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MEETING**

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Chairman: Mr. Hermod LANNUNG (Denmark).

In the absence of the Chairman, Mr. Alfred Edward (Ceylon), Vice-Chairman, took the Chair.

AGENDA ITEM 62

Administrative and budgetary procedures of the United Nations: report of the Working Group appointed under General Assembly resolution 1620 (XV) (A/4971, A/C.5/L.702) (continued)

Section D. An advisory opinion from the International Court of Justice (A/C.5/L.702) (continued)

1. Mr. ROSHCIN (Union of Soviet Socialist Republics) said that his delegation fully shared the view expressed by the United States representative at the 897th meeting that the question before the Committee was not merely juridical but had political implications. He would refer to its political aspects only because other speakers had done so.

2. It was quite apparent that the proposal to seek an advisory opinion from the International Court of Justice (A/C.5/L.702) was merely another attempt to find a means of exerting pressure on those States which, for important political reasons and not merely on legal grounds, were unable to participate in the financing of operations such as ONUC and UNEF. Those reasons, in the case of ONUC, were that that operation had been unduly prolonged because it was being directly hampered by certain permanent members of the Security Council.

3. That was a purely political problem which called for a political and not a legal solution. His delegation wondered why all Members of the United Nations should have to bear the political and financial consequences of the extension of that operation, which could have been concluded long before if Mr. Tshombé's professed efforts to frustrate the United Nations action in the Congo had not been aided and abetted by certain Powers. That those Powers were doing so was clearly revealed by the facility with which Mr. Tshombé had been able to travel through Northern Rhodesia on his recent return to Elisabethville from Paris.

4. The problem with which the United Nations was faced could not be separated into legal, financial

and political elements. The peace-keeping decisions taken by the Security Council in 1960 and 1961 called for financial decisions which would have to be taken by the same body. Similarly, the determination of responsibility for the action which had been taken against the lawful government of the late Patrice Lumumba was a political matter within the sole competence of the Council. The proposal contained in draft resolution A/C.5/L.702 aimed only to make all Members of the United Nations assume responsibility for a situation of which only a few were the cause.

5. The United States delegation claimed to be seeking a means of meeting the expenses of the Congo operation. That, however, was not a legal problem; such financing should be arranged, in accordance with the provisions of Article 43 of the Charter, through the action of the Security Council. Hence, there was no need to seek an advisory opinion from the International Court.

6. The USSR delegation considered that any action by one member to compel other members illegally to bear the cost of its own political actions was an attempt to weaken the United Nations itself. Such attempts would not be tolerated by his Government.

7. Mr. JAYARATNE (Ceylon) said that the issues involved in the interpretation of Articles 10 and 17 of the Charter were, in a sense, politico-legal issues which the International Court was not competent to adjudicate.

8. His own country, being a small nation, naturally welcomed a situation in which peace-keeping operations would become a normal part of United Nations activities and the related costs a normal part of the expenses of the Organization. However, there was a danger that such a situation would develop prematurely. As things were at present, the peace-keeping role of the United Nations was but a probe into the future giving a glimpse of the potentialities of the Organization; it was not a continuing reality of the present. The fact that nations still found it necessary to maintain and increase national armaments in order to maintain national and international security showed how limited, contingent and marginal the Organization's peace-keeping role actually was. The day when the United Nations would be responsible for peace in a disarmed world was still far off, and its peace-keeping functions were therefore of a voluntary and co-operative nature. Such operations were being performed at present because of agreement between the great Powers and not in spite of disagreement between them.

9. His delegation consequently opposed the introduction of any element of compulsion into the financing of peace-keeping operations. As those operations were based on a consensus of great Power support, their financing should be derived from the same source. Only when general and complete disarmament had

been achieved could the function of maintaining world peace be vested solely in the United Nations.

