United Nations
GENERAL ASSEMBLY
FOURTEENTH SESSION
Official Records

SIXTH COMMITTEE, 619th MEETING

Tuesday, 27 October 1959, at 3.30 p.m.

NEW YORK

CONTENTS

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) (continued)

GENERAL DEBATE (continued)

1. Mr. CACHO ZABALZA (Spain) said that he would not enter into a discussion on the substance of the question of competence or the general question of reservations to multilateral conventions and would confine himself to considering what practical measures could be taken to solve the problem raised by India.

2. It was undeniable that the instrument of acceptance of the IMCO Convention which had been deposited by India (A/4235, annex I) contained, at the very least, a "condition". What had to be determined was whether or not that condition in fact constituted a reservation. Reservation or no reservation, however, the IMCO Assembly had requested the Secretary-General to circulate the instrument of acceptance to member States and had resolved that until those States had expressed their views, India could be represented in the Assembly without the right of vote. It was thus for the member States to decide whether or not India's declaration constituted a reservation. Moreover, it seemed that in the case in question the Secretary-General had merely followed the procedure which had been adopted for all conventions signed before 12 January 1952, the date of resolution 598 (VI), and had not meant to take a position in the matter in stating that India would be considered a member of IMCO if the other parties to the Convention did not make any objections.

3. With some justification, however, the representative of India had argued that in case of doubt the Secretary-General should have consulted the particular State concerned in order to ascertain whether it had intended to enter a reservation and should then have transmitted its reply to the other member States. But the representative of India seemed to have relied on the advisory opinion of the International Court of Justice of 28 May 1951 [1] and on General Assembly resolution 598 (VI); however, the Court had expressly stated that its opinion applied only to the specific case of reservations to the Convention on Genocide, and the same view could also be deduced from paragraph 3 (a) of the resolution.

4. As to the relations between the United Nations and the specialized agencies, it was, contrary to the view of the Indian delegation, the responsibility of the IMCO Assembly itself and, failing that, of the International Court of Justice, under articles 55 and 56 of the IMCO Convention, to settle any questions of law which might arise concerning the interpretation or the application of that Convention. The Sixth Committee could not be set up as a higher court possessing extraordinary jurisdiction. For its part, the Spanish delegation thought that India should be considered to be a member of IMCO, but, as the Netherlands representative had said (615th meeting), it was for that organization itself to rule in the matter, especially as some of its members were not Members of the United Nations and, conversely, as there were States in the Sixth Committee which were not represented in IMCO.

5. Lastly, the authors of resolution 598 (VI) had made it quite clear that that resolution applied only to conventions which would be concluded in the future. If they had meant to make it apply retroactively, they would have said so. While reserving his Government's final position on that matter, he was personally of the opinion that the General Assembly ought to define exactly what were the Secretary-General's functions as referred to in paragraph 3 (b) of resolution 598 (VI), possibly including his functions with respect to conventions signed prior to 12 January 1952.

6. Mr. MAURTUA (Peru) considered that the seriousness of the present problem had been exaggerated. According to the Secretary-General's report (A/4235, para. 35), the only difference between the procedure followed with respect to conventions concluded prior to the adoption of resolution 598 (VI) and the procedure with respect to subsequent conventions related to the form of the depositary's circular notes: in the former case the Secretary-General transmitted the text of the reservation to the States parties to the Convention, inviting them to express their views on the reservation; in the latter case, he transmitted the text of the reservation without raising that question. Moreover, in the case in point, the Secretary-General had only acted in conformity with the provisions of the resolution adopted by the IMCO Assembly, and IMCO's competence in the matter was clearly established by article 55 of the Convention. All that the United Nations General Assembly would be competent to do, therefore, would be to lay down new rules, if necessary, modifying or extending resolution 598 (VI).

