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CONTENTS

Chairman: Mr. José María RUDA (Argentina).

AGENDA ITEM 70

Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations (A/5509, A/5528, A/C.6/L.532, A/C.6/L.533 and Corr.1 and 2, A/C.6/L.534) (continued)

1. Mr. MIRAS (Turkey) considered that, in chapter III of its report (A/5509), the International Law Commission had given an adequately clear account of the question of extended participation in technical multilateral treaties concluded under the auspices of the League of Nations. What was needed in order to ensure such participation was an expeditious procedure which at the same time was consistent with the municipal law of the parties to those treaties. In that connexion, the arguments advanced by the Commission in favour of an administrative solution to the problem would do much to dispel the anxieties expressed by members of the Committee about the constitutional aspect of the matter.

2. The sponsors of draft resolution A/C.6/L.532 had taken the Commission's suggestions as their guide and proposed the application to the participation clauses of a procedure similar to that which had been followed for the clauses designating the depositary. That procedure, while not legally perfect, had the merit of being practical and effective, and his delegation could accept it. On the other hand it could not support the five-Power amendment (A/C.6/L.533 and Corr.1 and 2) because the proposed wording raised political problems and would lead to difficulties in application. He would therefore vote for the three-Power amendment (A/C.6/L.534).

3. Mr. COOMARASWAMY (Ceylon) said that he was grateful to the International Law Commission for having, in passing, brought to the Committee's attention, in paragraph 22 of its report the advisability of a re-examination of the treaties concluded under the auspices of the League. The need for further examination of the substance of those treaties was also brought out in paragraph 47 of the report, which stated that the very fact that five of the treaties had originally been designed as closed treaties suggested that they might not be of great interest to new States today, and that the problem in fact might concern only the twenty-one "open" treaties and, perhaps, only a very limited number even of those. The Commission raised that aspect of the question again in its conclusions (paragraph 50 (d)). Hence his delegation agreed with the Polish representative (797th meeting) that the general multilateral treaties concluded under the auspices of the League of Nations would be of wider interest to new States if they corresponded to the needs of today. Any draft resolution adopted by the Committee should reflect the Commission's suggestions regarding the further examination of the treaties in question.

4. His delegation supported the five-Power amendment (A/C.6/L.533 and Corr.1 and 2) to complete operative paragraph 4 of draft resolution A/C.6/L.532 by inserting the words "any State", because it favoured the principle of the universality of international law. International law was the law of all nations and not merely the law of the United Nations. The United Nations might, by majority votes, limit the scope of its political decisions, but it was not entitled to exclude from the rule of law States which, by accident or by the design of other States, were not Members of the Organization. That question had been described as a highly controversial political issue, but the United Nations itself created such political issues by withholding admission to membership from legal entities which were States in every sense of the term. Even though they were not Members of the United Nations, those States could not be denied the right to be governed by the same principles of international law as Member States, including the right to participate in general multilateral treaties. A committee of lawyers could take no such decision.

5. His delegation would vote in favour of draft resolution A/C.6/L.532, as completed by the five-Power amendment.

6. Mr. BLAGOJEVIC (Yugoslavia) observed that the present trend towards the universality of international law was in keeping with the character of the United Nations. That trend should be the determining factor for the General Assembly when it was called upon to take a decision concerning participation in general multilateral treaties, whether those concluded under the auspices of the League of Nations or any others of the same kind, such as those concluded under the auspices of the United Nations or of the specialized agencies. The principle of universality should govern the settlement of all questions of international law. It was a corollary of the principle of the equality of all States which, despite all the arguments put forward, was the only fair principle and the only one in conformity with the Charter of the United Nations. The principle of the universality of international law was also upheld by Article 2, paragraph 6 of the Charter, which enjoined the Organization to ensure that States which were not Members of the United Nations acted in accordance with its Principles so far as might be necessary for the maintenance of international peace and security. All States, therefore, must be enabled to comply with

the rules of law laid down in general multilateral treaties.

7. Whatever solution was adopted for the problem of extended participation in treaies concluded under the auspices of the League, it would not, in his view, prejudge the question of succession of States; those were two completely separate issues. Moreover, the question of succession of States raised not only the problem of the obligations of new States regarding treaties concluded by the States they succeeded, but also the problem of the right of those new States to accede on their own account to treaties concluded by their predecessors. It must not be forgotten that succession conferred not only obligations, but also rights, on the successor State.

