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CONTENTS

Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 65

Reservations to multilateral conventions: the Convention on the Inter-Government Maritime Consultative Organization (A/4188, A/4235, A/C.6/L.448 and Add.1, A/C.6/L.449 and Add.1 and 2, A/C.6/L.450) (continued)

CONSIDERATION OF DRAFT RESOLUTIONS (A/C.6/L.448 AND ADD.1, A/C.6/L.449 AND ADD.1 AND 2, A/C.6/L.450) (continued)

1. Mr. Benjamín COHEN (Chile) submitted the draft resolution contained in document A/C.6/L.450 on behalf of his delegation and the other co-sponsors. While appreciating the need for settling the question of India's membership in IMCO, he did not think that the general question of reservations to multilateral conventions could be decided until an over-all study of the subject had been made by the International Law Commission and other international organizations, including, for example, the International Conference of American States at Quito in 1960. Such an over-all study must necessarily go beyond the scope of the draft resolution contained in document A/C.6/L.449 and Add.1 and 2, which applied only to the functions of the Secretary-General as depositary. For that reason, he hoped that the Committee would see fit to approve the draft resolution he had just submitted, which was aimed at establishing a universal rule to govern all aspects of the question of reservations.

2. Sir Gerald FITZMAURICE (United Kingdom) said that it would be difficult to engage in any discussion on the subject of reservations to multilateral conventions without going into the specific, concrete issues raised by the three draft resolutions before the Committee. In order to shorten the debate, he proposed that the Committee should first vote on the joint draft resolution (A/C.6/L.448 and Add.1), concerning which there appeared to be no controversy, and then turn to the draft resolutions contained in documents A/C.6/L.449 and Add.1 and 2 and A/C.6/L.450.

3. Mr. ZEPOS (Greece) and Mr. NISOT (Belgium) supported the United Kingdom proposal.

4. After a brief procedural discussion, in which objections to the United Kingdom proposal were expressed by Mr. EL-ERIAN (United Arab Republic), Mr. AMADO (Brazil), Mr. TCHOBANOV (Bulgaria) and Mr. GLASER (Romania), the CHAIRMAN put the United Kingdom proposal to the vote.

The United Kingdom proposal was adopted by 44 votes to 14, with 8 abstentions.

5. After a procedural discussion, in which Mr. CHARDIET (Cuba), Mr. MAURTUA (Peru), Mr. ZEMANEK (Austria), Mr. JEAN-LOUIS (Haiti), Sir Gerald FITZMAURICE (United Kingdom), Mr. SALAMANCA (Bolivia), Mr. Maxwell COHEN (Canada), Mr. PERERA (Ceylon), Mr. TCHOBANOV (Bulgaria), Mr. MOROZOV (Union of Soviet Socialist Republics), Mr. DE LA GUARDIA (Argentina), Mr. LACHS (Poland) and Mr. DOUC RASY (Cambodia) took part, the CHAIRMAN proposed that the joint draft resolution (A/C.6/L.448 and Add.1) should be put to the vote.

At the request of the representative of Peru, a separate vote was taken by roll-call on the third paragraph of the preamble.

Cuba, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Cuba, Czechoslovakia, Denmark, Dominican Republic, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Lebanon, Liberia, Mexico, Netherlands, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Sudan, Sweden, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Yemen, Yugoslavia, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica.

Against: Peru.

Abstaining: United States of America.

The third paragraph of the preamble was adopted by 65 votes to 1, with 1 abstention.

At the request of the representative of India, a vote was taken by roll-call on the joint draft resolution (A/C.6/L.448 and Add.1) as a whole.

Denmark, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Denmark, Dominican Republic, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Lebanon, Liberia, Mexico, Netherlands, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Sudan, Sweden, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Yemen,

Yugoslavia, Argentina, Australia, Austria, Belgium Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia.

Against: Peru.

Abstaining: United States of America.

The joint draft resolution (A/C.6/L.448 and Add.1) as a whole was adopted by 65 votes to 1, with 1 abstention.

6. Mr. PATHAK (India) said that he had intended to reply in detail to the points made by the representative of the Secretary-General (616th meeting). In view, however, of the vote approving the joint draft resolution and of the spirit of co-operation and understanding of which it was the fruit, he would refrain from making that reply. He nevertheless wished it to be entirely clear that the Indian delegation had in no way modified its original position.

