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Chairman: Mr. Víctor A. BELAÚNDE (Peru).

Recognition by the United Nations of the representation of a Member State (A/1292, A/1308, A/1344, A/AC.38/L.6, A/AC.38/L.11, A/AC.38/L.21, A/AC.38/L.22, A/AC.38/L.23) (*continued*)

[Item 61]*

1. Mr. VOYNA (Ukrainian Soviet Socialist Republic) thought that the discussions in the Committee had shown that there was a tendency to depart from the provisions of the Charter and the universally accepted rules of international law.

2. According to international law, only governments which exercised effective authority in their respective countries, on behalf of the people and with their consent, could exercise within an international organization the functions assigned by such an organization to its members. That opinion was held by most experts in international law, and in particular by Professor Lauterpacht and Professor Oppenheim.

3. As a result of developments within a country, a change of government sometimes occurred. That had happened, for instance, in several countries in Latin America. But in such cases, it was unprecedented for an international organization to recognize as competent to take part in its work the representative of a government which no longer existed, and to refuse to recognize the representative of the true and legitimate government chosen by the people. International practice in such cases was to recognize the representatives of the legitimate government and to withdraw recognition from those of the government which no longer existed and which no longer exercised any authority in the country concerned. That was reasonable, since participation in an international organization by the representatives of a fictitious government which no longer held any authority could be of no advantage either to the organization itself, or to the interests of peace and world security or international co-operation.

4. The Secretary-General's memorandum [1] also set forth that principle; it emphasized that only governments which exercised effective authority in their countries were in a position to fulfil their international obligations. Latin American experts in international law also shared that view; in that connexion, Mr. Voyna quoted a statement by Professor Paredes, Director of the Institute of International Law of the Central University of Ecuador, published in the newspaper *El Comercio* on 18 April 1950, in which the Professor had said that a legitimate government was that which controlled the greater part of the national territory and which exercised effective authority.

5. The members of the Committee were well aware that the question of the representation of a Member State in the United Nations had arisen in connexion with the problem of the representation of the Central People's Government of the People's Republic of China. It was impossible, therefore, to consider the problem in a purely abstract way and to refuse to consider the real issue. It was common knowledge that, at the price of a long struggle and despite the interference of certain foreign governments in their domestic affairs, the Chinese people had achieved their independence, driven out the anti-people's government of Chiang Kai-shek and established a democratic government, under the leadership of Mao Tse-tung, which exercised authority throughout Chinese territory and which was therefore the only legitimate government of that country. China was a Member of the United Nations and it was therefore obvious that, by virtue of international law and of the Charter, the Government of Mao Tse-tung should be represented in all United Nations organs.

6. Notwithstanding the numerous communications to that effect which the Central People's Government of the People's Republic of China had addressed to the United Nations, and the efforts of various delegations, including those of the USSR, Poland, Czechoslovakia, and India, it had been impossible to bring about that

* Indicates the item number on the General Assembly agenda.

[1] See document S/1466.

result because of the stubborn opposition of certain States which claimed to be the friends of the Chinese people but which were in fact usurping the sovereign rights of that people and following a policy hostile to their interests.

7. That policy was consistent neither with the principles of the Charter nor with those of international law. Mr. Voyna cited the opinion of Professor Oppenheim on that point, namely, that the fact that a government owed its existence to a revolution, or was supposed to be unwilling to fulfil the international obligations incumbent upon it, was not a reason for refusing to recognize it. Moreover, in the past, the fact that one or more governments had not recognized a given government had not prevented all governments from cooperating within an international organization. Such had been the case at one time in the League of Nations.

