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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.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)

1. Mr. CHOWDHURY (Pakistan) said that he only wished to appeal to the sponsors of the two draft resolutions before the Committee to seek an agreed solution. The United Kingdom representative's statement at the 623rd meeting had convinced him that the intricacies of the problem of reservations to multilateral conventions necessitated detailed study and analysis by a body of experts, such as the International Law Commission. He had also been impressed by the argument put forward by the United States representative at the same meeting regarding the desirability of formulating certain general principles on such reservations without further delay. The sponsors of both draft resolutions clearly agreed that there was need for further studies; consequently, they should endeavour to maintain the traditions of the Sixth Committee and arrive at a compromise text.

2. Mr. TUNCEL (Turkey) observed that in the explanatory memorandum which accompanied its request for the inclusion of the item in the agenda (A/4188), the Indian Government had raised not only the specific issue of India's membership in IMCO, an issue which had been effectively disposed of by the adoption of the joint draft resolution (A/C.6/L.448 and Add.1), but also the general question of reservations to multilateral conventions, with particular reference to the functions of the Secretary-General as depositary authority. The two draft resolutions submitted on that general question, though at first sight they seemed to advocate different approaches, in reality complemented each other. The seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2) was based on the assumption that the final solution of the question could be found in resolution 598 (VI) itself, while the sponsors of the ten-Power draft resolution (A/C.6/L.450 and Add.1) believed that no immediate solution was possible and that the first step should be to expedite the study of the question. But the views expressed at the previous meeting by the representatives of Yugoslavia, Greece and the United Kingdom, who had shown how necessary it was to follow up resolution 598 (VI) with further study, had been largely endorsed by some of the sponsors of the seven-Power draft resolution, especially the Argentine and United States representatives, who had emphasized that the solution envisaged in their text could only be provisional and that a final decision would have to await the codification of the law of treaties by the International Law Commission. Clearly, therefore, even those who held that the scope of resolution 598 (VI) should be broadened immediately to render its provisions applicable also to conventions concluded before 1952 believed that there was urgent need for further study.

3. A somewhat more extreme view had been expressed by the representatives of the Ukrainian SSR and Czechoslovakia, who, while approving the seven-Power draft resolution, adhered to the rigid position that resolution 598 (VI) already contained a final ruling on the depositary's practice and that there was consequently no need for further study. Those representatives had even sought to attribute to the sponsors of the ten-Power draft resolution the design of forcing on the United Nations the former League of Nations practice. That interpretation, as the United Kingdom representative had pointed out, was wholly erroneous.

4. The ten-Power draft resolution, of which the Turkish delegation was a co-sponsor, invited the International Law Commission to expedite its work on the question of reservations, with a view to reporting thereon to the General Assembly at its sixteenth session. Thus, the complexity of the problem was acknowledged, and the Commission was not called upon to attempt the impossible. At its sixteenth session, the General Assembly would receive merely a preliminary report, on which Government comments would have to be sought. The text thus reflected the views of those who, like the Brazilian representative had stressed that the problem was too wide to be solved within two years. The sponsors had also borne in mind the fact that in the International Law Commission all shades of legal opinion were represented, and that all Governments would, in any event, have an opportunity to state their views after the Commission's report had been submitted.

5. In conclusion, the Turkish delegation welcomed the United Kingdom representative's readiness to seek a compromise text. Such a text was perfectly possible, and should preferably be submitted not as an amendment to the seven-Power draft resolution, but as a new joint proposal.

6. Mr. TCHOBANOV (Bulgaria) said that he had found it difficult to understand the contention that the General Assembly lacked competence to consider the agenda item under discussion. Those supporting that view had argued that, since IMCO was an autonomous organization, wholly outside the United Nations system and possessing its own organs qualified to rule on all disputes regarding the application of its constituent

Convention,1/ neither the General Assembly nor any other United Nations organ was competent to consider those disputes. In that connexion, the Bulgarian delegation fully agreed with the Indonesian representative, who had drawn attention to Article 57 of the United Nations Charter. Furthermore, IMCO had been created at the direct initiative of the United Nations, in the exercise of the powers vested in the Organization by Article 59 of the Charter. The United Nations Maritime Conference of 1948 had not only created IMCO but had also prepared the Convention thereon, and it was India's accession to that Convention in January 1959 that had led to the discussion in which the Committee was currently engaged.