7. Mr. SPERDUTI (Italy) said that he wished to exercise his right of reply with regard to the statement made by the representative of the Ukrainian SSR (621st meeting). According to that representative, the Italian delegation had declared that the Secretary-General was not empowered to accept in deposit instruments containing reservations. The Italian delegation had made no such statement. On the contrary, he had sought to draw the Committee's attention to the fact that the Secretary-General, upon receiving for deposit an instrument containing reservations to which objections had been made, was not empowered under General Assembly resolution 598 (VI) to pass on the juridical effects of the reservations in question.

8. Nor had the Italian delegation said that if a convention contained no clause either allowing or forbidding reservations, such reservations could only be allowed if there were no objections from the other contracting parties. He could have made no such statement without contradicting himself. What he had said was that the General Assembly, by resolution 598 (VI), had expressly requested the Secretary-General neither to apply the unanimity rule nor to take any other substantive decision pertaining to reservations, regardless of whether or not a dispute had arisen; he had then added that the Secretary-General was bound to leave the decision regarding the date on which a reserving State became a party to the Convention or the date of the Convention's entry into force to the competent organs.

9. The Italian delegation had opposed any attempt to make resolution 598 (VI) an instrument giving general application as a rule of international law to the advisory opinion of the International Court of Justice of 28 May 1951.[1] Such an interpretation of the resolution would be contrary to the very sense of that advisory opinion. The Court had set definite and unequivocal limits upon the scope of the solution it had advocated for the Convention on Genocide.

10. The Italian delegation had not neglected the part of the Court's advisory opinion dealing with the principle of unanimity and could not be accused of having considered that advisory opinion in an incomplete fashion. The Italian delegation had stated that the Court had indicated that the practice previously followed by the Secretary-General and by the League of Nations could not be considered based on any rule of international law and that it had not led to the establishment and recognition of such a rule. He hoped that his remarks would remove any misunderstanding there might have been regarding the real meaning of his previous statement.

11. Mr. CHOWDHURY (Pakistan) said that he had joined in sponsoring the joint draft resolution as it had been in complete accord with the views he had expressed in the general debate. It now seemed entirely clear that the Government of India had accepted the IMCO Convention [2] without any reservation, the statement it had attached to its instrument of acceptance having been no more than a declaration in conformity with article 1 (b) of the Convention. He welcomed the fact that the decision just taken by the Committee was one which would facilitate India's participation in IMCO as a full member.

12. It was gratifying that the resolution reflected a satisfactory settlement between delegations which held conflicting views. The fact that the resolution recorded that the Government of India had merely submitted a declaration absolved the Committee from considering the question of principle whether an instrument of acceptance of the IMCO Convention could be accepted with a reservation to which an objection had been raised. By forwarding the question to IMCO for decision, the Committee was relieved of the necessity to take a decision regarding the competence of the United Nations in the matter.

13. Mr. MAURTUA (Peru) wished to explain why his delegation had requested a separate vote on the third preambular paragraph of the joint draft resolution. The Committee must adopt a responsible attitude with regard not only to the resolutions it adopted but also to their consequences. Compromise solutions should not be the result of a sacrifice of principles. Thus, if the third preambular paragraph of the draft resolution stated India's position, some mention should also have been made of the positions adopted by other parties, such as the representatives of the Secretary-General and France. Only in those circumstances would a real compromise solution endorsed by all parties present have been reached. By approving the third preambular paragraph, the Committee had accepted the validity of a declaration of policy with regard to the Convention without recognizing that declaration as a reservation, even though it could affect the force and integrity of the Convention.

14. The Peruvian delegation wished to announce its opposition to such a practice. His delegation respected the will of the parties as regards the matters raised by the Indian declaration and the French Government's objection to that declaration. The Government of France had now agreed that the statement made by the Indian representative to the Sixth Committee might open the door to an understanding in IMCO. However, the making of declarations of policy upon ratification of a treaty was a novel procedure which was likely to give rise to disputes in the future because of the need to defend the integrity and meaning of treaties. It would be valid to ask what the direct effect of India's so-called declaration of policy would be on the force of the IMCO Convention, which was a constitutional treaty. The matter was one that required serious reflection.

