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SIXTH COMMITTEE, 623rd MEETING

Monday, 2 November 1959, at 10.50 a.m.

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CONTENTS

Chairman: Mr. Alberto HERRARTE (Guatemala).

Point of order concerning meeting arrangements

1. Sir Gerald FITZMAURICE (United Kingdom) asked why the Sixth Committee had had to meet for at least three weeks in the Economic and Social Council Chamber, which was not very convenient, and he thought that the Committees should take it in turns to sit there.

2. Mr. LIANG (Secretary of the Committee) explained that most of the other Committees met twice a day and naturally preferred not to have to change rooms from one meeting to the next. However, he would see what he could do to meet the United Kingdom representative's wishes.

AGENDA ITEM 65

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

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

3. The CHAIRMAN invited the members of the Committee to explain their votes on the joint draft resolution (A/C.6/L.448 and Add.1), which had been adopted at the 622nd meeting.

4. Mr. CHARDIET (Cuba) said that he was most gratified that the joint draft resolution, which his delegation had co-sponsored, had been adopted almost unanimously. The resolution settled the problem at issue and at the same time recognized the autonomy of IMCO, which must itself decide on the admission of India. In any event, India's declaration of policy could not be regarded as expressing a negative attitude or a reservation.

5. His delegation would express an opinion later on the general principles which should govern reservations in connexion with the two other draft resolutions before the Committee.

6. Mr. HU Ching-yu (China) reminded the Committee of his statement at the 621st meeting that his delegation would vote in favour of the joint draft resolution because operative paragraph 2 left to IMCO itself the responsibility for deciding on the acceptance or rejection of the Indian declaration.

7. Mr. ZEMANEK (Austria) said that he had voted in favour of the draft resolution because it provided a practical solution for the problem which had been raised without requiring the General Assembly to adopt measures which were outside its competence. He reiterated his opinion that the relationship between the United Nations and the specialized agencies, of which several representatives had spoken, was governed not by the Charter but by the special agreements between each agency and the United Nations.

8. Mr. EL-ERIAN (United Arab Republic) regarded the adoption of the draft resolution which his delegation had co-sponsored as fresh proof of the conciliatory spirit which inspired the Sixth Committee.

9. In his delegation's view the draft resolution expressed two fundamental ideas. As regards the legal character of the declaration made by India in its instrument of acceptance, it constituted a declaration of policy which was not incompatible with the purposes of the IMCO Convention[1] as defined in article 1 (b) thereof, and the Indian Government's right to reconsider IMCO's recommendations was implicit in the consultative character of IMCO.

10. As regards the relationship between the United Nations and the specialized agencies, his delegation was in complete agreement with the United Kingdom representative's remark at the 620th meeting that the relationship was not one between subordinate and superior. The specialized agencies were independent organizations, with regard to which the United Nations had simply a co-ordinating function. In that connexion, the draft resolution which had been adopted ruled out any attempt at interference in the affairs of IMCO.

11. His delegation hoped that India's position would soon be regularized.

12. Mr. YASSEEN (Iraq) said that his delegation had voted for the joint draft resolution because it thought that India's statement did not have the character of a reservation and was merely a declaration of policy. His delegation was prepared to support any action which would help to regularize India's position in IMCO.

13. The explanation he had just given did not in any way prejudge his Government's position on the general question of reservations. He reserved the right to speak again on that issue.

14. Mr. CHIKARAISHI (Japan) said that he had voted in favour of the draft resolution because, in his delegation's opinion, IMCO itself should take a decision

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

on the validity of India's instrument of acceptance. The draft resolution was not in any way an attempt to intervene in IMCO's affairs, for it did not prejudge the decision which the States members of IMCO would take at their next Assembly. His delegation also thought that the Secretary-General had performed his functions as depositary with impartiality and correctness when he had left the burden of making the decision to the members of IMCO. The draft resolution adopted embodied the results of the Committee's discussions on the subject in as satisfactory a way as possible.

