



Saturday, 26 January 1952, at 11 a.m.

Palais de Chaillot, Paris

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Chairman : Mr. Manfred LACHS (Poland).

**Ways and means for making the evidence of customary international law more readily available : report of the Secretary-General (A/1934) (*continued*)**

[Item 53]\*

1. The CHAIRMAN recalled that the Committee had before it the draft resolution submitted jointly by the United Kingdom and Israel (A/C.6/L.220), to which the French delegation had submitted an amendment (A/C.6/L.224), which would delete paragraph 6 and insert the following :

"Invites the Secretary-General to make the necessary arrangements, in conjunction with the competent learned institutions, for the publication of a *répertoire* of the practice of the United Nations with regard to questions of international law and to proceed actively with the preparation of the *répertoire* of the practice of the United Nations with regard to the articles of the Charter;".

2. Also before the Committee was a draft resolution submitted by Egypt (A/C.6/L.226). He invited the members of the Committee to present their observations on those various texts.

3. Mr. FITZMAURICE (United Kingdom) said that a number of the observations he had intended to make had already been submitted by the representative of Israel at the preceding meeting. Like the latter, he had some difficulty in understanding the attitude adopted by some members of the Committee. It was to be expected that the joint draft resolution (A/C.6/L.220) should be criticized in detail, but it had been impossible to foresee such divergencies of view on the substance. It was indeed a matter of quite particular importance to countries which did not possess very complete records and which, if the United Nations took action along the lines indicated in the joint draft resolution, would thus have easy access to the documentary material on customary international law which they lacked. As the legal organ of the United Nations, the Sixth Committee should make all possible efforts to achieve that object.

4. No one dreamt of denying that financial considerations were of very real importance. The measures recommended in the joint draft resolution, however, would not involve any additional expenditure for the financial year 1952, and it would be for the General Assembly, and more particularly the Fifth Committee, to consider at its next session the question of such additional appropriations as might subsequently be necessary. A discussion of the financial implications of the measures recommended in the joint draft resolution was therefore out of place in the Sixth Committee at the present session.

5. The authors of the joint draft resolution understood quite well that some delegations might desire to make formal modifications in it. He was prepared to accept the addition of a paragraph requesting the Secretary-General to submit an estimate of the cost of publishing the works concerned—not, as he had just explained, because such an addition seemed necessary to him, but in order to satisfy delegations which had expressed concern on that subject. Incidentally, a revised draft resolution was to be distributed during the meeting.

6. He realized that the publication of a consolidated index to the *League of Nations Treaty Series* was a considerable undertaking which would perhaps have to be relinquished at the next session if it were found to be too costly. He stressed the value of such an index, however, in facilitating consultation of the numerous volumes in the *League of Nations Treaty Series*, and urged the need for making a preparatory study so as to determine whether the undertaking was financially possible.

7. In the opinion of the United Kingdom delegation, the Egyptian draft resolution did not represent any advance on resolution 487 (V) adopted at the fifth session of the General Assembly. Owing, however, to the misunderstandings to which the representative of Israel had drawn attention, it was important to give the Secretary-General precise instructions on the matter. Thus, for example, the representative of Egypt had expressed doubt as to the need for preparing and publishing a list of treaty collections, pointing out that such a list was already provided for under Article 102 of the Charter.

\* Indicates the item number on the General Assembly agenda.

Article 102, however, related only to treaties concluded after the entry of the Charter into force, and there was no doubt that a list of the treaties concluded before that date would be very useful.

8. Lastly, referring to the amendment submitted by France to the joint draft resolution, he recalled that his delegation attached particular importance to the publication of a *Juridical Yearbook* and a *répertoire* of the practice of the United Nations. He was afraid, however, that the publication of the latter work might be too costly, and before accepting the French delegation's proposal, he would like to have some information on its precise scope.

9. For all those reasons, he recommended the adoption of the joint draft resolution in its revised form (A/C.6/L.220/Rev.1).

10. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics) said that after a thorough study of the draft resolutions submitted to the Committee, the concern expressed by his delegation in connexion with the financial implications of the joint draft resolution had been confirmed. The measures recommended in that draft resolution would inevitably involve additional expenditure, as the representative of the United Kingdom had himself just admitted.

