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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, A/C.6/L.451 and Add.1) (concluded)

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

1. Mr. USTOR (Hungary) said that he welcomed the spirit of compromise shown by the sponsors of the nineteen-Power draft resolution (A/C.6/L.451 and Add.1), in which they had sought to fuse the two earlier draft resolutions into one. His delegation would certainly be the last to wish to oppose an equitable solution of the question under consideration but it could not help feeling some misgivings on reading the new text.

2. The seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2) had in effect expressed approval of resolution 598 (VI) and had been designed to maintain and even extend the application thereof. The ten-Power draft resolution (A/C.6/L.450 and Add.1), while simply emphasizing the need for a fresh study of the question, had nevertheless implied that the solution laid down in resolution 598 (VI) had not been satisfactory and should be replaced by a more rigid system.

3. It was true that the sponsors of the last-mentioned draft resolution, by becoming co-sponsors of the new draft resolution, had agreed to an extension of the application of resolution 598 (VI) to conventions concluded under United Nations auspices before 1952, but that small concession had been inevitable, in view of the pressing need to standardize the practice followed by the Secretary-General. On the other hand, they had gained a certain advantage through the inclusion in operative paragraph 1 of the words "until such time as the General Assembly may give further instructions". Either that phrase was pointless and superfluous, in which case the Hungarian delegation hoped that its sponsors would withdraw it, or else the conclusion which had to be drawn was that they had intended to leave the door open for a revision—in a retrograde sense—of resolution 598 (VI), particularly as the words applied to all conventions concluded under United Nations auspices and not only to those concluded before January 1952. The system laid down in resolution 598 (VI), which was based on the advisory opinion of the International Court of Justice,[1] was in the interests of small nations, of States which had recently attained independence and, ultimately, of international co-operation. His delegation therefore could not support the phrase in question.

4. On the other hand, he believed that the idea of restricting the application of paragraph 3 (b) of resolution 598 (VI) to conventions concluded under United Nations auspices—a departure from the provisions of the seven-Power draft resolution—was not justified.

5. Finally, he could not support operative paragraph 2 of the nineteen-Power draft resolution, which, by emphasizing the need for further studies, also revealed a desire to revise resolution 598 (VI).

6. Mr. ASRAT (Ethiopia) said that the incompatibility which his delegation, unlike a number of other delegations, had seen between the two earlier draft resolutions was unfortunately still present in the nineteen-Power draft resolution which had been submitted to the Committee as a compromise solution. His delegation, for one, did not see how it was possible to reconcile the decision to amend paragraph 3 (b) of resolution 598 (VI) at once with the conviction that a more thorough study of the question was necessary before changing the practice currently followed by the Secretary-General. Nor could it see what advantages the sponsors of the ten-Power draft resolution had gained from the compromise which they had reached and which appeared to have benefited only the sponsors of the seven-Power draft resolution. In point of fact, the purpose of the latter draft resolution would be achieved, through the adoption of operative paragraph 1 of the new text, while the decision to entrust the Secretary-General with the work referred to in paragraph 2 of the new text would in no way change the situation, the International Law Commission having in any case to continue its study of the law of treaties—which included the related questions of reservations and the functions of the depositary—regardless of the adoption or rejection of that paragraph.

7. His delegation, which had voted against resolution 598 (VI) in 1952, had felt great sympathy with the ten-Power draft resolution and had contemplated co-sponsoring it. But the proposed compromise seemed unsatisfactory and he could not support it. He believed that the complexity of the question, so clearly demonstrated during the course of the debate which had just taken place, called for a decision to undertake a more thorough study before extending the application of resolution 598 (VI) retroactively.

8. It had been said that one of the concessions made by the sponsors of the seven-Power draft resolution had been their consent to the inclusion, in operative

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

paragraph 1 of the new draft, of the phrase "until such time as the General Assembly may give further instructions", which gave an interim character to the amendment of paragraph 3 (b) of resolution 598 (VI). He agreed with the representatives of Ceylon and Romania that the phrase was redundant, since the General Assembly could always take up the matter again and would in any case have to deal with it when it came to consider the report of the International Law Commission on the law of treaties.