8. No treaty which was concluded under the auspices of the United Nations, or in respect of which the United Nations exercised depositary functions, could be considered a closed treaty; to treat it as such would be tantamount to denying the universality of the Organization. That would mark a return to secret diplomacy and run counter to the progressive development of international law. The opening of such treaties to all States should be regarded as rule of jus cogens superveniens.

9. To be in a better position to ensure the universality of international law, the Committee should always have on its agenda an item entitled "Review of the situation concerning the preparation and ratification of general multilateral treaties, including treaties concluded under the auspices of the United Nations". Later on, "preparation and ratification" should be extended to cover the application of those treaties as well. A number of conventions that had not obtained the required number of signatures could not come into force. Other conventions were obsolescent and nothing was being done to adapt them to modern conditions. The Committee should have before it each year a report from the Secretariat to bring it up to date. It would then be better able to contribute to the progressive development and universality of international law. A similar practice was already followed in other fields by almost all United Nations committees. The conclusion reached by the Commission in paragraph 50 (d) of its report (A/5509) confirmed that view.

10. His delegation would vote in favour of draft resolution A/C.6/L.532, as completed by the five-Power amendment.

11. Mr. ANGUELOV (Bulgaria) said that he had followed the discussion with keen interest. The question of extended participation in multilateral treaties concluded under the auspices of the League of Nations had been approached both from the practical standpoint —that of the value of the treaties in question to States and to the international community—and from the theoretical and technical standpoint—that of the method of achieving such extended participation. The first aspect of the question was dealt with in operative paragraph 3 (c) of draft resolution A/C.6/L.532, concerning consultations with the States concerned, and in the Polish representative's useful suggestion (797th meeting) that United Nations organs and the competent specialized agencies should also take part in those consultations.

12. As to the second aspect of the question, his delegation was glad to find the members of the Committee opting almost unanimously in favour of the Commission's suggestions for a simplified and expeditious method, that of adapting the participation clauses of the change-over from the League to the United Nations. While that method might not be perfect from the legal point of view, there was no call to speak of revising the participation clauses, as the Italian representative had done. A time-limit had been included in those clauses in order to set bounds to the period within which a State might sign the protocol of conclusion of a treaty, not in order to exclude any State which had not been invited to sign that protocol within the specified periods. The method proposed in draft resolution A/C.6/L.532 provided a means to a fair and equitable end: that of opening certain non-political treaties concluded under the auspices of the League of Nations to any State excluded from them by the disappearance of the League itself.

13. Yet, some States, including the sponsors of the three-Power amendment (A/C.6/L.534), although they endorsed the method selected, paradoxically opposed the idea of giving "any State" an opportunity of acceding to the treaties in question. As the representative of Iraq had pointed out, the advantage of that method over the other two methods contemplated in the past was that it derived the right of participation from the terms of the treaty itself. The participation clauses were so drafted as to open the treaty for accession by any State to which the Council of the League of Nations had transmitted a copy of the treaty. It would therefore be contrary to legal logic to restrict accession to the treaties concluded under League of Nations auspices exclusively to States Members of the United Nations or of a specialized agency. The steps taken to achieve extended participation in the treaties in question would ultimately have the effect of making participation in those treaties narrower than had been provided for in the treaties themselves. Quite apart from the adverse political consequences of making a distinction among States, the amendment would infringe the right of every State to participate in international life and, in particular, to conclude treaties, a right recognized by article 8 in part I of the Commission's draft articles on the law of treaties.[1]

14. In the last analysis, the arguments advanced against the principle of universality were based on purely political considerations: more specifically, on the refusal of certain States to recognize other States whose political régimes were not to their liking. It was beyond question, however, that the recognition of States and the participation of States in the international legal order were not coextensive; the latter was a much wider matter. If a national of a given State traded, married or died in the territory of another State which did not recognize his State of nationality, the second State would not hesitate to apply the rules of private international law even if, in the case in question, those rules happened to be those of the municipal law of the State of nationality. Again, it was a practical impossibility not to recognize the private law effects of acts performed by a non-recognized State. For years the United States Government had refused to recognize the Soviet régime and had denied the legal effects of the nationalizations carried out by that régime. However, in the case of the Russian Reinsurance Company vs. Stoddard (1925) Judge Lehman of the New York State Court of Appeals had acknowledged the effects of those nationalizations and, in a commentary on that decision published in the Annual Digest of Public International

[1] Official Records of the General Assembly, Seventeenth Session, Supplement No. 9.