15. Mr. MESSINA (Dominican Republic) said that his delegation, in voting for the draft resolution, had felt that the text did not in any way detract from IMCO's absolute right, under articles 55 and 56 of the Convention, to decide which States would become parties to the Convention through the deposit of their instruments of acceptance; in that sense, IMCO was not subordinate to the United Nations or to any of its organs.

16. Mr. MORALES RIVAS (Colombia) said that he had voted for the draft resolution because he considered that the Secretary-General had acted correctly in acknowledging that IMCO was competent to deal with all problems relating to the interpretation and application of its Convention.

17. Mr. ASRAT (Ethiopia) said that the adoption of the joint draft resolution had come as a relief to his delegation and as a happy solution for all concerned. That compromise had been struck in a spirit of co-operation and good will manifested by the members of the Committee.

18. His delegation hoped that India would be made a member of IMCO, and expressed its sympathy with India's cause, a sympathy which had led it to vote in favour of the draft resolution. However, Ethiopia had found it difficult to take a definite position in the matter as it was not a member of IMCO.

19. Mr. ZEPOS (Greece) said that, in his delegation's opinion, the resolution which had been adopted meant that in the case in point the Secretariat had performed its functions with complete impartiality and in conformity with established rules, that the issue of India's participation in the IMCO Convention should be decided by IMCO itself in accordance with the provisions of the Convention, and that there was no relationship of subordination between the United Nations and IMCO, at least from the point of view of the admission of States to IMCO.

20. Mr. WOODARD (Australia) said that he had been happy to vote for the draft resolution, since it did not prejudice the principle of non-interference by the United Nations in the affairs of another organization.

21. Mr. DADZIE (Ghana) repeated his delegation's opinion that the Indian statement constituted a declaration of policy and not a reservation. Ghana had accordingly voted in favour of the draft resolution and would be pleased to see India admitted to membership in IMCO.

22. The CHAIRMAN proposed that the Committee proceed to consider 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).

23. Mr. PECHOTA (Czechoslovakia) explained that his delegation had voted in favour of the joint draft resolution (A/C.6/L.448 and Add.1) because it provided a satisfactory remedy for the unwarranted action taken by the depositary of the IMCO Convention in regard to India's instrument of acceptance, and because it confirmed that India had been right to submit the question for consideration by the General Assembly. Moreover, the resolution as adopted would help to remove any doubts in the minds of the appropriate organs of IMCO concerning recognition of India as a member of the organization.

24. Turning to the general question of reservations to multilateral conventions—which was the subject of the other two draft resolutions—he said that in the opinion of a large number of delegations, including his own, the significance of General Assembly resolution 598 (VI) was quite clear: the purpose of the resolution was to bring the previous unjustified practice of the Secretariat into conformity with the recognized rules of law.

25. Only the revival of the League of Nations practice by the Secretariat had made it necessary for the Sixth Committee to revert to a question which had already been the subject of thorough examination at the fifth and sixth sessions of the General Assembly.

26. His delegation believed that the Committee was in a position henceforth to take concrete steps towards a solution which would satisfy the overwhelming majority of delegations. That solution should indicate plainly that the Secretary-General, in his capacity as the depositary of instruments of ratification, acceptance of accession to multilateral conventions, should in future act in all cases in accordance with the principles laid down in resolution 598 (VI) irrespective of the date of conclusion of the convention.

27. The Committee should not permit the principles embodied in that resolution to be weakened or revised in any way or allow considerations of prestige to compromise the efforts made in the interest of international co-operation. Any ambiguity in the definition of the Secretary-General's functions as depositary might impair conventional relations between States. International co-operation depended upon the conclusion of agreements, which should be given the widest possible application; any attempt to obstruct their universal application was contrary to the purposes and principles of the United Nations.

28. The depositary functions with regard to reservations were essentially administrative and comprised three aspects: acceptance, declaration and communication. The depositary had no power of arbitration or evaluation. That conception was reflected in resolution 598 (VI), which should be made applicable to all conventions, in accordance with the wishes of the great majority of the delegations as expressed in the seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2).