9. Another concession, it had been said, was reflected in the fact that the new draft resolution related only to conventions concluded under United Nations auspices and not to all conventions. That was certainly a more prudent attitude. But it should not be forgotten that the Secretary-General had stated in paragraph 35 of his report (A/4235) that there had been no substantive difference—in point of fact, the difference was only in the style in which the circular notes of the depositary were formulated—between the procedure applicable to conventions concluded before 1952 and that followed with respect to conventions concluded after that date. It seemed, in the circumstances, that there was no pressing need for an immediate decision regarding the pre-1952 conventions.

10. His delegation, which saw no reason for changing the position taken by it at the sixth session of the General Assembly, requested a separate vote on operative paragraphs 1 and 2 of the nineteen-Power draft resolution. It would vote against paragraph 1 and in favour of paragraph 2, and would abstain from voting on the draft resolution as a whole. It regretted not being able, in the circumstances, to display that spirit of conciliation and co-operation of which the Sixth Committee had given so many examples.

11. Mr. BARNES (Liberia) congratulated the sponsors of the nineteen-Power draft resolution, who had succeeded in reconciling two divergent trends of thought: that of the sponsors of the seven-Power draft resolution, who had felt that resolution 598 (VI) should be amended, and that of the sponsors of the ten-Power draft resolution, who had advocated a thorough preliminary study before any final decision was taken. His delegation would vote in favour of the nineteen-Power draft resolution (A/C.6/L.451 and Add.1).

12. Mr. YASSEEN (Iraq) said that his delegation had been ready to vote in favour of the seven-Power draft resolution, since it held the view that the depositary functions were purely administrative, as indicated by resolution 598 (VI). That draft resolution had been intended to reconcile the different opinions existing on the scope of the immediate effects of resolution 598 (VI). The Committee now had before it the nineteen-Power draft resolution, which was a compromise between the two previous ones. Its sponsors proposed to extend the application of paragraph 3 (b) of resolution 598 (VI) but had added the words "until such time as the General Assembly may give further instructions". That was not just a redundant formula, for it clearly indicated a desire to weaken the rule contained in resolution 598 (VI). His delegation therefore wished to be associated with those who had requested a separate vote on that formula, which it found unacceptable.

13. Mr. PECHOTA (Czechoslovakia) said that the new draft resolution, far from being a harmonious entity, had been the object of various interpretations; but thanks to the explanations given at the previous meeting by two of its sponsors and the Legal Counsel, the position now seemed clearer.

14. It had been argued that the instructions given to the Secretary-General in the new draft resolution would not involve great changes in the depositary practice followed thus far. That question had been implicitly clarified at the previous meeting, during the debate following the Legal Counsel's statement; but he would like to refer to certain of its aspects, so that there might be no doubt as to the true significance of the decision the Committee was about to make.

15. The Committee knew that the practice adopted by the Secretary-General as depositary authority varied considerably, depending on whether the conventions had been concluded before or after the adoption of resolution 598 (VI), and that the difference was due to an erroneous interpretation of the resolution. It was clear that, according to the practice established by resolution 598 (VI), the depositary was to communicate to all States concerned the text of documents relating to reservations accompanying an instrument of ratification or accession without passing upon the legal effect of such documents. That was the procedure duly adopted by the Secretary-General in the case of conventions concluded after 1952.

16. His delegation had welcomed the statement made by the Legal Counsel at the previous meeting, to the effect that the Secretary-General would consistently follow that procedure in respect of all future instruments of ratification, accession or acceptance—with or without reservations—relating to any conventions of which he was the depositary, regardless of the date of their conclusion. That assurance meant that the same treatment would be accorded to conventions concluded before 1952.

17. The positive solution offered by operative paragraph 1 of the nineteen-Power draft resolution would help to establish a sound and practicable system and to define the scope of the functions of the Secretary-General as depositary authority.

