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Chairman: Mr. Alberto HERRARTE (Guatemala),

Request by the Fifth Committee for the advice of the Sixth Committee regarding proposed amendments to certain provisions of the Pension Scheme Regulations of the International Court of Justice (A/4214, A/4241, A/C.6/360, A/C.6/L.452) (concluded)

1. Mr. ROSENNE (Israel) said that, having carefully studied the documents on the subject, his delegation was ready to support the joint draft resolution submitted by Ceylon and Iran (A/C.6/L.452).

2. Everybody agreed that it was essential for the United Nations that the International Court of Justice should discharge its functions under the best possible conditions. Therefore, it was important to ensure that the persons best qualified to be judges of the Court were ready to accept election to the post and that they, as well as the Registrar and other members of the Court's staff, should be able to carry out their duties in complete independence. Those principles were embodied in several provisions of the Court's Statute, which was an integral part of the United Nations Charter, whereas the Statute of the Permanent Court of International Justice was not incorporated in the League of Nations Covenant. The greatest care should be taken to remove any possible doubt about the independence of members of the Court, and hence it would be right to make the amendments requested in the Pension Scheme Regulations. Those amendments would not introduce any innovation but would mark a return to the situation existing at the time of the Permanent Court, whose Statute served as the basis for the Statute of the International Court of Justice, as stated in Article 92 of the Charter.

3. In reply to the comments made by the Turkish representative at the 630th meeting, he explained that the second sentence of paragraph 3 of the draft letter contained in the joint draft resolution merely paraphrased the provisions of Article 2 of the Statute of the Court. The omission of the sentence might be misinterpreted, for the Sixth Committee had been called upon to express its opinion on the question of policy involved and the most important of those questions was the regular and effective application of the Statute.

4. Unlike certain representatives, his delegation did not feel that the last sentence of paragraph 5 was a

repetition of the provisions of paragraph 3, especially if the amendment proposed by the United Kingdom representative at the 630th meeting were accepted. The last part of that sentence, which stressed the importance of making the conditions of service with the Court attractive to persons of the highest recognized competence, introduced a new concept which should appear in the letter.

5. The Secretary-General had suggested in his note (A/4244, para. 4) that the question of the amount and the method of computing the pensions of judges who retired in the ordinary course of events should be deferred until the fifteenth session of the General Assembly. The Secretary-General might take the opportunity of making a new study of the possibility of creating a special retirement fund, a problem which had already been discussed on several occasions without any satisfactory solution being found.

6. When, for the first time, the General Assembly—at the first part of its first session—had considered the Court's budget, and especially the question of pensions, a joint sub-committee of the Fifth and Sixth Committees had discussed the matter in detail. That procedure ensured that questions of policy as well as budgetary and administrative considerations would equally be taken into account. However, since then, questions of that nature brought before the General Assembly had been settled exclusively by the Fifth Committee, so that it had not always been possible to lay sufficient emphasis on considerations of policy. The Israel delegation approved of the procedure applied at the present session and hoped that it would be used each time the General Assembly was called upon to discharge the functions entrusted to it under Article 32 of the Statute.

7. Mr. CALINGASAN (Philippines) felt it would be a sound policy to grant members of the Court with five years' service the right to receive a pension rather than leave the decision to the discretion of the Court itself in each particular case. That would increase the efficiency of the Court as a whole and ensure that judges enjoyed greater independence. For that reason, his delegation would vote in favour of the joint draft resolution, except for paragraph 5, which should be eliminated because it touched on the budgetary aspects of the question on which the Sixth Committee not only had not been consulted but also was not qualified to take a decision.

8. Mr. GONZALES GALVEZ (Mexico) congratulated the representatives of Ceylon and Iran on having expressed in their joint draft resolution the feeling of the majority of the Committee. His delegation would support that text.

9. Any improvement in the material position of judges of the Court should be welcomed in view of the high qualifications that were taken into consideration in their election. The argument was especially valid

in the present case inasmuch as it involved abolishing a rule that was completely unjustified, and the Members of the United Nations had unanimously decided in 1946 that the emoluments of the judges of the Court should be at least equal to those of the Permanent Court of International Justice.

10. Account should also be taken of the precedent created by the pension scheme of the Permanent Court of International Justice, under which judges were entitled to a pension at the end of five years' service, even if they resigned. That was, moreover, the system which the Secretary-General had recommended in 1946 in his report on the question;^{1/} according to him, the Court should also have the right to grant a pension to a judge before the five-year period had elapsed.

11. In November 1946, a joint sub-committee of the Fifth and Sixth Committees had expressed the same opinion^{2/} without referring expressly to paragraph 4 of the present Pension Scheme Regulations.

12. He agreed with other representatives that the award of a pension should not be left for the Court itself to decide.

13. His delegation supported unreservedly the amendment proposed by the United Kingdom representative to the last sentence of paragraph 5 (A/C.6/L.452); the present wording might be interpreted as an interference in the affairs of the Fifth Committee.