10. Under the Charter, peace-keeping and security functions were entrusted exclusively to the Security Council, in which the unanimity of the great Powers was essential for any substantive action. His delegation could not accept an interpretation of Article 17 that would have the expenses of peace-keeping operations regarded as expenses of the Organization. Article 17, paragraph 1, gave the General Assembly the power to consider and approve the budget of the Organization, but if that power was to include control over the expenses of peace-keeping operations, it would be a clear example of power without responsibility. Hypothetically, the General Assembly could refuse funds for an operation sanctioned by the Security Council. Although such an occurrence was unlikely, the fact that it was possible revealed the undesirability of giving one organ financial power and another organ exclusive substantive responsibility.

11. His delegation believed that all Members had a general duty to give individual and collective support to decisions of the Security Council, and, in particular, financial support for its peace-keeping operations. Payment of assessed contributions was the minimum requirement for membership in the United Nations, but Members had the additional responsibility of meeting United Nations commitments arising from the Organization's expanding activities. The permanent members of the Security Council had a greater responsibility, as did the more prosperous Members of the United Nations generally, and Member States whose delinquency necessitated United Nations action were especially liable. Members had, in fact, a moral obligation to volunteer support.

12. His delegation considered that, in the particular case of the operations in the Congo, the Soviet Union and other Powers of similar outlook no longer had any reason for withholding their support. In the light of the new circumstances which were making a satisfactory solution of the Congo problem possible, it appealed to them to reconsider their attitude.

13. Although convinced of the good intentions of the sponsors of the draft resolution (A/C.5/L.702), his delegation could not support their proposal, as it believed that the situation was unlikely to be altered even by an affirmative answer to the question which they proposed should be put to the International Court. The present *de facto* situation could be altered only through the co-operation of Member States and particularly of the great Powers. An affirmative answer by the Court would only tend to complicate a situation which was already sufficiently complex. Such an answer would be of little value if a great Power still refused to pay its share of the present peace-keeping operations, and he doubted that much advantage would be gained by depriving that Power of membership in the United Nations on the basis of the Court's opinion. Legality could be of little value if it could not ensure compliance. Therefore, a practical approach involving a recognition of both reality and legality appeared preferable.

14. Co-operation could not be achieved through compulsion. In its present initial phase, the United Nations would have to rely upon voluntary co-operation if it was to progress. From that point of view, the attempt to refer the present issue to the International Court was futile and negative. His delegation renewed its

appeal to the Soviet Union to bear its share of the ONUC costs in order that the Acting Secretary-General might give full effect to the relevant Security Council and General Assembly resolutions.

15. Mr. NOLAN (Ireland) said that the question must be viewed against its background. In order to finance ONUC and UNEF the General Assembly had levied assessments on Member States under Article 17 of the Charter, the only Article which permitted the Assembly to make such assessments. Some Members had refused to pay their assessments, giving various reasons, one of which was the legal argument that Article 17 was not applicable to the two operations in question. It was therefore only logical that an effort to dispel the legal uncertainty surrounding the Assembly's right to make assessments under Article 17 for the purpose of financing those operations should be made by referring the matter to the International Court of Justice for an advisory opinion, which, in addition, would clear the way for an agreement on future United Nations financing.

16. If all Members had been agreed that the assessments for UNEF and ONUC had been made under Article 17 of the Charter and hence were obligations legally binding on Member States, his delegation would be able to concur with the views of those who were unwilling to refer the question to the Court. Since, however, there was no such agreement, the Fifth Committee must seek an authoritative legal opinion on the matter. The fact was that the United Nations actions in the Congo and in the Middle East were being hampered by an attempt to impose a financial veto, some Members claiming both the right to demand that the United Nations should take certain actions and the right to deny it the means of doing so. Members who thus demanded all but contributed nothing were weakening the effectiveness of operations undertaken by the United Nations and frustrating its peace-keeping machinery.

17. There were also members which denied the juridical basis for the levying of assessments on Member States and at the same time tried to prevent their legal argumentation from being thoroughly scrutinized. Moreover, they seemed now to be relegating their legal argumentation to the background in favour of political arguments that were outside the scope of the present discussion.

