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CONTENTS

Chairman: Mr. Carlet R. AUGUSTE (Haiti).

AGENDA ITEM 99

Peaceful settlement of disputes (A/5964; A/SPC/L.123).

1. The CHAIRMAN stated that under the item entitled "Peaceful settlement of disputes" the Committee had before it a draft resolution submitted by fourteen delegations (A/SPC/L.123).

2. Lord CARADON (United Kingdom), introducing draft resolution A/SPC/L.123, said that the question of the peaceful settlement of disputes was one of fundamental importance and undeniable urgency. It must be admitted that in the primary task of peaceful settlement of disputes the United Nations had not succeeded in fulfilling the purposes of the Charter or the hopes of mankind. The seriousness of that failure could be seen from the fact that the persistence of certain disputes impeded all the other activities of the United Nations and could endanger world peace.

3. The United Nations could be credited with achievements in economic and social development. Furthermore, in the sphere of peace-keeping, on a score of occasions the Organization had been able to stop or at least contain disorders. Such action, however, concerned disputes which had already broken out. In the peaceful settlement of disputes, which was distinct from peace-keeping operations, there could be no doubt as to the inadequacy of the achievements of the United Nations.

4. He himself had often declared that it was the policy of his Government to support and strengthen the United Nations. The United Kingdom had shown that it meant what it said. But practical demonstrations of support for the United Nations would be inadequate if Member States did not at the same time give their minds to the first duty of the Organization, that of finding effective means to resolve disputes which might degenerate into conflict.

5. The United Kingdom delegation did not approach the issue with any preconceived plan. Its contention was simply that it was essential before the end of the present session of the General Assembly to take a new initiative, to review what had been done in the past and to set a new course for the future.

6. Before turning to a more detailed examination of those questions, he wished to make three points on which it seemed that there could be no disagreement. In the first place, there could be no doubt about the top priority of the issue which the Committee was now discussing. Chapter VI of the Charter, entitled "Pacific settlement of disputes", had deliberately been accorded precedence by the authors of the Charter. In Article 33, the most important words were "first of all": States were "first of all" required to seek solutions by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or other peaceful means.

7. Secondly, the history of the Organization showed that the very success of United Nations operations in holding back the antagonists in a conflict had sometimes postponed the search for a solution of the dispute which had led to the conflict. The stopping of conflict had sometimes even led to the perpetuation of the dispute, and peace had sometimes taken precedence over justice. An uneasy peace as a result of United Nations intervention had sometimes been accepted or imposed as a substitute for permanent settlement. Temporary peace-keeping must never be allowed to become the enemy of permanent peace-making. In other words, the United Nations must never forget the need to deal not only with the symptoms but also with the causes of the diseases and troubles that beset mankind.

8. Thirdly, the failure to go to the roots of international disputes led to appalling waste. Mention had often been made of the burden which armaments and what had been called "the balance of terror" imposed on the world. Furthermore, whenever a dispute leading to or threatening conflict arose, there was an immediate diversion of resources in men, money and material from fruitful purposes to barren waste. Patient efforts to bring about economic and social advance were suddenly reversed when conflict threatened, and far more was spent in a week of fighting than in a year of constructive effort. Conversely, small amounts spent on peace-making in good time could save huge amounts spent on peace-keeping later.

9. At the 1351st plenary meeting of the General Assembly, the United Kingdom Foreign Secretary, Mr. Michael Stewart, had stated on the present issue that if, in past centuries, war had been an instrument through which injustices had been righted, tyrannies overthrown and nations liberated, it was no longer an instrument which mankind dared employ. The Foreign Secretary had gone on to propose the creation of a body of pre-eminent political and legal experts, representative of the membership of the Assembly, who would make recommendations that would con-

stitute a handbook and a set of tools for use in the settlement of disputes.

10. The questions which the proposed committee should consider were the following:

Did Member States agree that in the past there had been reluctance to resort to the methods of peaceful settlement set out in Article 33 of the Charter? If so, what were the root causes of that reluctance?

How could Member States be encouraged to make greater use of the available facilities and procedures for peaceful settlement?

Did Member States accept that, whenever a dispute arose, peaceful settlement should be the first aim, and should it also be accepted that when peace-keeping operations were undertaken by the United Nations there should be a concurrent effort as a matter of urgency for the settlement of the dispute?

What were the circumstances in which third-party methods of conciliation such as mediation and fact-finding could be most effective?

