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**SIXTH COMMITTEE, 298th
MEETING**

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C O N T E N T S

| | <i>Page</i> |
|---|-------------|
| Ways and means for making the evidence of customary international law more readily available : report of the Secretary-General (A/1934) (<i>continued</i>) | 279 |
| Designation of non-member States to which a certified copy of the Revised General Act for the Pacific Settlement of International Disputes shall be communicated by the Secretary-General for the purpose of accession to this Act : report of the Secretary-General (A/1878) | 280 |

Chairman : Mr. Manfred LACHS (Poland).

Ways and means for making the evidence of customary international law more readily available : report of the Secretary-General (A/1934) (*continued*)

[Item 53] *

1. Mrs. BASTID (France) congratulated the Secretary-General on his report on ways and means for making the evidence of customary international law more readily available (A/1934).

2. Two considerations had to be taken into account in connexion with United Nations publications and *Treaty Texts* : first, the desirability of wide circulation, and secondly, the need not to overload the budget by excessive free dissemination. It might therefore be advisable to undertake a periodic review of the free list and to circulate questionnaires in order to ascertain whether the recipients could make those publications available to the persons to whom they might be of use. Certain United Nations publications were somewhat difficult to classify, and some recipients might not be able to do so.

3. In issuing new publications relating to international law, duplication with existing publications should be avoided and the work should be done with the resources at the Secretary-General's disposal.

4. The proposed Juridical Yearbook raised a number of problems. The Secretary-General's report did not make sufficiently clear what types of legislative texts the Yearbook was to contain. Regarding decisions of national courts, it was doubtful whether the Secretariat could carry out the necessary work of selection, and it would be preferable to use a system of correspondents in the various countries. It would be difficult to publish the Yearbook promptly enough to enable the information

it contained to be used; the French delegation therefore doubted whether the work would be profitable. There were already many national and international periodical publications in the field, and others, like the *Annuaire de législation étrangère* (Yearbook of Foreign Legislation) in France, were about to be resumed. There were similar collections of judicial decisions in the United States, such as the *Annual Digest and Reports of Public International Law Cases* edited by Professor Lauterpacht. It would probably be wiser, therefore, if the Secretary-General abandoned the idea of publishing a Juridical Yearbook.

5. A legislative series would be a useful publication but of limited scope even on specific questions. It appeared difficult to compile an exhaustive work, since it might be necessary to publish auxiliary material in order to clarify the significance of the legislation.

6. The collection of national constitutions would probably duplicate already existing collections, which it might be preferable to support by subscription.

7. On the other hand, the consolidated index of the *League of Nations Treaty Series*, particularly the analytic index, would be a useful and important work; a chronological index would be of less interest.

8. The Secretary-General should give particular consideration to a *répertoire* of United Nations practice. The necessary basic documents were in New York, whereas other projects would be better carried out in other centres. In the work on the *répertoire* of United Nations practice with regard to questions of international law, the example of the League of Nations should be followed. The French delegation warmly supported that project, and would be equally in favour of a *répertoire* on problems of interpretation of the Charter, which would be of great practical use. It also suggested an inquiry into the origin of the Charter texts, which should go back as far as the governmental drafts preceding the Dumbarton Oaks Conference. It would there-

* Indicates the item number on the General Assembly agenda.

fore support a draft resolution recommending the preparation of a *répertoire* of United Nations practice.

9. It would be highly useful to continue publication of the series of *Reports of International Arbitral Awards*, if the table were compiled with the same care as in the past.

10. The publication of digests of diplomatic correspondence would be useful, but in view of the existing difficulties the idea should be dropped.

11. With regard to the methods to be used in carrying out the various tasks, she considered that contacts should be improved between the Secretariat and the various specialized private organizations, such as the *Institut de droit international*, which could give valuable advice, and scientific research organizations.