7. As a specialized agency, IMCO had a legal status which was distinct from that of the United Nations. The proof of that was to be seen in the agreements between each specialized agency and the United Nations,

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

which provided for "liaison" between the activities of the two bodies concerned; the ways and means of ensuring such liaison were often defined in supplementary agreements. The relationship between the United Nations and the specialized agencies, therefore, was not one of subordination but stemmed from the fact that the purposes of those agencies were in conformity with the general purposes of the United Nations. Thus, for example, the resolution annexed to the Protocol concerning the entry into force of the Agreement between the United Nations and the International Civil Aviation Organization (ICAO) indicated that certain matters were within the exclusive competence of ICAO.

8. The conditions expressed by India in its instrument of acceptance obviously constituted a reservation, although that word was not specifically used in the Indian Government's declaration. The Secretary-General, therefore, had been obliged to comply, and had complied, with the provisions of the Conventions. Moreover, he had confined himself to stating that the condition seemed to be in the nature of a reservation (A/4235, para. 6), a statement which in no way exceeded his authority as a depositary, and he had not passed upon the legal effects of that reservation. As to the problem of unanimity, the Committee should rely on the statement of the Secretary-General, who had carried out the orders of the IMCO Assembly. In paragraph 15 of his report, the Secretary-General stated that the fact of submitting the question to the IMCO Assembly had not been tantamount to a requirement of unanimity on his part, but had only been a reservation for the member States of the entire decision, including the question of unanimity. The Committee should give that statement the weight and credence it deserved.

9. Moreover, the Secretary-General's attitude had been consistent with the guiding principles laid down in resolution 598 (VI)—even though that resolution was not directly applicable in the matter under discussion—to the effect that it was not the Secretary-General's responsibility, as depositary, to pass on the juridical effects of reservations to conventions, which were determined by the States concerned themselves.

10. His delegtion considered the Secretary-General's report to be an objective statement of the position. It took that opportunity to thank the United Nations Office of Legal Affairs for the assistance it had always given to the Sixth Committee by furnishing the necessary explanations to clarify its discussions.

11. It could not be claimed that the Secretary-General had failed to observe the rule laid down in Article 100 of the United Nations Charter, whereby all international officials were forbidden to receive instructions from any Government or from any other authority external to the United Nations. The specialized agencies, which possessed a juridical link with the United Nations, were representative, in their respective fields, of the purposes and objectives of the United Nations and were simply the result of applying the principle of the division of work. The function of depositary of a multilateral convention in no way jeopardized the independence of United Nations officials. It also presupposed, however, that if a State created a new and ill-defined situation with regard to the application of the convention entrusted to the depositary, the latter had discretionary power to decide the procedure to be followed in the matter.

12. The Secretary-General's intentions were clearly evident from his report. Moreover, an objection to a convention did not cease to be a reservation just because it was alleged not to be one. His delegation for its part, thought that conventions concluded prior to resolution 598 (VI) should be governed by the same rules as conventions concluded after it.

13. The problem of unilateral reservations to multilateral conventions was an important one, but should be settled in conformity with the provisions of the conventions themselves, as well as with the relevant principles of internal law.

14. Summing up, his delegation considered that steps should be taken to ascertain whether a sufficient number of conventions had been concluded prior to resolution 598 (VI) to justify a revision of that resolution, and that, if so, that resolution should be revised and extended in order to establish the rule to be applied with respect to conventions concluded prior to its adoption. Lastly, it was important that the settlement of that question should not be further delayed.

15. Mr. LACHS (Poland) said that while the question under discussion admittedly had many aspects and raised a considerable number of substantive and procedural problems of a legal nature, its complexities should not lead the Committee to evade the responsibilities it bore simply by virtue of the fact that the item had been included in its agenda. The Committee must confine itself to considering those aspects of the question which were sufficiently urgent and important to require special measures.

16. The situation which had been brought to the attention of the United Nations by the Indian delegation was truly regrettable. Members of the Committee were aware of the facts; they had heard the statements of the Indian representative and the Legal Counsel; they must spare no efforts to find a just and equitable solution which would meet both the interests of the United Nations in that matter and the interests of Member States.

