

United Nations  
**GENERAL  
ASSEMBLY**

**FOURTEENTH SESSION**  
**Official Records**



**SIXTH COMMITTEE, 628th  
MEETING**

*Monday, 9 November 1959,  
at 11.40 a.m.*

**NEW YORK**

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**Chairman:** Mr. Alberto HERRARTE (Guatemala).

**AGENDA ITEM 65**

**Reservations to multilateral conventions: the Convention on the Inter-Governmental Maritime Consultative Organization (A/4188, A/4235, A/C.6/L.451 and Add.1) (continued)**

**CONSIDERATION OF DRAFT RESOLUTIONS  
(A/C.6/L.451 AND ADD.1) (continued)**

1. Mr. STAVROPOULOS (Legal Counsel) said that he wished to reply to a question which the Soviet representative had asked at the preceding meeting concerning the Secretariat's interpretation of the nineteen-Power draft resolution (A/C.6/L.451 and Add.1). In applying General Assembly resolutions, the Secretariat's only concern was to be as loyal as possible to the spirit and letter of the resolution. It was to be noted that the nineteen-Power draft resolution referred specifically to Assembly resolution 598 (VI), which had very definitely stated that the Secretary-General should continue to act as depositary in connexion with the deposit of documents containing reservations or objections without passing upon the legal effect of such documents. It had further stated that he should communicate the text of such documents to all States concerned, leaving it to each State to draw the legal consequences from such communications. Accordingly, if the nineteen-Power draft resolution were adopted, the Secretariat, when it received instruments of acceptance with appended reservations, would consider that its main function was merely to circulate those documents to the States concerned with the convention in question, quoting the reservation but without asking their attitude. Similarly, the Secretariat would also circulate, without comment, any objections to those reservations which might subsequently be received. Once the Secretary-General had accepted an instrument of ratification or accession, he would include the country concerned in all the processes of operation of the convention, so far as concerned the Secretary-General's functions in respect of that convention. That, for instance, involved the circulation to that country of all documents appertaining to the status of the convention. If, in carrying out those functions, the Secretary-General should be confronted with some unexpected legal problem which could not be solved by agreement between the parties,

the only possibility open to him would be to ask the General Assembly to request an advisory opinion from the International Court of Justice; but that was an extreme measure which could hardly be anticipated at the present time.

2. Sir Gerald FITZMAURICE (United Kingdom), speaking as a co-sponsor of the nineteen-Power draft resolution, said that he considered the statement of the Secretary-General's representative to be a correct account of the practice which should be followed by the Secretary-General as depositary under resolution 598 (VI). The draft resolution, if adopted, would merely extend the provisions of the 1952 resolution to certain other conventions.

3. Mr. CASTAÑEDA (Mexico), also speaking as a co-sponsor of the nineteen-Power draft resolution, said that the interpretation the Secretary-General's representative had just given of the Secretary-General's depositary functions under resolution 598 (VI) was in his view juridically correct.

4. Mr. MOLINA (Venezuela) said that his delegation rejected the unanimity rule which had been applied by the League of Nations and, on numerous occasions, by the United Nations, since it was unjustifiable for one State to impose its will on the majority. The Venezuelan delegation preferred the Pan American system, which respected the rights both of States which made reservations and of those which accepted or rejected such reservations. That system was juridically satisfactory and had given excellent results in Latin America.

5. His delegation was in general prepared to accept the nineteen-Power draft resolution, which appeared to be a useful compromise between the seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2) and the ten-Power draft resolution A/C.6/L.450 and Add.1) and did not sacrifice any of the principles which his Government considered essential in connexion with the difficult problem of reservations to multilateral conventions. Since, however, he had doubts concerning certain phrases in the compromise draft resolution, he would speak again if circumstances so required.

6. U MAUNG MAUNG (Burma) said that the problem of reservations to multilateral conventions had many facets, and was not susceptible of any clear and simple solution. In dealing with the problem, the Committee should bear in mind that it was building for the future; it should therefore proceed slowly, but surely. It should, above all, try to achieve unanimity in its decisions, since international practice, if it was to secure universal recognition, could not be founded on a mere majority vote. For that reason, his delegation had originally favoured the ten-Power draft resolution, which had been based on the view that the question needed further study before any final decision was taken on it. The seven-Power draft resolution, however, had not been incompatible with that resolution; it might be considered the end for which the ten-Power

draft resolution would supply the means. His delegation, therefore, was prepared to support the nineteen-Power draft resolution, which offered a satisfactory compromise between the two earlier drafts.