12. Mr. BARTOS (Yugoslavia) said that his delegation warmly supported the International Law Commission's recommendations¹ on the report submitted by Mr. Manley O. Hudson (A/CN.4/16, A/CN.4/16/Add.1) and agreed with the Secretary-General's report on the subject (A/1934). The Secretariat's work in that field should be expanded to the greatest possible extent. It was true that private publications existed, but the small countries were not always able to obtain them, particularly when owing to hostilities or the absence of a government juridical continuity had been interrupted. Moreover, some private scientific publications had on occasion been influenced by political considerations.

13. It was gratifying to note that the circulation of United Nations publications had continued to increase. The Fifth Committee should not impede that progress for financial reasons.

14. The publication of a Juridical Yearbook could be justified only by an absolute need. He agreed with paragraph 22 of the Secretary-General's report with regard to the Legislative Series; but the work necessitated co-operation by States, who should be invited to conform to the Secretary-General's recommendations.

15. A collection of national constitutions would be a useful publication, since certain private collections consisted mainly of commentary. States might be asked to publish parts, in a specified format, for collection into a single publication.

16. The index and list of treaties should be continued. As for the *Treaty Series*, a number of States were not following the practice laid down in Article 102 of the Charter. A *répertoire* of United Nations practice would be highly useful, and so would the additional series of the reports of international arbitral awards. However, awards of the special tribunals set up between the two wars were of no further importance and should not be included in the new series.

17. His delegation would vote for draft resolutions supporting the Secretary-General's report.

18. Mr. FARZAND ALI (Pakistan) thought that a Juridical Yearbook would only be useful if it contained a sufficiently scholarly study of the growth of legislation in the various countries. On the other hand, the publication of reports of arbitral awards and of decisions of national courts would be highly useful.

19. The legislative series referred to in paragraph 21

of the Secretary-General's report was unlikely to be of use, since it would cover only the legislation of the various countries, which was unnecessary; it would cost too much labour and money. To be of real use a collection of national constitutions would have to include not only their texts but also notes on their practical interpretation. The publication of diplomatic correspondence would be too heavy a task for the small countries in proportion to its usefulness.

20. The Pakistan delegation would support any draft resolution which offered a reasonable solution of the problem.

21. The CHAIRMAN declared the general discussion closed, and invited the Committee to proceed to the vote on the draft resolution submitted jointly by Israel and the United Kingdom (A/C.6/L.220).

22. Mr. MAKOTOS (United States of America) asked that the proposal should be voted on paragraph by paragraph.

23. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics) said that his delegation was not ready to vote on the joint draft resolution as the Russian translation had not yet been distributed. He therefore requested that the vote be deferred until the afternoon meeting.

24. The CHAIRMAN agreed to the request.

25. Mr. CREPAULT (Canada) asked the Assistant Secretary-General whether the publication of a Juridical Yearbook in 1953 would involve immediate supplementary expenditure.

26. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) explained that the item would not affect the 1952 budget, since the necessary preparatory work on the publication could be done by the Legal Department. The effect on the 1953 budget was a matter for the General Assembly to decide at its seventh session.

27. Mr. MAKOTOS (United States of America) proposed that, in view of the USSR representative's request, the Committee should proceed to the next item on its agenda.

28. Mrs. BASTID (France) said that, although an amendment by her delegation to the joint draft resolution was on the point of being distributed, she would support Mr. Makotos' proposal.

29. The CHAIRMAN said that, in view of the circumstances to which reference had been made, the Committee might proceed to consider the next item on its agenda.

It was so decided.

Designation of non-member States to which a certified copy of the Revised General Act for the Pacific Settlement of International Disputes shall be communicated by the Secretary-General for the purpose of accession to this Act : report of the Secretary-General (A/1878)

[Item 51] *

30. Mr. VAN GLABBEKE (Belgium) explained that the Belgian delegation in submitting its draft resolution (A/C.6/L.221) had hoped to facilitate the Sixth

¹ See *Official Records of the General Assembly, Fifth Session, Supplement No. 12*, part II.