[1] Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, p. 15.

[2] United Nations Maritime Conference, Final Act and Related Documents (United Nations publication, Sales No.: 1948.VIII.2), p. 29.

15. Mr. COCKE (United States of America) said that his delegation believed that article 55 of the IMCO Convention made it clear that the appropriate way of dealing with that problem was in IMCO, and that it would be inappropriate for the General Assembly to attempt to influence the decision in IMCO. Taken as a whole, the joint draft resolution contained in document A/C.6/L.448 and Add.1 was such an attempt, and the United States delegation had abstained in the voting on that draft resolution even though the decision it foreshadowed was one which the United States had supported in the past, and would continue to support in IMCO.

16. Mr. USTOR (Hungary) explained that he had voted in favour of the joint draft resolution as he well understood India's concern over the events which had led to the situation whereby India had been deprived of a vote in IMCO. His delegation whole-heartedly supported India's efforts to remedy that situation, and it was clear from developments in the Committee that India would achieve its aim.

17. Discussion of the item had shown that the procedure applied by the Secretary-General, as depositary of multilateral conventions concluded under United Nations auspices, to conventions concluded prior to 12 January 1952 differed from that applied to conventions concluded after that date. The representative of the Secretary-General had stated that General Assembly resolution 598 (VI) was responsible for that situation, but the representatives of India and the USSR had put forward convincing arguments to show that that resolution could not be interpreted as sanctioning the Secretary-General's practice regarding conventions concluded before 12 January 1952. The representative of the Secretary-General had been supported in his views by the United Kingdom representative and others. He for his part must disagree with those views.

18. The rule of interpretation known as expressio unius est exclusio alterius was of long standing and had been followed by international tribunals in a number of cases. It was not, however, the only rule of interpretation and was subordinate to the more general rule that a rule of interpretation could not itself lead to a result which was unreasonable or inconsistent with generally recognized principles of international law. Indeed the International Court of Justice had refused to recognize the principle of unanimous consent as being a rule of international law. It could not be assumed that after the Court had given such an opinion the Assembly should resolve to continue a practice which was neither well established nor necessarily reasonable.

19. The representative of the Secretary-General had denied the charge that the unanimity rule had been applied in the case of India's accession to IMCO. The matter involved the Secretary-General's interpretation of his note to India quoted in his report (A/4235, para. 8). If the Secretary-General applied the same rule of interpretation as he applied to resolution 598 (VI), the whole argumentation in paragraph 14 of the report would collapse completely. At all events it was clear that the Secretary-General had in fact been applying the unanimity rule to India's accession to the IMCO Convention. The Committee should now take the opportunity to give the Secretary-General fresh instructions with regard to treaties concluded prior to 12 January 1952.

20. Mr. AMADO (Brazil), explaining his support for the joint draft resolution, recalled that at the General Assembly's sixth session the Brazilian delegation in the Sixth Committee (see 267th meeting) had found itself in opposition to the other South American States. Having taken part in the consideration of the question of reservations to multilateral conventions at the third session of the International Law Commission, he had felt bound, on that occasion, to align himself with those who, like the United Kingdom and French representatives, had preferred to remain faithful to the traditional principles governing the subject. He would redefine the Brazilian position at a later stage, during the discussion on the two remaining draft resolutions.

21. The question introduced by India had, despite its happy outcome, revealed the somewhat excessive sensibility of the United Nations. An incidental question of that nature should hardly have provoked so heated a discussion, in which many delegations had implied that the whole question of reservations called for urgent emergency action. The Indian representative himself, in introducing his case, had unleashed an artillery barrage somewhat out of proportion with the objective which it had been India's intention to secure. The Brazilian delegation, as indeed the entire Committee, fully sympathized with India and well understood the importance of merchant shipping to a country seeking to expand its economy, but it could not quite understand why such a formidable array of weapons had been aligned merely to assert India's right to be a member of IMCO, a right which none had disputed.

