HUNDRED AND FIFTY-SEVENTH MEETING

Held at Lake Success, New York, on Monday, 10 October 1949, at 3 p.m.

Chairman: Mr. LACHS (Poland).

Methods and procedures of the General Assembly: report of the Sub-Committee (A/937) (*continued*)

1. The CHAIRMAN requested the members of the Committee to continue the discussion of the proposal of the Belgian delegation (A/C.6/L.22)[1] concerning the point dealt with in paragraph 34 of the Special Committee's report (A/937), namely, the two-thirds majority vote.

2. Mr. ZIAUDDIN (Pakistan) pointed out that the Belgian proposal raised the important question of the interpretation to be placed on Article 18, paragraph 2, of the Charter and on rule 76 of the rules of procedure of the General Assembly, which reproduced the terms of the article exactly. The question had to be solved by pure logic, with proper regard for the intentions of the authors of the Charter.

3. At the 156th meeting, there had been two opposing points of view. Some delegations, including the French delegation, had placed great stress on the word "decisions", which occurred in Article 18 of the Charter; others, for example the Australian delegation, had emphasized the word "questions", which occurred several times in the text. In his delegation's view, the Committee's decision would probably depend on how that word was to be construed.

4. Article 18 of the Charter divided the questions which might be submitted to the General Assembly into two categories: important questions and others. No clear and precise line of demarcation was drawn between those two categories of questions, but the examples of important questions as given in Article 18, paragraph 2, might serve as a guide. His delegation was of the opinion that, when it had once been decided that a question should be regarded as important, any decision concerning that question, whether it concerned a proposal or an amendment to a proposal, should be considered as bearing on an important question and consequently required a two-thirds majority. Such a conclusion was inevitable, even if a certain inflexibility were to result from it. If Article 18 was differently construed and a distinction was drawn between important amendments and those of merely secondary importance, the same difficulty would crop up again when it came to distinguish between those two categories of amendments.

5. His delegation, considering that the Belgian proposal, which was logical and justified, was necessary to clarify a question beset with difficulties, would vote in favour of that proposal. His delegation also considered that the Sixth Committee, being composed of jurists, was in duty bound to settle the question before it unassisted, without having to apply to the International Court of Justice for an advisory opinion.

6. Mr. CHAUMONT (France) recalled that he had previously explained the cogent reasons, dic-

[1] See the summary record of the 156th meeting, paragraph 65.

tated by simple good sense, which militated in favour of the solution proposed by the Belgian delegation. His delegation's view was that the Committee should approve that solution and adopt the Belgian proposal; still, since some delegations seemed to be hesitant and had expressed the desire to obtain an opinion on the matter which would have unquestionable juridical force, the French delegation had presented a draft resolution to request an advisory opinion of the International Court of Justice (A/C.6/L.27). The text follows:

"The General Assembly,

"Considering that Article 18, paragraph 2, of the Charter of the United Nations provides that 'decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting',

"Considering that rule 76 of the rules of procedure of the General Assembly merely reproduces the aforesaid provision,

"Considering that it has not been possible on the basis of customary practice in the General Assembly to determine the exact meaning to be attributed to the word 'decisions' and in particular to decide whether, in addition to votes taken on proposals, this word also applies to votes taken on amendments and on parts of proposals put to the vote separately,

"Decides to request the International Court of Justice to give an advisory opinion on the following legal question:

" 'Should decisions of the General Assembly on amendments to proposals bearing on important questions within the meaning of Article 18 of the Charter, and parts of such proposals put to the vote separately, be taken by the two-thirds majority provided for in Article 18, paragraph 2, of the Charter, like decisions on the proposals themselves?' "

7. So far as his delegation was concerned, there was no doubt about the question. He was convinced that the Court's reply would concur with the Belgian proposal. He had, however, submitted his draft resolution in order to please some members of the Committee. He hoped that, after the authoritative opinion of the International Court of Justice had been obtained, the erroneous practice which had gained currency in the General Assembly would be discontinued.

8. Mr. Koretsky (Union of Soviet Socialist Republics) said that he had not, so far, participated in the discussion because he had thought that the question was too simple and that it was not necessary to discuss at length a proposal as logical as that of the Belgian delegation. Still, he felt bound to say a few words in view of the fact that certain delegations, while adopting in principle the same attitude as the Belgian delegation, were drawing from those principles conclusions which his delegation considered not quite accurate. The French delegation, for example, had proposed that, in case all the members of the Committee did not accept the Belgian delegation's interpretation of Article 18 of the Charter, an advisory opinion should be requested from the International Court of Justice.

9. The delegation of the USSR was opposed to having the Committee consult the Court on the question dealt with in the Belgian proposal, not because it did not have confidence in that highly competent organ, the International Court of Justice, but because, in the opinion of his delegation, the Court had much more weighty questions to solve, and because it would be improper for a committee of jurists to ask the Court for an opinion on such a simple question. The Committee itself should settle the matter and decide that votes on amendments to important proposals, like votes on parts of such proposals put to the vote separately, should be dealt with in the same way as the proposals themselves, that is, that they should require a two-thirds majority.