What improvements could be made in the methods of bilateral negotiations, for instance in border commissions and other standing arrangements for direct consultation, co-operation and conciliation?

Since disputes and conflicts often had economic as well as political causes, could more be done by harnessing the economic resources available through international organizations to the settlement of disputes?

Could greater use be made of commissions of inquiry and other means for discovering the facts of any dispute?

Since mediation was one of the most promising methods of peaceful settlement, would it be valuable to appoint a group of mediators who would be ready at any time to carry out their task?

How should such a group be appointed and by whom, and to whom should they report?

Should such a group meet at regular intervals and make recommendations on the possible use of specific methods for the settlement of particular disputes?

Was it necessary to make additional provision in the Headquarters staff to help in the task of mediation?

What lesson could be drawn from the experience of the specialized agencies, for example that of the International Labour Organisation in the field of conciliation and fact-finding?

What lessons could be drawn from the experience of regional organizations?

What considerations encouraged or discouraged wider acceptance of the jurisdiction of the International Court of Justice, in particular acceptance of the procedure under Article 36 of the State of the Court? In particular, how could States be made to withdraw or limit the reservations they had made under Article 36?

Could the method of arbitration be more frequently used?

How could the co-operation of academic, legal and research organizations best be enlisted?

Lastly, and possibly most important of all, how could world and national opinion be stimulated to recognize the advantages of peaceful settlement and show a greater readiness to accept the processes of international conciliation?

11. He then turned to two other subjects closely related to the peaceful settlement of disputes. The first was that known as friendly relations between States, a question currently being considered by the Sixth Committee, and to the examination of which many delegations, particularly that of Czechoslovakia, had made a valuable contribution. The seven principles being considered by the Sixth Committee included the peaceful settlement of disputes. The Sixth Committee's work, however, was directed towards the progressive development and codification of the principles involved. His delegation attached great importance to that work, but believed that in the field of peaceful settlement of disputes much more was needed than a formulation of basic principles. What was needed was a penetrating survey of the means and methods leading to the adoption of recommendations and measures which would enable States to have greater recourse to the means of peaceful settlement. Attention should also be directed to the practical and political measures which would ensure the effective application of those principles, and there was no conflict between the work of the Special Political Committee and that of the Sixth Committee and of the Special Committee on Principles of International Law concerning Friendly Relations.

12. The other question which had some connexion with that before the Special Political Committee was fact-finding, which was also being considered by the Sixth Committee on the initiative of the Netherlands delegation. The Secretary-General had already prepared a most useful study on methods of fact-finding (A/5694) and there was currently before the Sixth Committee a draft resolution requesting the Secretary-General to supplement that study.[1] In his delegation's view, the study already prepared by the Secretary-General, and those which might be prepared if the draft resolution before the Sixth Committee was adopted, should be made available to the committee whose establishment was proposed by the sponsors of draft resolution A/SPC/L.123. Again, there would be no confusion between the item on the Special Political Committee's agenda and that relating to fact-finding.

13. The sponsors of draft resolution A/SPC/L.123 proposed the establishment of a committee which would have not less than nine and not more than fourteen members. His delegation hoped that the recommendations set forth in draft resolution A/SPC/L.123 would be considered in a spirit of universal co-operation and would be widely supported.

14. Mr. RUDA (Argentina) observed that the first two Articles of the Charter obliged all Member States to settle their disputes by peaceful means. Article 33 specified that the parties to any dispute should seek

[1] Subsequently adopted as General Assembly resolution 2104 (XX).

a solution, "first of all"—i.e., before any United Nations intervention—by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. In that context the draft resolution introduced by the representative of the United Kingdom (A/SPC/L.123) seemed particularly appropriate.

15. In that connexion, an objective review of the Organization's activities since its establishment was called for. Despite the serious crises it had undergone, the United Nations during its twenty years of existence had attained its main objective—the maintenance of international peace and security. Nevertheless, a more penetrating analysis of the facts revealed that although the Organization had adapted itself to the critical situations which had arisen, it had made little progress with regard to the development of machinery that would make it possible to avoid aggravating a situation or provide a definitive solution to the basic issues which continued to constitute a threat to peace. It must thus be recognized that as far as the peaceful settlement of disputes was concerned the Organization had not fulfilled the hopes it had awakened. The causes of the situation should be examined and new solutions sought.