8. Mr. Voyna then turned to the draft resolution (A/AC.38/L.6) submitted by the Cuban delegation. That proposal, taking advantage of the Chinese case, jettisoned the rules of international law hitherto universally applied in respect of the recognition of a State, and was intended to legitimize future interference with the sovereign rights of peoples. The system advocated by the Cuban delegation would give the General Assembly the right to interfere in the domestic affairs of a sovereign Member State and, in defiance of that State's sovereignty, to expel it from the Organization. That was the purpose both of the operative part of the Cuban draft resolution and of the amendments that had been submitted to that draft, on the pretext of ensuring that a particular government was in effective control of a country or was able and willing to fulfil its international obligations. The statement made at the 19th meeting by the Australian representative left no doubt on that score. Yet the Charter prohibited such interference even when the application of a State for admission to membership of the United Nations was under consideration. The criteria which the Cuban delegation desired the United Nations to adopt were therefore contrary to the Charter, as was made even plainer by the fact that the proposal contained no reference to the Charter. Furthermore, there was no mention in the text either of the principles of international law or of prevailing international practice in the matter.

9. It was enough, incidentally, to consider the statements that had been made during the discussion to be persuaded of the illegal and unprecedented nature of that proposal. Neither the author of the proposal nor the other speakers had been able to show that the draft resolution was in conformity with the Charter, and such considerable misgivings had been felt on the subject that it had been proposed that the text should be referred to a sub-committee for examination or that the question should be submitted to the International Court of Justice or some other agency.

10. Under the Charter and the General Assembly's rules of procedure, the various United Nations organs must decide for themselves whether the representatives of Member States were entitled to take part in their work. What was needed, therefore, was not to establish new criteria which were unfair and without foundation, but to comply strictly with the provisions of the Charter and of international law. That was the real point. In view of all those considerations, the delegation of the Ukrainian SSR would vote against the Cuban draft resolution.

11. Mr. SOHLMAN (Sweden) said that the Swedish delegation had not yet decided on its attitude on the matter and that his statement would be simply a preliminary one.

12. The Swedish delegation agreed with other delegations that the question before the Committee was of a general nature. The Committee should therefore set aside the special case of the representation of China—which was moreover to be examined by a special committee appointed by the Assembly for that purpose (277th plenary meeting). The Committee's own discussions would be facilitated if it studied the two distinct aspects of the question separately, on the one hand the procedure to be adopted in settling the question of representation and, on the other, the substance of the matter.

13. With regard to procedure, Mr. Sohlman agreed with those representatives who considered that the General Assembly, in whose work all Member States participated, was the body best qualified to examine the problem of the representation of a Member State in the United Nations when such representation had been challenged. However, the Security Council was also entitled to take a decision in the matter, particularly if the problem arose in the interval between two sessions of the General Assembly. The sub-committee whose establishment had been proposed (18th meeting) should study the question whether the Security Council should, in such a case, consult the Member States which were not represented on the Council.

14. With regard to the substance of the question, it was important not to confuse the matter of the representation of a State which was already a Member of the Organization with that of the admission of new Members. In matters of representation, the Committee should not prescribe conditions as strict or more strict than those required for admission. The criteria to be applied should be based on facts and should be as clear and as objective as possible. Although the problems were different, the Committee, in establishing those criteria, could be guided to some extent by the existing principles of international law concerning unilateral or bilateral recognition.

15. The exercise, by a government, of control over the territory of a particular country and its ability to fulfil its international obligations should be the indispensable prerequisites for representation in the United Nations and perhaps even for recognition by other States. In view of the current world situation, however, even once those conditions had been met, the government concerned might not necessarily be represented in the United Nations or recognized by other governments, for each State would be guided by different considerations, possibly of a political nature.

16. To sum up, the Swedish delegation felt that when a government fulfilled the above-mentioned conditions, its representation in the United Nations and its recognition by other States should not be delayed. In the prevailing circumstances, however, might it not be wise to establish automatic criteria? That was a goal which the

Organization should make every effort to reach, but Mr. Sohlman was doubtful whether it could be achieved forthwith.

17. Mr. HAJDU (Czechoslovakia) said that the matter under discussion was only apparently of a theoretical and juridical nature; everyone was aware that the real issue, which it would be better to face squarely, was the representation of China. Otherwise there was no explanation for the sudden concern in the *Ad Hoc* Political Committee to solve a question which had been decided long before by the establishment of general principles of international law and by the provisions of the Charter. The General Assembly could not contravene those principles and provisions unless it wished to maintain the attitude it had adopted on the Korean question and on the proposal for "united action for peace" (A/1456).