7. Mr. Maxwell COHEN (Canada) said that while the specific question submitted by India had been solved with the adoption of the joint draft resolution (A/C.6/L.448 and Add.1), it had raised the very important issue with which the discussion was at present concerned, namely, the functions and duties of the Secretary-General as depositary of multilateral conventions concluded under United Nations auspices. It had been felt by some that that problem had been solved by the adoption of General Assembly resolution 598 (VI) and by the advisory opinion of the International Court of Justice on the Genocide Convention.<sup>1/</sup> However, the Court's advisory opinion had not established a new general régime of treaty law but only a régime applicable to the Convention on Genocide itself, while resolution 598 (VI) had done little except to create a double régime for conventions concluded under United Nations auspices, by dividing them into conventions concluded before 1952 and those concluded after that date.

8. In point of fact, there were a number of régimes which the Secretary-General could apply in his capacity as depositary. There was first of all the League of Nations practice, which admitted only the principle of unanimity. Secondly, there was the régime the Secretary-General applied to treaties he had inherited as depositary from the League of Nations, which were governed by General Assembly resolution 24 (I). That régime had introduced some modification of the earlier practice, in that the power to reject a reservation was confined to those States which had established their immediate concern in the treaty by themselves becoming parties. Thirdly, there was the régime which the Secretary-General applied to treaties concluded under United Nations auspices before the adoption of resolution 598 (VI). Fourthly, there was the régime that had arisen out of resolution 598 (VI), which, by its silence on the subject of conventions concluded before 12 January 1952, had by implication given the Secretary-General juridical authorization to continue as before with respect to such conventions. Fifthly, there was the régime based on the advisory opinion of the International Court of Justice regarding the Convention on Genocide, which, however, applied only to that Convention. Sixthly, there was the régime governing conventions concluded after 1952, as set out in paragraph 3 (b) of resolution 598 (VI). Lastly, there was a great variety of individual régimes provided for by treaties not concluded under the auspices of the United Nations but of which the Secretary-General was depositary, where such treaties themselves gave him instructions regarding his depositary practice or left it to him to develop his own practice.

9. When so large a number of régimes existed, it might legitimately be asked what the Committee wished to accomplish by changing any of the present régimes governing the Secretary-General's practice as depositary. Presumably, the common objective sought by the sponsors of all the draft resolutions had been to achieve a uniform approach to that aspect of treaty law, one which would at least ensure clarity in respect of the following questions: firstly, when should States

signing, ratifying, accepting or acceding to treaties be treated as parties thereto as a matter of form; secondly, when should States signing, ratifying, accepting or acceding to treaties be treated as parties as a matter of substance, in cases where they had made declarations, reservations or similar statements raising problems with respect to their contractual relationship with the other parties to the treaty; and thirdly, when might it be said that an instrument had come into effect, where such instrument itself required, for its entry into force, the performance of certain administrative acts or the deposit of acceptances by a given number of parties.

10. The problem of reservations to multilateral conventions was not a new one. But the specific issue before the Committee at the present time really arose out of the conjunction of a more modern approach to the question of participation in multilateral agreements with the existence of a depositary who was an official of an international organization, and could be given instructions on the two questions of which States were parties and when the instrument might be deemed to have come into force.

11. Up to the nineteen-twenties it had been assumed in treaty law and practice that the essential treaty concept was a contractual one. But the desire for the greatest possible participation by States in the great variety of new international obligations and benefits of a social, economic, administrative and political kind had suggested the need for a more flexible mechanism. The League of Nations had dealt with the matter in 1927, but had been unable to progress beyond a strictly contractual theory of treaty-making. However, the world was moving forward rapidly, and the contractual theory came gradually to be replaced by a legislative theory of treaty-making and treaty participation. Although the United Nations, on its establishment, had inherited the League principles with respect to the functions of the depositary in the matter of reservations, it had already been prepared to make some changes. Accordingly, in response to the general desire to maximize participation in treaties and not to allow the treaty-making process to be entirely obstructed by a demand for strict uniformity in the contractual obligations of all the signatories, the United Nations now came to require assent to a reservation only from the original contracting parties.