10. Another consideration militated in favour of the interpretation of Article 18 of the Charter proposed by the Belgian delegation. At one of its previous meetings, the Committee had decided to recommend the General Assembly to amend rule 81 of the rules of procedure concerning the division of proposals in the following manner: it should be determined that, when all the operative parts of a proposal had been rejected, the whole of the proposal would be deemed to have been rejected. If that recommendation were approved by the General Assembly, and if the existing practice were retained, the result would be that a proposal, all the parts of which had been adopted by simple majority votes, would be deemed as not having been rejected in its entirety and would be put to the vote. Hence, the solution recommended by the Belgian delegation should be adopted so as to change the existing practice and to make it impossible to delete, by a simple majority vote, parts of a proposal which in its entirety required a two-thirds majority for adoption.

11. While supporting the Belgian proposal, his delegation considered that it was not necessary to insert a new rule in the rules of procedure and that an interpretation of the existing provisions would suffice. His delegation would not, however, oppose the adoption of an additional rule if the majority of the Committee Members favoured such action.

12. Mr. Amado (Brazil) did not agree with the view that the Belgian proposal was inconsistent with Article 18, paragraph 2, of the Charter.

13. Admittedly, that paragraph did not expressly state that the adoption or rejection of an amendment to an important proposal constituted a "decision", as did the adoption or rejection of the proposal itself, but there was nothing in the Charter to justify the Australian delegation's argument that the word "decision" referred exclusively to the vote on the whole of a question. Decisions on amendments to a proposal might be said to be partial and preliminary decisions on the proposal itself.

14. Moreover, the purpose of Article 18 of the Charter must not be forgotten. The reason a two-thirds majority was required for decisions on important questions was that such decisions, because of their gravity, were felt to need wider support so as to be capable of being applied to all the Members of the United Nations. Now, while some amendments were very important and might considerably change the scope of a proposal, there were others which were of quite secondary importance. It might also be argued that, since Article 18, paragraph 2, of the Charter created an exception to the general rule concerning simple majority votes, it must be interpreted strictly and as referring only to decisions on the whole of a proposal. It was therefore very difficult to establish a hard and fast rule which was consistent with both the letter and spirit of the Charter.

15. If it were decided that a two-thirds majority would be required for the adoption of amendments to important proposals, wording more flexible than that of the Belgian proposal would have to be found, some phraseology making it possible to apply the provisions of paragraph 3 of Article 18 of the Charter, under which the General Assembly could, by a simple majority, decide that a question—and, *a fortiori,* an amendment—required a two-thirds majority.

16. The delegation of France had proposed that an advisory opinion be requested from the International Court of Justice. Although his delegation saw no reason for consulting the Court, it would not oppose that proposal if the majority of the Committee was in favour of it. Obviously, an opinion of the Court would have an authority which the Secretariat's study would not have. The Court's opinion would settle the question, while the Secretariat's study would merely serve as a basis for further discussion in the Committee.

17. The Brazilian delegation thought that the Secretariat could be asked to prepare a memorandum on the practical results of the application of rule 76 of the rules of procedure; in that memorandum the Secretariat would indicate the various cases where the provisions of that rule had been applied to decisions on amendments to proposals requiring a two-thirds majority for adoption.

18. Whatever method the Committee might choose to solve the problem, it was important not to lose sight of the necessity for finding a solution flexible enough to make it possible to distinguish between vital amendments and amendments of secondary importance.

19. Mr. Kerno (Assistant Secretary-General in charge of the Legal Department) stated that the Secretariat would be extremely pleased if the Committee could rapidly find a clear solution to the problem before it, because that would greatly facilitate the application of the rules of procedure.

20. The practice followed hitherto had not been uniform. The parts of important proposals voted on in parts were subject to the rule of a two-thirds majority, while the amendments to those proposals were adopted by a simple majority. As was well known, if it were desired to have a provision of a proposal deleted, either a separate vote on the provision could be requested or an amendment to delete it could be submitted. In the first instance, it would suffice for a third of the Members present and voting to oppose the provision for it to be deleted, whereas, in the second case, half of the votes would be needed to achieve the same result.

21. Mr. Abdoh (Iran) said that it would not be possible, without altering the text of the Charter, to add anything whatsoever to the provisions of rule 76 of the rules of procedure, which produced verbatim the terms of Article 18, paragraph 2, of the Charter. What could be done was to interpret the existing text. Some delegations thought that the General Assembly itself could do that; as a preliminary the Iranian delegation thought that it was preferable to consult the International Court of Justice, for the following reasons:

22. In the first place, under Article 96, paragraph 1, of the Charter, the General Assembly could request an advisory opinion from the Court on any legal question. The matter before the Committee was an extremely complex juridical question presenting numerous difficulties. It therefore seemed quite obvious that, when an effort was made to solve it, appeal should be made to the Court, especially since, by resolution 171 (II) the General Assembly had stressed the need of making greater use of the services of the International Court of Justice.