29. Some delegations were seeking indirectly to re-establish the unanimity rule which had been applied by the League of Nations, by pressing for further study of the question of reservations in order to postpone a decision in the matter. They had presented the ten-Power draft resolution to that effect (A/C.6/L.450 and Add.1), which would merely complicate the existing situation and at the same time arbitrarily impose a change in the programme of work of the International Law Commission. His delegation would oppose any attempt of that nature.

30. Mr. SAHOVIC (Yugoslavia) said that his delegation had voted for the joint draft resolution because it reflected the wishes of the countries concerned. The other two draft resolutions before the Committee had, however, to be considered in a different light. Diverse and complex questions were involved, which did not relate solely with the Secretary-General's functions as the depositary of multilateral conventions. All aspects of the question of reservations, and particularly the effects of resolution 598 (VI), should be studied carefully before a final decision was taken.

31. The first question which arose was that of the limits of the Organization's competence with regard to the Secretary-General's depositary functions. It had been argued that the General Assembly was entitled to take decisions regarding those functions but that argument must be analysed in the light of two particular factors: the nature of the ties between the United Nations and the specialized agencies and the relationship between the Secretary-General's responsibility to the Organization as depositary of multilateral conventions concluded under United Nations auspices and his responsibility to the parties to those conventions under the rules of international law.

32. In order to answer the first question it must first be established whether, and to what extent, the Charter, the statutes of the specialized agencies and the agreements governing the relationship between the United Nations and those agencies provided a legal basis for intervention by the General Assembly. After all, it was impossible to ignore the general rule of international law whereby the depositary was responsible to the contracting parties, who alone had the right to entrust him with or to divest him of those functions. The Secretary-General was not exempted from that rule, and he therefore had a twofold international responsibility: responsibility to the United Nations under the Charter and responsibility to the parties to the conventions deposited with him. The absence of any reference in the Charter to that second responsibility meant that the instrument was incomplete and did not exempt the Secretary-General from the need to abide by the rules of international law. The problem added to the significance of the question of reservations and merited more careful study.

33. The second question was whether resolution 598 (VI) was applicable to conventions concluded before its adoption. The interpretation of the resolution could be regarded as merely a matter of juridical technique but it nevertheless required a position to be taken on the substance of the rule interpreted. His delegation was convinced that the problem of reservations could not be finally solved by rewording the text of resolution 598 (VI). It would be preferable to discuss the question of reservations as a whole when the Committee considered the report of the International Law Commission. Resolution 598 (VI) had left the parties to multilateral conventions free to determine the principles which would govern their acceptance or refusal of reservations, and they would not necessarily adopt the system recommended by the International Court of Justice in connexion with the Convention on Genocide. 2/ While it might be said that a more liberal attitude towards reservations would lead to more general acceptance of international conventions, that did not necessarily mean that the other systems had nothing to be said for them. Moreover, it should not be forgotten that the responsibility and the obligations of the contracting parties must be based on respect for the integrity of texts—a prerequisite for the mutual respect of the sovereignty of all States.

34. However, the administrative nature of the Secretary-General's depositary functions was a particular aspect of the question of reservations on which agreement could be reached more easily. At the same time, it would be advisable, before attempting to spell out firm rules, to study those functions carefully in order to establish a dividing line between the Secretary-General's administrative role as depositary and the steps taken by him at the request of the contracting parties, and to decide on the juridical validity of his acts in the two cases.

35. His delegation would vote for the ten-Power draft resolution (A/C.6/L.450 and Add.1) but would abstain from the vote on the seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2).

36. Mr. COCKE (United States of America) wished to make it clear that, in his delegation's opinion, the Secretary-General had not violated the instructions given him in resolution 598 (VI). At the sixth session of the General Assembly the United States had sponsored the draft resolution which became resolution 598 (VI). When that draft resolution was considered, the Sixth Committee was aware of the previous practice of the Secretary-General from the descriptions of that practice contained in the advisory opinion of the International Court of Justice and in the report of the International Law Commission. Since resolution 598 (VI) was limited to conventions concluded after its adoption, the Secretary-General had been warranted in following his previous practice regarding conventions concluded before 1952. For the sake of uniformity, however, the practice stated in resolution 598 (VI) should now be made applicable to all conventions of which he was the depositary, thereby avoiding uncertainty and misunderstanding. Accordingly, his delegation had joined the sponsors of the seven-Power draft resolution, which would affect only the future practice of the Secretary-General.