Law Cases (1929-1930),2/ Justice Cardozo had recognized that the everyday transactions of business or domestic life were not subject to impeachment, though the form might have been regulated by the command of the usurping Government. It should be emphasized that that solution was dictated by the exigencies of international life and not by the interests of the non-recognized State. Similarly, the violation by a State of a rule of international law engaged the responsibility of that State even if it was not recognized by a particular Government and was not a Member of the United Nations or of a specialized agency. There again, the interests of the international community was the deciding factor. In many documents the United States Government referred to "principles and practices of international conduct", and to "minimum norms of international law", as applicable to all States, whether recognized or not. Thus, whether or not States granted each other recognition as political régimes, there was a minimum of reciprocal recognition in international law. The treaties now under consideration were part of the international legal, not political, order, and as many States as possible should be given the opportunity to accede to them in order to strengthen that legal order. In an era of interdependence among States, the absence of a generally accepted order in, for example, the field of transport, communications and telecommunications was unthinkable. It was equally unthinkable that a single State should be excluded from that order. A resurgence of legitimism, leading to negation of the international order, would conflict with the interests not only of certain States but of the international community as a whole. The criterion of effectiveness was gaining increasing acceptance in modern international law, and that trend should also prevail in the Sixth Committee. A desire to exclude certain States from participation in technical treaties was an untenable attitude today, expecially when it was remembered that the recent Treaty of Moscow, which dealt with an eminently political question, had been opened under its article 3, to participation by all States.

15. For all those reasons his delegation would vote against the three-Power amendment.

16. Mr. HEDAYATI (Iran) said that he supported draft resolution A/C.6/L.532 in form and in substance.

17. Of the two amendments, the first (A/C.6/L.533 and Corr.1 and 2) stood for the principle of universality, while the second (A/C.6/L.534) upheld the principle of the sovereignty of States. In the present case, the two principles appeared to clash.

18. His delegation was in favour of the principle of universality but did not think that a State could be compelled to assume the same obligations towards a third State as it had accepted towards the other States parties to a treaty. All writers on international law acknowledged that multilateral conventions were valid only between the signatory States, and that the accession of a new State to such a convention required the approval of the States parties. Consequently, his delegation could not vote in favour of the first amendment, which ran counter to the principle of the sovereignty of States.

19. As a possible solution to the problem, he suggested that operative paragraph 4 of draft resolution A/C.6/L.532 should read as follows: "Further requests the Secretary-General to invite, with the consent of the States parties to those treaties, any State which....".

20. Mr. BOUZAIANE (Tunisia) congratulated the International Law Commission, on behalf of his delegation, on the quality and legal exactness of the work which it had done. Tunisia, ever faithful to its political principles, had always maintained that conventions should be open to the participation of all States without exception. If it was accepted that the codification and progressive development of international law should be carried out through treaties, the importance of the law of treaties immediately became clear. Multilateral conventions, which dealt with most questions of international law, made possible the rapid transformation of customary law into written law, and were thus of very special interest in that respect. Any clause tending to restrict participation in general multilateral treaties would thus hinder the codification and progressive development of international law. Moreover, treaties concluded under the auspices of an international organization or in the course of a conference convened at the request of a number of States were concluded in the name of the international community as a whole, and could not be "closed". To prevent a member of the international community from participating in a treaty of that nature constituted an act of discrimination carried out in flagrant violation of the principle of universality, and was hardly calculated to promote peaceful international co-operation. The question was of particular importance to States which had recently gained their independence, for to prevent such States from becoming parties to treaties would be the same as preventing them from participating in the progressive development of international law, and represented an attempt to enforce an anachronistic rule whereby international law meant the law of the European Powers that had imposed a law of silence on the victims of their colonial exploitation in Africa and Asia. In the present-day world, general multilateral conventions should be open to the largest possible number of States, because it was in the interest of the international community and the contracting parties themselves that the rule of law embodied in such conventions should be applied universally, and because the exclusion of certain States would be contrary to the principle of the sovereign equality of all States and incompatible both with the Purposes and Principles of the United Nations Charter and with the objectives of the multilateral treaties themselves. Moreover, the extended participation advocated in the Sixth Committee was in accordance with present-day trends as illustrated by the Moscow test ban treaty. The Tunisian delegation considered that the principle of universality was entirely distinct from the question of the recognition of States, because as it dealt with technical, non-political treaties, multilateral participation did not imply any recognition and did not involve any political commitments.