7. Moreover, article 45 of the IMCO Convention expressly described IMCO as one of the specialized agencies envisaged in Article 57 of the Charter. Those agencies clearly came under United Nations jurisdiction, as regulated by Chapters IX and X of the Charter, the two most striking provisions on that point being Articles 58 and 60. And if any delegation should still entertain doubts regarding the General Assembly's competence in the matter, on the basis of the view that the Charter vested the power to make recommendations to the specialized agencies in the Economic and Social Council, those doubts should be dispelled by the provisions of Article 10 of the Charter, which authorized the General Assembly to discuss "any questions or any matters" relating to the powers and functions of any organs provided for in the Charter.

8. Simultaneously with its work on the IMCO Convention, the United Nations Maritime Conference had prepared and adopted the draft Agreement on Relationship Between the United Nations and the Inter-Governmental Maritime Consultative Organization,2/ article IV of which again confirmed the right of the United Nations to discuss matters relating to IMCO's activities and to make appropriate recommendations. Accordingly, the contention that the Sixth Committee and the General Assembly lacked competence to discuss the question raised by India seemed devoid of substance.

9. Some representatives had also suggested that when acting as depositary of multilateral conventions the Secretary-General was no longer acting as the Secretary-General of the United Nations but in some wholly different capacity, in which he was in no way subject to the provisions of the Charter which governed his relationships with United Nations organs. Such a suggestion, however, could hardly be regarded as serious. Nor could it be assumed that the United Nations Maritime Conference, in drafting article 62 of the Convention, had in fact envisaged the Secretary-General as a sort of extra-juridical entity or indeed as a metaphysical abstraction. The Bulgarian delegation, therefore, believed that the Secretary-General, on becoming the depositary of a multilateral convention, lost none of his rights or prerogatives and could not divest himself of any of the obligations or responsibilities deriving from his position as the chief administrative officer of the United Nations.

10. At the 619th meeting the Cambodian representative had advanced an opinion on reservations which could only be described as extreme. Citing a number of examples connected with bilateral contracts in private law, he had apparently sought to deny any legal validity to an accession accompanied by a reservation, unless that reservation was accepted by all the States parties to the multilateral convention. The Cambodian representative was perfectly right in saying that there could be no valid contract between two persons where one of them refused to accept a clause or clauses which the other party had inserted; but that did not apply to cases when there were, say, twenty-two parties involved—or indeed all the eighty-two States Members of the United Nations. In such a case, if one State made a reservation to a specific provision and only one of the parties objected to that reservation, the objecting State might perhaps be entitled to consider that the reserving State was not a party to the convention. The remaining twenty signatories, however, would be entitled to regard the reserving State as a party, subject only to the proviso that they would not be bound to that State with regard to the provision to which it had made a reservation. In any event, the Bulgarian delegation could not accept the contention that the absence of unanimous agreement on a single clause could entitle one State to impose its will on all the other signatories and thus prevent them from regulating their relationships with other States as they saw fit.

11. The United Kingdom representative had said, at the preceding meeting, that in deciding which theory on reservations was applicable in any given case, a distinction had to be drawn between different kinds of conventions. But a distinction had also to be drawn between, on the one hand, the manner and time of a convention's entry into force and its binding effect on the States parties—a context in which the United Kingdom representative's argument might well apply—and, on the other hand, the wholly separate question whether the depositary was entitled to differentiate between conventions which envisaged reciprocal benefits for the parties and declaratory instruments such as human rights conventions and the like. In the latter case, if the depositary were to act in the manner suggested by the United Kingdom representative, he would be prejudging questions which could be decided only by the signatories. But nobody could argue that, if the depositary in fact acted in that manner, the parties to the convention would be precluded from accepting or rejecting reservations or that the competent organs would lose their rights to decide which of the relevant theories should be applied. The Bulgarian delegation, for its part, believed that even if the unanimity rule itself was applicable in a specific case, the decision on the point would be wholly outside the functions of the depositary.

12. In conclusion, he expressed the hope that the question of reservations to multilateral conventions would be settled in such a manner as to facilitate the conclusion of such conventions between the greatest possible number of States. Resolution 598 (VI) had marked an important step forward, and any revision of that resolution could only have adverse consequences.

