lend its assistance in legal matters to the other Committees and that the latter were to be encouraged to seek that assistance. It seemed, therefore, that a wider interpretation than that suggested by the Costa Rican representative was called for.

17. There appeared to be nothing improper in the Sixth Committee reporting direct to the General Assembly on the legal issues involved. Such a procedure was calculated to expedite matters.

18. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the text of paragraph 1 (*d*) did not warrant the wide interpretation proposed by the Legal Counsel.

19. In the Third Committee the USSR delegation had supported the most progressive type of draft convention possible on the nationality of married women and was eager to see such a convention adopted at an early date. The issue before the Committee was, however, one of principle and the Costa Rican representative had been right in objecting to the procedure suggested, which was without precedent. It would lead to the practice of part of a draft being voted on by one Committee and another part by a different Committee. Common sense indicated that it would be dangerous to have two series of decisions from two different Committees on one and the same draft convention. He could recall no example of any such division of a draft convention, whereby neither of the two Committees would adopt the complete draft.

20. The critics of the Costa Rican representative's submissions were in effect criticizing General Assembly resolution 684 (VII), paragraph 1 (*d*) of which made it clear that the Sixth Committee could be called upon to give legal advice but not to make the final decision on a question referred to it by another Committee. The Third Committee had the choice between two courses: either to seek legal advice from the Sixth Committee and then make its own decision on the basis of that advice, or to propose that the question should be considered by a joint Committee consisting of itself and the Sixth Committee. As the Third Committee had not chosen the latter course, it was obvious that the only competence the Sixth Committee could have was that of giving its legal advice to the Third Committee. If a decision was required, a joint Committee could still be convened, although the Third Committee had terminated its meetings.

21. In the opinion of the USSR delegation, the correct procedure was for the General Committee to propose, and the General Assembly to decide, that the matter

should be referred to a joint Committee of the Third and Sixth Committees.

22. It was the duty of the Sixth Committee to welcome any questions which were referred to it for legal advice and to co-operate in the matter of forming a joint Committee. The USSR delegation had often stressed that a more frequent application of paragraph 1 (*d*) of General Assembly resolution 684 (VII) would greatly facilitate the solution of many legal questions which arose in the course of discussions in the other Committees.

23. While, therefore, his delegation favoured in principle the reference to the Sixth Committee of the legal aspects involved in the final articles of the draft convention on the nationality of married women, as, indeed, it supported the reference to the Sixth Committee of all legal questions, it stipulated that the right procedure must be followed, in accordance with resolution 684 (VII).

24. The most important question raised in the Costa Rican representative's statement was whether sufficient time was available for a proper discussion. The United Kingdom representative had clearly been too optimistic; many highly important points were bound to arise and any hasty decision could have adverse consequences. It was vital to remember that the adoption of any such articles would have serious repercussions far beyond the proposed convention. The mere fact that such provisions were incorporated in a United Nations instrument would give them great persuasive force as a precedent.

25. Numerous provisions would obviously require prolonged debate. For instance, the clause of territorial application, the so-called "colonial clause", was certain to give trouble, for it was well known that opinions were very divided on the subject. Similarly, the question of reservations, which had already been frequently discussed, was unlikely to be resolved without further exhaustive study. Another thorny problem was the compulsory jurisdiction of the International Court of Justice, suggested in draft article 9. Finally, many States felt that the provisions of article 4 (1), regarding the qualifications for accession, were too liberal. The Sixth Committee should certainly examine those points before the draft convention was offered for signature. The time available for discussion was inadequate and the necessary procedural requirements had not yet been met. Moreover, the Third Committee had only itself to blame for the fact that its request for advice had not reached the Sixth Committee in good time.

26. For those reasons, the Costa Rican proposal appeared to be fully justified.

27. Mr. BIHIN (Belgium) said that the Third Committee had not gratuitously transferred part of its agenda item to the Sixth Committee but had only requested legal advice, a procedure that was perfectly justified under the terms of General Assembly resolution 684 (VII), now embodied in annex II to the rules of procedure.

28. The Committee should welcome such a request for advice, for a more frequent use of the procedure provided would certainly prove beneficial. The Costa Rican and USSR representatives had placed an excessively narrow interpretation on annex II. The argument that the only reasonable course would have been to call a joint Committee seemed especially strange, since paragraph 1 (*d*) of resolution 684 (VII) clearly gave the referring Committee a choice in the matter.