11. Rule 152 of the rules of procedure, however, clearly stipulated that the financial implications of any resolution must be examined before it was adopted, and no derogation was provided for in cases where the resolution concerned would not involve additional expenditure during the current financial year. It followed, in the first place, that it was impossible to maintain the argument put forward by the United Kingdom and Israel to the effect that the appropriations to be provided would not affect the financial year 1952 and, in the second place, that even if the joint draft resolution were adopted by the Sixth Committee at the present session, the General Assembly would be obliged to reject it under rule 152 of the rules of procedure. Apart from the financial aspect of the matter, which was of decisive importance to all delegations whatever their opinion on the substance, it was thus certain that by adopting the joint draft resolution, the Sixth Committee would be infringing rule 152 of the rules of procedure. Obviously, the Legal Committee, more than any other, must observe those rules.

12. Mr. TARAZI (Syria) appreciated the validity of the argument advanced by some delegations that the measures recommended in the joint draft resolution to facilitate research in international law would contribute to its development. Nevertheless, since there was as yet no estimate, however rough, of the expenditure involved, his delegation would support the Egyptian draft resolution.

13. VAN GLABBEKE (Belgium) regretted having to say that his delegation's view remained unchanged, despite its interest in the development of international law and hence in possible ways and means of facilitating research in the field of customary international law.

14. He would make a careful study of the revised draft resolution, the distribution of which had been announced by the United Kingdom representative. He had, however, been somewhat surprised to hear the latter express readiness to agree to the addition to the joint draft resolution of a paragraph which would, in the final analysis, reproduce the operative part of the Egyptian

draft resolution. It would thus appear that the United Kingdom representative himself recognized the justice of that text.

15. The joint draft resolution could not, at any rate as it then stood, be challenged on the basis of rule 152 of the rules of procedure. Judging by the apprehensions expressed by the United Kingdom representative, it would be quite different if the French amendment were to be incorporated in the joint draft resolution. The joint draft, as contained in document A/C.6/L.220, had however been prepared and presented with such skill that it could not be criticized on those grounds.

16. By adopting the joint draft resolution, the Committee would be assuming commitments of which it would unfailingly be reminded at the next session. Unless it knew precisely what it was committing itself to at the current session, the Committee should defer final decision until the next session, as recommended in the Egyptian draft resolution. He formally proposed that the latter text should be given priority in the order of voting; that would seem to be the logical procedure inasmuch as the Egyptian draft proposed deferring a decision on the substance of the question.

17. He reminded the Committee that the agenda item was entitled " Ways and means for making the evidence of customary international law more readily available ". The joint draft resolution, dealing as it did with the evidence of international law as a whole, therefore exceeded the scope of the question, since the list of treaty collections it proposed for publication related to treaty law or, in other words, to written and not customary law. That was at least one disadvantage from which the Egyptian draft resolution did not suffer. In that connexion, he did not agree with the United Kingdom representative that the Egyptian draft resolution would do no more than reiterate the resolution adopted by the General Assembly at its fifth session, since it requested the Secretary-General to submit to it a report containing detailed plans to serve as a basis for implementing the measures recommended in the current year's report.

18. The request for detailed financial estimates, however, was an essential precaution in view of the constantly mounting expenditures of the United Nations. The Belgian delegation was somewhat disturbed at the increase noted each year in the United Nations budget, and it therefore stressed the prudence of the request to the Secretary-General contained in the Egyptian draft resolution to submit an estimate of the expenditure involved in the proposed measures. In those circumstances, his delegation would vote for the Egyptian draft resolution.

19. Mr. LIANG (Secretariat) wished to make a few explanatory observations on the additional expenditure which might be involved in the preparation and publication of the works referred to in the joint draft resolution. Funds had already been appropriated at the fifth session for the publication of some of those works, which were even then in course of preparation or publication and for which therefore no additional funds would have to be provided. That applied, for example, to the reports of *International Arbitral Awards*. Moreover, the national lists of texts of treaties could be compiled by the existing staff out of funds already available.

20. On the other hand, no funds had yet been appropriated for the *Juridical Yearbook*; should the proposals for its publication be adopted, the Secretary-General would submit an estimate of the expenditure involved.

That also applied to the consolidated index to the *League of Nations Treaty Series*, which was referred to in paragraph 31 of the Secretary-General's report (A/1934).

21. As regards the list of treaty collections, the *répertoire* involving material relating to the interpretation of the Charter, and the volume dealing with the function and operation of the Security Council, the work of compilation would not necessitate fresh appropriations. Their publication, however, would involve supplementary expenditures, an estimate of which would be submitted if the proposals for their publication were adopted.

22. Lastly, he explained that the expression "Legislative Series" was somewhat vague. The Secretariat intended to confine itself to the publication of the texts relating to the questions considered by the International Law Commission in connexion with the codification of international law, such, for example, as the question of the régime of the high seas. In so far as the Secretary-General was not invited to widen the scope of that study, it would not be necessary to appropriate additional funds for the Legislative Series.