13. Mr. YASSEEN (Iraq) recalled that a decision on the specific question raised by the Indian delegation had already been approved by the Committee. Notwithstanding that decision, however, the general question of reservations to multilateral conventions remained unsolved. In that connexion, the Iraqi delegation believed that the first point to consider was the right to make reservations; without analysing the basis of that right, it would be difficult to appraise the compe-

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

2/ Ibid., p. 18.

tence of the Secretary-General in the exercise of his functions as depositary. He wished to stress that he was for the moment contemplating only one particular kind of convention, namely, general multilateral conventions open to acceptance by non-signatory States throughout the world or in a specified region.

14. The decisive factor in the conclusion of a treaty was consent. The notion of a contractual relationship still dominated international instruments and largely determined their scope. No treaty provision could be invoked against any State which had not accepted it, regardless of whether the treaty in question was bilateral or multilateral. Accordingly, the question of reservations could only be solved, in the absence of special provisions embodied in the instrument concerned, on the basis of the principle of consent. That fact had been confirmed by the International Court of Justice in its advisory opinion on the Genocide Convention,[3] for the Court had based its reply to the questions addressed to it by the General Assembly on the principles governing the determination of the intent of the parties. That advisory opinion was undoubtedly of general scope, especially so far as it established the method to be followed. Indeed, in dealing with the question of reservations it was preferable to determine the appropriate method rather than to elaborate a complete and detailed system.

15. If a multilateral convention contained special provisions on reservations, then those provisions, whether they recognized or denied the right to make reservations, undoubtedly had to be respected. In the absence of such provisions, however, it was necessary to ascertain the implicit significance of the instrument in question and thus the common intention of the parties. In so doing, it was permissible to refer to external elements, such as the preparatory work. It might also be advisable to bear in mind some of the realities likely to have influenced the convention's authors; and in that connexion, the fact that the States concerned had decided to give the treaty the form of a general multilateral instrument was in itself significant. In choosing that form, States certainly wished to ensure the greatest possible participation by States, while at the same time safeguarding the basic principle of the convention. But if the wish to encourage wide acceptance logically and necessarily implied recognition of the right to make reservations, the principle of the integrity of a treaty was manifestly inconsistent with such a wish; that, in view of the differences in the existing political systems and the economic and social conditions of States, was a conclusion which could hardly be challenged. On the other hand, the need to safeguard the essence of a convention imposed a limit on the right to make reservations. As the International Court had held, reservations could not be at variance with the object and purpose of the convention. The logical conclusion, therefore, was that when a convention itself said nothing about reservations, and it was impossible to infer any contrary intention from the text, the right to make reservations must be presumed to exist, subject to the one limitation he had indicated.

16. That conclusion having been reached, the question of the depositary's functions and competence could be considered. In the Iraqi delegation's view, the depositary's role, in the absence of any provision to the contrary in the instrument concerned, was purely administrative. The depositary was not a party to the instrument nor was he competent to judge whether or not the right to make reservations existed. Nor could he rule that a given reservation was inadmissible and thus prevent a State's accession to a multilateral convention. That conception of the depositary's role was also apparent in resolution 598 (VI). The fact that that resolution referred expressly only to conventions to be concluded after 1952 in no way rendered it inapplicable to future acceptances of conventions concluded before that date. However, in view of the differences of opinion on the immediate effect of resolution 598 (VI) on such conventions, it might be advisable to clarify the situation. The Iraqi delegation would accordingly support the seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2). It would speak on the ten-Power draft resolution (A/C.6/L.450 and Add.1) at a later stage.

17. Mr. BHADRAVADI (Thailand) said that his delegation had carefully studied the comprehensive, clear and precise report submitted by the Secretary-General (A/4235), and had come to the conclusion that the Secretary-General had acted in a correct and impartial manner. It was also of the opinion, however, that if a definite rule had been laid down for the Secretary-General to observe in dealing with reservations to multilateral conventions, the occasion for the Committee to discuss the matter would not have arisen. For that reason, it had joined with the delegations of Argentina, Belgium, Indonesia, Mexico, Peru and the United States of America in sponsoring the seven-Power draft resolution.