23. Furthermore, the solution to request an advisory opinion from the Court would be in accordance with conclusions of the Special Committee which had recommended that the General Assembly should not take a final decision until after a detailed juridical study of the question.

24. Finally, it appeared from the debate at the preceding and the current meetings that opinion was divided and that the Committee was not of one mind on how Article 18, paragraph 2, of the Charter should be interpreted.

25. In those circumstances, the Iranian delegation would vote for the draft resolution presented by the delegation of France.

26. Mr. Chaudhuri (India) noted that there were two trends in the Committee. Some members, recognizing the logic of the Belgian proposal, supported it. Others, fearing that a change in rule 76 might at the same time mean an alteration of the Charter, opposed the proposal.

27. Mr. Chaudhuri thought that the only decision possible on the question before the Committee was to interpret the provisions of rule 76 of the rules of procedure. Several interpretations were possible, and the Indian delegation believed that none of those interpretations could be selected until the opinion of the International Court of Justice was known. For that reason his delegation would vote for the draft resolution submitted by the delegation of France and would oppose the Belgian proposal, especially since in its opinion, on the one hand, it was not advisable, without having gone into the question more deeply, to condemn the way the General Assembly had hitherto interpreted rule 76 of its rules of procedure, and, on the other hand, it would be going too far to subject all amendments to proposals on important questions to the two-thirds majority rule.

28. Mr. Roling (Netherlands) stressed the complex nature of the question raised by the Belgian proposal.

29. Because rule 76 of the rules of procedure reproduced verbatim Article 18, paragraph 2, of the Charter, it had been possible to argue against that proposal by asserting that the General Assembly could not amend the Charter. It should not be forgotten, however, that the General Assembly was competent to interpret the provisions of the Charter which it found ambiguous. Moreover, since the General Assembly, under Article 21 of the Charter, had the power to draw up its own rules of procedure, it also had the power and even the duty to interpret its rules. The Belgian proposal could be considered as merely an interpretation of Article 18 of the Charter and of rule 76 of the rules of procedure. The question which therefore arose was whether the Committee agreed with that interpretation. Some members might think that interpretation was based solely on that rule; others might think that it was also based on political considerations.

30. The Netherlands delegation did not support the proposal that an advisory opinion should be

requested from the International Court of Justice, because such an opinion could only be based on juridical considerations, whereas, if rule 76 of the rules of procedure was to be interpreted properly, the essential thing was to take past experience as well as political considerations into account.

31. The important thing was to have a rule which was both unambiguous and at the same time satisfactory. All ambiguity could be done away with by providing that any decision bearing on an important question, whether in the form of a proposal, a part of a proposal or an amendment to the proposal, should be taken by a two-thirds majority. The Netherlands delegation thought that such a rule would be satisfactory, because it would be much easier to submit a very unimportant amendment to the two-thirds majority rule than to enable a distinction to be made between basic amendments and amendments of secondary importance, which would certainly give rise to endless discussion. For all those reasons, the Netherlands delegation would vote for the Belgian proposal.

32. Mr. LOUTFI (Egypt) said that he would support the proposal of the Belgian delegation but that, if the majority had doubts concerning the interpretation of Article 18 of the Charter and of rule 76 of the rules of procedure, he would favour the French draft resolution requesting an advisory opinion from the International Court of Justice.

33. Mr. TATE (United States of America) would not repeat the arguments leading his delegation to support the Belgian proposal.

34. He merely wished to emphasize that, since the parts were the constituent elements of the whole, they should be subject to the same rule as the whole; consequently, if the whole of a proposal had to receive two-thirds of the votes to be adopted, the parts of that proposal, as well as amendments thereto, should also be adopted by a two-thirds majority.

35. Furthermore, it would not be normal to permit a situation whereby amendments adopted by a simple majority could render a proposal subject to the rule of a two-thirds majority unacceptable.

36. If the Belgian proposal were not adopted, the United States delegation would oppose the request for an advisory opinion and would suggest that the Secretariat should be instructed to prepare a comprehensive study of the question. His delegation considered that, if the General Assembly had the power to decide on new categories of questions to be settled by a two-thirds majority, it was all the more competent to interpret the provisions of Article 18, paragraph 2, of the Charter.

37. Mr. PÉREZ PEROZO (Venezuela), while recognizing that the purpose of the Belgian proposal was laudable and that the General Assembly undoubtedly had the power to interpret its rules of procedure, thought that it was not advisable to adopt the too rigid formula proposed by the Belgian delegation without having studied all the aspects of the question more closely.

38. Many amendments were not of major importance and voting in parts was often requested only to enable a delegation to abstain on a certain part of a proposal. It thus seemed too much to require the two-thirds majority rule to be applied in all cases; it would be better to attempt to find a more flexible formula permitting of a different application in each case.

