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CONTENTS

Page

Admission of new Members, including the right of candidate States to present proof of the conditions required under Article 4 of the Charter (A/1887/Rev.1, A/1899, A/1907 and A/C.1/702)..... 215

Chairman : Mr. Finn MOE (Norway).

Admission of new Members, including the right of candidate States to present proof of the conditions required under Article 4 of the Charter (A/1887/Rev.1, A/1899, A/1907 and A/C.1/702)

[Item 60]*

GENERAL DEBATE

1. Mr. BELAUNDE (Peru) felt that he was expressing the views of many delegations when he stated that the question of the admission of new Members was a particularly pressing one.

2. A correction was needed in the Spanish text of the draft resolution he had presented (A/C.1/702). The word "*puede*" had been omitted before the word "*juridicamente*" in the third paragraph.

3. Mr. Belaúnde wished to thank his colleagues from the American continent, more particularly Dr. José Arce, who had been for a long time the Argentine representative on the First Committee, and the delegations of the British Commonwealth of Nations and the delegations from the Arab States, who had all worked since the creation of the United Nations to make it universal. He also thanked the representatives of the United Kingdom and the United States who had helped him to improve the text of his draft resolution.

4. The crisis which the United Nations had experienced was undoubtedly due to disagreement between the great Powers. It had come to a head, however, as a result of the fact that one-fifth of the nations of the world were not Members of the United Nations. Moreover, those nations included many which had made particularly important contributions to civilization. Thus it was not only the number, but also the quality of the States that were not members that prevented the United Nations from being a universal body.

5. Without that universality, the Organization could not create the harmony which should exist between it and the family of nations, of which it was the legal representative. If a balance were not achieved between the international community and the United Nations, the latter would be imperfect and, at most, would represent an alliance between opposing blocs.

6. The creation of the United Nations at San Francisco had not been merely the result of a political opportunity which had arisen. It was true that the end of the war provided an occasion favourable to the foundation of an international body. Nevertheless, the favourableness of the occasion was secondary in importance to the purpose, which was to give legal form to the international community. For instance, it must not be forgotten that at that time the United States had decided to abandon its policy of isolation and to play a leading part in the future of the United Nations.

7. The founders of international law had always stressed the conception of universality and of the community of States. Victoria and, after him, Suarez—to quote only the earliest and most important—had pointed out that every State was a part of the international community. There were two obstacles, however, to the harmonious development of that community. First, the chauvinist tendency to erect barriers between States and to replace law by tyrannical respect of the nation ; second, the totalitarian tendency, which might assume the appearance of universality, but was contrary to the harmonious development of States on an equal footing and tended to impose the hegemony and domination of the strongest. That imperialist tendency, pagan in inspiration, had been opposed, as had also the chauvinist tendency, by the founders of international law, who had stressed the Christian conception of the international community. It should further be added that such an international community allowed for the harmonious development of each of its members and derived its wealth from the variety within itself.

8. Recalling Simón Bolívar's ideas on the universality of the community of nations, the Peruvian representative successively reviewed the declarations and agreements which had preceded the signature of the United Nations Charter from the point of view of the concepts of universality underlying them.

9. At the third meeting of consultation of Ministers of Foreign Affairs of American States held in Rio de Janeiro in September 1942, the Inter-American Juridical Committee had declared that no State would be debarred from the future international organization. The declaration had not

* Indicates the item number on the General Assembly agenda.

only established the right of each State to membership in the international community but had stated that it was a duty which States must accept. On 30 October 1943, the signatories of the Moscow Declaration had recognized the necessity of establishing a general international organization, based on the principle of the sovereign equality of all peace-loving States. That declaration was accepted one month later by the United States Senate. On 1 December 1943, at the conclusion of the Teheran Conference, the representatives of the United States, the United Kingdom and the Soviet Union had stated that they sought the active co-operation of all nations large and small.

10. The Inter-American Council of Jurists had echoed that generally expressed tendency to universality, and had declared that the future international machinery should be a sort of new League of Nations, until it could be transformed into a universal organization. All those declarations showed that their authors on no account intended the founder Members to be given arbitrary power to judge whether States who were not yet members of the Organization could be admitted. That was why the Dumbarton Oaks proposals had provided that all peace-loving States should be members of the Organization.

