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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. PETRZELKA (Czechoslovakia) said that he viewed the United Kingdom proposals (A/C.6/L.175 and A/C.6/L.176) with some scepticism. It was clear from the discussion that they were not likely to improve the situation in any way. As many objections had already been raised by other delegations, he would not go into details but would simply emphasize a few important points.

2. Like other representatives, he felt that the United Kingdom proposals, if adopted, would hinder rather than help the work of the United Nations. The United Kingdom delegation had adopted a completely false approach by assuming that respect for international law could be restored by purely procedural methods. The essential requirements for the maintenance of peace and security were international understanding and trust, without which purely procedural devices, such as the establishment of groups of experts and attempts to draw a stricter distinction between legal and political questions, would be of no avail.

3. Moreover, whether a problem was legal or not was not apparent simply from the way in which the General Assembly wished to deal with it, but could be determined only on the basis of the actual substance of the question. All the Main Committees of the General Assembly dealt to some extent with legal questions and the International Law Commission also dealt with them, but in a somewhat different way. Consequently, procedure offered no satisfactory clue to the real nature of a question. Respect for substantive law was a prerequisite of respect for international law. If that was always borne in mind and an atmosphere of mutual understanding created, the correct procedure would naturally follow. Procedure was in any event a secondary consideration and should not be given undue prominence.

4. The main duty of the United Nations as a whole, and not only of the Sixth Committee, was to put the principles of the Charter into practice. The procedure laid down in the Charter was perfectly adequate, and the adoption of the United Kingdom proposals would simply complicate matters without producing any useful result. The United Kingdom delegation seemed to have left the principles of the Charter aside and to have concentrated solely on procedure. It also appeared to have adopted a purely technical approach to international law. If the United Kingdom proposals were adopted, the work of the United Nations would be paralysed and the principles of the Charter would be threatened by the introduction of power politics. The most important duty of the United Nations was to promote respect for the fundamental principles of international law: equality of States, sovereignty, non-intervention, territorial integrity and strict observance of international treaties. Solutions of principle were needed rather than mere solutions of procedure. The representative of Israel had quite rightly pointed out that it was for the individual delegations to improve the working of the United Nations. It had been suggested that a group of experts should be set up for drafting purposes and it had been argued that the work of such a group would be purely technical. But the work of the United Nations was mainly political, and the group of experts would certainly be influenced by political considerations. The appointment of a group of experts would lead to extra work and would prolong the discussions. Undue emphasis would be laid on form at the expense of substance, and in the end there was the danger that substance would be distorted for the sake of form.

5. He could not accept the United Kingdom representative's approach to law as something entirely abstract, and consequently could not accept either of the draft resolutions or any of the amendments thereto. The one merit of the United Kingdom proposals was that they had served to emphasize defects in the realm of international co-operation, and if any effective solution to that problem was proposed his delegation would certainly support it.

6. Mr. MOUSSA (Egypt) said that he had from the outset viewed the United Kingdom proposals with some

* Indicates the item number on the General Assembly agenda.

mistrust and had been surprised that the Committee should have decided to place them so early on the agenda. The United Kingdom representatives had presented their proposals ably but he could not endorse the initiative they had taken in bringing the item before the Assembly. He was surprised that representatives of a country which was generally noted for its practical approach and its desire for flexibility should have put forward proposals involving such strict standardization. Perhaps there was something behind the proposals which the discussion had not yet brought to light.

7. He had no particular enthusiasm for the United Kingdom proposals since the machinery necessary for the smooth functioning of the General Assembly was already provided for in the rules of procedure. The decision to postpone discussion on the draft Declaration on the Rights and Duties of States (256th meeting) — after it had previously been studied by the International Law Commission—showed quite clearly that the Sixth Committee was just as much a political organ as all the other Committees of the General Assembly. The representatives in the Sixth Committee were first and foremost the representatives of their Governments and the votes taken were not based on purely legal considerations.

8. His initial distrust of the whole proposal had been reinforced by the fact that the preamble to draft resolution I (A/C.6/L.175) bore no relation to the operative part. The conditions under which justice and respect for the obligations arising from treaties and other sources of international law could be maintained were clearly not purely procedural. Thus, the first paragraph of the preamble to draft resolution I was clearly inadmissible as an introduction to the remainder of the text. The second paragraph of the preamble had also been criticized on the ground that the General Assembly already had satisfactory methods and procedures for dealing with legal matters.