16. There were of course traditional methods for the peaceful settlement of disputes and various institutions had been established for that purpose, but the rules governing those procedures were usually negative: they did nothing more than prohibit the use of force, except in the case of legitimate self-defence or under the auspices of international bodies. If that negative phase was to be left behind, international bodies would have to play an important role. There were only two alternatives with regard to the peaceful settlement of disputes: either the two parties concerned accepted the solution proposed by a third party or the third party persuaded the parties to undertake consultations with a view to seeking for themselves the solution of their dispute, with or without its aid. Apart from those alternatives, there remained only the possibility of direct negotiations or the use of force, armed or otherwise. It was therefore clear that international bodies could play a decisive role as arbitrators in the settlement of disputes. To that end, it would be necessary to supplement the United Nations Charter, which contained only general provisions relating to that question.

17. The time had come to return to the current of ideas which at the beginning of the century had led to the belief that international conflicts could be resolved without resorting to the threat or the use of force. Since that time many changes had taken place, new States had been established and there were few questions which were not of concern to the international community as a whole. The situation with regard to methods for the peaceful settlement of disputes, however, remained more or less the same as at the end of the Second International Peace Conference at The Hague of 1907, with the exception of the possibility of recourse to the International Court of Justice.

18. It must be borne in mind that when the international political bodies were established the accent had been placed primarily on the principle of collective security rather than on the peaceful settlement of disputes. Thus, peace-keeping operations were designed simply to keep order and not to provide a solution. The forces used in those operations played the same role as domestic police forces, whose purpose was to prevent violence. In those circumstances, a de facto situation could arise in which peace was maintained without the rights of the parties being taken into account or a definitive solution found to the dispute.

19. For all those reasons, and taking into account the obligation of Member States to seek a settlement of their disputes before bringing them before the United Nations, his delegation enthusiastically supported the initiative of the United Kingdom Government. That attitude was justified by the traditional foreign policy of the Argentine Republic, which had settled its territorial problems through negotiations and most often through arbitration. Guided by those traditions, Mr. Zavala Ortiz, Minister for External Affairs of Argentina had stressed, during the general debate at the nineteenth session (1292nd plenary meeting), the need to submit all disputes, whether political or legal, to compulsory jurisdiction. During the present session, he had submitted to the General Assembly (1337th plenary meeting) a draft agreement proposing that all legal disputes should be submitted to the jurisdiction of the International Court of Justice, subject to certain conditions. That draft was based on the same basic principles as the draft for a reform of the Covenant of the League of Nations which Argentina had submitted at Geneva in 1920.

20. He drew the Committee's attention to the system of consultation and recourse to regional bodies and agreements which was becoming progressively more widespread. He hoped that the discussion of the important question before the Committee would make it possible to devise concrete measures with a view to strengthening world peace and affirming the authority of law over political ideologies.

Mr. Lannung (Denmark), Rapporteur, took the Chair.

21. Mr. PACHECO (Brazil) said that the draft resolution A/SPC/L.123 submitted by the United Kingdom representative had the full support of his delegation. Brazil's history included several examples of disputes which had been solved by arbitration, mediation or judicial settlement. Thus, thousands of miles of boundaries between Brazil and its neighbours had been established on the basis of arbitration, without detriment to any of the parties involved. Today more than ever relations between peoples required the establishment of a set of principles and legal provisions, and the draft resolution before the Committee could help to overcome certain difficulties without resort to force and violence. In the face of daily realities, long-standing juridical principles gained in importance, while in the course of the United Nations' activities new juridical techniques emerged; in accordance with the terms of the Charter, however, one task, that of settling disputes by peaceful means, remained foremost. Draft resolution A/SPC/L.123 derived from the same sources which had inspired the United Nations Charter and its adoption

would be a step towards the settlement of complex international problems.

22. Mr. DE BEUS (Netherlands) observed that universal confidence in the capacity of the United Nations to settle disputes had been somewhat weakened as a result of the many international disputes, both political and juridical, which had occurred in rapid succession since 1945. The United Nations had often suceeded in solving those problems, especially by means of peace-keeping operations and observation missions, but such action had usually been limited to preventing further hostilities and all too often it had failed to go to the root of the controversy and find a solution.

23. The peace-keeping task of the United Nations had two equally important aspects: one was to put an end to hostilities and the other was to settle conflicts which might lead to hostilities. There was a great discrepancy between the results obtained with regard to the two things and. as Mr. Luns, Netherlands Minister for Foreign Affairs had said when addressing the General Assembly (1348th plenary meeting), the reason was that States Members of the United Nations had not made sufficient use of all the means for achieving negotiated settlements placed at their disposal by the Charter. The problem of Kashmir, the conflict in the Middle East and the Cyprus situation were cases in point.