21. The Tunisian delegation fully approved the practice followed by the Secretary-General, which consisted of asking every new State if it agreed to be bound by any United Nations or any League of Nations treaties, as amended by the protocols of the United Nations, which had been made applicable to its territory by the State which it succeeded. That procedure corresponded exactly with the views of the new States, which, while not going so far as to denounce all such treaties systematically, claimed the right to confirm any undertakings entered into in their name during their pre-

2/ London, Longmans, Green & Co., Ltd., 1935.

tended political minority. Accession thus remained for them the only method of becoming parties to a treaty.

22. The extended participation under discussion would be ineffective and useless a study was carried out with a view to adapting treaties that had not lapsed to the needs of modern technology, because since the conclusion of those treaties great progress had been made in the technical subjects with which they dealt. It therefore appeared desirable that a body should be instructed to examine the conventions listed in document A/C.6/L.498[3] in order to determine which of them were really in force, to decide whether those which were in force were adapted to contemporary conditions, and then to proceed to make the necessary amendments. Such a study represented an essential preliminary to any decision on the matter, and States should not be recommended to accede to a treaty until all the necessary measures to adapt it had been taken.

23. The Tunisian delegation reserved the right to speak again on any draft resolution which might be put to the vote.

24. Mr. DEGEFOU (Ethiopia) said that he wished to make known his delegaton's attitude on the two main questions under discussion: first, the procedure to be adopted with a view to extending participation in general multilateral treaties concluded under the auspices of the League of Nations, and secondly, the choice between the two proposed ways of completing operative paragraph 4 of draft resolution A/C.6/L.532.

25. As far as the first question was concerned, the International Law Commission had described three possible procedures in chapter III of its report (A/5509): the procedure described in draft resolution A/C.6/L.504/Rev.2[4] submitted at the seventeenth session of the General Assembly; a protocol of amendment; and a third solution which the Commission recommended itself and which the Ethiopian delegation also found to be preferable. The International Law Commission had based its suggestion on the arrangements made in 1946 for the transfer of the powers and functions of the League of Nations to the United Nations. In its main lines, draft resolution A/C.6/L.532 followed the International Law Commission's recommendation. The Ethiopian delegation was convinced that it offered a practical and effective solution to the matter under discussion.

26. In the case of the second question, the Ethiopian delegation was in favour of the widest possible participation in general multilateral treaties, in the interest of all the members of the international community. It therefore supported the formula proposed in the five-Power amendment (A/C.6/L.533 and Corr.1 and 2) strengthened the principle of universality and threw open the treaties to all States.

27. Mr. SCHWEBEL (United States of America) said that he wished to make a few remarks on the new ideas which had been put forward during the discussion. The representative of the Soviet Union had proposed that the problem of choosing between the wording "any State" and the wording "each State Member of the United Nations or of a specialized agency" should not be considered or decided at the present session, but should be considered at the nineteenth session if in the meantime one or more of the twenty-one treaties under discussion proved to be valid and of real interest. The United States delegation was sure that that proposal had been made in a constructive spirit, but it could not support it, as it would not do anything to advance the work of the Committee. It was certain that the usefulness and validity of at least one convention—the International Convention for the Suppression of Counterfeiting Currency[5] — might be recognized, and that the States interested in the subject would wish to become parties to it without the need to modify it. It accordingly was not clear how any study of the twenty-one treaties in question would avoid the necessity of choosing between "any State" and "each State Member of the United Nations or of a specialized agency". It would be a waste of time to put off discussion of the question until the nineteenth session, as there was no reason to believe that such changes would have taken place on the international scene by 1964 that the problem would have disappeared or that the relevant facts would have essentially changed. The matter should therefore be settled at the present session.