22. In discussing the two other draft resolutions relating to reservations, the Committee should bear in mind that the general question of reservations was virtually inexhaustible. In any event, with all due respect to the Special Rapporteur on the law of treaties, that question simply could not be solved in two years. The Latin American countries had probably shown much vision in the matter of reservations in defending the procedure approved by the Eighth International Conference of American States at Lima, for that was clearly the procedure best designed to ensure the greatest number of ratifications. On the other hand, the ruling of the International Court, in its advisory opinion on the Genocide Convention, that reservations had to be subjected to the test of their compatibility with the "object and purpose" of the Convention—a criterion previously unknown—showed that no universally applicable rules could be readily devised. In some conventions, particularly ones that possessed certain features of a synallagmatic contract, the integrity of the instrument might indeed be the most important consideration. In other cases, however, especially where the multilateral convention concerned was of the law-making type, as was common with conventions drawn up under the auspices of the United Nations, the universal application of the instrument might be even more important. In view of the vastness of the problem, therefore, the Brazilian delegation was opposed to any attempt being made to solve the whole question of reservations in the near future.

23. In conclusion, he wished to stress that the Secretary-General's conduct in dealing with the Indian declaration seemed completely above reproach. The United Nations was indeed fortunate that the Secretary-General always justified the trust and respect of Member States. That fact should be borne in mind if any attempt was to be made to give him further instructions regarding his functions as depositary.

24. Mr. PEREIRA (Portugal) said that, in the first place, the Portuguese delegation fully agreed with the Netherlands and Austrian representatives, who had said (615th meeting), that the General Assembly lacked competence to go into the heart of the question of India's membership in IMCO. Secondly, his delegation believed that Article 100 of the Charter had nothing to do with the Secretary-General's actions as depositary of the IMCO Convention. The risk inherent in introducing Article 100 into the discussion was wholly unwarranted.

25. Mr. MOLINA (Venezuela), explaining his vote, said that the draft resolution approved by the Committee accurately interpreted the feelings of many delegations regarding India's position. The Venezuelan delegation had particularly welcomed the views expressed by the representatives of Haiti and France, which had demonstrated the real significance of international co-operation.

26. Mr. GLASER (Romania) said that he had voted for the joint draft resolution to emphasize the true powers of the General Assembly. Unlike the United States representative, he was convinced that the General Assembly had a right, and indeed a duty, to attempt to influence IMCO in the case under consideration. The Romanian delegation had never had the slightest doubts regarding India's right to be a member of IMCO and had already stressed that India's declaration could in no way prevent that membership. Even if that declaration had constituted a reservation, as had been contended by the French delegation and the Secretary-General, the majority of signatories of the IMCO Convention had accepted it expressly or tacitly; and since it had been shown that the declaration had never contained a reservation at all, the wrong done to India through the denial of its full rights of membership had to be speedily repaired.

27. Some representatives based their position on three arguments: the contention that the United Nations was not IMCO's superior; the fact that the membership of the United Nations did not correspond to the membership of IMCO; and the assertion that IMCO's field being highly specialized its competence should not be encroached upon. So far as the first argument was concerned, the mere fact that the General Assembly made a recommendation to another organization did not mean that the General Assembly was assuming the position of a superior body. The General Assembly usually addressed its recommendations to States, yet it had never been contended that States were inferior to the United Nations. Furthermore, the specialized agencies themselves could address recommendations to the United Nations. And in any event, the United Nations certainly was to some extent IMCO's superior, for IMCO was a specialized agency and the very notion of "agency" implied a somewhat subordinate status.

28. The argument that the United Nations and IMCO did not have the same membership seemed wholly irrelevant. The IMCO Convention stipulated that membership in IMCO was in fact open to all States Members of the United Nations, and the mere fact that not all of them had thus far availed themselves of that right was hardly material. Similarly, the General Assembly could not lose a right it enjoyed merely because two members of IMCO happened not to be in the United Nations. The General Assembly was fully qualified to make recommendations not merely to all Member States but to all the countries in the world—within the limits, of course, prescribed by the United Nations Charter—and consequently the contention that it could not do so to the thirty-odd States associated, for a special purpose, in IMCO seemed difficult to understand.