18. The motive underlying the attempts to settle the question by violating the Charter and the recognized principles of international law was a desire to place the United Nations at the service of the political interests of the United States; that was confirmed by the fact that, for the first time, the question had been submitted to an international body although it was of no concern to any of its members, since it had already been settled by the Charter and by international law and since the General Assembly was neither a court nor a body responsible for deciding questions of international law.

19. Heretofore no one had ever attempted to settle the question of the representation of a Member State in the abstract, although, as the representative of Bolivia had recalled, the League of Nations and the United Nations had been faced with problems of that nature. Many changes of government had occurred in Latin America without the Members of the League of Nations or the United Nations having challenged the right of the new governments to represent their countries in those organizations. That clearly showed that the question under discussion was merely a pretext which concealed a desire to serve the interests of United States policy.

20. If those interests were examined, it would be seen that, for the time being, for reasons of domestic and foreign policy, the United States did not wish to recognize the People's Republic of China and its government. True, there was no reason to be disturbed by such an attitude—a somewhat ridiculous attitude, if only because of its lack of realism—if it were not contrary to the principles of the Charter and of international law. What was even more serious and, indeed, intolerable, was that the United States was attempting to impose its views on the United Nations, with all the consequences that that would entail; if the United Nations entered upon that course, its authority would be considerably weakened.

21. The Cuban draft resolution was the means which would enable the United States to achieve its ends. It served the interests of the United States and, like the attitude hitherto adopted by a majority of the Members of the Organization, it was contrary to the provisions of the Charter and of international law.

22. Mr. Hadju recalled that after their victory over the corrupt régime of Chiang Kai-shek, the Chinese people had driven him from the mainland and had set up the Central People's Government of the People's Republic of China; everyone knew that that government exercised control over the whole territory of continental China and that that régime was firmly established because it really emanated from the Chinese people. The United States preferred to ignore those incontrovertible facts, but the United Nations should not, in its turn, be led to adopt that attitude, which was not only absurd but prejudicial to the best interests of the Organization.

23. It was clear, first of all, that the Chinese people undeniably had the right to be represented in the United Nations by their lawful government. Apart from that government, there was no representation. A clique which had no connexion with the Chinese people, which represented no one, exercised no control over Chinese territory and owed its existence solely to the armed intervention by the United States in the internal affairs of China, could not be considered as representing the Chinese people. To allow its members to take part in the work of the United Nations was to violate the Charter, since the Chinese people were no longer represented in the Organization and therefore did not enjoy the rights granted them under the Charter.

24. That situation undermined the universality and authority of the United Nations, since some 500 million people were artificially excluded from it. Fortunately, the United Nations was dealing with a people and a government which were determined voluntarily to accept the obligations imposed by the Charter and to submit to the decisions of the various United Nations organs for, by refusing to recognize their lawful representatives, the Organization was in effect freeing the Chinese people from the obligation to respect the principles of the Charter. Only the lawful government of a country could see that those principles were observed. To enable a government to ensure respect for those principles, it was essential to admit its representatives to the various organs of the United Nations.

25. The attitude hitherto assumed towards the lawful government of China also violated the recognized principles of international law. In the matter of the recognition of governments, the great majority of States adopted the criteria of effective control over all or most of a territory and obedience of the bulk of the population, as the United Kingdom representative had explained (18th meeting). There was no doubt that the Government of the People's Republic of China fulfilled those conditions. To disregard that fact was to violate recognized principles of international law.

26. The United States delegation, as well as some other delegations, seemed indifferent to that type of violation. When the First Committee was considering the question of united action for peace,[2] the Australian representative had even gone so far as to say that his delegation was not concerned with legality. The United States delegation and certain other delegations were adopting that same attitude in the *Ad Hoc* Political Committee.

27. Some delegations had expressed the opinion that the problem was essentially one of law; others had felt that it was a purely political one. The Czechoslovak delegation did not consider that the political aspect of

[2] See *Official Records of the General Assembly, Fifth Session, First Committee,* 354th to 371st meetings inclusive.

the problem could be thus dissociated from its legal aspect; although influenced by political considerations, it was always careful to act in accordance with the principles of the Charter and of international law.