Committee's work on the present question. The Committee should be able to make a very quick study of the item, which appeared on the agenda for the third time. The item had been discussed in detail at the fourth session of the General Assembly², and at its fifth session the Assembly had decided, by resolution 480 (V), to defer consideration of the item until its sixth session.

31. Although the General Act of 1928 had not had great practical importance, it none the less marked an important development in the field of international co-operation, as the French representative had emphasized during the discussions at the fourth session. In undertaking a revision of the General Act of 1928 as part of the activities envisaged under Article 13 of the Charter, the General Assembly had wished to draw the attention of certain Members of the United Nations, and also of non-member States, to the need to apply conciliation, arbitration and judicial procedure to the settlement of international disputes. Nothing, indeed, could be more natural, when peace itself was at stake. Resolution 268 A (III) had been adopted by a very large majority. The implications of the Revised General Act therefore presumably went beyond the narrow limits of the question before the Committee. It was preferable, however, since the end of the session was approaching, not to extend the discussion but to remain within the four corners of the item on the agenda.

32. The criterion proposed by the Belgian delegation to enable the Secretary-General to determine the States to which he should communicate a certified copy of the Revised General Act was the one adopted in connexion with the accession of non-member States to the Convention on the Prevention and Punishment of the Crime of Genocide. The Economic and Social Council had likewise recommended application of the same criterion in connexion with the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The Belgian delegation had proposed the criterion as long ago as the fourth session, at which time the French delegation had cast doubt upon its value and held that membership of a United Nations specialized agency was irrelevant. Whatever the validity of that objection, it was sufficient to note that the criterion had been accepted with respect to inviting non-member States to become parties to the Convention on the Prevention and Punishment of the Crime of Genocide (resolution 368 (IV)). It took account of the desire for international co-operation shown by non-member States, and allowed the Secretary-General to conform to the provisions of article 46 of the Act without taking a political decision—in other words, to confine himself to administrative measures.

33. The Sixth Committee should come to a decision on the matter at its present session. At the fourth session the majority of the Committee had believed that a decision would be premature because the Revised General Act had not then entered into force. A number of delegations, including those of Australia, Cuba and Argentina, had however upheld the views of the Belgian delegation. At the end of the fifth session the question had been discussed rapidly by the Sixth Committee (250th meeting) and, on the request of the representative of the Union of South Africa for time to permit his Government to study the matter, it had been decided by a majority of only four to defer the matter until the

sixth session. The entry of the General Act into force on 20 September 1950 had meant that a number of delegations had already changed their views in favour of the Belgian draft resolution. The United States representative in particular had stated that he would vote for the draft if the majority of the Committee were opposed to deferment of the question. The situation was even more favourable at the present moment, since Norway also had become party to the Revised General Act. He therefore hoped that his delegation's draft resolution could be adopted without need to revert to the points which had been made clear at the earlier discussions. He cited article 46 of the Revised General Act, which laid down that a copy of the text should be delivered by the Secretary-General to each of the Members of the United Nations, to the non-member States which had become parties to the Statute of the International Court of Justice, and to those designated by the General Assembly of the United Nations.

34. Mr. FITZMAURICE (United Kingdom) set forth the reasons which had induced his delegation to submit the following draft resolution (A/C.6/L.223):

"The General Assembly,

"Considering that only three Members of the United Nations have become parties to the Revised General Act for the Pacific Settlement of International Disputes, and that in the circumstances its communication to non-member States under article 43, paragraph 1 of the Act would be premature,

"Decides to defer further consideration of the matter until at least one third of the Members of the United Nations have become parties to the Act".

35. The General Act of 1928 was an instrument laying down a very closely defined procedure for the settlement of international disputes. A large number of the members of the League of Nations had been parties to it. On the disappearance of the organs of the League of Nations and the Permanent Court of International Justice, the General Assembly had undertaken a revision of the Act. The majority of the States Members of the United Nations, including the United Kingdom, had however not yet become parties to the Revised General Act, for reasons upon which he would not enlarge. The question arose whether, under those conditions, non-member States should be invited to become parties to the Act.