12. The earliest precedents for the new way of settling the question of reservations had been established by the United States reservation to the Constitution of the World Health Organization and the many reservations to the Convention on Genocide. However, the former case was not a good example of the problems of the depositary since the Secretary-General had been able to pass the problem of the United States reservation to the WHO Constitution to the Assembly of WHO and had not been required to undertake any form of appraisal. Moreover, the WHO case had made it clear that the question of reservations was of a different nature where it involved membership in international organizations, since reservations to conventions establishing international organizations were generally incompatible with the very idea of membership.

13. It was really the reservations to the Convention on Genocide which had first brought to a head the whole question of the Secretary-General's depositary functions. The Secretary-General, confronted with

<sup>1/</sup> Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, p. 15.

an extremely complicated situation, had turned for guidance to the General Assembly, which in turn had invited the opinion of the International Court of Justice. The Court had ruled that for the purposes of the Convention on Genocide compatible reservations should be deemed permissible, and that multiple bilateral relations were legally possible within the framework of that multilateral treaty. An important result of the Court's advisory opinion had been the adoption of resolution 598 (VI).

14. It was worth asking what difficulties had in fact been encountered by the Secretary-General in acting as depositary, and indeed to what extent those difficulties had arisen, even earlier, when the Secretary-General of the League of Nations had first begun to act as the depositary of international instruments. The Secretary-General of the League of Nations had had to face difficulties in connexion with a British objection to a reservation by Austria to the Second Opium Convention. The outcome had been the 1927 report to the Council,<sup>2/</sup> which had thereafter governed League practice. The effect of that practice had been to limit participation in treaties to States willing to undertake the full contractual obligations or to those parties whose reservations were approved by all the other contracting parties.

15. Despite the large number of conventions for which the Secretary-General of the United Nations had acted as depositary, none had apparently given rise to any difficulty before the Convention on Genocide; and even that had been no problem, since the Secretary-General had not attempted to make any appraisal of the reservations or the objections to them, but had sought the guidance of the Assembly. The only other difficulty the Secretary-General had encountered had been in respect of the IMCO Convention. In that situation, the Indian Government's main concern had been whether the Secretary-General's treatment of its declaration had amounted, even if in a negative way, to an appraisal. It might be argued, however, that the Secretary-General had merely acted on the invitation of a specialized agency of whose charter he was the depositary. The whole question had to be related to the problem whether the Secretary-General could receive instructions from a body outside the United Nations, and whether he could be a depositary in respect of both the United Nations and some other organization. The question was one which deserved careful study.

16. The conclusions to be drawn from past experience were the following. Firstly, the number of situations involving the Secretary-General in procedural or substantive difficulties had been very small. Secondly, the problem of his procedure seemed more significant in principle than it was in practice; for the application of both the pre-1952 and the post-1952 régimes to accessions to conventions concluded under United Nations auspices had had much the same practical results. Under neither system did the Secretary-General determine whether a signatory or a State acceding with a reservation was or was not a party, and in no case had the Secretary-General ever decided or announced that a treaty had or had not come into force. The Secretary-General's practice only remotely or indirectly affected matters of substance—and that only in a negative way, as a possible result

of his circulation of declarations or reservations. The Secretary-General had, it was true, extended the role of silence as amounting to tacit acceptance of reservations, a practice which the Secretary-General of the League of Nations had not followed. He had left the whole matter of appraising the significance of reservations or of stating the date of entry into force of a convention to the unilateral determination of the States parties to the instrument, with all the difficulties which such a procedure involved in achieving uniformity of viewpoint.

17. The objective desired was a system which clarified the question when States making reservations became parties to an international instrument, and with respect to what other parties, and the question when instruments to which reservations had been made came into force, and which at the same time encouraged maximum participation in treaties by States, without rendering their legal relations absurd by creating an intricate web of qualified bilateral relations within a single multilateral agreement. To achieve that objective, continuing study would be required, even after the International Law Commission had formulated its draft articles. It was clear, moreover, that a mere alteration at the present time in the Secretary-General's method of dealing with conventions concluded before 1952 would make no substantial contribution to solving the problem. But a great deal of experience had been gained, and might provide a useful guide to the adoption of more successful depositary and reservations régimes.