29. Another important point which had not been clarified was what would become of the question if the Sixth Committee refused to discuss it. To send the draft articles back to the Third Committee was certainly not a constructive course.

30. Mr. LOPEZ VILLAMIL (Honduras) said that under annex II to the rules of procedure the Sixth Committee was clearly competent to consider the question. The fact that it had been requested to do so by the President of the General Assembly should dispel any doubts regarding its competence. It was wrong to construe annex II restrictively; the flexibility of these provisions had been demonstrated by the fact that in 1953 the Fifth Committee had requested an advisory opinion from the International Court of Justice, without prior reference to the Sixth Committee (Assembly resolution 785 A (VIII)). In the present case, therefore, the Committee should not claim that it lacked competence; rather, it should recognize that it had a responsibility.

31. The important point, however, was that the Sixth Committee required time for a proper discussion. In view of the gravity of the subject, on which numerous delegations would certainly wish to comment, the time factor should be carefully weighed before the Committee decided either to defer the debate or to proceed. His delegation would welcome any reasoned views on that point.

32. Mr. CARPIO (Philippines) said that his delegation, which was prepared to participate in any constructive debate with a view to disposing of the item, was dismayed by the procedural wrangle which had developed. The preliminary question was assuming such proportions that the fundamental question was becoming obscured.

33. His delegation had a distaste for time-consuming technicalities. For that reason, it had remained silent when the Chairman had first mentioned the reference of the item to the Sixth Committee. It had nevertheless felt certain qualms, which the Costa Rican representative's point had unfortunately proved justified.

34. In view of the United Kingdom representative's apparent conviction that the matter was simple, it might be advisable to begin the discussion at the earliest possible moment, if only to ascertain what progress could be made. Not until the issues had been clearly stated could it be determined whether sufficient time was available. A debate for the purpose of clarifying the issues need not constitute a procedural precedent for the future.

35. Mr. VALOIS (Canada) felt that the Committee should consider the draft articles. The item gave the Committee an opportunity to assist the General Assembly in realizing a positive achievement. Moreover, to defer the question to the eleventh session would simply add to an agenda which was already overburdened.

36. Annex II to the rules of procedure clearly stated that legal questions could be referred to the Sixth Committee. There had indeed been complaints in the past when similar questions had not been referred. Consequently, a refusal to examine the present item would hardly encourage other Committees to seek advice in the future. It might admittedly have helped if the Third Committee had stated its general views on such questions as reservations, or if a joint Committee had been called.

37. Nevertheless, it would be better to begin consideration of the question forthwith rather than squander what little time remained on procedural discussions.

38. Mr. TARAZI (Syria) said that the representative who had spoken before him had made one point clear: the primary problem was the time remaining at the Committee's disposal.

39. The Third Committee had unfortunately failed to state precisely what kind of advice it required. If the question was only one of drafting, the matter was exceedingly simple. If, on the other hand, the Sixth Committee was to give advice on the substance, the USSR representative was fully justified in saying that difficulties were bound to arise. The Syrian delegation was well aware of the delicate nature of the preliminary question. The letter of the President of the General Assembly did not specify the issues which were supposed to be controversial. Consequently, although it was the duty of the Sixth Committee to give legal advice under annex II of the rules of procedure, its task in the present instance was far from clear.

40. It was worth recalling that other Committees had seldom made use of annex II of the rules of procedure. At the eighth session, as the Honduran representative had mentioned, the Fifth Committee had requested an advisory opinion from the International Court of Justice without asking the Sixth Committee's advice. At the present session, the Fifth Committee had dealt with the question of the review of administrative tribunal judgments without inviting consultation. It was thus clear that the other Committees did not attach outstanding importance to the recommendations in annex II of the rules of procedure. Those facts seemed to bear out the Syrian delegation's original contention, advanced during the debate in the Sixth Committee preceding the adoption of resolution 684 (VII), that the Sixth Committee could not be converted into some form of Council of State (307th meeting, para. 40).

41. The Philippine representative was possibly right in suggesting that the Committee should at least begin the debate. There seemed, however, to be substantial weight in the argument that the discussion might become protracted. Many aspects of the question would certainly lead to political controversy. In the circumstances, the Syrian delegation felt that the Costa Rican proposal was reasonable.