36. The Belgian representative had observed that it was natural, in the interests of peace, to invite non-member States to accede to the Revised General Act. The States Members of the United Nations should themselves, however, first become parties to the Act, and it would be somewhat invidious for them to invite non-member States to do something which they were not doing themselves. When the question had arisen for the first time in 1949, it had not been possible to take such a decision, since the General Act had not then entered into force. At the fifth session the Revised General Act had just entered into force through the deposition of instruments of accession by Belgium and Sweden. Since that time one country only, Norway, had acceded to the Act. The situation had thus undergone practically no change.

37. According to the Belgian representative, the Committee had decided at the fifth session to postpone the item merely in order to give the Government of the Union of South Africa time to study it. The overriding reason as far as the United Kingdom delegation was concerned had at that time been, and indeed still was,

² *Ibid.*, Fourth Session, Sixth Committee, 210th and 211th meetings.

the excessively small number of Member States which had acceded to the Act.

38. The Belgian representative had stated that it would be sufficient to apply to the question the criterion adopted in connexion with the Convention on the Prevention and Punishment of the Crime of Genocide. A country could of course become a member of a United Nations specialized agency even if not fully sovereign: it need only possess sufficient domestic autonomy in the field covered by that specialized agency. The accession of such a country to the Convention on Genocide presented no difficulty, since any State which enjoyed domestic autonomy could undertake not to commit the crime of genocide. The Revised General Act, on the other hand, imposed international obligations, which could not be undertaken by a State not fully sovereign. Partisans of the procedure proposed by the Belgian delegation would have to decide whether the criterion it proposed was suitable. If that criterion did not appear suitable, another would have to be found, which would call for a long and complicated discussion. For those reasons the United Kingdom delegation had submitted its draft resolution.

39. He agreed with the Belgian representative that the Committee could not continue to postpone the question from one session to the next. The United Kingdom draft resolution accordingly proposed that further consideration of the matter should be deferred until at least twenty Members of the United Nations had become parties to the Act. The United Kingdom delegation did not attach special significance to that number. The important point was that the Assembly should decide to wait until a sufficient number of States Members had acceded to the Act before again considering the question.

40. Mr. VAN GLABBEKE (Belgium) said that when he had made his first speech he had not examined the United Kingdom draft resolution, which was then being distributed. Having studied the draft resolution and heard the explanation given by the United Kingdom representative, he was reluctantly compelled to say that the United Kingdom representative had just contradicted the statements he had made in the Sixth Committee in 1949, and that the United Kingdom delegation had now explained for the first time the reasons for its attitude on the question.

41. In 1949, at the 210th meeting of the Sixth Committee, the United Kingdom representative had stated that in his opinion consideration of the question should be postponed until at least two Member States of the United Nations had acceded to the Revised General Act for the Pacific Settlement of International Disputes, and had added that it was hardly appropriate for the United Nations to ask non-member States to accede to a convention to which Member States themselves had not yet become parties. Three States Members had now acceded to the Act, and the requirement the United Kingdom representative had laid down in 1949 was satisfied. However, the United Kingdom representative continued to argue that it would be inappropriate to invite non-member States to accede to a convention to which most States Members were not parties. The position of the United Kingdom delegation seemed to have been substantially changed, since the United Kingdom representative was maintaining an argument which in 1949 had been clearly presented as the corollary of the first.

42. Moreover, in 1949 the United Kingdom representative had said that he could not see why it was provided that only non-member States which were members of one or more specialized agencies on 1 January 1950, should be invited to accede to the Act, and had explained that he saw no reason to assume that non-member States which became members of one or more specialized agencies after that date would not also have the requisite qualifications to accede. The United Kingdom representative now opposed the suggestion that non-member States could become parties to the Revised General Act on the sole ground of their participation in the work of one or more specialized agencies. There was an obvious contradiction which could not easily be explained.