39. It had been suggested that a committee of the Sixth Committee should be asked to draft a rule to be added to the rules of procedure. The Venezuelan delegation thought that the question had not yet been sufficiently studied for the matter to be assigned to such a committee. A proposal had also been made to request a special committee or the Secretary-General to examine the question and report to the Committee at its next session. He stressed the disadvantage of setting up too many subsidiary bodies or of giving the impression that the Secretary-General was empowered to interpret the Charter in cases of ambiguity. His delegation preferred the solution suggested by the French delegation. Requests to the International Court of Justice for advisory opinions were expressly provided for in Article 96 of the Charter, and the complexity of the question raised by the Belgian proposal justified consulting the Court on that matter.

40. Mr. MAYRAND (Canada) agreed with those members who considered that the question should be studied further before a decision was taken. He himself was quite unable to speak either for or against the Belgian proposal at that juncture.

41. The Canadian delegation considered that the simplest solution would be to instruct the Secretariat to prepare a comprehensive study of the question, as provided for in the draft resolution submitted by the Scandinavian countries (A/C.6/L.23). There was no need to consult the International Court of Justice, at least not before the Committee had received and examined the study carried out by the Secretariat.

42. Mr. MATTAR (Lebanon) stressed the need to find a solution which would put an end to a practice which led to contradictions and controversies.

43. His delegation was ready to vote for the Belgian proposal. If, however, the Committee considered that it could not come to a decision on that proposal, the Lebanese delegation would support the French draft resolution, in view of the complexity of the question.

44. Mr. SVENNINGSEN (Denmark) said that he would vote for the Belgian proposal, which seemed logical and answered a real need.

45. Mr. GLASHEEN (Australia) was not certain that the Belgian delegation's interpretation of rule 76 was correct. It might, indeed, be asked why the practice followed by the General Assembly in regard to amendments to important questions was absolutely contrary to that interpretation.

46. The Australian delegation had the greatest respect for the practices which had been established by the General Assembly and accepted by the delegations. It was essential that the rule on amendments to important proposals should be sufficiently flexible to allow the greatest possible number of solutions through compromise and the broadest possible measure of agreement. Too rigid an application of the two-thirds majority rule would hold up the solution of many problems and would obstruct the realization of the fundamental purposes of the United Nations.

47. The French delegation had proposed that the International Court of Justice should be con-

sulted. The Australian delegation, although it had taken the lead in 1947 in an action which had led to the adoption of resolution 171(II), thought that, in the case under discussion, an appeal to the International Court of Justice was not justified. The General Assembly should be master of its own procedure: it was for the General Assembly itself to interpret its own rules of procedure. That was why the Australian delegation thought it preferable to request the Secretariat to prepare a detailed study of every aspect of the question, indicating every occasion upon which the problem of the two-thirds majority rule had arisen. The Committee, after it had seen the study, would be better able to take a decision on the interpretation to be given to rule 76 of the rules of procedure, and it might then, in the light of that study, decide to request an advisory opinion of the International Court of Justice.

48. The question was not particularly urgent, but what was important was that a thorough study should be made so that it might be settled at the General Assembly's fifth session.

49. Mr. TABIBI (Afghanistan) said that he would vote for the Belgian proposal; in his opinion, it provided a satisfactory solution of the problem.

50. There was no need to consult the International Court of Justice or to refer the matter to a special committee for study; the Sixth Committee was fully capable of taking a decision on the Belgian proposal.

51. Mr. FITZMAURICE (United Kingdom) said that the exchange of views in the Committee had only confirmed his opinion that, in view of the importance of the question, it should be studied in greater detail before a decision was taken.

52. Everybody agreed that the gaps in the rules of procedure should be filled in, provided no provisions contrary to the Charter were inserted. The Belgian proposal was certainly not contrary to the Charter, but the Committee was not yet in possession of sufficient data on the question to enable it to come to a decision.

53. In principle, the United Kingdom Government favoured recourse to the International Court of Justice as frequently as possible, but it felt that it would not be wise to consult the Court on that particular case, since the question must not be decided from a purely legal angle. There were practical considerations which must not be overlooked. It was essential that the General Assembly should not be obliged to apply the two-thirds majority rule in every case. It would be well, therefore, before consulting the International Court of Justice, to ask the Secretary-General or a special committee to study every aspect of the question. As the Australian representative had said, the question was not particularly urgent and it would be wise to defer a decision till the next session, when it could be taken in full knowledge of the facts.

54. Mr. BARTOS (Yugoslavia) agreed with the Australian delegation's argument and confirmed the position adopted by his delegation at the preceding meeting.

55. From the standpoint of strict logic, the fact that a decision on the whole of an important question had to be taken by a two-thirds majority did not necessarily mean that it was not possible for parts of the same proposal to be decided upon by a simple majority.

56. From a political point of view, it would be advisable to adhere to the principle adopted at San Francisco, whereby each organ of the United Nations applied and interpreted the Organization's rules within the framework of its own competence. Recourse should be made to the International Court of Justice only after every possibility of reaching a satisfactory interpretation had been exhausted. The Court should not be used as a disputes tribunal to which to bring any legal difficulties that might arise in a committee. The Court should not be consulted except in exceptional cases where a problem had already been thoroughly studied and was of an undeniably urgent nature. That did not apply to the case in question. A special committee, or preferably the Secretary-General, should be instructed to undertake the thorough legal study recommended by the Special Committee (A/937, paragraph 34).