37. The sponsors of the ten-Power draft resolution urged the Committee to postpone any decision on the question pending further study. His delegation was opposed to a study of that question on the basis of a partial and incomplete set of the International Law Commission's articles on the law of treaties and considered that it would be wasteful of the time and resources of the Sixth Committee to study the question before the Commission had completed its work on that topic. That would require approximately five years; meanwhile, the adoption of the uniform practice provided for in the seven-Power draft resolution would avoid further controversy.

38. Mr. ZEPOS (Greece) emphasized the importance of the questions of reservations to multilateral conventions and of the functions of the depositary. For an organization such as the United Nations the unanimity rule was certainly out-of-date, but it had not yet been replaced by any rule of law. A large number of States preferred to apply the principle of universality and claimed that, by virtue of its sovereignty, each State had the absolute right to accede to multilateral conventions on its own conditions. However, there were

2/ Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, p. 15.

some who recognized that stricter procedures had to be applied to conventions which were in point of fact constitutions, since they set up international organizations and embodied their statutes.

39. Differences of opinion regarding the functions of the depositary greatly complicated the Secretary-General's task. Thus far, those functions had consisted simply of informing the States of accessions and ratifications and of the date on which the convention came into force. The Secretary-General could not give that information if Member States did not agree on the rules of law or, in other words, on the administrative criteria on which the depositary had to rely in deciding which factors he had to make known in accordance with the final articles of each convention. It was a matter for regret that the world's most important depositary was not always in a position to know the status of the instruments entrusted to him. Resolution 598 (VI) had been a compromise, whereby the General Assembly, while failing to lay down what the Secretary-General had to do, had laid down what he was not to do; States were thus free to draw their own conclusions regarding the legal effects of the reservations, effects of which the Secretary-General remained unaware. Each State could thus decide who was a party to a multilateral convention, who had assumed obligations and towards whom, and the date on which the convention entered into force.

40. That situation was extremely unfortunate and it was to be hoped that the United Nations would find a satisfactory solution to the question in the near future. In that connexion, it might perhaps prove possible to combine the two draft resolutions before the Committee in a single text. The seven-Power draft resolution simply standardized the makeshift procedure laid down in resolution 598 (VI), which certainly simplified matters but was none the less a temporary solution. The Sixth Committee would have to reconsider the question once the experience gained by the Secretary-General had revealed a sufficiently important body of precedent. By refusing in advance to revert to the question, the Committee would run the risk of depriving itself—and the Secretary-General—of the benefit of important studies such as those of the forthcoming International Conference of American States at Quito and those of the International Law Commission on the law of treaties.

41. Those were probably the considerations on which the ten-Power draft resolution was based. Some of the points in the draft resolution would give those Member States which believed that a hasty decision was bound to provoke further disputes cause for reflexion; but no opportunity to study, at the appropriate time, all the new aspects of the practice followed by the Secretary-General in his capacity as depositary ought to be missed. It was perhaps unnecessary to request the Commission to complete its work in time for the sixteenth session of the General Assembly. If it were given a year or two more, the Sixth Committee and the General Assembly would have time to digest the findings arrived at by the International Conference of American States and the experience gained by the Secretary-General.

42. He believed, therefore, that it would be well to combine the two draft resolutions in a single text.

43. Sir. Gerald FITZMAURICE (United Kingdom) warned the Committee against the deceptive simplicity of the wording of the seven-Power draft resolution. In reality, the question of reservations to multilateral conventions, which included the depositary's functions, was much less simple than it appeared at first sight, and it was essential, as was proposed in the ten-Power draft resolution, to study it thoroughly before taking measures such as those currently envisaged.