11. Thus it was not only logical and fitting that the international community should be universal, but it was also required by international law and by the various instruments which had immediately preceded the United Nations Charter.

12. Universality was moreover provided for in the United Nations Charter itself. It was true that technically the provisions of Article 4 were defective from the legal point of view. Article 4 clearly laid down the conditions governing the admission of new Members, but it did not lay down the right of each State, or the obligation upon it, to become a Member. That omission resulted from the fact that law developed step by step. In view of that shortcoming, two attitudes were possible. The first was to acknowledge that the article was imperfect and to make no attempt to obviate it. As opposed to that reactionary point of view, which did not permit the development of law in line with the development of mankind, the other attitude was to make up for what was lacking in the letter of the law by its spirit, so as to make explicit what had so far been only implicit.

13. The conditions laid down in Article 4 of the Charter governing the admission of new Members were not intended to restrict the principle of universality, but merely to provide certain guarantees. The fact that those conditions applied to all and could be fulfilled by all meant that they were in no sense derogations from the principle of universality itself.

14. Obviously the expression "peace-loving States" was vague from the legal point of view. It had been adopted because, at the time the Charter had been drawn up, the first necessity had been to attract public attention and because it was readily understandable. The idea that peace-loving States were those which maintained friendly relations with other States, which respected their international obligations and submitted their international disputes for peaceful settlement was a fairly obvious one. It could not be claimed on the other hand that it was peace-loving for one State to arrogate to itself the arbitrary right of deciding whether another State was or was not peace-loving. It had been the intention of the authors of the Charter to admit within the United Nations all peace-loving States. That was why it was impossible to accept the narrow concept put forward by Professor Hans Kelsen in his book entitled *The Law of the United Nations*, namely that for lack of an explicit definition of the term "peace-loving", it was for the Members of the United Nations to judge whether non-member States who had applied for admission did possess that peace-loving character.

15. It was true that the provisions of Article 4 were very imperfectly worded, since some claimed that they bestowed on the Security Council arbitrary and cynical powers which might enable it to disregard the facts of a situation and block the admission of States which met all the prescribed conditions, on the pretext that in its opinion those States might be harbouring doubtful intentions. It was clear that it was against the conceptions of law and democracy to give the Security Council such a power. The objection might be made that the United Nations had not only a legal character but was above all else a political body. While not denying that fact, he must point out that a good policy would never be arbitrary and that in the present case any interpretation of what was meant by a "peace-loving State" which was not in accordance with objective reality as defined in the third paragraph of the draft resolution would be arbitrary.

16. It might also be said that in every community there were *actes de gouvernement* and cases of discretionary action by the authorities which were not governed by law. In so far as such powers existed, they were not identical with arbitrary powers. The tendency in law was for those discretionary or subjective powers to diminish and to become embodied in regulations. *Actes de gouvernement* were at present circumscribed by the constitution and the law, and the judge's subjective powers were limited to cases which had not been provided for by the legislative bodies. As life in society became more and more complex, those powers fell within the ever more clearly defined limits set by the development of legislation and jurisprudence.

17. As law evolved, it aimed at imposing the greatest possible limitations on the arbitrary factor. For that reason a sound interpretation of Article 4 of the Charter required that the Security Council should pass upon the peace-loving nature of States applying for membership of the United Nations with due regard to the facts of the case and without making use of discretionary powers.

18. He quoted Professor Hauriou and other authorities on public law to show that the concept of discretionary powers had been driven from the field by the concept of public interest. Under Article 4, therefore, the Security Council possessed no discretionary powers but a prescribed power to confirm whether the past or present attitude of States which applied for membership warranted their being placed in the category of "peace-loving States".

19. It must be added that, in any event, the exercise of discretionary power was circumscribed by the aims and motives behind the action. Since the aim of the United Nations was universality, the Security Council was bound by that aim and could not, therefore, decide to exclude a State *a priori*, since that would be inconsistent with the aim of universality.

