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CONTENTS

Chairman: Mr. Hermod LANNUNG (Denmark).

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)

1. Mr. PRICE (Canada) said that the Committee had discussed the financing of peace-keeping operations since UNEF had been set up in 1956. The question had become still more pressing since the Organization had undertaken operations in the Congo at an even higher level of expenditure. In five years, the members of the Committee had not been able to agree on a formula acceptable to most of them or on the legal basis of the obligations to be borne by Member States. Each year positions hardened and the question remained unsolved, while the Organization's financial difficulties were becoming so serious that its very existence was in danger.

2. Fortunately Article 96 of the Charter provided that the General Assembly might request the International Court of Justice to give an advisory opinion on any legal question. That was why several delegations, including his own, had decided to submit draft resolution A/C.5/L.702, in which they had tried to frame, in the least contentious terms possible, the question on which the Assembly might ask the Court for an advisory opinion. The preamble simple noted that a legal problem existed. In the operative part, the sponsors set forth the question to be submitted to the Court, referred to all resolutions adopted on the two operations concerned and requested the Secretary-General to give the Court all documents likely to throw light upon the question.

3. It was clear that an important conflict existed, that the Committee had been unable to solve it and that the only course remaining was to refer the matter to the Court.

4. He hoped that all representatives, whatever their view on the substance of the matter, would be able to support that simple and straightforward draft resolution, which was designed to end a controversy to which members of the Committee had given up so much time to no purpose over the last five years.

5. Mr. EWERLOF (Sweden) announced that Sweden would co-sponsor the draft resolution. Sweden had always thought that the costs of peace-keeping operations should be regarded as expenses of the Organization, within the meaning of Article 17, paragraph 2, of the Charter, and it had always voted for General Assembly resolutions to that effect. However, if certain countries did not pay their contributions to those operations, because they doubted their legality, it would be best to remove their doubts by asking the International Court of Justice for an advisory opinion, as suggested by two members of the Working Group of Fifteen on the Examination of the Administrative and Budgetary Procedures of the United Nations who considered that Article 17 did not apply to the financing of peace-keeping operations.

6. Mr. BHADKAMKAR (India) recalled that India had reserved its position on the subject, both in the Working Group and in the Fifth Committee. India had always supported peace-keeping operations and paid its contributions to them, but it thought that recourse to the International Court of Justice would not necessarily solve the problem and, on the contrary, might lead to unforeseeable difficulties.

7. Mr. ROSHCHIN (Union of Soviet Socialist Republics) said that the Soviet Union and Bulgaria were not the only two countries which thought that the costs of peace-keeping operations could not be considered as expenses of the Organization, within the meaning of Article 17 of the Charter. Paragraph 20 of the report of the Working Group (A/4971) showed that the majority took the same view. The Charter contained explicit and even categorical provisions which settled the question of extraordinary expenses. Article 11 provided that any question relating to the maintenance of international peace and security on which action was necessary should be referred to the Security Council by the General Assembly. Article 43 also made it clear, beyond any doubt, that the Security Council was responsible for taking any decisions. It was impossible to ask the Court for an opinion on a question which had been settled so clearly by the Charter, because that would mean undermining the essential principles which Member States had accepted on signing the Charter. The problem was political rather than legal, and arose only because a group of Member States, which had once been assured of some kind of majority, was still trying to impose its view on other countries.

8. The Soviet Union would vote against the draft resolution and would not consider itself bound by any decision the Court might take, because the question was not within the competence of the Court.

9. Mr. MAURTUA (Peru) recalled that in resolution 684 (VII), the basic provisions of which were re-

*Resumed from the 891st meeting.

produced in annex II to the rules of procedure, the General Assembly recommended that, whenever any Committee contemplated making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, that Committee might refer the matter to the Sixth Committee. He considered that that recommendation was in fact mandatory, since it was annexed to the rules of procedure.