57. There was no reason to make hasty changes in a practice which had been followed for four years, particularly since that tradition had been established by a majority which included those who had actually drafted the Charter; that circumstance justified the belief that the procedure approved by them was not incompatible with the spirit of the Charter.

58. The CHAIRMAN put to the vote the Belgian proposal (A/C.6/L.22), for which the drafting committee would find a suitable place in the rules of procedure.

The Belgian proposal was adopted by 28 votes to 7, with 14 abstentions.

59. The CHAIRMAN invited the Committee to consider item 4 of document A/C.6/L.15, on motions calling for a decision on the competence of the General Assembly. That item was dealt with in paragraph 35 of the Special Committee's report (A/937) and was the subject of paragraph 3 of the United Kingdom proposals (A/C.6/L.8), which concerned rules 72 and 110 of the rules of procedure on questions of competence.

60. Mr. FITZMAURICE (United Kingdom) said that the Special Committee had merely drawn the Assembly's attention to the ambiguity of rules 72 and 110 of the rules of procedure. The purpose of the United Kingdom proposals was to facilitate the Sixth Committee's work, rather than to suggest a final solution of the difficulties which arose.

61. It would appear that the word "immediately" was responsible for the ambiguity of rule 72. That word could in fact be interpreted as meaning that the vote on the question of competence should be taken without discussion, as soon as the question was raised. That did not appear to have been the intention of the authors of the rules of procedure, who had wished rather that a vote should be taken on the question of competence before the vote on the basic proposal, but not without there first having been a discussion on the question of competence. If that interpretation was correct, and he thought that it was, the simplest course would be to delete the word "immediately"; rule 72 would then cease to be ambiguous.

62. A similar amendment was necessary for rule 110, which dealt with the same question in the chapter entitled "Committees".

63. That rule raised another difficulty, in that it dealt with the case of a motion in a Committee calling for a decision on the competence of the General Assembly to adopt a proposal submitted

to it. It was obvious that a Committee could not decide on the competence of the General Assembly; that was for the Assembly itself to do. Otherwise, the inadmissible situation might arise of several Main Committees taking conflicting decisions on one and the same question of competence. All that a Committee could do was to decide whether that question came within the general jurisdiction of the United Nations. Consequently, the words "of the General Assembly" would appear to have been inserted in error, instead of the words "of the Committee".

64. The fact was that, as they stood, the rules of procedure contained two rules dealing with the competence of the General Assembly, whereas there was no provision regarding the competence of Committees. While the question of the competence of the General Assembly did sometimes arise in Committees, the question of their own competence arose also frequently. That was why the United Kingdom delegation proposed that the words "the General Assembly" in that rule should be replaced by the words "the Committee".

65. He would like, however, to know the Assistant Secretary-General's opinion on the subject.

66. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) drew the Committee's attention to the past history of rule 72, which, after having been considered by a Special Committee, by a sub-committee of the Sixth Committee and by the Sixth Committee itself, had been adopted by the General Assembly in 1947 as a compromise.

67. Both in the Special Committee and in the sub-committee of the Sixth Committee, two opposing views had come to light. One was that the vote should be taken as soon as the question of competence was raised, in order to avoid unnecessary discussion of the substance, should the General Assembly decide that it was incompetent to deal with the matter. The other view was that the discussion should bear both on competence and on substance and that the vote should be taken only after a comprehensive debate, on the understanding that a vote on competence would be taken immediately before the vote on the substance.

68. In practice, the compromise text which had been intended to reconcile those two views had given rise to some difficulties. The Secretariat had been consulted more than once on the meaning of rule 72. It had replied each time that the text was not clear and that, in its opinion, the literal interpretation would be that the discussion on competence should take place jointly with the debate on the substance and that the vote on competence should be taken after that debate and immediately before the vote on the substance. The Secretariat's opinion, however, had not been accepted in all cases, and the rule had been given varying interpretations.

69. It was therefore for the Sixth Committee to decide how it wished to clarify the rule and whether it wished to give a more rigid interpretation to the existing text, which had been adopted precisely because of its flexibility.

70. There was no typographical error in the text of rule 110. The competence of Committees was a matter of internal procedure which was settled by the General Assembly. The rule did indeed refer to the competence of the General Assembly, upon which a Committee might have a recommendation to propose.

71. Mr. STABELL (Norway) recalled that the same problem had arisen in connexion with rule 41 of the rules of procedure of the Interim Committee, which had decided to eliminate any ambiguity by deleting the word "immediately".

72. The same result might be obtained by putting a comma before the word "immediately" in the English text. In his opinion, it could hardly be said that the objective of rule 72 was to prevent any discussion on the question of competence. For that reason, the Norwegian delegation would vote in favour of the United Kingdom proposal, which had the advantage of making the text of the rule quite clear and bringing it into line with rule 41 of the Interim Committee's rules of procedure.

73. He also endorsed the United Kingdom representative's remarks on rule 110 and would support the amendment to that rule.