20. In its opinion, given on 28 May 1948,[1] the International Court of Justice had stated that admission to membership could not be made dependent on conditions not provided by Article 4 of the Charter. That opinion excluded the possibility of States basing their votes on motives which were outside the scope of Article 4 of the Charter.

21. Evidence should, therefore, be submitted in support of the facts which would justify the admission of new

[1] See *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion*: I.C.J. Reports 1948, p. 57.

Members, and such evidence should be submitted by the States applying for admission.

22. When the United Nations took a decision on the admission of new Members, it should make a reasoned finding, free of ambiguity and of any political considerations and based upon the legal conditions laid down in Article 4.

23. The Peruvian delegation proposed, therefore, that States which had applied for admission to membership should submit to the Security Council or the General Assembly evidence of their qualifications under Article 4 of the Charter ; it further recommended that the Security Council should reconsider such applications, basing its decisions exclusively on the conditions contained in the Charter and on the facts establishing the existence of those conditions.

24. In submitting that proposal, the Peruvian delegation recognized that it was an interpretation of the Charter, but considered that the General Assembly had the power to make such an interpretation. Moreover, the Peruvian proposal was in conformity with the law and reduced the arbitrary factor to a minimum.

25. He hoped that the legal traditions of his country and the ideas of legal solidarity common to all the Latin American States would help the Organization which legally represented the family of nations to acquire the universality which should characterize it.

26. Mr. SOHLMAN (Sweden) recalled that his delegation had always been in favour of the principle of the universality of the United Nations, since any organization set up for the purpose of maintaining international peace should include all the peoples of the world. It had not, however, belonged to those delegations at San Francisco which had wanted membership of the Organization to be obligatory for all States, nor to those which had thought that all States should be admitted to membership unconditionally. Nevertheless, the United Nations work would be greatly facilitated if it had the co-operation of all States, great and small.

27. In any event, until the Organization became really universal, the geographical representation of the various parts of the world should be as evenly balanced as possible. In the case of some continents, all countries were represented. Out of the twenty-seven European countries, however, only sixteen were Members of the United Nations. Central and southern Europe were represented by only two countries. The case of Italy in particular illustrated the urgency of the problem.

28. It would be well to recommend that the Security Council should reconsider the applications for admission which had been submitted, in a spirit of generosity and liberality and bearing in mind the principle of universality.

29. Mr. RESTREPO JARAMILLO (Colombia) said that his delegation would vote for the draft resolution submitted by the Peruvian representative, because it believed whole-heartedly in the principle of the universality of the United Nations.

30. At the same time, it did not consider the draft resolution to be a final solution of the problem before the General Assembly, although it was a step in the right direction. The problem would not be finally solved until the General Assembly reasserted its full powers, which at present depended upon a favourable decision by the Security Council. That was illogical ; if the General Assembly was not obliged to endorse a favourable decision of the Security Council, it should not be bound by an unfavourable decision by that body.

31. It would be impossible for the United Nations to function properly as long as great countries which played an important part in world affairs remained outside the Organization. The advisory opinion of the International Court of Justice, to which there was reference in the draft resolution submitted by Peru (A/C.1/702), was not binding on the General Assembly. The latter's authority could not be limited by a unilateral interpretation of the Charter, given by an organ whose authority, like that of the Assembly, was governed by the Charter itself.

32. The absence of such countries as Italy, Spain and Portugal was incompatible with the principles and purposes of the United Nations. As the Peruvian representative had pointed out, the legal criteria laid down in the Charter should be the sole determining factors. The introduction of political considerations or of feelings of sympathy or antipathy for countries could only bring discord into the Organization.

33. For those reasons the Colombian delegation would vote for the draft resolution submitted by Peru. It would, however, continue its endeavours with a view to the adoption, if possible during the next session of the General Assembly, of measures to restore the Assembly's full powers.

34. Mr. AL-GAYLANI (Iraq) observed that the examination of the question of the admission of new Members had attracted the attention of millions of human beings to the General Assembly's debates, since their participation in its work would depend on the results achieved in that connexion.

35. According to Article 4 of the Charter, there could be no question as to the General Assembly's power to take decisions. The powers usurped by the Security Council were based on the abuse of the veto, which was itself incompatible with the spirit of the Charter. The delegation of Iraq believed in the principle of the universality of the United Nations and felt that the veto should not be applied when that principle was at stake.