18. An interesting approach to the question of determining the admissibility of reservations was to be found in Professor Lauterpacht's report to the International Law Commission of 24 March 1953.<sup>3/</sup> He had put before the Commission four alternative drafts for an article concerning reservations. His most important ideas included the role of silence as acceptance, the use of a two-thirds majority rule for the rejection or acceptance of reservations, the appointment of a committee of signatories to pass on admissibility, the appointment of a committee of the conference to pass on admissibility, and, finally, the establishment of a special chamber of summary procedure by the International Court of Justice for the determination of admissibility.

19. It would be desirable to increase the use of specific clauses on reservations in treaties; the depositary would then have clear instructions and the question of admissibility would never be left to him. The only disadvantage of such a method was that it might create as many régimes as there were varieties of clauses on reservations.

20. If there was to be any hope of achieving clarity in the complex matter of treaty law, particularly as regards reservations and entry into force, it might be necessary to vest a minimum of appraisal authority in a depositary or some other similar agency.

21. While his delegation would support the nineteen-Power draft resolution (A/C.6/L.451 and Add.1), which it had co-sponsored, he was convinced that further study would reveal the need for a much more elaborately designed régime for depositary practice than could be effected by the temporary change of applying to conventions concluded before 1952 the

<sup>2/</sup> League of Nations, *Official Journal*, 8th Year, No. 7 (July 1927), annex 967.

<sup>3/</sup> *Yearbook of the International Law Commission*, 1953, Vol. II (United Nations publication, Sales No.: 59.V.4, Vol. II), document A/CN.4/63.



procedure now applicable to conventions concluded after that date. The really vital debate on the whole issue would take place after the Secretary-General's study and the International Law Commission's report on the subject had been submitted to the Committee.

22. The representatives of Ceylon and Romania had asserted at the previous meeting that the phrase "until such time as the General Assembly may give further instructions", in operative paragraph 1 of the nineteen-Power draft resolution, was redundant and consequently unnecessary. They had even suggested that those words might in fact hint at some limits being placed on the normal powers of the General Assembly to give instructions to its agents and to amend, repeal or otherwise change any previous instructions or rules. The real significance of the phrase, however, was to prevent the extension of resolution 598 (VI) from becoming regarded as a fixed rule of international treaty law, liable to restrict the freedom of the International Law Commission in its consideration of the problem. From a parliamentary point of view, there was nothing strange in providing in a statute for its remaining in force until repealed, such a provision being in fact often inserted when the legislator intended to indicate a possible change in the statute in the not too distant future. From a purely technical viewpoint, the statement that a legislature had the power to repeal or amend was certainly redundant; but the spirit of the language was to alert those who applied the law to the fact that other rules might shortly be enacted. In any event, the insertion of the phrase in question in the nineteen-Power draft resolution certainly implied no diminution of the General Assembly's authority.

23. All the considerations he had advanced made it clear that the problem before the Committee, namely, the most efficient manner in which to organize the Secretary-General's depositary functions, with particular reference to multilateral agreements which evoked reservations and to the matter of the entry into force of such agreements, was relatively unexplored and called for further study. The Romanian representative had suggested that there had already been sufficient research on those questions. Much had admittedly been written on reservations, but there had been no writing of any significance which endeavoured to relate the functions of a depositary to the various problems of treaty participation with which the draft resolution was essentially concerned. The bibliographies of the two most recent works on the revision of treaties and reservations showed not a single article on the problems of a depositary as such. Much study therefore remained to be done before long-term rules governing United Nations depositary practice could be devised. The nineteen-Power draft resolution would perhaps establish a useful interim régime, while encouraging the broadest inquiry upon which to base a suitable depositary system for the more distant future.

24. Mr. DADZIE (Ghana) said that the United Kingdom representative had already explained (623rd meeting) the need for the study of the general question of reservations originally envisaged in the ten-Power draft resolution (A/C.6/L.450 and Add.1) and now recommended, in modified form, in operative paragraph 2 of the nineteen-Power draft resolution. The importance of such study could not be over-estimated, and no delegation, surely, would deny the need for it.