17. The first question was whether the declaration contained in India's instrument of acceptance of the IMCO Convention was or was not a reservation. The explanations furnished by the Indian representative at the 614th meeting had provided the necessary clarification on the subject. All that the Government of India had intended to do was to specify, for the benefit of the other signatories of the Convention, firstly that India would exercise its rights under article 1 (b) of the Convention within the limits fixed by that article and, secondly, that any recommendations adopted by IMCO in the matter would be subject to re-examination by India. It should not be forgotten that under article 2 of the Convention, IMCO was to perform consultative and advisory functions. The International Court of Justice had itself recognized that recommendations, and particularly General Assembly recommendations, were not binding. In those circumstances, it was clear that the Indian declaration did not amount to a reservation. The fact that the Indian Government had used the word "conditions" to describe the terms of its declaration did not substantively change the situation. What was important was not the label placed on the document but its contents, and there had in the past been very many cases where general declarations of principle had been mistaken for reservations.

18. Resolution 598 (VI), the basic document in the case in point, had been adopted not only with a view to giving effect to the advisory opinion of the International Court of Justice on reservations to the Convention on Genocide, but also and above all to guide the United Nations, the specialized agencies and States in the matter of reservations to multilateral conventions. Resolution 598 (VI) had not altered the law existing at the time of its adoption. The unanimity rule, although advocated by certain States, had for a long time been an anachronism, and the League of Nations procedure was no more than a simple administrative practice which had never acquired force of law. By adopting resolution 598 (VI), the General Assembly had given practical effect to a principle which had been affirmed and widely recognized over many years. Contrary to what the Secretary-General had said in paragraph 35 of his report (A/4235), the Polish delegation considered that there was a profound difference, as regards substance rather than form, between the procedure applicable to conventions concluded prior to resolution 598 (VI) and that applicable to conventions concluded after it.

19. The case of India was not the only one. The USSR had drawn the Committee's attention (615th meeting) to the reservations it had made to the 1949 Convention on Road Traffic and the Protocol on Road Signs and Signals, and to the action the Secretary-General had taken on them. A satisfactory solution must be found to the problems which had arisen.

20. At the present time the Secretary-General was depositary of a considerable number of multilateral conventions. Those which had been concluded after the adoption of resolution 598 (VI) had not given rise to any difficulties. In order to avoid any misunderstandings in the future it would perhaps be advisable to extend to conventions concluded before the adoption of that resolution the procedure laid down for the others. There would thus be a single procedure applicable to all international instruments whatever their date of signature. In those circumstances, however, the question might arise whether the General Assembly could recommend particular measures to the Secretary-General, particularly with regard to documents emanating from organizations other than the United Nations, as for example, the specialized agencies. In that connexion, it should be recalled that as early as its first session the General Assembly had adopted resolution 24 (I), charging the Secretary-General with the task of performing functions pertaining to a secretariat formerly entrusted to the League of Nations, and that when the question had been brought up again at the fifteenth session of the Economic and Social Council, the representative of the Secretary-General had stressed that the powers conferred on the Secretary-General in that connexion affected neither the application of conventions nor, substantively, the rights and obligations of the parties. General Assembly resolutions 598 (VI) and 794 (VIII) had added very widely to the scope of the Secretary-General's activities. Contrary to what certain delegations had stated during the debate, the Polish delegation did not believe that the provisions of the Charter had been exceeded by that action. As in the case of resolution 97 (I), in which the General Assembly had adopted regulations to give effect to Article 102 of the Charter—regulations which exceeded in scope the general provisions of that Article—the object was to develop United Nations action. As Justice Oliver Wendell Holmes of the United States Supreme Court had so rightly said, the authors of the constitution of an organization, however competent they might be, could not foresee all aspects of that organization's development. Clearly, the Charter could not define in detail the activities which the various United Nations organs would have to carry out in the future.