18. The purpose of that draft resolution was to provide the Secretary-General with a definite rule to follow, in his capacity as depositary, when confronted with the question of reservations. It was the Committee's duty to formulate such a rule for all cases and for all time, so that the Secretary-General should know exactly what procedure to apply when the occasion arose. But his delegation had no objection to the question being referred to other bodies for further study, in particular, to the International Law Commission when it undertook the part of its work on the codification and development of the law of treaties which related to the question of reservations to multilateral conventions and the functions of depositary authorities.

19. His delegation could not, however, support the ten-Power draft resolution, since its effect would be to postpone the Committee's decision for at least some years, and since the International Law Commission's work on the subject was not work which could easily be expedited. But if some way could be found to combine the leading principles of the two draft resolutions before the Committee, he would welcome such a compromise solution.

20. Mr. ZEMANEK (Austria) said that simply to extend the application of resolution 598 (VI) to conventions concluded before 12 January 1952, as provided for in the seven-Power draft resolution, was not a lasting solution of the problems confronting the Secretary-General as depositary of multilateral conventions. He cited the hypothetical case of a multilateral convention providing for entry into force after the deposit of twenty-one ratifications. Twenty States might already have deposited their instruments of ratification when the depositary received the twenty-first instrument of ratification, containing a reservation. That reservation might be subsequently accepted by fifteen of the States

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

which had previously ratified the convention. According to Pan American practice, as laid down in the resolution of the Governing Board of the Pan American Union dated 4 May 1932, that convention would not be in force between a Government which had ratified with reservations and any other Governments which had already ratified and which did not accept such reservations. That view had been upheld by the International Court of Justice in its advisory opinion on the Genocide Convention, when it had held "that if a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving State is not a party to the Convention". If that was so, the depositary could not possibly pronounce on the entry into force of the convention. Moreover when, in such a situation, the convention had to be interpreted by means of proceedings before the International Court, the question also arose which States had a right to intervene in the proceedings under Article 63 of the Court's Statute.

21. To extend resolution 598 (VI) to conventions concluded before 12 January 1952 might give rise to still another problem. Under the present practice, a State which wished to become a party to a convention concluded prior to that date while making a reservation could do so only if all the other parties at least implicitly accepted the reservation. If that practice were changed, a State might in the future become a party to the convention while making exactly the same reservation which had previously prevented another State from becoming a party. Such a situation would surely be at variance with the principle of the sovereign equality of States.

22. His Government considered, therefore, that a careful study should be made of those and similar questions before any decision was taken. The ten-Power draft resolution, which his delegation had the honour to co-sponsor, would make a useful contribution to that aim. He was prepared, however, to support any reasonable compromise which provided that the Secretary-General could apply resolution 598 (VI) to conventions concluded before 12 January 1952 until he received further instructions from the General Assembly after the studies mentioned in the ten-Power draft resolution had been completed.

23. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the practical problem confronting the Committee was how the Secretary-General should act in his capacity as depositary of multilateral conventions concluded before the adoption of resolution 598 (VI) which contained no specific reference to reservations. Although his delegation could not agree with some of the subsidiary arguments which had been advanced by the sponsors of the seven-Power draft resolution, in particular by the United States representative, it considered that the resolution would do much to bring about a practical solution of the problem, and was therefore glad to support it. It could not, however, support the ten-Power draft resolution, the aim of which was to prevent an immediate decision on the question of reservations and which, if adopted, would nullify the seven-Power draft resolution. It seemed clear from the ingenious arguments advanced by the co-sponsors of the ten-Power draft resolution that their ultimate purpose was to preserve the unanimity rule; indeed, they seemed prepared to emulate the group of delegations which had opposed the adoption of resolution 598 (VI), of which the most prominent had been the Netherlands and the United Kingdom. To be sure, their present position was less rigid than it had been in 1951. At that time they had refused to admit that any procedure for dealing with reservations could be worked out other than one embodying the unanimity rule, whereas today some of them obviously no longer believed that that rule should be a universally acknowledged principle of international law or that it could be applied to all forms of multilateral conventions. That undoubtedly represented a step forward. The arguments of the delegations concerned, however, tended to follow the pattern of those advanced in 1951 and to go beyond the bounds of the present discussion. After all, the question now before the Committee was not whether reservations to multilateral conventions were admissible in the first place, nor did it relate to the legal consequences of such reservations. Moreover, a considerable number of multilateral conventions which had been concluded both before and after the adoption of resolution 598 (VI) fell entirely outside the scope of the present debate. The problem now before the Committee was a narrower one, namely, that of conventions which contained no clauses either providing for or specifically prohibiting reservations. It also involved the even narrower question of the functions of the Secretary-General as depositary authority. The former problem was not difficult of solution, since it was obvious that where a convention failed to include provisions concerning reservations its framers had assumed as a matter of course that suitable reservations could always be made. Similarly, it would be quite improper to infer from the absence of provisions concerning reservations that the depositary was thereby authorized to follow some procedure other than the usual one.