28. The United States delegation had said in an earlier statement (796th meeting) that the Secretary-General would be faced with embarrassing political difficulties if the wording "any State" was adopted, because, as the Legal Counsel had also pointed out, the Secretary-General could not decide which entities not States-Members were States. What would the Secretary-General have done in the case of Katanga, for example, a year ago? As the representative of the Soviet Union had not appreciated the force of that argument, he would cite, as further examples, Estonia, Lithuania and Latvia, which were recognized as States by the Soviet Union.

29. Mr. MOROZOV (Union of Soviet Socialist Republics), on a point of order, said that he reserved the right to reply later to the point made by the representative of the United States, but he wished to request him there and then to refrain from raising the question of the political status of republics which formed part of the Soviet Union under the provisions of the Soviet Constitution. There could be no question about the status of those republics, and the United States representative's remarks were merely groundless insinuations regarding the territory of the Soviet Union. The United States representative could have chosen more pertinent arguments.

30. The CHAIRMAN called on the representative of the United States to show his goodwill by refraining from raising questions which were so delicate from the political and legal points of view.

31. Mr. SCHWEBEL (United States of America) remarked that the choice between "any State" and "each State Member of the United Nations and specialized agencies" could not be discussed without referring to the political factors which constituted the problem. If the United States recognized Lithuania, Estonia and Latvia, that was an opinion it was free to express if it desired. But if the "any State" formula was adopted, the Secretary-General would have to decide whether those three countries, as well as certain other territories, were to be regarded as States. Saying that did not involve provocation, but rather the recognition of the complexity of the question.

32. It had also been claimed that the formula "each State Member of the United Nations and specialized agencies" particularly affected the interests of the

[3] Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 76.

[4] Ibid.

[5] See League of Nations, Treaty Series, vol. CXII, 1931, No. 2623.

African and Asian States. That was not so. The formula would affect areas in other continents, for instance those he had mentioned earlier and the so-called German Democratic Republic. His delegation believed the Committee would do well not to tread upon such politically delicate ground and not to undertake to decide which entities not Members of the United Nations were States. That went far beyond its competence.

33. The recent Moscow Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water had been cited as a precedent of a multilateral treaty open to all States. The comments of the United Kingdom representative at the 797th meeting had disposed of that argument. The question of participation by all States in the Treaty was politically so explosive that the original parties had designated three depositaries. The Secretary-General, however, was the only depositary of the treaties concluded under the auspices of the League of Nations, and he must therefore know which entities not Members of the United Nations were to be regarded as States.

34. Regarding the proposal of the Iranian representative, he did not find it satisfactory at first sight, but it clearly deserved closer examination.

35. Mr. MOROZOV (Union of Soviet Socialist Republics), in the exercise of his right of reply, said that the tone and tendency of the United States representative's statements did not encourage serious consideration of the arguments adduced. He wished nevertheless to clarify his delegation's position on several points. The Soviet delegation was against the cold war and preferred simply not to pursue the attempts of the United States representative to give the debate the same tone it had had a few years before. The arguments of the United States representative were unfounded and, seeing that he had already answered them politically, he would decline to continue the discussion on the level desired by the United States representative.

36. The Iranian representative's proposal seemed quite attractive, but it was deceptive. Knowing the list of parties to the treaties concluded under the auspices of the League of Nations, it was certain that if the question of participation by all States in those treaties was submitted to them, the majority of European States and allies of the United States would take a negative stand, and that would remove any merit that the Iranian proposal might have. If the Iranian representative was willing to delete from his proposal the reference to the consent of all States parties to the treaties, then he could very simply associate himself with the formula proposed in the five-Power amendment (A/C.3/L.533 and Corr.1 and 2). If, however, his proposal was formally submitted in its present form, the Soviet delegation would vote against it since any formula of that kind would preclude universality. What was needed, on the contrary, was to reaffirm the principle proposed by the International Law Commission by giving the Secretary-General the necessary powers. It had been said that the Secretary-General would find himself in very difficult straits if the universal formula was adopted. The Legal Counsel had tried to create that impression, but he personally was not convinced that the Secretary-General would have said the same thing thimself. He was afraid that the Legal Counsel had perhaps expressed a personal opinion, one which corresponded to the view of the United States and the Western Powers. The Soviet Union for one was prepared to trust in the wisdom of the Secretary-General, who, it believed, would act dispassionately, impartially and in keeping with his understanding of his duties, without yielding to outside pressures. Those favouring the five-Power (A/C.6/L.533 and Corr.1 and 2) had confidence in the Secretary-General, while those supporting the three-Power amendment (A/C.6/L.534) did not wish to entrust him with certain powers. It was unnecessary to complicate the issue by inventing hypothetical cases like that of Katanga. The formula which the Soviet Union defended had to do with the principle of universality. There was no reason to fear the countries of Africa and Asia; their participation in the treaties in question would not affect either the privileges or interests of the parties. The Soviet delegation did not wish to play the cold-war game as it was being encouraged to do by the United States, which thus betrayed that it was trying to impose an erroneous solution that would prevent States having hundreds of millions of inhabitants from becoming parties to multilateral treaties for the simple reason that their régimes did not please certain other States.