21. At all events, in seeking to resolve difficulties, in that sphere of United Nations activities as in all others, reference must be had to the provisions of the Charter. The Secretariat had been set up under the Charter: whatever functions it performed, it was answerable for them in the first place to the United Nations. The Secretariat seemed never to have contested that fact. The General Assembly certainly had a right of supervision with respect to conventions prepared under its auspices. It was possible to go even further and to affirm that the General Assembly was also concerned with conventions concluded outside the United Nations. Hypothetically, it was conceivable that the Secretary-General might be required to act contrary to the provisions of the Charter. It was plain that in such a case the provisions of the Charter must prevail.

22. The Polish delegation shared the views of those delegations which had held that the General Assembly could not impose its decisions on the specialized agencies and that it must take care not to become a court of appeal against decisions taken by the executive organs of those agencies. That did not, however, mean that the General Assembly could not examine matters which, though within the competence of the specialized agencies, were of particular interest to it, and that it must refrain from making suggestions in regard to them. The best proof of that was resolution 598 (VI) itself, which contained a recommendation to the specialized agencies. Moreover, it should not be forgotten that Article 58 of the Charter expressly provided that "the Organization shall make recommendations for the coordination of the policies and activities of the specialized agencies", or that there were many General Assembly resolutions which contained recommendations to specialized agencies not only on technical matters but also on substantive matters relating to the agencies' activities. Some of those resolutions had used the word "request" or "invite", others "commend" or "call upon" specialized agencies, and in other resolutions again the attention of the competent organs of the United Nations and of the specialized agencies was being drawn to recommendations made by the General Assembly or the Economic and Social Council. In view of an ample practice existing in that matter, there was no constitutional difficulty and no case of ultra vires whenever the General Assembly adopted recommendations addressed to any specialized agency.

23. It being thus established that the General Assembly was competent to make recommendations to the specialized agencies, the only question to be answered was that of the extent to which the General Assembly could intervene. Admittedly, in view of the different structures of the specialized agencies and the diversity of their activities, each case should be studied individually. But no one could seriously deny the desirability of applying, to the greatest possible extent, a uniform procedure with respect to reservations. By recommending the adoption of such a procedure, the General Assembly would not be exceeding its competence but would be promoting the development of

international co-operation and the co-ordination of the work of the specialized agencies. Article 11 of the IMCO Convention provided that no State or Territory might become or remain a member of IMCO contrary to a resolution of the General Assembly of the the United Nations. It could be argued a contrario that no State or Territory could be prevented from becoming a member of IMCO contrary to a resolution of the General Assembly.

24. In conclusion, he said that whatever the interpretation placed on the provisions of resolution 598 (VI), it would be useful to extend the application of the procedure it recommended to all multilateral conventions, irrespective of their date of signature. That would not only make it possible to avoid complications in the future but would also facilitate the settlement of the problem by the specialized agency concerned.

25. Mr. TABIBI (Afghanistan) regretted that India, which had for centuries been one of the world's greatest maritime powers, was still not a party to the IMCO Convention. India had indeed been one of the principal artisans of that Convention and was one of its signatories. It would be unfortunate, therefore, for both India and IMCO if each was denied the co-operation of the other.

26. The explanations given by the Indian representative to the Sixth Committee (614th meeting) and the statement by the Legal Counsel (616th meeting) had shed much light on the question, and it was to be hoped that the IMCO Assembly, which was due to meet within a few days, would accept India as a member. The Indian representative's explanations showed that the declaration accompanying India's instrument of acceptance had not been a reservation but a mere declaration of policy.

27. However, the confusion created in that connexion by the different interpretations placed on resolution 598 (VI) had raised several problems, on which he wished to state his delegation's views. Those problems were the competence of the United Nations General Assembly, the role of the Secretary-General as depositary and the meaning of India's declaration.