9. Other representatives having pointed to the technical defects in the draft resolution, he would dwell only on a few points of particular importance. With regard to sub-paragraph 1 (*a*), the draft resolution did not make it clear who was to carry out the very difficult task of determining the exact proportion of legal and non-legal elements in a given item. If it was to be the General Committee, then his answer was that, in any case, it was the regular practice for the General Committee to distribute items, predominantly legal questions being referred to the Sixth Committee. If, on the other hand, it was proposed that the Main Committees would themselves determine the importance of the legal elements in the items referred to them, and, where necessary, refer certain problems to the Legal Committee, that practice again was already provided for in the rules of procedure. The fact that the draft resolution was not clear on that point suggested that the decision would be taken by some different procedure each time according to the expediency of the moment.

10. Nor could he agree to the proposal in paragraph 3 of draft resolution I that a body of experts should review the drafting of texts. Much attention was already paid to the drafting of decisions in all the organs of the United Nations and, in many cases, each word and each comma had its own special significance. Any attempts at improving the drafting would therefore only give rise to additional discussion. His delegation also had misgivings concerning paragraph 4 of draft resolution I. If any organ was to fulfil the functions described in that paragraph, it should be the Sixth Committee as a whole rather than a committee made up of only eleven members.

11. Not wishing to adopt a purely negative approach, however, his delegation felt there was some merit in the proposal that requests for an advisory opinion from the International Court of Justice or proposals to refer a matter to the International Law Commission should be drafted by the Sixth Committee, though even that Committee was not infallible.

12. Turning to draft resolution II (A/C.6/L.176), he expressed surprise at the suggestion that lawyers should be called upon simply to polish the drafting of resolutions. In that respect, the Swedish delegation had made the useful suggestion that the Rapporteurs of Committees, in collaboration with the Secretariat, should study and try to improve the drafting of resolutions and decisions. Accordingly, he was prepared to support the Swedish amendment (A/C.6/L.178) or the Iranian amendment (A/C.6/L.185).

13. His delegation was very anxious to adopt a constructive approach to the whole problem and it had considered submitting a draft resolution, jointly with certain other delegations, to propose that the Secretariat should be asked to study the various suggestions and amendments and submit a fully documented report on the matter, giving in addition its own view as to the best possible solution. He understood, however, that some such proposal was to be submitted by another delegation and, if so, he would be prepared to support it. If no such proposal was made, his delegation would be ready to submit it in its own name.

14. Mr. VAN GLABBEKE (Belgium) said the United Kingdom delegation was to be commended for introducing the item. Views might differ in the Committee, but discussion was bound to be fruitful. The United Kingdom draft resolutions were based on serious considerations and had been advanced in the interests of the United Nations, and it was in that light that the members of the Committee should approach the subject.

15. The desire for remedying existing procedural weaknesses should not involve the Organization in hazardous experiments. All complications likely to retard the Assembly's work and to give rise to unnecessary repetition of debates and any procedures that would lend themselves to obstructive tactics had to be unhesitatingly set aside.

16. He agreed with the Netherlands delegation (261st meeting) that draft resolution I raised a question of substance closely linked with the relation between law and politics, whereas draft resolution II dealt only with the minor question of the form of texts and documents. The inescapable fact was that the United Nations was essentially a political body and that the Sixth Committee was composed of representatives of governments and not merely of legal experts. Thus, to say that it was desirable, and to make it obligatory, to refer legal questions to the Sixth Committee so as to ensure an absolutely objective examination of them, was unrealistic; the current debate itself proved that contention.

17. Again, United Kingdom draft resolution I and several amendments thereto, as well as the Venezuelan draft resolution (A/C.6/L.184), postulated the possibility of drawing a clear line of demarcation between the legal and non-legal aspects of questions and of deciding whether the legal aspect was more or less important than the non-legal aspect. But surely every problem that came before the General Assembly had an initial legal

aspect, in that it raised the question of the Assembly's competence to deal with it. Frequently, such minor legal aspects passed unnoticed and it was not always convenient, in a political assembly, to emphasize the legal aspect of a problem.

18. Furthermore, United Kingdom draft resolution I and the Venezuelan draft resolution both introduced the complication of deciding at what point in the proceedings the legal aspect of a matter should be referred to the Sixth Committee, whose discussion would inevitably touch substance. All such preliminary discussions were time-consuming; the Assembly might well become a happy hunting ground for the obstructionist and the procedurally-minded. In a political organization like the United Nations, such debate could not possibly be objective; and representatives, focussing their attention on political considerations, would tend to refuse to recognize the legal aspects of problems as if they did so their freedom of action would be restricted. The rule of the political majority would prevail and the outside world would be left with the erroneous impression that the Sixth Committee was dealing with the legal aspects from a purely technical point of view. Moreover, as the Brazilian representative had pointed out (257th meeting), the growing complexity in the relationships between States was making it more and more difficult to distinguish between the legal and the non-legal aspects of problems.