14. Mr. WYZNER (Poland) said that in spite of the clarity of the Secretary-General's note (A/4241) and of the joint draft resolution before the Committee (A/C.6/L.452), and while fully aware of the valuable work of the Court and the high qualifications of its members, his delegation had some reservations about the proposed amendments to its pension scheme.

15. In particular, if a judge resigned before his term of office expired, the position should be based on general considerations of economy. Moreover, during the thirteen years in which the Court's present pension scheme had been in force, it had always worked satisfactorily. In no case had a person of impeccable moral character and outstanding professional qualifications refused to serve as a judge of the Court on the grounds of inadequate emoluments.

16. Again, quite apart from any budgetary consideration, the automatic granting of pension rights to judges who resigned after five years' service would give official recognition to an exception, since Article 13 of the Statute of the Court stipulated that members should be elected for nine years.

17. The present scheme fully guaranteed the award of a pension to a judge who resigned, in all cases where such a decision was justified. The Court itself was best qualified to take a decision in any given case.

18. The Deputy-Registrar of the Court pointed out in his report (A/4241, annex, para. 6) that several countries granted a pension to judges who resigned after a reasonable period of service. It would be difficult to find laws which considered five years as a reasonable period, particularly as the value of a judge's services increased with his seniority and experience.

19. As for the second proposal (A/C.6/L.452, para. 5) regarding the amount and method of computing the pension of judges who left the Court otherwise than by resignation, his delegation agreed with the Secretary-General that the best procedure would be to defer the question until later, as there were not enough data on which to base an immediate decision. It could therefore not support the present text of the final sentence of the draft resolution.

20. Mr. EL-ERIAN (United Arab Republic), recalling that his delegation had always supported the measures taken by the General Assembly with a view to providing the Court and its members with the maximum safeguards and the best possible facilities, said that he would vote in favour of the joint draft resolution, since he was convinced that the right of judges to a pension after completing five years of service should be recognized and there should be no need for a special decision of the Court in each case.

21. His delegation would make no comment on the second question raised by the Court, in view of the Secretary-General's suggestion that the consideration of that question should be deferred until the fifteenth session of the General Assembly.

22. Mr. CHARDIET FERNANDEZ (Cuba) said that his delegation thought every judge was entitled to a fair pension when he had completed a certain number of years of service, but it had doubts as to the justification for the proposed changes.

23. In the report to the Secretary-General, annexed to the Secretary-General's note (A/4241), the Deputy-Registrar of the Court seemed to have taken into consideration only cases where a judge wished to resign because he found himself unable to serve the Court to his satisfaction. But other cases could be imagined, for instance where a judge wished to resign in order to take up a more lucrative appointment. It would hardly seem fair to treat the two cases alike. It would be better to leave the Court itself to grant what it considered an appropriate pension in each specific case.

24. Moreover, his delegation was by no means convinced that five years of service constituted a reasonable period for entitlement to a pension.

25. For all those reasons, his delegation would find it impossible to support the joint draft resolution.

26. Mr. Maxwell COHEN (Canada) pointed out that the joint draft resolution was designed to reintroduce the system which had formerly applied to the members of the Permanent Court of International Justice, and was at present sanctioned by the legislation of many countries. His delegation thought that a five-year period of service was a reasonable length of time to give judges of the International Court a vested right to a pension.

27. In view of the fact that the financial implications of the proposed amendment would be only \$17,000 for the year 1960 (A/4241, annex, para. 12), he suggested deleting the words "Considering that this question had important budgetary aspects" at the beginning of the last sentence of paragraph 5 of the draft resolution, so as not to detract from the force of the arguments put forward by the Sixth Committee.

28. The Fifth Committee should be considered as the custodian of accounts for the Organization, while the

^{1/}Official Records of the General Assembly, Second part of first session, Sixth Committee, annex 20 a, p. 294.

^{2/}Ibid., annex 20. p. 291

Sixth Committee should be the custodian of policy. Thus it would seem proper that when an item on the agenda raised questions of policy as well as having budgetary implications, the Sixth Committee rather than the Fifth should, in the last resort, make the decision. In case of doubt, a joint sub-committee of the two Committees might be constituted, but the last word should not be left to the Fifth Committee. Unlike other delegations, the Canadian delegation thought that the Sixth Committee should feel free to give instructions to the Fifth Committee on any matter affecting its work.

29. Mr. TUNCEL (Turkey) said that some members of the Committee were tending to forget the limited and technical nature of the question and to enter into considerations of policy which in the circumstances were pointless or even dangerous. That was why at the 630th meeting he had proposed that certain adjectives describing the qualifications required of the judges of the International Court should be deleted from the joint draft resolution. In that connexion, the Statute of the Court contained all the necessary provisions and there was some danger that by repeating them the Sixth Committee might give the impression of haggling, by representing the proposed changes as a sort of reward or compensation. His purpose had been to defend the reputation of the judges by leaving out of the debate the question of their professional competence and their moral character, which had no connexion with the two very clearly defined questions raised by the Deputy-Registrar of the International Court. It should in any case be noted that only the first of those questions was to be considered at the current session of the General Assembly.