28. The Afghan delegation believed that the General Assembly was competent to pass upon the Indian declaration and on the Secretary-General's role, and also to make recommendations to IMCO, as it was the United Nations which had created IMCO, acted as depositary of the IMCO Convention and possessed judicial organs such as the International Court of Justice. As the representative of the United Arab Republic had pointed out (615th meeting), the General Assembly had already considered the question of reservations to multilateral conventions and its decisions thereon were contained in resolution 598 (VI). To question the competence of the Assembly would be an attempt to restrict it authority and, consequently, that of the Secretary-General, who performed the functions of depositary. Furthermore, the specialized agencies were mostly concerned with technical matters and it was therefore up to the United Nations to rule on legal issues.

29. So far as the Secretary-General's role as depositary was concerned, the Afghan delegation wished first to congratulate the Secretary-General and the Office of Legal Affairs on the manner in which they performed their task. It was in fact the first time that a Member State had had any cause for complaint. The Secretary-General, who acted as depositary not in a personal capacity but in the name of the United Nations, should from time to time receive instructions from the General Assembly and seek its advice in the event of disputes. In the case under consideration, he was acting not as agent of IMCO but as Secretary-General of the United Nations.

30. Independently of those considerations, the Afghan delegation could not endorse the procedure followed in the case of India. If there was any ambiguity when a State deposited an instrument of ratification of or accession to a convention, the Secretary-General should first seek clarification from the parties concerned. If he had addressed himself directly to the Government of India, there would have been no further problem. Moreover, even if the Secretary-General had thought that the Indian declaration constituted a reservation to the Convention, he should have included India on the list of members of IMCO and informed the other members of the position.

31. The next question was whether the Indian declaration constituted a reservation. In his opinion, it did not. A reservation meant that a State refused to accept certain provisions of a convention. But, as the Indian representative had stressed (614th meeting), the Indian Government took the view that it had merely made a declaration of policy with respect to measures for giving encouragement and assistance to its national shipping and shipping industries. Such a declaration was in no way inconsistent with the provisions of article 1 (b) of the Convention, concerning the purposes of IMCO. India had thus automatically become a member of IMCO, in conformity with articles 6 and 57 of the Convention.

32. As representative of an under-developed country, he believed that every nation undergoing development had the right to make declarations of intention, or even reservations, consistent with its national sovereignty or its interests. But that should not prevent it from taking part in the work of international organizations or from deriving the advantages offered by multilateral conventions.

33. The Afghan delegation believed that the Sixth Committee should not broach the subject of reservations to multilateral conventions at the current session. It would not object, however, to that question and that of the role of the depositary being placed on the agenda of future sessions of the General Assembly. So far as India was concerned, the Committee should request the Secretary-General, in his capacity as depositary, to inform IMCO of the meaning ascribed by the Indian Government to its declaration; it should also request the General Assembly to take note of the Legal Counsel's statement that the Indian representative had given the first explanation of his Government's declaration—an explanation which called for a reappraisal—and invite the General Assembly to take note of the Indian representative's explanations and to express the hope that the Secretary-General would speedily take the necessary steps to include India on the list of members of IMCO.

34. The Afghan delegation believed that the Sixth Committee should take a concrete decision speedily, as the IMCO Assembly was due to meet shortly.