28. The Cuban draft resolution attempted to establish new principles which were contrary to the provisions of the Charter. The Charter of course contained provisions relating to the admission of States and the expulsion of Member States, but those provisions did not apply to the case in point, for China was already a Member and there was no question either of admitting it to, or of expelling it from, the Organization. With regard to the representation of a Member, the Charter contained only provisions relating to the recognition of the credentials of representatives. It was logical and in accordance with the recognized principles of international law that those credentials could be issued only by a government which exercised effective control over all or most of the territory of the State concerned.

29. If the criteria proposed by the Cuban delegation were adopted, the result would be that, in the name of the United Nations, the United States and other States could intervene directly in the internal affairs of States by examining the domestic situation in those States, although, in accordance with established principles of international law, the recognition of the government of a State should not depend on the internal affairs of that State. Moreover, the provisions of the Cuban draft resolution would impose on Member States obligations which the Charter itself did not lay upon individual Members and which would constitute a fresh intervention in the internal affairs of States.

30. The Czechoslovak delegation was opposed to any alteration of the Charter and of the recognized principles of international law; the legal and abstract reasons which had been advanced to justify such alterations could not conceal the fact that, in the case under discussion, the real aim was to prevent the Chinese people from being represented by their lawful government. The Czechoslovak delegation was therefore opposed to the Cuban draft resolution. It supported the first paragraph of the operative part of the United Kingdom draft resolution (A/AC.38/L.21), because it proclaimed a principle which was in conformity with international law, but it thought that even that draft resolution would serve no useful purpose.

31. The Chinese question should be settled properly without the Committee being compelled to settle purely theoretical questions which, moreover, were outside its competence. The question could be settled only by observing the principles of the Charter and of international law, in other words, by recognizing the representatives of the Chinese people as the only lawful representatives of China.

32. Mr. MOE (Norway) associated himself with the delegations which had expressed their appreciation of the initiative taken by the Cuban delegation in bringing that important problem before the General Assembly. It would undeniably be of great help to the work of the United Nations if it were possible to establish objective and factual criteria for determining which government of a Member State was qualified to represent that State in the United Nations in cases where there were two rival governments in the same State. It was, however, hardly likely that the Committee's efforts in that direction would be successful, for there were in fact no objective criteria.

33. The United Kingdom draft resolution came nearest to establishing purely factual criteria, but they could not be applied without the introduction of some element of personal, and consequently subjective, judgment. How was it possible to decide what constituted "the bulk of the population" and "nearly all the national territory"? The same applied to the criteria set forth in the Cuban draft resolution, for there was no way of determining whether a government was really respecting human rights and fundamental freedoms in the territory under its control.

34. In actual fact the problem was both legal and political, and therefore it could not be settled solely from a legal point of view. Political considerations would always come into play. Consequently Mr. Moe doubted whether a solution such as the one recommended in the Cuban draft resolution could be adopted. It would certainly be useful to lay down a few guiding principles, but the conditions governing representation in the United Nations could not be made stricter than those for admission to membership; the maximum conditions for representation must be those which governed admission to membership.

35. The Norwegian delegation believed that the solution should be based on political principles. One of those principles was that of the universality of the United Nations. The purpose of that Organization was to maintain international peace and security. It would obviously be easier to achieve conciliation within the framework of the United Nations if the States parties to a dispute were Members of the Organization. Since the various countries of the world differed in their relative stages of development, in their economic conditions, in their population and in their philosophical or religious beliefs, the universality of the United Nations could be achieved only if tolerance were practised and if all those differences were accepted. Thus the United Nations should not attempt to establish very strict rules regarding representation, for its membership would thereby be limited and that would reflect upon its influence in the world.