10. In any case, the International Court of Justice could give only an advisory opinion, which could be accepted or rejected. But, having regard to the principle of the sovereign equality of Member States, it might well be asked what the situation would be if one or more of them did not agree with the opinion delivered by the Court. Moreover, the expression "expenses of the Organization" in operative paragraph 1 of the draft resolution was lacking in precision and failed to take account of the element of urgency. Any request for an advisory opinion should be sufficiently clear and authoritative as to both form and substance.

11. Mr. SERBANESCU (Romania) considered that it was neither necessary nor expedient to request an advisory opinion from the Court. Questions of competence with regard to the financing of peace-keeping operations were regulated explicitly by the Charter, particularly by Articles 11, 24, 43, and 48. The rules existed, but they were not being applied. In many cases, in the past, the authority of the Security Council had been usurped, and to request the Court for an advisory opinion would be equivalent to denying the Council's competence. If there were any doubts about the interpretation of the provisions of the Charter, it was for the Security Council to ask the Court for an opinion. Any decision in the matter that was aimed at bypassing the Security Council would be contrary to the Charter. Romania would therefore vote against the draft resolution if it was put to the vote.

12. Mr. KLUTZNICK (United States of America) congratulated the representative of the Soviet Union on the clarity and moderation with which he had stated his Government's position.

13. He went on to recall that the arrears of the Members' contributions to the financing of ONUC and UNEF had amounted to $85 million in November 1961, that more than seventy countries had not paid their contribution for ONUC for 1960, and that about thirty countries had not paid the sums due on the UNEF account for the financial years 1957 to 1960. The Organization was unquestionably passing through a serious financial crisis. If its credit was to be maintained, funds must be found to cover both expenses already incurred and future expenses. The United States had always paid its contributions as fixed by the General Assembly, and it would continue to do so. In spite of certain rumours, however, it had not the slightest intention of paying for those who did not fulfil their obligations.

14. He understood the apprehensions of the Indian and Peruvian representatives, for no one could predict with certainly what the opinion of the Court would be. But it was better to request that opinion, which would be a purely advisory one, than to remain in the present impasse. The question did have political implications, but essentially it was a legal question. The best argument in favour of requesting the opinion had been furnished by the Soviet Union and Romania. Each Member could, in perfectly good faith, interpret the Charter in its own way and be convinced of the soundness of that interpretation. The United States considered, for its part, that the expenses should be apportioned as the General Assembly had decided, and it might thus object to the question being referred to the Court. The United States, however, did not consider itself infallible, and, though convinced that an advisory opinion from the Court would not be sufficient to resolve the Organization's financial difficulties, it hoped that that opinion would perhaps make it possible more clearly to define the rights and obligations of each Member with respect to the United Nations.

15. Mr. HODGES (United Kingdom) recognized that there was no easy solution to the problem of the financing of peace-keeping operations. The current debate had shown beyond doubt the existence of a profound difference of opinion on the legal interpretation of Article 17 and other Articles of the Charter. In view of the Organization's financial difficulties and of the scale of certain peace-keeping operations, his delegation considered that it was time to clarify that question of interpretation by recourse to Article 65 of the Statute of the International Court of Justice. Once the advisory opinion had been delivered, at least part of the problem would have been usefully clarified. The members of the Committee were not being called upon, for the time being, to take a position on the substance of the matter, but merely on the desirability of requesting an advisory opinion from the Court. He expressed the hope that the draft resolution co-sponsored by his delegation would be adopted, if not unanimously, at least by a fairly large majority.

16. Mr. ARRAIZ (Venezuela) held that, in accordance with Article 17 of the Charter, the expenses of the Organization should be borne by the Members as apportioned by the General Assembly. His delegation, however, had always considered that, in order to take account of the special nature of operations such as those undertaken by the United Nations in the Congo or in the Middle East, the costs of those operations should be carried in a special account or budget and be apportioned among the Member States in accordance with a different scale from that used to determine contributions to the regular budget.