35. Mr. DOUC RASY (Cambodia) said that, in view of the simplicity of the facts, he had been surprised

by the tendency of earlier speakers to dwell on important principles. Preferring not to go into certain theoretical problems of doubtful relevance, the Cambodian delegation proposed to stick to the facts. In order to determine whether or not the Indian declaration constituted a reservation, it was first necessary to decide what an acceptance with a reservation really amounted to. The answer was perfectly simple: it was an incomplete acceptance. The problem therefore called for a logical approach. A person signing a contract would not expect the secretary responsible for collecting signatures not to inform him of reservations made by the other party to the contract. If he failed to do so and nevertheless caused the contract to acquire binding force, it could not be contended, on the grounds that he was not qualified to pass upon the legal effects of reservations, that he was entitled not to delay carrying the contract into effect. But did an attempt to ascertain the real significance of an act already amount to passing on its legal aspects? Could it reasonably be said that a court ruled on the substance of a case whenever it made an interlocutory order? None would dispute the right of the depositary of a convention to verify the instrument of acceptance submitted to him; that right of verification meant that the depositary could check whether the terms of the instrument of accession really corresponded with the terms of the convention entrusted to him. In the case of an incomplete acceptance, i.e. an acceptance with reservations, the depositary had no right either to reject the instrument or to accept it in toto. If the terms of a convention were severable, logic would demand that only those terms of the instrument of acceptance which were compatible with the terms of the convention should be accepted. That, however, was only possible if it was admitted that the terms of an instrument of acceptance were themselves severable. If, on the other hand, they were considered to form an indivisible whole, it was no longer possible to insist that the depositary should merely confine himself to registration or rejection. That had been the issue confronting the Secretary-General upon receipt of India's instrument of accession. The immediate question, therefore, was to decide what authority was competent to rule on that issue. The Indian delegation had contended that the General Assembly alone was competent in the matter. It was difficult to imagine, however, that the Secretary-General could have called a special session of the General Assembly to decide the case in January 1959. Accordingly, he could not be blamed for having submitted the question to the IMCO Assembly.

36. Moreover, if the Indian declaration did not constitute a reservation, there was merely a misunderstanding. It was regrettable, therefore, that serious principles had been invoked merely to clear up a mistake. The very title of the second item on the Committee's agenda no longer corresponded to reality, because no genuine reservations was involved. And while it was difficult to rearrange a text, or to eliminate or replace a disputed word, the parties were always free to agree on a new text which would change the old one in the desired manner. There would then be no further question of any objection to India's entry into IMCO as a full member, nor of any abuse of authority by the Secretary-General, nor of the interpretation of the Charter or of resolution 598 (VI), nor even of any conflict of authority between the United Nations and IMCO.

37. The sole purpose of his statement had been to reduce the problem ot its true dimensions. It did not in any way prejudge the position of principle which the Cambodian delegation might ultimately have to adopt. He accordingly reserved his right to speak again, if necessary.

38. Mr. CHEAH (Federation of Malaya) said that the Malayan delegation, while fully aware of the importance and complexity of the many legal problems inherent in the question of reservations to multilateral conventions, and in particular in the declaration accompanying India's acceptance of the IMCO Convention, was reluctant to enter into a substantive discussion on all the aspects involved. On the one hand, it would seem illogical for the Federation of Malaya, which was currently not a party to the IMCO Convention, to have any say in deciding whether or not a State should be regarded as a member of that organization, especially as some members of IMCO were not in the United Nations. On the other hand, it seemed that, since IMCO was a specialized agency of the United Nations, the General Assembly was competent to address recommendations to it. The Malayan delegation feared, however, that if the Committee accepted the second argument and began a debate on the question, it would immediately find itself back in the province of the first argument. His delegation therefore preferred not to take any position but to reserve its right to make such comments as it might wish at a later stage, especially if the Federation of Malaya should become a member of IMCO.

39. The item entered on the agenda on the proposal of the Indian delegation also raised the question of the nature of the Secretary-General's functions as depositary of multilateral conventions. At first sight, it seemed that that question involved only general principles and that, consequently, the Federation of Malaya could contribute to finding a solution. After more thorough consideration, however, the Malayan delegation had concluded that any decision which the General Assembly might take in the matter would eventually affect the Indian Government's case. Since that result seemed undesirable, the Malayan delegation regretfully felt unable to contribute to a solution to the problem. He wished to stress, however, that the Malayan delegation had no intention of limiting the authority of the General Assembly or of running away from the truth.

The meeting rose at 5.30 p.m.

Litho in U.N. 77601—January 1960—1,975