74. Mr. BARTOS (Yugoslavia) cited two cases involving rule 72 in which the majority had held that the question of the General Assembly's competence could not be separated from the question of substance, because the same elements entered into both. That had occurred in the First and Sixth Committees when they had examined the complaint of the delegation of India regarding the treatment of Indians in the Union of South Africa. The same thing had happened in the Fourth and Sixth Committees when the Philippine delegation had proposed that a conference of representatives of colonial populations should be convened. Moreover, the same question often arose in the domestic courts of every country; those courts frequently held that the question of competence should be considered jointly with questions of fact, and took no decision on competence until the substance had been discussed.

75. Those were, however, exceptional occurrences; in most cases the question of competence could be separated from the question of substance and settled before any debate on the latter took place. It therefore seemed that rule 72, as interpreted by some delegations and by the Secretariat, represented a generalization of an exceptional case. The rule should consequently be so amended that it should be possible, on the one hand, to give the question of competence adequate consideration, in the light, when necessary, of the substantive factors, and on the other hand, if incompetence could be proved immediately, without dealing with the substance, to avoid a long debate on substance. From that point of view, the United Kingdom proposal did not seem satisfactory.

76. Rule 110 could obviously not deal with the competence of Committees, inasmuch as that was determined by the General Assembly itself under rule 89 of the rules of procedure. Committees were only subsidiary organs, subject to the General Assembly, which decided on the competence of each of them. No Committee could refuse to deal with a question referred to it by the General Assembly.

77. Mr. Bartos recalled that it had been suggested that, in order to expedite the work of the session, questions should be distributed among the Committees in a less rigid manner, so that some items might be referred to Committees which had a less heavy agenda. Such a solution would become

impossible if a Committee were allowed to declare itself incompetent to deal with the questions allocated to it.

78. The position therefore was as follows: rule 89 covered the question of the competence of Committees; rule 110 dealt, as intended, with the question of the competence of the General Assembly, such as might arise in a Committee and have to be settled by it, either by deciding that the Assembly was not competent or by recognizing the competence of the General Assembly and submitting to it a recommendation of substance. Consequently, the text of the existing rule 110 should be retained.

79. Mr. WENDELEN (Belgium) thought that the United Kingdom proposal would facilitate the application of rule 72, the interpretation of which did not appear to raise serious difficulties, without really altering the compromise solution reached after long debate. The United Kingdom delegation had in fact merely taken up a proposal submitted by Belgium and supported by India in the Special Committee. He would therefore vote for that proposal, since his delegation was not prepared to reopen the debate on the substance of the matter, as the Yugoslav representative wished to do.

80. He also supported the United Kingdom representative's remarks on rule 110. The question of its own competence could undoubtedly arise in a Committee. In the First Committee, for example, certain delegations were apt to maintain that the Committee was competent to deal with any proposal the object of which was to save human lives. A Committee should therefore be able to decide on its own competence; yet rule 89, interpreted literally, did not permit it to do so. Furthermore, any Committee could be instructed by the General Assembly to draw up a proposal concerning the competence of the General Assembly itself to deal with a given question. For that reason, the Belgian delegation proposed the addition, in rule 110, of the words "or of the Committee" after the words "of the General Assembly".

81. Mr. JORDAAN (Union of South Africa) pointed out that rule 72 was one of those which might affect the fundamental rights of Member States. The Yugoslav representative had cited two cases in which doubts had been raised concerning the competence of the United Nations and in which the question of substance had been inextricably bound up with the question of competence.

82. The question of competence had also arisen in the *Ad Hoc* Political Committee in connexion with the discussion on the observance of human rights in Bulgaria, Hungary and Romania. Some delegations had held that the question fell within the competence of the United Nations under Articles 55 and 56 of the Charter. Others had asserted that it was clear from the preparatory work on the Charter that those Articles could not nullify the principle of non-intervention in matters which were essentially within the domestic jurisdiction of any State, as laid down in Article 2, paragraph 7.

83. In view of the importance and seriousness of such a problem, it was inadmissible that the question of competence should be raised by a State and immediately decided by vote, without the States which denied that competence and held that their basic rights were involved having had an opportunity to state their arguments. Yet that was the implication of the text of the existing rule 72 of the rules of procedure, which should consequently be amended; he was not certain that deletion of the word "immediately" would be sufficient for the purpose.

84. With reference to rule 110, the South African delegation endorsed the remarks of the Belgian delegation. In the case mentioned, the question of competence had been raised in the *Ad Hoc* Political Committee. A Committee should, therefore, be able to give its views on the competence of the General Assembly. Moreover, the question of its own competence might also arise in the Committee itself. He therefore approved of the draft amendment to rule 110 submitted by Belgium.

85. Mr. KORETSKY (Union of Soviet Socialist Republics) considered that the rules of procedure should not be amended without serious reason. In his opinion, the Committee should confine itself to introducing technical improvements and should not seek to raise questions bearing upon extremely important problems merely for the sake of innovation.

86. With regard to rule 110, he saw no objection to the Belgian representative's proposal for the insertion of the words "or of the Committee" after the words "of the General Assembly". On the other hand, he formally opposed the United Kingdom proposal to delete the word "immediately" in rules 110 and 72.