24. With respect to the unanimity rule, he hoped that it was clear to all, in the light of the advisory opinion handed down by the International Court in connexion with the Genocide Convention, that that rule was no longer alive—although it seemed as if efforts were being made in certain quarters to revive it. In order to secure the adoption of the ten-Power draft resolution, for example, some of the co-sponsors had announced their willingness to combine that resolution with the seven-Power draft resolution. That was only a tactical concession, aimed in effect at opening the back door to the unanimity rule by weakening the provisions of resolution 598 (VI). From an objective point of view, moreover, the adoption of the ten-Power draft resolution, whether independently or in combination with the seven-Power draft resolution, would have no practical significance, since the question with which it dealt was one which was already before the International Law Commission and the latter was bound, sooner or later, to submit a report on it. He was unwilling to believe that the sponsors of the ten-Power draft resolution were actuated by ulterior motives and were attempting to re-establish the now discredited unanimity rule; nevertheless, there were new Member States represented in the Sixth Committee which might not realize the full consequences of the draft resolution, and he felt compelled to warn them that its adoption would mean that the General Assembly was not acting as decisively as it had in 1952 by the adoption of resolution 598 (VI). His delegation had not hesitated to vote for the latter resolution, and was equally prepared to vote now for the seven-Power draft resolution. As a participant in the debates at the sixth session, however, he considered it his duty to point out that the adoption of the ten-Power draft resolution, even in

a compromise form, might be followed by results which its sponsors themselves would not wish. In general, his delegation was always prepared to welcome a compromise solution; but where a compromise threatened to jeopardize a question of principle it must be rejected.

25. Mr. ALONSO LIMA (Guatemala) said that his delegation would support the seven-Power draft resolution, which, by outlining the practice the Secretary-General should follow in respect of conventions of which he was depositary, would undoubtedly facilitate the Secretary-General's work in the future, providing him with uniform procedure to apply in all circumstances and thereby precluding uncertainty and misunderstanding. It would also support the ten-Power draft resolution, considering that matters of such importance as reservations to multilateral conventions and the functions of the Secretary-General as depositary were worthy of careful study. The work of the forthcoming International Conference of American States and of the International Law Commission on the subject would be of the greatest interest.

26. The two draft resolutions were in no way incompatible, and every effort should be made to merge them into a single draft. Such a text would ensure careful study of the questions involved, while at the same time giving the Secretary-General immediate and clear instructions regarding the procedure he was to follow. A compromise solution of that kind would offer further proof of the spirit of understanding which had always existed in the Sixth Committee and which had already resulted in the adoption of the joint draft resolution (A/C.6/L.448 and Add.1), the result of which, it was to be hoped, would be that India would become a full member of the Inter-Governmental Maritime Consultative Organization.

27. Mr. SPERDUTI (Italy) expressed his delegation's satisfaction at the almost unanimous approval of the joint draft resolution. In voting for that draft resolution his delegation had expressed not only its desire to satisfy India's legitimate request but also its adherence to the principles which he had already outlined regarding the Secretary-General's role as depositary of multilateral conventions.

28. The Italian delegation was also anxious that some remedy, even if only a temporary one, should be found for the difficulties encountered by the Secretary-General in carrying out his functions as depositary. The United States representative, in introducing the seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2), had spoken of the need for the Secretary-General to follow a uniform administrative practice as depositary of multilateral conventions. The instructions given by the General Assembly in its resolution 598 (VI) had been limited to conventions concluded after 12 January 1952. The United States representative and the other co-sponsors of the seven-Power draft resolution had argued that they should be broadened to cover all conventions for which the Secretary-General acted as depositary, provided that such conventions did not contain provisions to the contrary. While the Italian delegation agreed in general with that view, a clear distinction should be drawn between instructions given by the General Assembly to the Secretary-General as depositary, and the principles, particularly as regards reservations, of international law regulating the conclusion of treaties and the participation of States in multilateral conventions.