23. In conclusion, he pointed out that his comments related only to those of the Secretary-General's proposals which had been studied by the Committee. He suggested that the word "additional" should be inserted before the word "expenditure" in paragraph 2 of the operative part of the Egyptian draft resolution (A/C.6/L.226), since, as he had just explained, the General Assembly had already voted funds for the publication of works relating to customary international law.

24. Mr. EL-BARAZI (Saudi Arabia) said that in principle his delegation would be in favour of adopting the joint draft resolution. Nevertheless, although apparently more complete and explicit than the Egyptian text, the joint draft resolution differed from it only in the recommendation concerning a volume dealing with the function and operation of the Security Council—in regard to which the joint draft resolution did not make it clear whether preparation had already begun. All the other measures proposed in the joint draft resolution were contained in the general formula proposed by Egypt, which referred to the detailed recommendations already contained in the Secretary-General's report.

25. For that reason, and in view of the joint draft resolution's incompatibility with rule 152 of the rules of procedure, as well as of its as yet unknown financial implications, his delegation would vote for the Egyptian draft resolution, although approving in substance the measures proposed in the joint draft resolution.

26. Mr. PLANTEY (France) explained that his delegation appreciated the importance of the Secretary-General's proposals and considered that the United Nations should endeavour to implement them, while the Secretary-General, when proceeding to put into effect whatever decision was adopted, should be guided by the debate in the Sixth Committee.

27. The French delegation recognized that financial considerations were of primary importance and that consequently priority should be given to works for which appropriations had already been made, and that decisions regarding other works should not be contrary to the rules of procedure. It was in that spirit that the French delegation had submitted its amendment (A/C.6/L.224). Indeed the French proposal, which testified to the importance attached by France to the publication of a *répertoire* of United Nations practice, should be understood,

in the French delegation's view, as not involving any additional expenditure. The "necessary arrangements" recommended by the amendment should therefore be made by the Secretariat within the limits of its present resources.

28. In those circumstances, the French delegation would vote for the priority requested for the Egyptian draft resolution. It asked that its amendment, which had originally related to the joint draft resolution, should be considered in conjunction with the Egyptian draft resolution and voted on at the same time.

29. Mr. WYNES (Australia) said his delegation would prefer the joint draft resolution, which had the advantage of giving the Secretary-General precise instructions. Contrary to what the Belgian representative seemed to think, the Egyptian draft resolution went much further than the joint draft resolution. Indeed, its vagueness might give the impression that the Committee had in substance adopted all the suggestions made in the Secretary-General's report, particularly the suggestions relating to the collection of national constitutions and the publication of digests of diplomatic correspondence. In that connexion, he observed that his Government had reservations with regard to the publication of diplomatic correspondence.

30. Like the representative of Belgium, however, he recognized that the joint draft resolution did not confine itself to evidence of customary international law. In fact, only the first and last of the works, the publication of which was recommended in the draft, could in his view be regarded as concerning customary law, for the other works referred to in the joint draft resolution concerned international law as a whole.

31. In conclusion, he wondered whether it would not be possible to combine the two draft resolutions and to insert in the joint draft resolution a reference to the financial implications of the measures recommended, though in a different form from that in which it appeared in the Egyptian draft resolution. He also asked that if the joint draft resolution were put to the vote it should be voted on paragraph by paragraph.

32. Mr. FITZMAURICE (United Kingdom) considered that the Belgian representative had spoken rather as a financier than as a jurist, and seemed to be opposed to all the conclusions in the Secretary-General's report. The representative of the Secretary-General had shown that the Belgian representative's fears were exaggerated, for he had pointed out that the publications envisaged would have no financial implications at present and would involve only a moderate expenditure at a later stage.

33. As the representative of Australia had observed, he considered that the Egyptian draft resolution was much broader than the revised joint draft. There was therefore no reason why the Egyptian draft should have the priority which he claimed for the joint draft.

34. The Belgian representative had expressed the view that the publications envisaged went beyond the limits of customary international law. Mr. Fitzmaurice pointed out that similar publications had already been included under that head at previous sessions of the General Assembly. Furthermore, treaty law was in his view an important source of customary law. Thus, for example in the matter of the immunities of consular representatives, there had not been any customary international law fifty years previously. Such customary law had



been formed gradually by the conclusion of numerous treaties on the subject. He therefore thought the Committee should adopt the joint draft.