43. The change in attitude was the more difficult to understand because in 1950 the United Kingdom delegation had not even taken part in the discussion on the matter, so that its position had presumably been the same as in 1949. Comparison of the statements made by the United Kingdom representative in 1949 and now showed that the facts were quite otherwise. Without wishing to seek for ulterior motives, the Belgian representative surmised that the reason which really determined the position of the United Kingdom delegation was that the United Kingdom Government had never been in favour of the Revised General Act for the Pacific Settlement of International Disputes, and was proposing the adoption of the present ingenious formula simply to bury the matter once and for all. If the Committee decided to defer consideration of the question until at least one-third of the States Members had become parties to the Act, the United Kingdom delegation would certainly not for a long time, if ever, have to concern itself with a question which it wanted shelved.

44. The number of States Members parties to the Act was a wholly secondary question. The essential point was that the Act had entered into force. In the view of the Belgian delegation there was therefore no logical connexion between the preamble and the operative part of the United Kingdom draft resolution. The United Kingdom delegation might not approve the criterion which had been adopted in the case of the Convention on the Prevention and Punishment of the Crime of Genocide. Nevertheless, that criterion had already been used; and in asking that it should also be applied in the case of the Revised General Act for the Pacific Settlement of International Disputes the Belgian delegation was merely calling for the application of a completely regular procedure. In 1950, it might be remembered, consideration of the question had been postponed to 1951 merely because the representative of the Union of South Africa had so requested, although many delegations had been ready at that time to settle the question immediately. Finally, Article 13 of the Charter certainly recommended that the Assembly should promote international co-operation in every field, and there could be no doubt that by facilitating the accession to the Act of States which, although not Members of the United Nations, were not completely divorced from its work since they were members of one or more specialized agencies, the Assembly would draw the attention of the greatest possible number of States to the necessity for the pacific settlement of international disputes and would thus promote international co-operation.

45. For those reasons the United Kingdom draft resolution ran counter to what had always been the inten-

tion of the General Assembly in the matter, and should not be adopted.

46. Mr. FITZMAURICE (United Kingdom), replying to the Belgian representative, said that his statement in no way contradicted the statements he had made in 1949. When he had said that to invite non-member States to accede to the Act was inappropriate because it was not in force, he had not implied that, when the Act did come into force and two or three States had acceded to it, an invitation should then necessarily be addressed to non-member States.

47. He had refrained from speaking in the brief discussion of the matter in 1950, not because he had sought to conceal his delegation's views, but because it had been clear to him that the majority did not wish to settle the matter immediately and would therefore take a decision meeting the wishes of his delegation, which had therefore had no reason to take part in the discussion. He wondered, incidentally, whether the Belgian representative really believed that the decision had been postponed in 1950 simply because of the request made by the delegation of the Union of South Africa.

48. The United Kingdom delegation might be opposed to the General Act because it considered—and apparently it was not the only delegation to do so—that that instrument was unnecessary to the extent that States were genuinely prepared to settle their disputes by peaceful means. Nevertheless, if a sufficient number of States Members acceded to the General Act, the

United Kingdom delegation's objection would immediately disappear. The United Kingdom delegation had never had any ulterior motives for the Belgian representative to surmise, and its position had not undergone any mysterious change, as the Belgian representative appeared to believe.

49. There were also a number of obvious contradictions in the Belgian representative's statement. The Belgian delegation seemed to fear that if the question were not finally settled at the present session it would appear on the agenda of the Sixth Committee year after year. If so, it was hard to see why the Belgian delegation could not support a proposal which set a definite time and ensured that when the question reappeared on the Committee's agenda it could be settled immediately and finally. The Belgian representative had also chosen to regard that suggestion as a roundabout means whereby the United Kingdom Government could lay down conditions which would ensure that the questions was never settled. If, as the Belgian representative feared, the accession of a substantial number of Member States to the Revised General Act within a reasonable time was improbable or even impossible, it would be clearly established that States Members attached little importance to the Act. That led back to the essential point : to invite non-member States by drawing their attention to a text in which Member States themselves showed little interest was futile and unreasonable.

The meeting rose at 1.15 p.m.