37. The Soviet delegation, acting in a spirit of compromise, had suggested that an auspicious climate should be created, as that was in the interests of all mankind. In order to further peaceful coexistence, it had proposed that members should not rush into a politically and legally unjust decision. It hoped that the United States delegation would not insist on having the Committee decide hastily, as that would create an unfavourable situation and would emphasize the points on which States Members of the United Nations were divided. He did not see the necessity of settling the question in its minutest details at a time when the contents of the treaties were still unknown. Many delegations which deserved respect for the struggle they had waged to achieve independence supported the five-Power amendment. The Committee might at the present stage declare itself for the principle of universality and see, within a year whether there were treaties to which States wished to accede. He strongly urged the sponsors of the two amendments to consider carefully whether they should in fact be put to the vote. The vote would be influenced by the political considerations of those delegations that wanted to undermine the principles of univerality. If they obtained a majority, the result of the vote would surely not serve to strengthen peace and friendly relations, because on the other side of the scale were millions of persons who would condemn the attitude of those delegations. The Soviet delegation supported the five-Power amendment but was prepared not to insist on its being put to the vote. The United States representative had said that nothing would have changed in a year's time and that the international situation would not be better. That was a pessimistic and polemical view. He preferred to believe that it did not represent an official attitude, but was a mere slip.

38. Mr. HEDAYATI (Iran) said that his proposal was meant to help the Committee out of the political trap into which it had fallen despite itself; it was not politically loaded but was essentially juridical and consistent with the norms of international law. He repeated that he could not accept the "any State" formula unless it was qualified by the phrase "with the consent of the States parties to the said treaties". He gathered from the Soviet representative's remarks that the USSR delegation was against having the consent of the parties to the treaties because it wanted to oblige a signatory State to contract obligations with respect to other States

which it did not recognize. In that case his delegation would vote against the five-Power amendment and for the three-Power amendment.

39. Mr. DADZIE (Ghana) regretted that the Committee's deliberations again bore the stamp of the cold war, despite the great progress made recently in that respect. The Committee should not take a step backwards for the path of progress was also that of reason.

40. The sponsors of the five-Power amendment had not yet had an opportunity to examine the Iranian proposal, but it appeared to him to have considerable merit and to deserve closer study. Up to the present the choice between "all States" and "States Members of the United Nations or of a specialized agency" had been a purely political question, but the situation had changed in recent years and the question had become juridical. The State of Western Samoa, for example, had recently achieved independence but for certain reasons had been unable to become a Member of the United Nations. Did that give others the right, out of cold war considerations, to deny it the benefits of treaties for which the United Nations acted as depositary? The Committee should find a solution which did justice to States in that situation. The Iranian proposal was a step forward and should be given the attention it merited. He reserved the right to take the floor again if the proposal was submitted as a formal amendment.

41. Mrs. BURNETT (New Zealand) pointed out that Western Samoa, although not a member of the United Nations, was a member of a specialized agency. Hence, the formula proposed in the three-Power amendment did not exclude it from participation in general multilateral treaties.

42. Mr. DADZIE (Ghana) thanked the representative of New Zealand for clearing up that point. Other countries might be named to which the formula "any State" could apply: for instance, the Bahrein islands.

43. Mr. HEDAYATI (Iran) stated that the Bahrein islands were an integral part of Iran.

44. Miss GUTTERIDGE (United Kingdom) said that her delegation could not accept that statement.

45. Mr. YASSEEN (Iraq) Mr. EL-ERIAN (United Arab Republic) and Mr. NACHABE (Syria) reserved the position of their delegations with regard to the statement of the representative of Iran on the status of the Bahrein islands, and declared that those islands were integral parts of the Arab world.