36. He recalled the terms of the second paragraph of the Preamble and of paragraphs 2 and 3 of Article 1 of the Charter. The representative of Iraq feared that, in considering the question, the Security Council had not paid sufficient attention to the principle of the equal rights of all countries, great and small, the need to develop friendly relations between the nations and the principle of international co-operation. A number of States which were prepared to co-operate fully in the work of the United Nations and to respect the principles of the Charter had been refused admission.

37. At the fourth session of the General Assembly the delegation of Iraq had submitted a draft resolution recommending that all the applicant States should be admitted, in accordance with the letter and spirit of the Charter. [2] That draft resolution had been adopted by the General Assembly, with a few amendments, and transmitted to the Security Council. [3] The erection of the obstacles which had prevented the realization of the principle of universality of the Organization was contrary to the spirit of international co-operation.

38. In particular, the Committee should consider the application for membership submitted by the United Kingdom of Lybia (A/2032). The Government of Libya had now taken over full power and it was to be hoped

[2] See *Official Records of the General Assembly, Fourth Session, Ad Hoc Political Committee, Annex*, document A/AC.31/L.21.
[3] *Ibid., Fourth Session, Plenary Meetings*, 252nd meeting.

that there would be no dissension in the Security Council with regard to that country's admission.

39. Although the representative of Iraq had not yet thoroughly studied the draft resolution submitted by the Peruvian delegation (A/C.1/702), he believed that it expressed his delegation's views. He reserved the right to speak again later in the discussion.

40. Mr. CASTILLO ARRIOLA (Guatemala) said that his delegation, together with those of Honduras and El Salvador, had asked that the item be included on the agenda of the General Assembly's sixth session solely because it supported unreservedly the principle of the universality of the United Nations. He had not intended to support the admission of any particular State.

41. The delegation of Guatemala had not hitherto submitted a draft resolution because it had been anxious to hear a statement from the representative of Peru and to study that statement in detail before taking part in the debate.

42. Faris EL-KHOURY Bey (Syria) stressed his agreement with the representative of Peru as regards the essential point of his draft resolution—the principle of the universality of the United Nations.

43. His country had been the first to insist on that principle when it was a member of the Security Council in 1947 and 1948. The General Assembly was bound in the matter by the provisions of Article 4 of the Charter. Furthermore, no signatory to the Charter could be deprived of the rights acquired by signing it. It followed that, by virtue of Article 27, any permanent member could prevent the adoption of a recommendation for the admission of a new member, and that the General Assembly in its turn would be unable to take a decision without a favourable recommendation from the Security Council. The transmission to the Council of a further recommendation requesting it to reconsider applications for admission would therefore be futile as long as one of the permanent members continued to oppose the adoption of a favourable recommendation.

44. In the present circumstances, it would be necessary, in order to reach a solution as regards the admission of the nine States which could count on a favourable vote from a majority of the members of the Security Council, for the USSR to abstain in the voting on those States. Furthermore, while the USSR delegation persisted in its demand for the admission of the five States enjoying its support, the nine others would be refused admission. To break the deadlock, the four other permanent members would have to accept the principle of universality.

45. The representative of Peru proposed that the States which had applied for admission should be invited to submit proof of their qualifications under the terms of Article 4 of the Charter. Such a procedure might place the United Nations in an embarrassing position if, in any particular case, it found that the proofs were not sufficient. If the representative of Peru would agree to confine his proposal to a request that the principle of universality should be adopted, it would probably obtain a majority vote.

46. Mr. BELAUNDE (Peru) said that he would be prepared to accept the Syrian representative's suggestion if it were not for the fact that the Charter laid down certain inescapable obligations. In conformity with those obligations, a State had the right to furnish proof of its qualifications. Furthermore, the Security Council had no arbitrary powers under Article 4 of the Charter. The Peruvian draft resolution marked a step forward, which should now be taken. The spirit of the Charter must be respected, and it must be emphasized that the General Assembly was entitled to interpret the letter.

The meeting rose at 5.35 p.m.

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