29. Nobody could maintain that the Secretary-General, in his capacity as depositary, could in dealing with the problem of reservations act contrary to the general principles of international law or to a particular rule applicable to a given convention. Nor could anyone argue that the General Assembly should be ready to give the Secretary-General instructions whose observance would be at variance with international law. Everybody must agree that instructions from the General Assembly should be based on current international law as regards reservations to multilateral conventions. Supposing, for example, that as international law now stood the validity of a reservation was subject, in the absence in the convention of any provision to the contrary, to the rule of unanimity, then there would clearly be no reason why the Secretary-General should not be instructed to decide for himself whether a State which had signed or ratified a convention while submitting a reservation could be considered a party to that convention. The rule of unanimity was simple in the sense that the Secretary-General could apply it himself without thereby assuming functions of anything more than a strictly administrative nature. And there were other circumstances also in which the Secretary-General could himself decide whether a State which had made reservations could or could not be registered as party to a convention.

30. The essential problem before the Committee was whether the Secretary-General could act in such a manner within the terms of paragraph 3 (b) of resolution 598 (VI). That problem must be solved on the basis laid down by the International Court of Justice in its advisory opinion of 28 May 1951. The principle involved was so well known that there was no need to dwell on it. What should be stressed, however, was that the advisory opinion in question was fully in keeping with the General Assembly's request to the Secretary-General not to pass on the legal effects of instruments of acceptance containing reservations and objections. It had often been observed that that limited the Secretary-General's functions as depositary to acting as a post office; such comments were fully understandable.

31. The General Assembly had taken its stand on the Court's opinion that the principle of unanimity was not a general rule of international law. The Court had not envisaged, in place of that principle, other general rules of international law relating to reservations. It had clearly and frequently stated that problems connected with reservations to multilateral conventions should be dealt with as problems relating to the interpretation of the common will of all the parties to the convention. Accordingly, the General Assembly had instructed the Secretary-General to act merely as a post office and to formulate no conclusions with respect to the legal effects of reservations or objections. That meant that the Secretary-General could not determine for himself whether a State which had deposited an instrument with reservations had or had not become party to a convention.

32. A number of delegations had not been prepared to draw those inferences from resolution 598 (VI); on the contrary, they had maintained that the Secretary-General was obliged by that resolution to register any State which had deposited an instrument, even with a reservation, as party to the convention. The validity of that contention had never been demonstrated. Merely because the Secretary-General was required to receive all instruments found in good and due form without

passing on the legal effects of reservations, it did not follow that he must at the same time register the States making the reservations in question as parties to the convention. A clear distinction had to be made between the acceptance by the Secretary-General of instruments deposited in due form and the execution by him of other acts implying a judgement as to the legal value of those instruments. The Secretary-General had to limit himself to acceptance; he was not competent to register a State making reservations as a party to a multilateral convention.

33. The United Kingdom representative had demonstrated clearly at the 623rd meeting that the theory that in accepting a convention States had an absolute right to make any reservations they thought necessary had been rejected by the International Court of Justice in its advisory opinion of 28 May 1951. It could not therefore be regarded as accepted in resolution 598 (VI), which was based on the Court's advisory opinion.

34. Accordingly, the Italian delegation considered that in extending the application of resolution 598 (VI), with the laudable aim of standardizing the Secretary-General's practice, great care must be taken not to give the resolution any interpretation contrary to existing international law, to the intentions of the General Assembly in 1952, and to the advisory opinion of the International Court of Justice. A formula could be adopted providing for the application of resolution 598 (VI) to any convention concluded under United Nations auspices, for which the Secretary-General was the depositary, subject to the proviso that the Secretary-General must not pass on the legal effects of reservations or objections, such effects remaining to be determined by the States concerned or, if necessary, by competent bodies. The ten-Power draft resolution contained nothing contrary to those ideas, and the Italian delegation was glad to support it.

35. Mr. HOLMBACK (Sweden) said that he wished to make it clear at the outset that his delegation approved of the practice the Secretary-General had been following as depositary. At the same time, it sincerely hoped that India would soon become a full member of IMCO.