44. Contrary to what a number of delegations believed, the proposal to have the study of the question undertaken was in no sense a concealed attempt to impose the unanimity rule. It stemmed from the conviction that the question was extremely complex, that its complexity had a bearing on the functions of the depositary and that the system instituted by resolution 598 (VI) could not be extended to all conventions without exception before a thorough technical study of all its aspects had been completed.

45. Resolution 598 (VI) had limited the application of the system set forth in operative paragraph 3 (b) not only to conventions concluded after 12 January 1952 but also to those among them that were concluded under United Nations auspices. But there were at least four other categories of conventions in connexion with which the Secretary-General could be called upon to exercise the functions of depositary: first, conventions concluded under League of Nations auspices; secondly, conventions concluded under United Nations auspices before 12 January 1952; thirdly, conventions concluded under auspices other than those of the League of Nations or of the United Nations; and lastly, conventions setting up an international organization.

46. So far as the first category of conventions was concerned, there could be no doubt whatever that the Secretary-General, who had been made responsible for the functions previously entrusted to the League of Nations, was required to apply the League of Nations system. It was difficult to see how, without infringing the mandate which he had, as it were, inherited from the League of Nations, the Secretary-General would be able to apply the system instituted by resolution 598 (VI).

47. As to the second category of conventions, the application of that system with retroactive effect would introduce an element of discrimination, the reservations attached to instruments of ratification or accession deposited in the future enjoying more liberal treatment than those which had accompanied instruments of ratification or accession already deposited. Apart from the fact that most legal systems viewed the principle of retroactivity with a certain measure of mistrust and recommended that it should only be applied with the greatest caution, it should not be forgotten that, in the case of conventions concluded under United Nations auspices before 12 January 1952—most of which had already entered into force—the adoption of the seven-Power draft resolution could create doubts as to the validity of a number of acts done in the past. The draft resolution in question did not take into account all the legal complications which could arise and about which resolution 598 (VI) said nothing. He recalled, in that connexion, that the General Assembly had decided in 1952 to limit the application of the new system to future conventions precisely because it had feared such difficulties. Those difficulties were perhaps not insurmountable, but they could not be ignored and the system laid down in resolution 598 (VI) could not be extended to all conventions automatically.

48. With respect to the third category of conventions, such as, for example, those concluded at Geneva on 12 August 1949 for the protection of war victims, it could be asked whether, in cases where the Secretary-General was the depositary, he could be compelled to follow the procedure laid down in resolution 598 (VI), even where the parties appeared to have contemplated a different procedure. It was true that the seven-Power draft resolution provided that that procedure would apply to conventions "which do not contain provisions to the contrary", but it should not be forgotten that most conventions made no provision for reservations and that it was precisely in those cases that difficulties arose. Silence on the part of the parties should not be taken to mean that they recognized the absolute right of formulating reservations or that they authorized the depositary to list as a party to the convention every State which made a reservation of any kind.

49. Regarding the fourth category of conventions, everyone would agree that reservations to constituent instruments of international organizations should not in principle be admitted, or at least not without the unanimous consent of all the members of the organization in question. In the hypothetical case where a State submitted for deposit an instrument of ratification containing a reservation on, for example, the payment of contributions stipulated by the constitution of an international organization, and where that instrument was the last one needed to bring the convention on the establishment of the organization into effect, it was hard to imagine that the Secretary-General would be bound to accept that instrument and put the convention into force, or, in other words, launch an organization one of whose members would be unilaterally authorized to derogate from the provisions of the constituent instrument.

50. Many other complications could arise in that connexion. The few examples cited were sufficient, however, to show that it was impossible to treat all multilateral conventions in the same way.