24. It was for that reason that his delegation welcomed the initiative taken by the United Kingdom in focusing renewed attention on the principle of the settlement of international disputes by peaceful means. There were two categories of disputes: those arising from different interpretations of the law to be applied and those arising from the desire or even the necessity to alter the law. Article 33 of the Charter clearly pointed to arbitration or judicial settlement as a means of settling disputes in the first category. The fact that Nigeria, Uganda and Iran had recently accepted the compulsory jurisdiction of the International Court of Justice was encouraging for the United Nations. Another example was the Convention on Transit Trade of Land-locked States adopted in July 1965, in which a compulsory arbitration clause had been incorporated. Similarly, the draft International Convention on the Elimination of All Forms of Racial Discrimination included an article relating to the compulsory jurisdiction of the International Court of Justice.

25. The second category of disputes gave rise to greater difficulties, for they were problems of a political nature which as such could not be decided in accordance with the rules of law. Article 33 of the Charter enumerated means of solving disputes in that category, namely negotiation, inquiry, mediation, conciliation and resort to regional agencies or arrangements; yet the present state of affairs showed that those means had not been adequately used. For that reason his delegation thought that the time had come to make a complete study of the legal and political aspects of peaceful settlement. It considered that fact-finding in particular could be an extremely useful method of settling legal and political disputes. The United Nations had successfully applied that procedure, as shown by the report of the Secretary-General (A/5694); however, there were also many cases in which impartial investigation of the facts had been impossible or had not been undertaken. That method would have been very effective when, for example, one country accused another of pursuing alleged invaders on its territory and molesting the local population, or when complaints were made concerning foreign intervention or subversion in the form of aid given to rebels or intruders. In all such cases fact-finding on the spot could settle the dispute, at least as far as the facts were concerned.

26. His delegation accordingly considered it very useful that draft resolution A/SPC/L.123, particularly in the last preambular paragraph and in operative paragraph 2 (b), established a link between fact-finding and other methods for the peaceful settlement of disputes.

27. His delegation would give its full support not only to draft resolution A/SPC/L.123 but also to its implementation, and was prepared to contribute to the work of the special committee envisaged in that text.

Mr. Auguste (Haiti) resumed the Chair.

28. Mr. STUART (Australia) expressed the opinion that if the carefully thought out proposals in the draft resolution submitted by the United Kingdom representative (A/SPC/L.123) were adopted they could make a useful contribution to the study of various methods mutually acceptable to the parties to a dispute.

29. During the Committee's debate on peace-keeping operations his delegation had noted with interest the emphasis placed by several speakers on the importance of settling disputes before they reached the point where peace-keeping operations became necessary. Peace-keeping operations were designed principally to prevent critical situations from deteriorating. That modest aim had frequently been realized, as in the case of Cyprus, but in other cases no results had been achieved. It was therefore essential to try to find solutions before undertaking peace-keeping operations. The tendency in the United Nations was often to concentrate on the negative side of international relations, such as non-intervention and refraining from the use of force, and it was useful in that connexion to recall the positive principle enunciated in Article 2, paragraph 3 of the Charter that the Members of the United Nations should settle their international disputes by peaceful means.

30. The success or failure of the peaceful settlement of disputes often depended on the choice of the machinery to be used. It would therefore be useful to indicate clearly what were the various means available, to define the situations to which those means could best be applied, and to establish a set of practices within the framework of which material needs and political feasibility could be accommodated to the central objective of reaching a solution to a particular problem. Thus third-party intervention or resort to permanent mediation and conciliation machinery could produce better results than could direct negotiation, which too often emphasized the superior bargaining position of the stronger party.

31. Australia, whose federal constitution gave prominence to judicial settlement of disputes and which used systems of arbitration for the settlement of its economic and social problems, was perhaps more inclined than other countries to favour judicial settlement. However, his delegation recognized the importance of political factors, and it considered that the parties to a dispute should have the widest possible choice of means open to them. Draft resolution A/SPC/L.123 took account of that fact and provided for a study of methods which would make existing means for the peaceful settlement of disputes more acceptable and effective. His delegation commended the initiative taken by the United Kingdom and thought that it should be given very wide support.

The meeting rose at 5.25 p.m.

Litho in U.N. 77111—May 1966—2,000