36. As various eminent statesmen had pointed out, Asia was one of the areas of the world where the problem of the representation of States arose with the greatest frequency and was most acute. It would be unfortunate if the United Nations were to place itself in such a position that it would no longer be able to consider questions of vital importance to world peace in direct collaboration with the governments of that area. Hence the Committee should be extremely careful in attempting to lay down criteria for the representation of Member States.

37. Turning to the question of the procedure to be followed for the recognition of the representation of a Member State, Mr. Moe noted that the current practice was for each United Nations organ to examine the credentials of the representatives participating in its work. In his opinion, that procedure should be simplified and a single organ, the General Assembly, should settle the question. It was not certain that the General Assembly had the right to take such a decision with

regard to representation on the Security Council, but it certainly had the right to decide who was entitled to take part in its own work and in that of its subsidiary organs, which included the Economic and Social Council and the Trusteeship Council. That appeared to be the wisest method; it would make it impossible, for instance, for the representative of one government of a Member State to take part in the work of the Economic and Social Council, while the representative of another government of the same Member State took part in the work of the Trusteeship Council.

38. Further, it would be desirable to adopt the principle recommended in the Secretary-General's memorandum, namely, that the collective decision by the United Nations concerning the representation of a Member State should not influence unilateral or reciprocal recognition by individual Member States. If that principle were to be applied with regard to representation, it should also be applied with regard to admission. Thus States which had no diplomatic relations with the government of a State requesting admission should not be able to adduce that fact as a reason for voting against the request.

39. In conclusion, the delegation of Norway supported the United Kingdom draft resolution although it had certain doubts as to the possibility of applying the criteria it set forth. If those criteria were adopted, however, it was important to specify, as had been suggested, that they would not apply in the case of a government set up in a country occupied by the armed forces of a foreign Power. The Norwegian delegation favoured a very liberal policy which would pave the way towards universal membership of the United Nations and promote international co-operation.

40. Mr. ESCOBAR SERRANO (El Salvador) congratulated the Cuban delegation on its efforts to find a solution to the problem of the representation of a Member State. The question was of great importance, for revolutions frequently brought about changes in governments and consequent alterations in the representation of States in the various organs of the United Nations.

41. The United Nations had not set up any machinery for dealing with such cases. On the other hand, if each organ were free to decide for itself in the matter, the Organization might find itself faced with conflicting decisions. The argument that each organ of the United Nations was free to decide upon the validity of the credentials of its members, in accordance with its rules of procedure, seemed applicable only to the process of ascertaining whether those credentials had been properly prepared. When it was a case of deciding on the representation of a Member State after a change of government, the General Assembly should take the decision. In that connexion, the representative of El Salvador cited the resolution adopted on 30 May 1950 by the General Conference of UNESCO, which requested the United Nations to adopt general criteria which would make it possible to reach a uniform and practical settlement of the problem of the representation, on the various organs and organizations of the United Nations, of countries where two or more authorities claimed to be the only regular government. Such uniformity could be achieved only by leaving the solution to a single organ—the General Assembly.

42. Some speakers had argued that the draft resolution submitted by Cuba was contrary to the principles of the United Nations Charter because it established certain prerequisites for the recognition of a new government which were not contained in the Charter. The delegation of El Salvador did not share that view; it considered that the text under consideration was in perfect harmony with the principles of the Charter. It was in fact quite normal that, before recognizing the representatives of a new government, the United Nations should make sure that the government in question exercised effective authority over the national territory and that its authority was based, not on the obedience of the population, but upon its general consent. The delegation of El Salvador shared the Cuban delegation's view that the "ability and willingness [of a government] to achieve the purposes of the Charter, to observe its principles and to fulfil the international obligations of the State" must also be taken into account.

43. If, under Article 6 of the Charter, a Member which had persistently violated the principles of the Charter could be expelled, then logically the General Assembly had the right not to recognize the representatives of a new government which was unable or unwilling to co-operate in the task of United Nations.