35. Earlier in the discussion he had said he was not opposed to the inclusion in the joint draft of a paragraph dealing with financial implications, and he was surprised that the Belgian representative should have used that statement as an argument against the joint draft, despite the fact that Mr. Fitzmaurice's own speech had dealt with that point exclusively.

36. Mr. CREPAULT (Canada) considered that the revised text of the joint draft incorporated the suggestions which had been made and that there was no longer any fundamental difference between the opinions expressed. Among the publications envisaged in the Secretary-General's report, the Canadian delegation was particularly in favour of the juridical Yearbook and the *répertoire* of United Nations practice. He noted that it seemed to be the general feeling of the members of the Committee that the information provided by the Secretariat was not detailed enough to enable the Committee to make a decision based on a full knowledge of the facts.

37. Mr. MOUSSA (Egypt) thanked the Belgian representative for having defended the Egyptian draft resolution. He had some reservations to make on the way in which the representative of the Secretariat had presented and commented on the draft. He was sorry that a scientific discussion had revealed other motives. Furthermore, like the French representative, he doubted whether some of the works contemplated by the Secretary-General would be of any scientific value.

38. The Belgian representative had drawn attention to the fact that some of those publications did not relate to customary law. Mr. Moussa did not exclude *a priori* the possibility of publications concerning statutory law also, and the General Assembly would be able to decide on that point if it adopted the Egyptian draft resolution, for according to that draft the Secretary-General was requested to present to the General Assembly a report containing detailed plans of the works mentioned in the Secretary-General's report. Thus the General Assembly would be in a position to judge the value of those works.

39. He did not think the revised text of the joint draft was an improvement on the original. In any case, the scientific point of view had not been applied to it.

40. The Belgian representative had expressed astonishment that the representative of the United Kingdom had agreed to the possible insertion in the revised text of the joint draft of a paragraph on financial implications. That remark had not implied any inconsistency on the part of the Belgian representative as the representative of the United Kingdom had suggested, but had merely reflected the Belgian representative's surprise that the author of an already revised draft resolution should still want it to be changed.

41. Mr. CHAUDHURI (India) said the discussion brought out the great value of the joint draft. Members of the Committee, however, appeared to be concerned by the fact that, although the suggested publications would have very minor financial implications for 1952, the same did not hold good for 1953. The important thing was that the work could be prepared without incurring additional expenditure. It would be time enough to proceed to its execution when the appro-

priations were sufficient, which would perhaps be only in 1954 or subsequent years.

42. His delegation took a favourable view of the joint draft. On the other hand, the Egyptian draft was not clear. It appeared to require the Secretary-General to submit detailed plans for all the publications contemplated in his report. Moreover, he considered it superfluous to ask the Secretary-General for an estimate of the expenditure required for those publications, because rule 152 of the General Assembly's rules of procedure provided that an estimate of expenditures must accompany any resolution involving expenditure.

43. He supported the proposal to give priority to the joint draft because the latter gave much more concrete instructions to the Secretary-General than the Egyptian draft.

44. Mr. VAN GLABBEKE (Belgium) was pleased to have been called a financier by the United Kingdom representative, but he did not think the mere fact of of having drawn the attention of Committee members to the financial implications of the contemplated publications could justify the epithet. Just as the USSR representative had asked the Assistant Secretary-General, he asked the United Kingdom representative whether he was prepared to pay with his own or his country's money the additional expenditure which would be entailed by those publications. He noted that the revised text of the joint draft provided that financial estimates would be presented to the General Assembly.

45. As a consequence of the Australian representative's statement, the United Kingdom representative had said the Egyptian draft resolution went further than the joint draft. That interpretation by the Australian representative was due to an error in the English translation of the Egyptian draft resolution. In the first paragraph, the words "*des plans détaillés qui pourraient servir de base*" had been translated as "detailed plans to serve as a basis", whereas it should be "detailed plans which might serve as a basis". Thus, the sense of the words was not nearly so far-reaching as the United Kingdom representative had claimed. Again, the joint draft made a choice among the publications visualized, which choice would be binding on the General Assembly. The Egyptian draft, on the contrary, made no choice and allowed the General Assembly to decide only after the financial implications and detailed information on the suggested volumes had been communicated by the Secretary-General. Unlike the United Kingdom representative, therefore, he thought the priority to be given to the Egyptian draft was justified because the latter was more restricted than the joint draft.

46. He could not follow the Indian representative when the latter stated that the preparatory work contemplated in the revised joint draft resolution (A/C.6/L.220/Rev.1) would always be useful. The Committee would be embarking on a dangerous course. Paragraph 2 of the draft would authorize the Secretary-General to undertake the initial steps for the preparation and "publication" of a list of treaty collections supplementary to those already existing. It was not, therefore, a mere preparatory study, but measures to provide for the publication of the list. The same reference to publication, entailing the same consequences, was to be found also in paragraph 4, sub-paragraphs (a) and (b), of the draft.