51. He next recalled the different theories that had been advanced in the preceding ten or fifteen years on the treatment to be accorded to reservations. Besides the unanimity rule, there was the majority principle, under which reservations to a convention were admitted if the majority of the parties to the convention were not opposed, the majority being either a simple majority, a two-thirds majority or the majority by which the convention itself had been adopted; the Pan-American system, under which a convention which had been made the subject of a reservation came into force between the reserving State and all States prepared to accept the reservation—it being understood, however, that the latter State was not obliged to apply to the reserving State the provisions to which its reservation related—but did not come into force between the reserving State and the States opposed to the reservation; the system laid down by the International Court of Justice in its advisory opinion on reservations to the Genocide Convention, namely, that the validity of a reservation depended upon its compatibility with the object and purpose of the convention and that the States accepting the reservation as being compatible would consider the reserving State as a party to the convention, whereas other States would consider it as not being a party thereto; and lastly the most extreme theory, which affirmed that States, in the exercise of their sovereignty, had the quasi-absolute right of making all the unilateral reservations they wished, even where those conflicted with the object and purpose of the convention. In its advisory opinion, the International Court of Justice had rejected that last theory outright.

52. It was obvious that the functions of the depositary depended to some degree on the system adopted and that the choice of the system depended in turn on the nature of the convention.

53. It had been said that the unanimity rule had ceased to exist. That, however, was only partially true. The rule retained full force in the case of regional conventions or treaties concluded between groups of States, which in certain respects resembled bilateral treaties. So far as general multilateral conventions were concerned, the unanimity rule was admittedly hardly practical and no one maintained that it should be applied. The rule could be regarded as traditional only from the standpoint of the codification of international law, and that was why he had retained it in his capacity as Special Rapporteur on the law of treaties. The International Law Commission would probably not adopt it, but it might consider that the rule could still be applied to certain categories of conventions.

54. From the standpoint of the progressive development of international law, a different rule might be envisaged for general multilateral conventions. That, however, raised a number of questions: what should the rule be? Could it be uniform for all conventions? What would be the functions of the depositary?

55. The majority rule had the advantage of ensuring, on the one hand, that unreasonable reservations would be rejected and, on the other hand, that a relatively small minority would not impede the acceptance of reasonable reservations.

56. If the majority rule was adopted, the Secretary-General's function as depositary of the convention would be more than that of a letter-box. He would clearly have to seek out the views of the other parties to the convention on the reservations submitted to him. The seven-Power draft resolution, which assigned to the Secretary-General the function of a letter-box only, excluded any possibility of applying the majority rule. It tended, in fact, to extend the application of the Pan-American method—which had yielded excellent results with some categories of conventions but which was quite unsatisfactory for others—or of the method envisaged by the International Court of Justice in the case of the Genocide Convention. The Pan-American method could be applied when dealing with multilateral conventions of a contractual character, but the great majority of conventions concluded under the auspices of the United Nations required a different method, for the parties to those conventions generally assumed obligations erga omnes, with a social or humanitarian purpose in view. The convenants on human rights might be cited as an example: it was inconceivable that a State should be free to ratify them while reserving the right to apply essential measures which were explicitly prohibited therein. A similar argument would apply in the case of conventions such as those relating to disarmament, in which the interdependence of the obligations of the parties was so great that the failure of one party to fulfil its obligations must entitle the other parties to renounce theirs.

57. He was fully aware that all the objections and difficulties he had pointed out—and there were many others—were equally valid when the procedure laid down in resolution 598 (VI) was applied to conventions concluded after 1952. That was indeed why his delegation had at the material time opposed the adoption of that resolution. But that was no reason for an indiscriminate extension of the resolution to all conventions without exception and without any preliminary study. He hoped that he had convinced the members of the Committee that the complexity of the problem and its relation to the functions of the depositary of multilateral conventions fully justified a more detailed study of the question. With reference to the comments of the United States representative, he explained that the International Law Commission should soon complete its consideration of the section of the law of treaties dealing with the conclusion of treaties, which included the question of reservations, possibly at its twelfth session.

58. In response to the appeal for a compromise, his delegation would accept something on the lines of the seven-Power draft resolution if its sponsors consented to launch a study of the problem and to stipulate that, only pending the outcome of that study, the Secretary-General would apply paragraph 3 (b) of resolution 598 (VI) in respect of conventions concluded under United Nations auspices of which he was the depositary and which did not contain provisions to the contrary.

The meeting rose at 1 p.m.

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