44. The delegation of El Salvador therefore supported the Cuban draft resolution.

45. On the other hand, it did not agree with the United Kingdom delegation, which proposed, in its draft resolution, that the only condition for the recognition of a government by the United Nations should be that that government exercised effective authority over the national territory. While the material aspect of the question should not be ignored, general principles of ethics and justice should also be borne in mind. Mr. Escobar Serrano noted, in that connexion, that the United Kingdom proposal in effect extended to the United Nations the system generally adopted by States for recognizing a new government, as States were usually anxious that the government concerned should fulfil its international obligations. In the case of the United Nations, however, that criterion was not sufficient; the new government represented in the United Nations must give clear proof of its intention of pursuing a policy in conformity with the purposes and principles of the Charter.

46. Mr. Escobar Serrano then turned to the amendment (A/AC.38/L.11) submitted by Uruguay to the Cuban draft resolution, under which the words "established without the intervention of any other State" would be added after the word "territory" in paragraph 1 (*a*). El Salvador had always upheld the principle of non-intervention. It would seem superfluous, however, to make express mention of that principle, as proposed in the amendment, since the Cuban draft resolution already provided that the general consent of the population should be taken into account, and that meant, of course, an unqualified consent, arrived at independently of any foreign influence. The inclusion of the amendment might even lead to intervention by the United Nations in the internal affairs of a State—in the name of non-intervention. He reserved the right to return to that question after further study.

47. The delegation of El Salvador considered that a distinction must be drawn between representation in the United Nations and the recognition of a new government by other countries. Such a distinction, which in itself was anomalous, was nevertheless natural in the case of an international organization composed of a great number of countries; a State which abstained from voting for the recognition of the representatives of a government with which its own government had no diplomatic relations would be bound, as a Member of the United Nations, by the majority decision concerning the representation of that new government.

48. Mr. Escobar Serrano agreed with the Costa Rican representative (20th meeting) that it might not be possible to settle the problem at the current session, but felt that it would be wise to begin to study it with a view to arriving at a fair solution later.

49. The representative of El Salvador would vote in favour of the Cuban draft resolution; in case that draft was not adopted, he proposed that the General Assembly should refer the question to the International Law Commission for study before the following session of the General Assembly.

50. Mr. PLAZA (Venezuela) emphasized the complexity of the question before the Committee and recalled the unsuccessful efforts which had been made to settle it on a political as well as on a legal basis.

51. He hoped that it would be possible in the not too distant future to reach agreement on the principles set forth in the Cuban draft resolution, but the time for that had not yet come. There existed a tendency to use international measures to influence certain aspects of the internal policy of States; but that tendency should not be used as a pretext for precipitating events. Apart from collective action for the maintenance of international peace and security, the United Nations had no authority to intervene in matters falling essentially within the domestic jurisdiction of a State; indeed, Article 2, paragraph 7 of the Charter expressly prohibited any intervention of that nature.

52. The conflict between that tendency, which so far had no legal basis, and the principle of non-intervention laid down in the Charter, was the cause of the dilemma in which the Committee found itself. Before the prerequisite contained in paragraph 1 (*b*) of the Cuban draft resolution could be accepted, the traditional concept of sovereignty would have to evolve further and States would have to show willingness to permit the international community to examine situations which were still considered as falling within their exclusive competence. It was difficult to determine the nature of the general consent on the part of the population without going thoroughly into matters of national policy. It was difficult to establish standards whereby the consent of the population could be assessed and evaluated, and the establishment of any procedure to that effect might well lead to the impairment of State sovereignty.

53. If the principle contained in paragraph 1 (*b*) were accepted, recognition of a government by the General Assembly would imply that the new government was supported by the majority of the population concerned; that would mean giving the government *carte blanche*. On the other hand, a General Assembly decision to the contrary would imply that the said government did not have the support of the majority of the population and thus the decision would constitute a sort of veto. The Members of the United Nations were probably not ready to assume such a responsibility.

54. The Venezuelan delegation therefore supported the United Kingdom draft resolution. It felt that it would be appropriate to establish a criterion for determining whether a given government was qualified to represent a Member State, and that the General Assembly was the appropriate organ for doing so. The United Kingdom draft took into account only strictly objective factors, the only ones which could be evaluated without violating the principles of the Charter or infringing the principle of sovereignty.