42. Mr. EL ERIAN (Egypt) said that, after hearing the statements of the United Kingdom representative and the Legal Counsel, his delegation entertained no doubts regarding the competence of the Committee to deal with the question in the manner requested by the President of the Assembly. The legal problems involved were merely of a technical character and their study was facilitated by the draft resolution submitted by Cuba (A/C.6/L.372). With no other item on its agenda, the Committee owed it to the Third Committee not to defer decision before it had even discussed the substance of the question.

43. Mr. TREJOS (Costa Rica) said that of the two considerations put forward in his initial statement, the time factor should be considered first.

44. He could not agree with the United Kingdom representative that the final clauses of the convention presented no problem. If this were the case, the Third Committee would scarcely have referred them to the Sixth after having already approved the substantive clauses.

45. Nor could he agree with the Belgian representative that the matter could be dealt with in a few meetings.

The actual wording of articles 4 to 11 had not even been discussed by the Third Committee.

46. He fully agreed that the Sixth Committee was the competent body to deal with the legal aspects of any problem. That being so, its competence should surely extend to the substantive articles as well as the final clauses of the draft convention.

47. Mr. JAMIESON (Australia) observed that the Committee had merely been asked for advice by the Chairman of the Third Committee and the President of the Assembly in order generally to assist the work of the United Nations. It could not, therefore, simply dismiss the subject but must do its best to help. The manner in which "mixed" items were allocated to committees was, admittedly, not always satisfactory, but he hoped that the Committee would not approach the matter from the narrow standpoint of strict competence.

48. The substantive and the final clauses of the convention were clearly separable questions and there was no reason why the Third Committee should not deal with the former itself. The Sixth Committee had often made recommendations on matters with serious financial implications without prior reference to the Fifth Committee.

49. It would hardly enhance the reputation of the Committee for the General Assembly to receive a report on the substance of the draft convention from the Third Committee and nothing on the final clauses from the Sixth.

50. Miss BERNARDINO (Dominican Republic) observed that the advice of the Legal Counsel should be accepted, inasmuch as he was a person of recognized experience in the United Nations. She said that the Sixth Committee had full competence to discuss and adopt the final articles of the draft convention on the nationality of married women referred to it by the Third Committee.

51. She was surprised to note that the arguments put forward by the delegations of some countries conflicted with the positions taken by the delegations of the same countries in the Third Committee when the item was discussed.

52. At that stage in the achievements of women in the United Nations, more attention should be paid to questions relating to their rights.

53. Discussion of the articles would not take the Committee much time. She appealed to it to adopt a constructive attitude toward a question which was of such great importance to the women of the world.

54. Miss MAÑAS (Cuba) drew attention to the draft resolution submitted by her delegation (A/C.6/L.372).

55. She pointed out that no delegation in the Third Committee had suggested that the question should be considered by a joint committee. She urged the Committee, for the sake of its reputation, to attach more importance to co-operation between subsidiary bodies of the United Nations and less to the time factor.

56. Mr. EVANS (United Kingdom) said that, if he was correctly informed, the Committee would have seven full working days in which to consider the question.

57. The CHAIRMAN pointed out that it was hoped that the Committees would complete their work by 10 December.

58. Mr. MOROZOV (Union of Soviet Socialist Republics) noted that, according to information received, it had taken the Commission on Status of Women, the Economic and Social Council and the Third Committee no less than two working weeks in all to study the draft convention. It was obvious from the Chairman's announcement that the Sixth Committee would have a maximum of three days in which to complete its study. The articles referred to the Committee raised a number of controversial issues, such as the inclusion of a "colonial clause" and the question of reservations, each of which would require several meetings to settle.

59. He could not agree that refusal to take a hasty decision merely in order to give an impression of fruitful activity, would be interpreted as refusal to give an opinion at all. As to the reputation of the Committee, he did not think that it would suffer unduly from a comparison of methods of working.

60. The Soviet Union delegation would welcome an opportunity to discuss the final clauses with due deliberation but could not countenance an intent to snatch last-minute approval from the Committee. If the matter were discussed, it would have certain amendments to propose to the Cuban draft resolution.

The meeting rose at 6 p.m.