25. The Committee must certainly be well aware of the dangers of mechanically applying existing rules to new situations, without previous exhaustive study of the special requirements and characteristics of each case. The delegation of Ghana had objected to the seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2) because it had proposed the mechanical extension of paragraph 3 (b) of resolution 598 (VI) without proper preliminary study, although it would certainly have supported such an extension if it had been recommended by the International Law Commission after a full survey of the subject. His delegation had however joined in sponsoring the nineteen-Power draft resolution, as it believed that, in view of the misunderstanding which had given rise to the Indian complaint, it was necessary to provide for an unequivocal system of practice not only in order to clarify the position but also to preclude any further misunderstanding during the period of the proposed study.

26. The extension of the application of paragraph 3 (b) of resolution 598 (VI) to conventions concluded before 1952 "until such time as the General Assembly may give further instructions" was the barest minimum basis on which a compromise could be reached. Furthermore, the nineteen-Power draft resolution in no way interfered with the sovereignty of the General Assembly, for the Assembly would always be free either to amend the system envisaged therein or to leave matters as they were. He therefore appealed to the Committee to endorse the compromise draft resolution unanimously.

27. Mr. CHOWDHURY (Pakistan) expressed his delegation's satisfaction at the successful amalgamation of the two previous draft resolutions in a single text, which it had hastened to co-sponsor. Even though some delegations had voiced sharply divided views on the two earlier proposals, others had always believed in the possibility of a compromise, and the new text proved that belief to have been justified.

28. Once an agreed solution had been found to the specific problem of India's membership of IMCO, it had become clear that, if future complications were to be avoided, an extension of the application of paragraph 3 (b) of resolution 598 (VI) to conventions concluded before 1952 could not be delayed. The ultimate object of the United Nations being to bring nations increasingly close together, which implied a constantly growing number of multilateral conventions, States holding divergent views had to have the possibility of reaching working arrangements without interfering with or sacrificing the object of such conventions.

29. Before 1952, the Secretary-General, in his capacity as depositary, had adhered to the rule that a State could make a reservation when signing, ratifying or acceding to a convention, prior to its entry into force, only with the consent of all the States which had already ratified or acceded. The General Assembly, however, had eventually referred the specific question of reservations to the Genocide Convention to the International Court of Justice, the majority of whose members had held that a State which had made or maintained a reservation objected to by one or more of the parties to the Convention but not by others, could be regarded as being a party to the convention if the reservation was compatible with the object and purpose of the convention; otherwise it could not be regarded as being a party. In consequence

of that ruling, the General Assembly, by resolution 598 (VI) of 12 January 1952, had requested the Secretary-General, in relation to reservations to the Genocide Convention, to conform his practice to the Court's advisory opinion; but in paragraph 3 (b) of the resolution, it had also laid down certain rules for the future guidance of the Secretary-General in dealing with future conventions concluded under United Nations auspices. However, since those rules were to apply only to conventions concluded after 12 January 1952, the resolution had introduced an element of discrimination between pre-1952 and post-1952 conventions of the same description. The nineteen-Power draft resolution sought to remove that discrimination by making the rules applicable to all conventions concluded under United Nations auspices. There was no need to go into the merits or adequacy of those rules, since they were already in existence and the draft resolution only sought to extend their application. The draft resolution also provided for further study of the subject, which would facilitate any future re-examination that might prove necessary.

30. So far as the Secretary-General's depositary functions were concerned, they were no doubt essen-

tially administrative, but they also required some application of mind. To hold otherwise would tend to reduce those functions to a purely mechanical process; and it was a well-known principle that if a person entrusted with administrative functions affecting the rights of others failed to apply his mind to the matter, the action taken by him was null and void. The Secretary-General should, therefore, after due and proper application of mind, take such steps as the rules required or permitted him to take.

31. In conclusion, he stressed that the nineteen-Power draft resolution in no way compromised the principles of the two earlier resolutions. Some suggestions that had been made regarding the text might involve drafting changes, which it would be better to avoid. The delegation of Pakistan wished to congratulate those who had brought about the desired compromise, and urged the Committee to approve the draft resolution unanimously. He also expressed the gratitude of his delegation to the sponsors for having effected the compromise—consisting in merging the two draft resolutions—which idea had been initiated by his delegation.

The meeting rose at 1 p.m.