46. Mr. SCHWEBEL (United States of America), replying to the comments made by the representative of the Soviet Union, pointed out that the United States was not, as that representative had said, demanding a vote to decide between the formulae "any State" and "each State Member of the United Nations or of a specialized agency". It was not characteristic of the United States to make demands. His delegation was merely submitting comments to the Committee on those two formulae. The Soviet representative had interpreted those comments as an unduly pessimistic forecast of international relations. He himself had in fact said that he did not suppose that the facts of the present problem would change enough to encourage the belief that a solution would be easier to find in a year's time. That was not a pessimistic but a completely realistic view.

47. Moreover, he rejected the Soviet representative's allegation that the United States delegation had raised questions connected with the cold war. It had not been the United States delegation which had provoked the debate on the two proposed formulae; that delegation, on the contrary, was in favour of having the problem disposed of in the traditional way. As, however, the question had been raised, it should be carefully considered.

48. The Soviet representative's comments also gave the impression that the United States delegation's attitude was contrary to the general opinion of the members of the Sixth Committee. But he had gone on to admit that if the five-Power amendment (A/C.6/L.533 and Corr.1 and 2) was put to the vote, it would be rejected by the majority. His statements therefore seemed rather contradictory.

49. The representative of the Soviet Union had also said that representatives who were opposed to that amendment had no confidence in the Secretary-General's judgement. The United States delegation was certain, on the contrary, that the Secretary-General enjoyed the absolute confidence of all delegations. The Secretary-General's representative himself had stated that, if the Committee adopted the five-Power amendment, the Secretary-General would be put in a very embarrassing position, and that the Committee would then have to give him instructions concerning which entities might be regarded as States. The question raised by the representative of the Soviet Union was therefore not relevant.

50. Lastly, the Soviet representative had made a strong appeal for the maintenance of friendly relations among nations, and the United States delegation willingly accepted that appeal. That, however, could not mean that the United States must necessarily adopt the Soviet Union's point of view. Rather, all Members must act in their own national interests and in the interests of the international community.

51. Mr. DE LUNA (Spain) said that his delegation considered the Iranian representative's suggestion reasonable and legally correct. It was true that any general international treaty must be considered open, in the absence of any declaration to the contrary by its parties. But that did not mean that a State could be compelled to recognize another State merely because of its accession to a treaty. There was often a confusion between two different legal acts: one had merely declaratory value, and was a mere declaration that a new State had just been established; whereas the other was an act of free will amounting to recognition of that State. His delegation did not understand how a closed treaty could be opened to all States against the will of the parties; their consent was indispensable. The resolution adopted by the Committee would have no effect if either States Members of the United Nations or States parties to the treaties were opposed to it. The Iranian representative's proposal accordingly seemed absolutely relevant.

52. Mr. AMON (Ivory Coast) recalled that at the 798th meeting he had referred to the decision contained in part I A of General Assembly resolution 24 (I) whereby the Secretariat of the United Nations was invested with the functions of a custodian, which functions, as such, did not affect the operation of the instruments deposited or the substantive rights and obligations of the parties. In virtue of that resolution the Secretary-General had declared himself incompetent where treaties were closed, including those which had become closed purely through the disappearance of the Council

of the League of Nations, to accept the ratification or accession of States not included in the participation clauses. If the Ivory Cost delegation had been strongly attached to that view, it would have unreservedly supported the three-Power amendment. But it shared the deep concern of the sponsors of the five-Power amendment to vindicate the universal character of the United Nations. For some, that meant that membership in the Organization was for the independent States of the world. For others, universality meant in practice that the principles of the Charter were general principles of international law which should govern relations between all States whether they were Members of the United Nations or not. The United Nations was not a closed institution; all States large or small could de facto and de jure become part of it.

53. His delegation accordingly thought that the two amendments complemented each other, for each emphasized an important aspect: the three-Power amendment the technical aspect and the five-Power amendment the principle of universality. As a compromise solution, he would accordingly propose that paragraph 4 of draft resolution A/C.6/L.532 should be replaced by the following text: "Further requests the Secretary-General and all other organs of the United Nations (such as the Economic and Social Council) to invite both States Members of the United Nations or of a specialized agency and non-member States which otherwise are not eligible to become parties .... (etc.).". That was merely a suggestion; if it were not accepted by the Committee, his delegation would support draft resolution A/C.6/L.532 as amended by the five-Power amendment.