29. As to the specialized competence of IMCO, it was necessary to draw a distinction. If the question at issue was some technical matter pertaining to ships or navigation, none would dispute that the specialists in IMCO were the persons best qualified to deal with it. In the case under consideration, however, the objective had been to redress the wrong which India had sustained as a result of the abusive application of a so-called rule of international law, and as a result of the violation of the principle of the sovereign equality of States. In such cases the United Nations had a duty to intervene, and the Romanian delegation had supported the joint draft resolution precisely because the text contained an appropriate recommendation to IMCO.

30. Mr. ILLUECA (Panama) said that his delegation had co-sponsored the joint draft resolution in the belief that that text was consistent with the purposes of the United Nations, which included international co-operation in solving international problems of an economic, social, cultural or humanitarian character. It was in order to secure such co-operation that the Charter, in Article 58, authorized the United Nations to make recommendations to the specialized agencies, not only on their activities but also on their policies.

31. Furthermore, Article 13 of the Charter authorized the General Assembly to make recommendations for the purpose of promoting international co-operation, without stating to whom those recommendations could be addressed. According to Kelsen, that meant that the General Assembly could make recommendations to any person or authority concerned with the problem to which the recommendation referred. Other relevant provisions of the Charter were Article 15, paragraph 2, which authorized the General Assembly to receive and consider reports from the organs of the United Nations, and Article 17, paragraph 3, which stated that the General Assembly could make recommendations to the specialized agencies regarding financial and budgetary arrangements. All such recommendations deserved and received the most prompt consideration by the specialized agencies.

32. The standard clause included in the relationship agreements between the United Nations and the various specialized agencies also stressed the co-ordinating powers vested in the United Nations by Articles 58 and 63 of the Charter. In the case of IMCO there was also something more, for article IV of the draft Agreement on Relationship Between the United Nations and the Inter-Governmental Maritime Consultative Organization [3] expressly stipulated that the latter agreed to arrange for the submission, as soon as possible to its competent organ, of all formal recommendations which the United Nations might make to it. The existence of that provision guaranteed that the text of the draft resolution which the Committee had just approved would be duly submitted to the competent organ of IMCO. In addition, the draft resolution would contribute to a co-ordination of the efforts of the States which, like Panama, were most directly concerned with IMCO's work.

33. With reference to the Secretary-General's functions as depositary of multilateral conventions, he

[3] Ibid., p. 18.

recalled that as far back as 19 June 1950 the Assistant Secretary-General had explained to the International Law Commission at its 49th meeting that the Secretary-General frequently encountered serious difficulties in discharging that task. The Assistant Secretary-General had added that, although the complexity of the problems would make it difficult for the Commission to reach final conclusions, the Commission might try to arrive at some preliminary conclusions, which would undoubtedly assist the Secretary-General as well as the General Assembly and the Sixth Committee. The Secretariat's concern with that problem had also been revealed in the annual report presented by the Secretary-General to the General Assembly at its sixth session (A/1844, chap. IV).

34. So far as the Indian case was concerned, the Panamanian delegation had heard with great interest the statement of the United Kingdom representative (620th meeting) that the United Kingdom's proposal, in January 1959, that India should be permitted to participate in the IMCO Conference without the right to vote had envisaged a purely temporary solution and had at no time meant that the United Kingdom opposed India's full membership in IMCO. That statement was particularly important, as the United Kingdom representative, in his capacity as Special Rapporteur, was the author of the report on the law of treaties submitted to the International Law Commission on 14 March 1956.[4/]

35. The Indian representative's statement that the Indian declaration contained no reservation, as also the contents of the letter dated 30 June 1959 from the representative of the United States to the Secretary-General (A/4235, annex III), afforded grounds for hope that a solution would shortly be found within IMCO regularizing India's position.

36. The question whether any given declaration in fact constituted a reservation was always difficult to answer, although a distinction had to be drawn between a reservation and an interpretative declaration. In India's case, however, the difficulties seemed to have been overcome and the draft resolution approved by the Committee should result in India's admission to IMCO as a full member. That was, in any event, the desire of India's many friends, and Panama, as one of them, accordingly welcomed the result of the vote.

The meeting rose at 1.10 p.m.

[4/] Yearbook of the International Law Commission, 1956, Vol. II (United Nations publication, Sales No.: 1956.V.3, Vol. II), document A/CN.4/101.

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