87. The USSR representative recalled that rule 72 was the result of a compromise reached after long debates, and he insisted that the word "immediately" specified that the vote on the question of competence would take place only after the question of substance had been discussed exhaustively.

88. To justify his proposal, the United Kingdom representative had stated that the existing text of rule 72 might permit an immediate vote, without preliminary discussion, on the question of competence. The USSR representative considered such an interpretation to be inadmissible. On the contrary, if the word "immediately" was deleted, the right of delegations to express their opinion freely whenever a question of competence was raised would be jeopardized. That right should be safeguarded, especially since a self-confident majority often had tendentious items, irrelevant to the work of the United Nations, included in the agenda.

89. In conclusion, he stated that rule 72 in its existing form had never given rise to difficulties and that the proposal to delete the word "immediately" was not justifiable either for practical or for technical or political reasons.

90. Mr. CHAUDHURI (India) explained that rule 72 might easily give rise to two different interpretations, since the word "immediately" might refer either to the preceding words or to those which followed it. Consequently, it would be advisable simply to delete that word, in order to avoid any possibility of an interpretation which might permit the question of competence to be put to the vote without a preliminary discussion. That deletion could not result in preventing the discussion of a substantive question concurrently with that of a question of competence; on the contrary, it would avoid any ambiguity in the matter.

91. He thought that the proposal to replace the words "the General Assembly" by "the Committee" in rule 110 would prevent a Committee from making a decision whenever the question of the competence of the General Assembly arose in connexion with a given problem. Indeed, rule 89, to which reference had been made, did not settle the problem of a Committee's competence. It confined itself to stating that a Committee could not on its own initiative introduce items that had not been referred to it by the General Assembly. A controversy might arise in a Committee, however, on its competence to deal with an item on its agenda, and even on the competence of the General Assembly to deal with a given item.

92. He therefore opposed the deletion of the words "of the General Assembly" in rule 110, but was in favour of the addition of the words "or of the Committee".

93. Mr. MATTAR (Lebanon) agreed with the United Kingdom representative that the deletion of the word "immediately" in rules 72 and 110 would remove any possible ambiguity. On the other hand, he was not in favour of the proposed amendment to rule 110, since the question of the competence of the General Assembly or of a Committee might well arise in a given Committee with regard to a proposal submitted to it. He therefore approved of the Belgian representative's proposal to add the words "or of the Committee" after the words "of the General Assembly". That addition was all the more necessary, moreover, since without it the rule would merely be a repetition of rule 72.

94. Mr. FITZMAURICE (United Kingdom) stated, in reply to the USSR representative's remarks, that the purpose of his proposal was, in fact, to eliminate any interpretation that would make it possible to put a question of competence to the vote without preliminary discussion. He fully shared the views of delegations which considered that the question of competence could not be dissociated from the substantive question and should be discussed very seriously.

95. He was not opposed to retaining the reference to the competence of the General Assembly in rule 110, although the matter really concerned the competence of the United Nations rather than that of the General Assembly, which was one of the organs of the United Nations. He would therefore confine himself to adding the words "or of the Committee", as the Belgian representative had suggested. On the other hand, he did not consider that rule 89 settled the question of the competence of the Committees, as the Yugoslav representative believed. While it was true that a Committee could only consider items referred to it by the General Assembly, a Committee could nevertheless decide upon its own competence if, for instance, a delegation were to submit a proposal allegedly relating to an item on the agenda, although other delegations did not recognize the connexion.

96. Mr. FERRER VIEYRA (Argentina) pointed out that the deletion of the word "immediately" might completely alter the meaning of rule 72. The French text was perfectly clear; since there was no comma after the word *immédiatement*, that adverb logically related to the end of the sentence. The same applied to the Spanish text. Those two texts, therefore, were in no way prejudicial to a detailed discussion of the question of competence as well as the question of substance. The word *immédiatement* simply indicated a time relationship between the vote on competence and the vote on the substance of the question. On the other hand, if the English text was liable to give rise to differences of interpretation, a drafting committee might perhaps be instructed to introduce the desired modifications.

97. Mr. CHOUKAIRI (Syria) considered that the deletion of the word "immediately" was contrary to the aim that the representative of the United Kingdom wished to attain. Obviously, those who had drafted the rule had only sought to establish a voting priority when the discussion on the questions of both competence and substance had been concluded. If the word "immediately" were deleted, however, it would be possible to take a vote without a preliminary discussion of the question of competence. He would therefore vote against the deletion of that word.

98. On the other hand, he was in favour of the amendment proposed by the United Kingdom to rule 110, since he did not think it conceivable that a Committee should take a decision on the question of the competence of the General Assembly. That rule formed part of section XII, which dealt with "Committees". As it stood, rule 110 would have to be taken to mean that a Committee would decide upon the competence of the Assembly immediately before the latter took a decision on substance; that did not make sense.