17. The sponsors of the draft resolution were merely asking the International Court of Justice for an advisory opinion on the legal aspects of an extremely serious problem, which was threatening the operations and the very existence of the United Nations. Admittedly, that problem was in some measure political, but it would be useful to settle at least the legal questions it raised. That was why his delegation would vote in favour of the draft resolution.

18. Mr. CASTAÑEDA (Mexico) recalled that it had been the representatives of Brazil and Mexico in the Working Group who had suggested that the Assembly should ask the Court for an advisory opinion: that had seemed to them the best way to solve a problem that would be difficult to solve in the General Assembly. At the fifteenth session and during the proceedings of the Working Group, the Mexican delegation had endeavoured to show why, in its opinion, the costs of peace-keeping operations were not expenses of the Organization within the meaning of Article 17 of the Charter. From the legal point of view, it appeared unacceptable and absurd to rely on a resolution of political nature, which lacked binding force, as a basis for imposing financial obligations on Member States.

19. The problem took on different aspects, depending on the conditions in which the Organization embarked on peace-keeping operations. For instance, in the

hitherto hypothetical case in which the Security Council, invoking Article 43 of the Charter, should call on Member States for assistance and should conclude special agreements with them in the matter, the only costs to be apportioned among all Member States would be general expenses, and the decisions of the General Assembly regarding their apportionment would be binding. At the other end of the scale, there was the case where the Organization did not directly undertake any peace-keeping operations, but recommended that Member States should act individually or collectively to maintain the peace. The case of the Korean conflict, in which some Member States had responded to the Organization's call for action, belonged to that category. Clearly, the costs of those operations were not expenses of the Organization within the meaning of Article 17.

20. The delicate problem of the interpretation of texts arose rather in connexion with intermediate cases which could not be classified under either of those heads, as for instance where, pursuant to a decision of the Organization, the Secretary-General undertook a series of operations on behalf of the Organization. The problem in such cases, was much more difficult to solve and gave rise to doubt and controversy. In the opinion of the Mexican delegation, the expenses incurred in respect of operations of that kind should not be apportioned in the same manner as those which came under the regular budget. However, the argument that those expenses should be considered as "expenses of the Organization" because they corresponded to operations undertaken directly by the Organization was not without point. It would thus be appropriate in each given case, to find out precisely whether the initial decision had been a recommendation or a binding decision, and to whom it has been addressed. That was why it seemed necessary to seek an authoritative legal opinion. The sponsors of the draft resolution had not wished to burden the Court with too general and abstract a question, and had preferred to request its opinion regarding two specific cases. In any event, even if the Court considered that those expenses were expenses of the Organization, they should not be apportioned according to the ordinary scale of contributions.

21. With regard to the question raised by the Peruvian representative, he considered that the Court's decision would have to be complied with. Moreover, he was of the opinion that, as the General Assembly had recommended in resolution 684 (VII), the question should be referred to the Sixth Committee for advice on the legal aspects and on the drafting of the request for an advisory opinion, or should be considered by a joint Committee of the Sixth and Fifth Committees. In conclusion, he said that he had not yet received instructions from his Government as to how he should vote on the draft resolution.

22. Mr. GANEM (France) paid a tribute to the Working Group, whose work would prove most useful in the event of a revision of the Charter, which would have to take place sooner or later. France, which had always favoured recourse to arbitration by international juridical bodies, had expressed the view in the Working Group of Fifteen that the General Assembly could request an advisory opinion from the International Court of Justice. Unfortunately, neither the Soviet Union nor the United States recognized the compulsory jurisdiction of the Court. Eight years earlier at the request of the United States delegation, the General Assembly in its resolution 785 A (VIII) had asked the Court for an advisory opinion as to whether, under the Statute of the United Nations Administrative Tribunal, the General Assembly could disregard the Tribunal's decisions. By a very large majority, the Court had given a negative reply,[1] which the General Assembly and the United States delegation had had no difficulty in accepting. That had been a much more elementary question than the problem with which the Committee was currently concerned. The Judges of the Court, whose professional conscientiousness was proverbial, would certainly wish to be in full possession of the facts, and it followed that they would probably study the preparatory work which had preceded the adoption of the Charter. They would not find any specific information bearing on Article 17, which had been taken over bodily from a proposal made at the Dumbarton Oaks Conference itself corresponding to the practice of the League of Nations. If they studied the debates in the United Nations on financial matters, they would see that the principle of two distinct budgets had already been proposed. If they studied United Nations practice, they would find that in the case of certain Member States contributions to expenses arising out of peace-keeping operations had become optional.