54. Sir Kenneth BAILEY (Australia) said that the Iranian representative's suggestion was evidently correct in strict law, but that the procedure requiring the consent of all the States parties to a treaty was stricto sensu that of the amendment protocol. Draft resolution A/C.6/L.532 offered an entirely different solution, conforming to the suggestion made by the International Law Commission. That procedure followed from the fact that the twenty-one treaties under consideration had not been intended to be closed and had only become so because the organ competent to receive accessions had ceased to exist. By resolution 24 (I) the General Assembly had agreed in principle that the United Nations should assume the functions formerly entrusted to the Council of the League of Nations. But that resolution did not specify which organ of the United Nations should assume those functions, and draft resolution A/C.6/L.532 completed it by designating the General Assembly, which would decide by vote which States might be invited to participate in the treaties under consideration. Thus it seemed preferable to set aside the Iranian proposal, for the decision ought to depend on the majority of the General Assembly and not on the parties to the treaties.

55. According to another formula, the Secretary-General would be requested to invite new States to participate in the treaties but not obliged to take the decision himself, for he would be acting on the instructions of the General Assembly. Some delegations seemed to prefer that formula, which had already been adopted by the United Nations Conference on Diplomatic Intercourse and Immunities held at Vienna 2 March-14 April 1961. It would also meet the objections of the Bulgarian representative, who had remarked that the three-Power amendment (A/C.6/L.534) in its present form was more restrictive than the participation clauses of the twenty-one treaties under consideration. A formula similar to the Vienna one, the substance of which had been mentioned by the representative of Ghana and which he (Sir Kenneth Bailey) had heard suggested by other delegations, would commend itself to him. That formula would involve an addition to the three-Power amendment which would make operative paragraph 4 read: "Further requests the Secretary-General to invite all States Members of the United Nations or of a specialized agency, or parties to the Statute of the International Court of Justice, or who have been invited by the General Assembly, which otherwise are not ... (etc.)".

56. Mr. HEDAYATI (Iran) thanked the representatives of Ghana, Spain and the Ivory Coast for their interest in his suggestion. He intended to consult the other delegations in order to draft a proposal in proper form.

57. Mr. MOROZOV (Union of Soviet Socialist Republics) was still surprised that some delegations insisted on taking a final decision on a problem which was not one of the most important in international law. In eighteen years no legal difficulty had ever arisen out of the general multilateral treaties concluded under the auspices of the League of Nations. However, the Members of the Committee were changing their attitude. Even those who wished for an immediate solution recognized that the matter required careful study and that a decision of principle must be taken. Moreover, that decision might prove unnecessary, for there was no certainty that the question of participation in any of the treaties would ever arise.

58. Australia's new proposal was not different from the other moves to limit the universality of the general multilateral treaties. To adopt it would be to deny that all States might accede to those treaties. Some States would, indeed, be refused accession for political reasons bearing no relation to the principles of the Charter. There was only an apparent difference between the alternative proposals so far put forward and the amendment in document A/C.6/L.534. It would be better to leave aside a problem which aroused such vehement discussion until the Secretary-General's decision was known. It should be kept on the Sixth Committee's agenda; in draft resolution A/C.6/L.532 the preamble and operative paragraph 5 should be retained, operative paragraph 1 should be amended, and operative paragraph 3 should indicate that the problem needed further study. The Soviet delegation did not insist that a solution should be adopted during the present session, for it held that the problem was unimportant and that the political questions it raised might seriously hamper the Committee's work.

59. Mr. STAVROPOULOS (Legal Counsel) explained, in order to clear up the doubts expressed by some delegations, that in his previous intervention (796th meeting) he had expressed the Secretary-General's opinion, not his own, on opening the general multilateral treaties for accession to "all States". After an exhaustive study of the problem, the Secretary-General had concluded that he was not competent to decide whether an entity was or was not a State. If the Sixth Committee decided in favour of the "all States" formula, it would have to indicate to the Secretary-General which those States were.

The meeting rose at 5.50 p.m.

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