55. Nevertheless, Mr. Plaza proposed that, in the second paragraph of the preamble of the United Kingdom draft resolution, the words "in determining whether a given government is entitled to represent a Member State, or when the representation of a Member State is challenged", should be replaced by the words "in determining whether a given government is entitled to represent a Member State when its representation is challenged". There was no need to distinguish between the two situations; in practice, they always existed together.

56. Furthermore, a clause should be inserted at the end of paragraph 1 of the operative part of the draft resolution requiring the government concerned to state its desire to fulfil the international obligations of a State. Such a clause would be merely a re-affirmation of a generally accepted practice of governments.

57. In the Spanish text of that paragraph, the word *modificaciones* should be replaced by the word *cambios*.

58. In conclusion, Mr. Plaza proposed that a subcommittee should be set up to study in detail the texts before the Committee, and that the question might be considered at a joint meeting of the *Ad Hoc* Political Committee and the Sixth Committee.

59. The CHAIRMAN requested the Venezuelan delegation to submit its amendments in writing as soon as possible.[3]

60. U AUNG KHINE (Burma) felt that the question under discussion, namely, the representation of a Member State, should not be confused with the question of the admission of a new Member to the United Nations.

61. With regard to the Cuban draft resolution, he admitted the importance of the criteria laid down in subparagraphs (*a*) and (*b*) of paragraph 1. Those laid down in sub-paragraphs (*c*) and (*d*), however, were superfluous; they could be taken into account only when a State's application for admission to membership was under consideration, unless, when the question of the representation of a Member State arose, definite charges were made against one of the parties claiming the right of representation.

62. It should naturally be assumed that a Member State satisfied all the requirements of Article 4 of the Charter; it was also logical for the United Nations to

[3] The amendments were subsequently issued as document A/AC.38/L.24.

consider that the legal government of a Member State was the only government qualified to represent that State. Consequently, when two governments claimed the right to represent a single State, the question should be decided in accordance with the generally recognized principles of international law applying to the recognition of States.

63. The delegation of Burma agreed with Professor Lauterpacht, who considered that a government must satisfy the following two requirements to be recognized: it must exercise permanent authority over all or nearly all the territory of its country, and it must enjoy the obedience of the bulk of the people of the country. The United Nations should therefore recognize a government which satisfied those requirements.

64. There was some doubt as to what would happen, however, if that government did not prove able and willing to carry out the purposes and principles of the Charter and if it did not respect human rights and fundamental freedoms. The answer to that question was contained in Article 6 of the Charter; if the government in question was convicted of violating the Charter, it might be expelled from the United Nations. However, its right to be represented and to occupy a place within the Organization could not be challenged in advance.

65. The delegation of Burma considered that the criteria set out in paragraph 1, sub-paragraphs (*a*) and (*b*) of the Cuban draft resolution and in the United Kingdom draft resolution were the only ones that could be applied; it would therefore support the United Kingdom draft resolution.

66. There was no point in referring the question to a legal body, as the Dominican Republic had proposed in its draft resolution (A/AC.38/L.23), since the principles governing the matter had been clearly established and were generally recognized. The Burmese delegation would therefore vote against that draft resolution.

67. Mr. CHAVES (Paraguay) felt that the problem might be summarized as follows: what should the United Nations do when one of its organs or specialized agencies challenged the right of a State with a new *de facto* or revolutionary government, established as a result of internal developments, to representation on that body?

68. Two questions were involved: first, the question of competence, in other words, the question as to which organ of the United Nations was competent to consider the problem; and, secondly, the question of the criteria to be applied in determining the government's right to be represented.

69. With regard to the first point, his delegation felt that it would be advisable to leave the solution of the problem to the General Assembly; in that way, the procedure would be centralized.

70. The question of the criteria to be applied was far more complex and raised a number of doubts. It was easy to ascertain whether a government controlled all or nearly all the territory of a country, but the other criteria, such as the general consent of the people, ability and willingness to carry out the purposes of the Charter, respect for human rights and fundamental freedoms, would involve so many subjective elements that an accurate appraisal of the situation would be impossible. Differences of opinion would arise, particularly in the case of backward countries. Furthermore, it would be difficult to carry out the necessary inquiry without offending the government and country in question.