99. Mr. WENDELEN (Belgium) recalled that rules 72 and 110 were the result of a compromise between two points of view, one of which had been that a question of competence should be put to the vote as soon as it was raised, whereas the other had been that the vote on competence should immediately precede the vote on substance. Since then, long debates had taken place, especially in the First Committee, on the question whether or not those rules should be interpreted as if there was a comma before the word "immediately". In order to avoid such discussions in the future, and in order to preserve the compromise character of the rule, that word should be simply deleted.

100. The CHAIRMAN put to the vote the United Kingdom proposal (A/C.6/L.8) to delete the word "immediately" from rule 72 of the rules of procedure.

The word "immediately" in that article was deleted by 34 votes to 8, with 6 abstentions.

101. The CHAIRMAN put to the vote the United Kingdom proposal (A/C.6/L.8) to delete the word "immediately" from rule 110 of the rules of procedure.

The word "immediately" in that article was deleted by 29 votes to 8, with 7 abstentions.

102. The CHAIRMAN put to the vote the Belgian amendment to the proposal of the United Kingdom delegation, accepted by the latter, to the effect that, in rule 110, the words "of the General Assembly" should be followed by the words "or of the Committee".

The Belgian amendment was adopted by 40 votes to 1, with 7 abstentions.

103. The CHAIRMAN proceeded to point 5 of the Secretariat's list (A/C.6/L.15), relating to the question of the suspension of the application of the rules of procedure raised in paragraph 36 of the report (A/937). In his view, there was no need to deal with that question since no specific recommendation had been made on it by the

Special Committee or by the Canadian delegation which had raised it.

104. Mr. MAYRAND (Canada) was convinced that all delegations were in agreement that the rules of procedure should be handled with great circumspection and that, in the interest of the stability and prestige of the United Nations, the application of those rules should never be suspended except in case of extreme necessity. As there was no specific provision on that point, the Canadian delegation had considered ways of preventing, if necessary, an arbitrary suspension of the rules, and the advisability of inserting a rule to that effect in the rules of procedure. The Canadian proposal thus merely asked the Secretary-General to proceed to a study of the question.

105. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) stated that the Secretariat was ready to study the question if the Committee so desired. He recalled the debates of the Preparatory Commission in London; the latter had had before it a proposal to that effect which had not been adopted. Attention had been drawn at the time to the dangers of such a special provision, a *lex specialis,* which might be used and abused by a constantly changing majority.

106. In conclusion, Mr. Kerno pointed out that, in practice, the rules of procedure had been suspended only once, by unanimous decision.

107. Mr. MAYRAND (Canada), in reply to a question by the CHAIRMAN, stated that he had no specific proposal to make.

108. Mr. SHANAHAN (New Zealand) asked whether the Secretary-General would nevertheless study the question.

109. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) stated that if he had correctly understood, the Canadian delegation had been satisfied by the assurance that the Secretariat would make a general study of the question.

110. Mr. KORETSKY (Union of Soviet Socialist Republics) considered that the resulting implication would be that the Committee approved to a certain extent the principle of the suspension of the application of the rules of procedure. Since it was inconceivable that the rules of procedure should contain a provision of that kind, such a study would be absolutely useless.

111. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) recalled that the Canadian delegation had stated its opposition to the principle of suspension and that he himself had shared that opinion. In view of the fact that the rules of procedure of the General Assembly, unlike those of the Trusteeship Council which contained an explicit stipulation for the purpose, did not expressly provide for the suspension of their application, there could be no question at present of suspending them. If the Committee shared that view, the question was settled there and then; if not, the Secretariat was prepared to study the problem raised by the Canadian delegation.

112. Mr. MAYRAND (Canada) stated that his delegation merely wished to prevent any suspension of the application of the rules. The Secretariat could consider whether, in the light of the existing rules of procedure, a study of the matter would be necessary.

113. The CHAIRMAN ruled that, in the absence of any specific proposal, there was no need to deal with the question.

114. He then invited the Committee to take up the consideration of the amendments to rules 82 and 119 proposed by the United Kingdom delegation (A/C.6/L.8).

115. Mr. FITZMAURICE (United Kingdom) asked if the question might be postponed until the following meeting, since the United Kingdom proposal might give rise to a rather lengthy discussion.

116. Mr. CHAUMONT (France) moved adjournment of the meeting, in view of the fact that there were still many documents to be considered in connexion with the first item on the Committee's agenda.

117. The CHAIRMAN acceded to that request, but pointed out that the Committee had a very heavy agenda which should be disposed of in time.

118. Moreover, the President of the General Assembly had sent him a letter asking the Sixth Committee to examine urgently a number of questions at the request of the Third Committee.

119. In conclusion, he appointed to a Drafting Committee, to put into final form the texts so far approved by the Sixth Committee, representatives of the following countries: Argentina, Belgium, Czechoslovakia, India, New Zealand, Sweden and Syria.

120. Mr. SHANAHAN (New Zealand) regretted that his delegation was so small that he would be unable to serve on the Drafting Committee.

121. The CHAIRMAN asked the representative of Canada to take the place of the representative of New Zealand on the Drafting Committee.

The meeting rose at 6.10 p.m.