23. Moreover, the composition of the Court was not very different from that of the Working Group, the Judges were of course completely independent, nevertheless their decisions rarely ran counter to the stand taken by their respective Governments. Lastly, they would not be able to consider Article 17 in isolation from the other Articles of the Charter. In the circumstances, taking the most optimistic view, it seemed unlikely that they would be able to deliver their opinion earlier than July 1962. A number of dissenting opinions would probably be involved, and at its seventeenth session, the General Assembly, having before it an advisory opinion regarding which there was no knowing beforehand whether it would be based on an absolute or a relative majority, would find that it had made little headway. Moreover, recourse to arbitration by the Court would probably merely have the effect of making the attitudes of the Governments concerned more rigid, and the financial reforms which could have been initiated in the meantime would have been delayed by a whole year. For those various reasons, the French delegation would not be able to support the draft resolution (A/C.5/L.702).

24. Mr. GORBAL (United Arab Republic) said he had some misgivings about the method that the Committee intended to follow. In becoming parties to the Statute of the International Court of Justice, Member States had recognized that in certain circumstances it might be necessary to ask the Court for an advisory opinion, but the draft resolution before the Committee did not seem to meet the conditions laid down in Article 65, paragraph 2, of the Statute.

25. By merely transmitting to the Court a resolution asking it to decide whether the expenditures relating to ONUC and UNEF were "expenses of the Organization" within the meaning of Article 17 of the Charter, the Assembly would not be supplying the Court with all the requisite data which might enable it to elucidate the question. The Court should also be acquainted with the reasons which had led to the launching of the two operations concerned.

26. Under Article 2, paragraph 3, of the Charter, Members of the Organization were required to settle their international disputes by peaceful means, and

[1] See I.C.J. Reports 1954.

Article 2, paragraph 4, imposed on them an obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations. Yet it was to assist a Member State which had been attacked by other Member States that the UNEF operation had been undertaken in the Middle East in 1956, and assistance to one of their number which had suffered aggression had surely been an obligation on all Member States. If draft resolution A/C.5/L.702 was adopted, the General Assembly, by asking the Court whether or not all States must contribute to financing those operations, would appear to admit that some States which had failed to comply with their obligations were not required to assume financial responsibility for acts committed in violation of the Charter.

27. The same applied to ONUC since, in that case also, the United Nations had undertaken the operation in order to protect the territorial integrity and security of a Member State and other Member States had refused to comply with resolutions adopted by the General Assembly or the Security Council.

28. He could therefore scarcely agree to the idea of requesting an advisory opinion from the Court on a question which was not precisely defined, but would be pleased to support any formal proposal by the representative of Mexico to seek the advice of the Sixth Committee.

29. Mr. WILLOCH (Norway) thought that the draft resolution was constructive and might provide a way out of the impasse. A clear and unambiguous opinion from the Court might help Member States to arrive at a decision on the question of financing peace-keeping operations. Even if the problem was fundamentally a political one, as some delegations thought, there was no reason not to seek by every means to clarify its legal aspects. Some delegations were convinced that only their own legal interpretation was sound, but that was not sufficient reason to refrain from asking the Court for an advisory opinion. On the contrary, those delegations should take the opportunity to submit their views to the highest legal tribunal. The Norwegian delegation had always favoured the idea of requesting the Court's opinion on disputes between States, and would vote in favour of the draft resolution.