30. Sir Gerald FITZMAURICE (United Kingdom) noted that the second sentence in paragraph 5 of the letter drafted by the delegations of Ceylon and Iran had given rise to several objections with regard to both the substance and the form. With regard to the substance, he pointed out that the Sixth Committee might not have any further opportunity to state its views on the non-budgetary aspects of the question. The sentence concerned was in no way designed to force a solution on the Fifth Committee, nor did it suggest that the pensions of the judges of the International Court should be increased; it merely expressed confidence that the Fifth Committee would take due account of certain considerations connected with the office of the judges and their responsibilities. All States did so in practice, whether expressly or not, when they fixed the salaries of persons holding high judicial office. In such circumstances, the Sixth Committee would hardly be exceeding its powers if it adopted a text of that kind.

31. With regard to the form, the beginning of the sentence in question might be amended as follows: "The Sixth Committee expresses its confidence that the recommendations which the Fifth Committee will make on this matter to the General Assembly will, together with the budgetary implications involved, take due account of the considerations referred to ...".

32. Mr. PERERA (Ceylon) said he had not imagined that the draft resolution which his delegation and the Iranian delegation had submitted would cause the slightest controversy.

33. He agreed with the representative of Canada that the Fifth Committee was to a large extent an accounting committee; it nevertheless possessed very clearly

defined powers and even if the Sixth Committee was proposing a policy solution, the Fifth Committee would still have to settle the financial side.

34. In reply to the representative of Turkey, he pointed out that the draft resolution raised no question of policy which had not been contained either explicitly or implicitly in previous texts. It was simply a question of reminding the Fifth Committee that it should take into account certain considerations with which the Sixth Committee was both entitled and required to deal. Moreover, it was precisely on the "questions of policy involved, other than those of a budgetary nature" that the advice of the Sixth Committee had been sought under the decision taken by the General Committee of the Assembly (A/4214, para. 5) and in the letter from the Chairman of the Fifth Committee to the Chairman of the Sixth Committee (A/C.6/360). In view of that, he could only accept formal amendments; he hoped that the Committee would support the joint draft resolution in substance.

35. Mr. NISOT (Belgium) suggested that the meeting be suspended to enable those representatives who had drafting amendments to propose to reach agreement with the sponsors of the joint draft resolution concerning a text.

It was so decided.

The meeting was suspended at 4.25 p.m. and resumed at 4.40 p.m.

36. Mr. PERERA (Ceylon) said that the two sponsors of the joint draft resolution (A/C.6/L.452) had decided to amend the last sentence of paragraph 5 in the following manner:

"The Sixth Committee expresses its confidence that the recommendations which the Fifth Committee will make on this matter to the General Assembly will, together with the budgetary questions involved, take due account of the considerations referred to in paragraph 3 above relating to the circumstances of the election of the members of the Court and the character and requirements of their office as well as the importance of making the conditions of service with the principal judicial organ of the United Nations appropriate in the case of persons of the highest recognized competence."

37. Mr. MOROZOV (Union of Soviet Socialist Republics) said that his delegation had submitted an amendment (A/C.6/L.453) to paragraph 4 of the joint draft resolution for the reasons which it had stated at the 630th meeting.

38. He requested that the last sentence of paragraph 5 of the draft resolution be put to the vote separately.

39. The CHAIRMAN put to the vote the USSR amendment (A/C.6/L.453) to paragraph 4 of the draft letter contained in the joint draft resolution (A/C.6/L.452).

The USSR amendment (A/C.6/L.453) was rejected by 51 votes to 10, with 3 abstentions.

40. The CHAIRMAN put to the vote the last sentence of paragraph 5 of the draft letter contained in the joint draft resolution (A/C.6/L.452), as amended by the sponsors.

The last sentence of paragraph 5, as amended by the sponsors, was adopted by 52 votes to 10, with 2 abstentions.

41. The CHAIRMAN put to the vote the joint draft resolution (A/C.6/L.452) as a whole, as amended.

The joint draft resolution (A/C.6/L.452) as a whole, as amended, was adopted by 54 votes to 9, with 2 abstentions.

AGENDA ITEM 56

Diplomatic intercourse and immunities (A/3859 and Corr.1, A/4164 and Add.1 to 6)

42. The CHAIRMAN recalled that in its report on the work of its tenth session (A/3859 and Corr.1, chap. III, para. 53), the International Law Commission had submitted draft articles on that subject and that the General Assembly in its resolution 1288 (XIII) had decided to include the item entitled "Diplomatic inter-

course and immunities" in the provisional agenda of its fourteenth session. Under the same resolution it had invited Member States to submit their comments on the draft articles of the International Law Commission and had requested the Secretary-General to circulate such comments. The comments had been reproduced in an annex to the Note by the Secretary-General (A/4164 and Add.1 to 6).

43. Sir Gerald FITZMAURICE (United Kingdom), speaking on a point of order, proposed that the debate be continued at the next meeting. The Committee would then have before it specific proposals which would make it possible to shorten the debate.

It was so decided.

The meeting rose at 5 p.m.