47. He again emphasized, as the Australian representative had also done, that the suggested publications went beyond the limited scope of customary international law, particularly so far as the publications covered by paragraph 4 (c) were concerned. It would not be said, as the United Kingdom representative had stated, that that draft resolution was more limited than the Egyptian draft resolution. He therefore maintained his proposal the latter should be put to the vote before the draft resolution of Israel and the United Kingdom.

48. Mr. AMMOUN (Lebanon) thought the French amendment was correct in using the term "*jurisprudence*", which had a very precise meaning in French legal terminology, and which should be maintained. It would therefore be desirable that that amendment should be adopted, or at least that the term "*jurisprudence*" should be introduced in the draft resolution adopted.

49. Mr. WYNES (Australia) thanked the Belgian representative for having drawn his attention to the mistake in the translation of the English text of the Egyptian draft resolution. The fact nevertheless remained that the Secretary-General was still called on to undertake preparatory studies on all the volumes mentioned in his report; his objection to the draft resolution therefore remained valid.

50. Moreover, that draft, like the Secretary-General's report, might be criticized on the ground that it went beyond the scope of customary international law; he did not see how the Belgian representative could make such a criticism of the Secretary-General's report without at the same time applying it to the Egyptian draft.

51. He objected to the Egyptian draft resolution being voted on first; he maintained his opinion that the joint draft resolution was more restricted.

52. Mr. CREPAULT (Canada) wished, together with some other delegations, to study the possibility of proposing certain amendments to the revised text of the joint draft resolution (A/C.6/L.220/Rev.1). He therefore requested the adjournment of the debate.

*It was decided to adjourn the debate.*

53. Mr. ROLING (Netherlands) pointed out that rule 119 of the rules of procedure might be invoked at the afternoon meeting; he therefore proposed that that meeting should be cancelled and that the discussion should be continued at the meeting on Monday, 28 January.

54. Mr. MAKTO (United States of America) said that he had not taken part in the discussion in the hope that the Committee would be able to finish its work during the afternoon meeting. He therefore could not support the proposal of the Netherlands representative.

55. Mr. ITURRALDE (Bolivia) shared the view of the United States representative.

56. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics) recalled that the Committee had held a great many meetings during the week, which had placed a heavy strain on its members. The drafts and amendments already submitted, like those which had been announced, needed to be studied carefully. Furthermore, he did not think that the Committee could finish its work in one meeting. One important item on the agenda would probably require a rather long discussion: application of the Headquarters Agreement to representatives of non-governmental organizations. He therefore supported the proposal of the Netherlands representative.

57. Mr. KERN (Assistant Secretary-General in charge of the Legal Department) pointed out that the Secretariat had hoped that the Committee's reports could be considered by the General Assembly at the plenary meeting on Wednesday, 30 January, or Thursday, 31 January. If the Committee's meeting scheduled for Saturday, 26 January, at 3 p.m., was cancelled, it was to be feared that those reports would not be ready in time.

58. Mr. VAN GLABBEKE (Belgium) did not understand the exact meaning of Mr. Kern's objection, since it had been announced that the Sixth Committee would hold two meetings on Monday, 28 January.

59. Mr. MAKTO (United States of America) wondered whether the Canadian representative would agree not to submit amendments to the joint draft resolution and to express his opinion by voting for one or other of the draft resolutions submitted. If the Committee was unable to complete its consideration of the current item during the meeting scheduled for the afternoon, it could take up the following points in its agenda at that meeting.

60. Mr. CREPAULT (Canada) explained that the amendments which he had mentioned were primarily concerned with matters of form and that, since the Committee was going to meet that afternoon, there should be no problem for any delegation in adopting a position regarding them. The amendments contemplated were not the result of Canadian initiative alone; they had been discussed with other delegations which intended to co-sponsor them. In spite of his keen desire to expedite the work of the Committee, he was unable to withdraw the amendments. It was not in any case desirable or appropriate to vote on draft resolutions which everyone agreed were not satisfactory simply because all members of the Committee were anxious to finish the work. He urged the Committee to vote on the matter at the afternoon meeting.

61. The CHAIRMAN put to the vote the Netherlands proposal that the meeting scheduled for Saturday, 26 January, at 3 p.m., should be cancelled.

*The proposal was adopted by 17 votes to 10, with 9 abstentions.*

The meeting rose at 1.25 p.m.