30. Mr. GREZ (Chile) said that he would like the vote to be deferred until the beginning of the following week since his delegation, like several others, had not yet received instructions from its Government.

31. Mr. NDUKI (Congo, Leopoldville) stated that he would be obliged to abstain if the draft resolution was put to the vote because of his impression that the text had subjective undertones which he would not countenance. The Government of the Congo (Leopoldville) would not encourage conflicts between blocs and did not propose to take part in such conflicts. He had already had occasion to say that States which refused to contribute to the financing of peace-keeping operations displayed a lack of charity and scruples, and he hoped that such States would reconsider their decision. He agreed with the representative of Peru that the Sixth Committee should also be asked for an opinion.

32. Mr. GIRITLI (Turkey) agreed with the representative of Norway that the question of financing peace-keeping operations had legal aspects and that a request for an advisory opinion from the Court was therefore perfectly in order. Consequently, he would vote in favour of the draft resolution.

33. Mr. CARRILLO (El Salvador) believed there was no doubt that Member States were required to defray the expenses of the Organization, no matter what body was competent to authorize the United Nations to undertake an operation. The problem was not the competence of this or that body, but simply a matter of the ratio in which peace-keeping expenses should be apportioned among Member States.

34. He supported the Chilean delegation's suggestion that the voting should be deferred, since he had not had time to consult his Government. Under rule 121 of the rules of procedure of the General Assembly, the vote should be postponed. If the draft resolution was put to the vote at the present meeting, he would be obliged to abstain.

35. Mr. MAURTUA (Peru) remarked that the sole purpose of the draft resolution was to obtain from the Court a clarification of the position concerning expenditures relating to UNEF and ONUC. Thus the advisory opinion, whatever it might be, would not be of a general nature and could not be applied on other occasions. It would be better to ask the Court for a general legal opinion on the whole question of financing peace-keeping operations, requesting it to take into consideration not only Article 17 but other articles of the Charter, such as Articles 48, 50 and 43, which had a bearing on the question of financing such operations.

36. The draft resolution did not even envisage the position of States which might be required to participate in financing such operations but were unable to do so because of special economic problems. Nor did the text allow for the possibility of establishing a special, and more equitable, scale of contributions for the apportionment of peace-keeping expenses. Some States felt that most of the expenses in question should be borne by the permanent members of the Security Council, while others considered that a large part of the costs should be imposed on the States responsible for the situation which had led to the operations. The text further omitted to mention the distinction which had been made between Security Council decisions and General Assembly recommendations. Account should also be taken of Article 19 of the Charter, which might have serious consequences for Member States.

37. He hoped that the sponsors of the draft resolution would consider his objections and amend their text accordingly, so that it might be supported by a majority of the Committee. It must be borne in mind that States which did not agree with the advisory opinion of the Court could ignore it. As he needed more time to study the question, he too would like the voting deferred until the beginning of the following week.

38. The CHAIRMAN said that he saw no objection to postponing the vote until the following Monday provided that the Committee completed its consideration of the question at the afternoon meeting and that the action on Monday was restricted to the vote and explanations of vote.

39. Mr. KLUTZNICK (United States of America) said that he too would agree, as a co-sponsor of the draft resolution, to the postponement of the vote.

40. He drew the attention of the Peruvian representative to the preamble of the draft resolution and assured him that it was not the view of the sponsors that

the Court should confine itself to an examination of Article 17 of the Charter and of the Draft resolution, but that it should consider the Charter as a whole. Moreover, under the Rules of the Court, any Member State was entitled to submit its views to the Court. It was the sponsors' intention that the Court should consider the question exhaustively and in all its aspects.

The meeting rose at 12.55 p.m.

Litho in U.N. 77501—January 1962—2,000