36. The sponsors of the two draft resolutions had been appealed to to merge their texts (A/C.6/L.449 and Add.1 and 2 and A/C.6/L.450 and Add.1) into a single draft. The Swedish delegation would be obliged to reserve its views on the compromise achieved until the text of such a draft resolution had been placed before the Committee.

37. The Swedish delegation shared the view that further study was necessary before any final decision was made regarding the present rules on the functions of the Secretary-General as depositary of multilateral conventions. While the Swedish delegation was in favour of the general principles set forth in the seven-Power draft resolution, it could not support that draft resolution as it stood. In its view, General Assembly resolution 598 (VI) applied only to the Convention on Genocide and to conventions concluded under United Nations auspices after 12 January 1952 for which the Secretary-General was depositary. The resolution had given the Secretary-General no instructions regarding other conventions, despite the fact that in 1950 he had referred the practice he had been applying in respect of reservations to multilateral conventions to the General Assembly for its approval and advice (A/1372). The Secretary-General was not bound by any General Assembly resolution to apply the unanimity rule exclusively. At the previous meeting the United Kingdom representative had outlined five systems of procedure applicable to reservations to multilateral conventions. The Swedish delegation held that the Secretary-General was entitled to apply whatever rules seemed appropriate in a particular case. The Secretary-General was an administrative official; if he had any doubt how to deal with a specific reservation he was always free to request the General Assembly under Article 96, paragraph 2, of the Charter to authorize him to apply to the International Court of Justice for an advisory opinion.

38. The principal difference between the Secretary-General's present practice regarding reservations to multilateral conventions concluded before 12 January 1952 and the rules which would apply if the seven-Power draft resolution was adopted would be that while, under present practice, where an objection was made to a reservation to a multilateral convention and the dispute could not be settled, the matter was examined by the Secretary-General after advice, if necessary, from the International Court of Justice, the seven-Power draft resolution, if adopted, would require the Secretary-General, in the absence of any provision to the contrary in the convention, to register immediately as party to a convention any State that had submitted instruments of ratification for deposit, even if they contained reservations. But the mere registration of a State as a party did not automatically make it a party; a rule in the convention was necessary. A possible course would be for the admissibility of any given reservation to be examined at a later stage; the reserving State could then, if necessary, be required to choose between withdrawing its reservation and ceasing to be a party to the convention concerned. It was doubtful, however, whether such an examination would be of any use in the event of the adoption of the seven-Power draft resolution, for once the instrument of acceptance had been registered, the process would then in fact be complete; the deposit would be definite, and the State would be a party to the convention.

39. It was of interest to consider what the effects of registration would be in the case of a State which had made a genuine reservation in its instrument of acceptance of the IMCO Convention. Under articles 7 and 57 of the Convention, a State became a member of IMCO on the deposit of an instrument of acceptance of the Convention with the Secretary-General. No exception was made with regard to reservations. As the articles in question were decisive, the only recourse open to other members of IMCO if they objected to a reservation was to ask the General Assembly of the United Nations to adopt a resolution under article 11 of the IMCO Convention providing that the State which had become a member of IMCO should not remain a member.

40. If the IMCO Convention had been drafted after the adoption of resolution 598 (VI), the authors of the Convention would have felt the need to formulate rules regarding the admissibility of reservations, particularly as that resolution recommended that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility of reservations. As the IMCO Convention had been drafted before 12 January 1952, there had been no occasion for including a special clause on the admissibility of reservations.

41. Accordingly, the adoption of the seven-Power draft resolution would have a retroactive effect on the IMCO Convention, and indeed not only on that convention but perhaps even on other multilateral conventions which were still open for acceptance. No studies had been made of the question. Great caution must be exercised in introducing any notion of retroactive effect; preparatory work should first be carried out. There was as yet no preparatory work of any kind on the question of changing the treatment applied to reservations to multilateral conventions concluded before 12 January 1952. It would therefore be premature to adopt the seven-Power draft resolution. On the other hand, the ten-Power draft resolution would provide for the necessary studies and would assign them to the competent hands of the International Law Commission. It would then be perfectly possible to take the matter up again at the sixteenth session of the General Assembly.

The meeting rose at 5.55 p.m.

Litho in U.N. 77601-February 1960-1,975