71. The United Kingdom draft resolution had the advantage of proposing only one criterion, namely, effective authority and control of the national territory. In applying that criterion, the United Nations would not have to pass judgment on the new régime. Nevertheless, the problem would remain unsolved; for if that single requirement were satisfied, all Member States would find themselves practically compelled to vote in favour of collective recognition, however strong might be the reasons which had influenced them to withhold individual recognition. It had been said that a government which had recognized another individually would not be able to oppose the collective recognition of that other government by the United Nations. The converse was also true. It was unimaginable that any Member which saw fit to withhold individual recognition of a government would decide in favour of collective recognition simply on the grounds that its vote would not commit its own government in its relations with that other government and that the collective decision would have no effect on the direct relations between one government and another.

72. Generally speaking, it was difficult to draw up a list of criteria which would be universally acceptable and applicable. If the Committee succeeded in drafting such a text, the delegation of Paraguay would support it. If that were not possible, it would merely uphold the argument that the General Assembly was competent to take an appropriate decision in each particular case.

73. The delegation of Paraguay did not shrink from the difficult task of codifying the provisions governing international relations. It was firmly convinced that the United Nations was *per se* a rational organization and that it was the most powerful instrument for promoting the progressive rationalization of international life and the foreign policies of States. It was only a question of ascertaining how far the Organization could go in the direction of rationalization and codification.

74. Mr. RIVERA HERNANDEZ (Honduras) compared the draft resolutions submitted by Cuba and the United Kingdom. He felt that the latter was more objective since it was based on the principle of effective authority in a given country, but he preferred the Cuban draft resolution since it represented an improvement on traditional practice. The delegation of Honduras would therefore vote in favour of the Cuban draft resolution.

75. Mr. KYROU (Greece) noted that the Committee, adopting the procedure of the General Committee and the General Assembly in plenary meeting, had begun its discussion by examining what might be regarded as a preliminary question relating to the legal aspect of the problem. Like the General Committee and the General Assembly, the Committee had nevertheless felt that it should not refer the matter to the Sixth

Committee. That did not mean, however, that those who had upheld the contrary argument were wrong. The question was both political and legal. It had drawn the Committee into a vicious circle: almost all the members of the Committee had admitted that the matter was solely one of principle and did not refer to a specific case, though all had one special problem in mind. That was why the Cuban representative had tried to place the question on an essentially legal plane.

76. Nevertheless, the discussion had shown that if the Committee attempted to formulate legal principles, there was a danger not only of bringing the question back to the political level, but also—and that was much more serious—of acting contrary to Article 2, paragraph 7 of the Charter.

77. Mr. Kyrou paid tribute to the outstanding qualities of the representative of Cuba and of the representative of the United Kingdom, whose concern he understood. He wondered whether there was not some contradiction between the words "appear to be" and "permanent" in paragraph 1 of the United Kingdom draft resolution. He doubted whether a situation could be regarded as permanent if it simply appeared to be so.

78. The matter was an important one at a time when fifth columns were active in many countries and were capable, with support from abroad, of seizing—or claiming that they had seized—effective authority over part of the territory of certain States, and of making it appear that they were obeyed by the whole population.

79. Thus, notwithstanding the praiseworthiness of the efforts of the Cuban and United Kingdom representatives to settle the problem, that problem could be settled only by taking into account the vital interests of the various States and of the United Nations. Far from facilitating the work of the Organization, an enunciation of rigid principles might well lead to a violation of the principle of non-intervention in the domestic affairs of States.

80. For those reasons, the Greek delegation felt that the wisest course would be to take no decision on the matter for the time being. It would have no objection, however, if the summary records of the Committee's discussion of the problem and the draft resolutions and amendments submitted in that connexion were communicated to the International Law Commission so as to provide the latter with all the necessary information.

81. Mr. Kyrou reiterated his belief that the question was and must remain essentially political, and should not be approached academically.

The meeting rose at 1 p.m.

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