18. The Fifth Committee must face the realities of the situation and not merely hope that they would disappear. The issue of the obligation of Members under Article 17 had been very hotly debated at the fifteenth session, and, as the present debate also showed, there was still a problem in regard to the interpretation of that Article. There could therefore be no doubt of the urgent need to refer the question to the International Court of Justice, not only in the interests of the two operations in question but also, and more importantly, in the interests of the future of the United Nations itself. While Ireland, which had taken a direct part in the operations and had contributed to their financial consequences because it fully accepted its obligations under the Charter, had no doubts regarding the legal aspect of the problem, it appreciated the fact that doubts remained in the minds of some other delegations. Since that aspect had been raised as an issue, it must be solved, even though its solution would not necessarily settle the larger problems involved. An advisory opinion from the Court would set at rest all doubts regarding the strictly

legal aspects of the matter, and his delegation would therefore support the draft resolution.

Mr. Lannung (Denmark) took the Chair.

19. Mr. RAFFAELLI (Brazil) said that his delegation had co-sponsored the draft resolution because it believed that an advisory opinion from the International Court of Justice would help to reconcile the various interpretations which had been given to Article 17, paragraph 2, of the Charter in regard to United Nations expenditure on UNEF and ONUC. As the Soviet Union representative had pointed out at the 897th meeting, Brazil had voted in the Working Group of Fifteen on the Examination of the Administrative and Budgetary Procedures of the United Nations in favour of the principle that the costs of peace-keeping operations could not be regarded as regular expenses of the Organization as envisaged in Article 17 of the Charter. The fact that some of the countries which had opposed that principle were also co-sponsors of the draft resolution was evidence that the proposal had no political implications and that the sponsors were not prejudging the issue but merely trying to clarify it. While the non-payment of assessments for peace-keeping operations might be a political issue, the question of consulting the International Court of Justice in regard to such expenditure was not. He therefore hoped that the draft resolution would receive wide support.

20. Mr. ATKINSON (Australia) said that while he did not wish to detract from the peace-making efforts of the Ceylonese representative, the absence of a positive response from the Soviet Union stating that it would accept the assessments levied against it for the financing of peace-keeping operations was evidence of the fact that some States were endeavouring to justify their failure to pay their share of the expenses of such operations on the ground that they were not expenses of the Organization within the meaning of Article 17 of the Charter. He therefore felt that it would be useful to have an authoritative legal opinion on the matter from the International Court of Justice, the highest legal source within the United Nations system, and he would accordingly support the draft resolution.

21. Mr. ITO (Japan) said that the statements made during the debate had deepened his conviction that the approach embodied in the draft resolution, of which

his delegation was a co-sponsor, was both correct and opportune. While some delegations had expressed dissatisfaction or apprehension over the course which the sponsors were proposing, it was disappointing that none of them had presented any constructive alternative which would put an end to the present uncertainty. Even the Working Group had failed to solve the controversy after four months of intense effort. While the proposal to seek an opinion from the International Court of Justice, the highest legal authority in the world, might not be the best course, the worst course was surely to do nothing and await a miracle, while endlessly repeating the same legal arguments on both sides of the controversy as the United Nations each day came nearer to bankruptcy. He therefore hoped that the draft resolution would be adopted by an overwhelming majority.

22. Mr. BALDARI (Italy) said that the question raised concerning the interpretation of Article 17, paragraph 2, of the Charter was a purely legal matter like any other question concerning the interpretation or application of international agreements. The International Court of Justice was the most appropriate and authoritative organ of the United Nations to consider the matter and express an opinion on it. Moreover, there could be no doubt of the Court's impartiality or competence. His delegation would therefore support the draft resolution.

23. The CHAIRMAN, noting the absence of further comments or proposals by delegations, suggested that the discussion should be regarded as concluded and that he should put the draft resolution (A/C.5/L.702) to the vote at the following meeting, at which time there would be an opportunity for delegations to explain their votes.

It was so agreed.

ORGANIZATION OF THE COMMITTEE'S WORK

24. The CHAIRMAN drew the Committee's attention to the fact that the General Committee had urged all Committees to make every effort to conclude their work by 20 December. He therefore appealed to all members to co-operate to the greatest extent possible in expediting the matters still to be dealt with by the Fifth Committee.

The meeting rose at 4.20 p.m.