19. After pointing out the loss of time which United Kingdom draft resolution I would involve by creating the necessity of a preliminary debate, itself legal in character, on whether a given question or aspect of a question was legal or not, he stressed, firstly, that there were too many jurists sitting on the other Committees for the legal aspects of questions not to be dealt with by those Committees, and secondly, that the Sixth Committee would not be able to confine itself to the purely legal aspect and would automatically enter into the political aspect, for in most cases it was impossible to divorce the one from the other. Under draft resolution I, the whole process was capable of further complications in that, after lengthy debates in the Committees, a problem might have to come before a joint committee in order to obtain agreement between the two Committees concerned, on its substance; and that tendency might tend to spread with a consequent adverse effect on the work of the Organization and its productivity.

20. In effect, the Assembly was not an academic body that took theoretical decisions. Its decisions were practically always in the nature of compromises on substance and frequently on form. In the circumstances it was reasonable to ask to what extent it was practicable for one Committee to take a decision on substance while the decision on form was left to the Sixth Committee.

21. Even in the case of requests to the International Court of Justice for advisory opinions, it might well be a mistake to refer their drafting to the Sixth Committee. The Court was consulted not always for purposes of enlightenment but frequently in order to gain time or to sidestep political difficulties; consequently, the requests addressed to the Court for opinions were drafted differently according to circumstances. All the Main Committees had enough jurists among their members to draft requests clearly if it were desired to do so. It might frequently be undesirable, for political reasons, that the Sixth Committee should be asked for its advice concerning the drafting of such requests, however defective they might be from a legal point of view. Again, as the Israel representative had said (259th meeting), it would make little difference if the Sixth Committee drafted requests to the Court; even requests drafted by the Sixth Committee had had to be interpreted in the past. Similarly, the International Law Commission had had to discuss at length what construction to place on the request initiated by the Sixth Committee (General Assembly resolution 177 (II)) relating to the formulation of the Nürnberg principles. Accordingly, the Committee's record was not unimpeachable and there was little justification for the conclusion that requests to the Court for advisory opinions could be better drafted by the Sixth Committee than by the other Committees. Moreover, despite the alleged drafting weaknesses, the Court had always been able to provide well-founded answers.

22. Besides, any attempt to confer, as it were, the status of a legislative section or a council of state on the Sixth Committee would not be well received by the other Committees, if the Sixth Committee were asked to pronounce on the substance of legal questions; and such a procedure would be dangerous, even if only questions of form were referred to it, because it would be bound to discuss substance. While such an arrangement was possible at the national level, it was impracticable at the international level, where decisions were taken jointly by a number of States.

23. The proposal, contained in sub-paragraph 1 (*b*) of draft resolution I, to appoint legal sub-committees was sound; similar arrangements had been highly successful in the League of Nations.

24. He also supported the view that the services of the Legal Department of the Secretariat, with its experience of drafting texts and documents and its ability to give unbiased advice, should be fully utilized, as had been the case with the Legal Department of the League of Nations.

25. He would not for the moment comment on any of the amendments to the United Kingdom proposals or on the Venezuelan draft resolution, as he understood that a joint resolution was being prepared which might supersede the earlier documents.

26. He would, however, like to comment on the United Kingdom draft resolutions in the light of his general remarks. Taking draft resolution I first, he said the passage from the Charter quoted in its first paragraph did not alter the fact that the United Nations was primarily a political body, a fact recognized by the United Kingdom representative himself when introducing his draft resolutions (256th meeting).

27. The second paragraph of the preamble was the theoretical justification of the operative part of the resolution. But he took issue with the suggestion that the General Assembly had failed in the past to adopt " regular and satisfactory " methods and procedures for dealing with legal matters. As had been pointed out by other speakers, such methods and procedures were laid down in the General Assembly's rules of procedure, under rules 44, 47, 67, 71, 102 and 111. General Assembly resolution 183 (II), concerning the utilization of the services of the Secretariat, was also relevant.

28. Sub-paragraph A 1 (*a*) of the operative part of the draft resolution provided that whenever the legal elements of any item on the agenda appeared to be of equal importance with the non-legal, or legal elements were equally germane to its determination, such item should either be allocated exclusively to the Sixth Committee or

placed, as to the legal aspects, on that Committee's agenda. That was an alarming provision to make. It was categorical, allowing no latitude whatever, and would be exceedingly difficult to put into effect. The Sixth Committee would be overwhelmed with work and might possibly have to sit the whole year round. Every item, or some part of it, would have to pass through the bottleneck of the Sixth Committee.

29. In sub-paragraph A 1 (*b*), in the first place he failed to understand the distinction between legal " aspects " and legal " elements ". Secondly, he felt that the passage " or whenever...a legal point arises *which may affect* the ultimate decision of the Committee " (in French : " *qui pourrait avoir quelque influence* ") was dangerously vague and open to abuse for political purposes. Thirdly, the words " advice and report " were unsatisfactory. Either " advice " or " report " would be better; since " advice " did not imply that the ruling must be followed, " report " would be quite sufficient. Fourthly, the provision that the legal elements should be referred " either to the Sixth Committee or to an *ad hoc* legal sub-committee set up for the purpose " failed to specify on what the choice between the two would depend. He asked the United Kingdom representative to clarify the point.

30. Referring to paragraph A 2, he said he was puzzled by the words " at some appropriate stage of its consideration ", and wondered if they could be construed to mean that, if the Sixth Committee considered a matter to have been referred to it too late, it could refuse to consider it. It would be better to be more specific. Secondly, he asked the United Kingdom representative to explain what was meant by the word " relevant "; whether, for example, the Sixth Committee was to be the judge of the relevancy of texts drafted by other Committees and referred to it by them, and whether it was entitled to refuse to consider those it regarded as not relevant. Lastly, the word " draft " should be introduced before the word " resolution "; otherwise the Sixth Committee would be empowered to alter texts which had been approved.

31. He said he had already given his views on sub-paragraphs (*a*) and (*b*) of paragraph A 2. The provision that proposals for amendment of the General Assembly's rules of procedure should be referred to the Sixth Committee, contained in sub-paragraph (*c*), was acceptable provided that what was meant was *draft* amendments.

32. In general, all the matters referred to in paragraphs A 1 and 2 could be dealt with on their technical side either by the Secretariat or through consultations with experts, and only the final decision need be taken by the Legal Committee and the General Assembly.

33. Proceeding to deal with United Kingdom draft resolution II, he said the first paragraph of its preamble advocated standardization of General Assembly resolutions on mass-production lines " subject to a reasonable measure of flexibility ". He did not feel that was particularly important one way or the other : the United Kingdom delegation had admitted that the existing state of affairs was not unsatisfactory, and had merely predicted a change for the worse. The inconsistencies in the style, form and language of the vast volume of General Assembly resolutions were slight and in practice unimportant. What the situation required was that before a resolution was adopted the Chairman of a Committee should give the Legal Department of the Secretariat an opportunity to state whether the text conformed with precedent. If the representative of the Legal Department passed the text, it could be voted upon; if he pointed out that, in a certain passage, some other term was usually employed, then the Committee would at once adopt its suggestion. There was no need to set up a co-ordination committee, which would merely further complicate the working of the General Assembly.

34. Some representatives had said that rule 44 of the General Assembly's rules of procedure, by which the General Committee was empowered to " revise the resolutions adopted by the General Assembly, changing their form but not their substance ", rendered the resolution in question unnecessary. The reason that advantage had not been taken of rule 44 was that it referred only to resolutions which had already been adopted, and it was a very serious matter to revise, even as to form, texts upon which a decision had already been taken. Revision should precede the vote. The Rapporteur could hardly be put in the invidious position of having to announce to a Committee that it had been decided that the text upon which it had voted was to be altered. The members present might, in some cases, not be the same as those who had been present when the text was originally approved.

35. In sub-paragraph A 1 (*c*) of draft resolution II he found the words " after the lapse of three days " unsatisfactory. Owing to delays caused by public holidays or postal or administrative errors the Chairman of the Main Committee concerned might not receive a written notification of objection within the three days allowed; in such cases, the report should not forthwith be regarded as adopted.

36. In conclusion, he said the Sixth Committee ought to make some contribution, however small, to improve the General Assembly's methods and procedures for dealing with legal and drafting questions. His delegation felt that the correct way to proceed was to appoint a sub-committee which would be able to come to positive conclusions.

The meeting rose at 5.55 p.m.

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