18. In that connexion, his delegation did not share the opinion expressed at the 627th meeting by the representative of France, who had said that resolution 598 (VI) had caused confusion in the legal status of conventions of which the Secretary-General was the depositary because it did not specify the legal consequences of reservations and of objections to such reservations. The representative of France had indicated his preference for a stricter ruling on the matter, and was indeed in favour of declaring the non-admissibility of reservations in general. In the opinion of his own delegation, the right to make reservations or objections to them was a sovereign and inalienable right of any State, a right recognized by international law. Moreover, the objection of one or several parties to a convention could not prevent the reserving State from acceding thereto. The importance of that right was undeniable, since it enabled States to assume international obligations while taking into account their own economic, political, social or constitutional patterns and their existing international commitments. The so-called unanimity rule had not been and could not be transformed into a standard of international law since it conflicted with the majority principle applied in the conclusion of multilateral conventions.

19. With reference to the nineteen-Power draft resolution, he said that his delegation endorsed the ideas

contained in paragraph 1 but did not see the necessity of the phrase "until such time as the General Assembly may give further instructions". He ascribed no special legal significance to it, since the Assembly was always free to reconsider one of its decisions. It seemed, however, that the sponsors might be trying to bring some sort of psychological or moral pressure to bear on the General Assembly in order to force it to review its present decision in the future even if such a review was unnecessary. His delegation therefore considered that the phrase could be deleted from the resolution.

20. He shared the view expressed by the representative of Romania (627th meeting) that the new draft resolution limited to some extent the number of conventions to which resolution 598 (VI) was applicable, as it only mentioned conventions concluded under the auspices of the United Nations; that might lead to some confusion with regard to conventions concluded prior to 1952 of which the Secretary-General was the depositary and which had not been concluded under those auspices.

21. So far as paragraph 2 was concerned, his delegation thought that a clear distinction should be drawn between the immediate task of the Committee, which was to interpret resolution 598 (VI), and the question of the codification of the law of treaties referred to in that paragraph. The Committee had already noted the progress accomplished by the International Law Commission in its codification work on the law of treaties, and it was inadvisable to influence the Commission in any way during the preparatory stages of its codification. The Commission itself had every facility for obtaining the necessary information and might indeed prefer to be at liberty to choose its own sources of information. Two recent reports on the functions of the Secretary-General as depositary authority (documents ST/LEG/7 and A/4235) were available to the Commission, and at its eleventh session the Secretary-General had submitted to it a note on the practice of the United Nations Secretariat in relation to certain questions raised in connexion with the articles on the law of treaties.[2] The Commission would no doubt make full use of all the documents relating to proceedings which had taken place in the General Assembly and the International Court of Justice.

22. Mr. ROSENNE (Israel) congratulated all the delegations which had succeeded, by making mutual concessions, in submitting to the Committee a compromise solution.

23. In the light of the statement of the Legal Counsel and the explanations given by some of the sponsors of the nineteen-Power draft resolution, his delegation was prepared to vote in favour of that draft, which offered a satisfactory basis not only for the future exercise of the functions of the Secretary-General as depositary authority, but also for the future studies to be made by the International Law Commission and for the decision which the General Assembly would eventually be called upon to take.

24. Operative paragraph 1 of the new draft resolution correctly stressed the fact that the exercise of the depositary function was subordinate to the terms of the convention in question, besides extending the stipulations of resolution 598 (VI) to all conventions concluded under the auspices of the United Nations. It thus filled two gaps in that resolution and dispelled the doubts previously expressed by his delegation (621st meeting).

25. Paragraph 2 was also satisfactory to his delegation, for two reasons. Firstly, it did not deal exclusively with the depositary functions of the Secretary-General but seemed to place on an equal footing the exercise of such functions by States and by international organizations. Secondly, it set no time limit for the completion of the study of the question by the Secretary-General or by the International Law Commission, and thus permitted the latter to decide for itself, according to the results of its work on the law of treaties as a whole, the exact stage at which it should submit to the General Assembly its recommendations on the question of depositary functions and reservations. In that connexion, his delegation hoped to see completed at the earliest possible opportunity the summary which the Secretary-General was requested to prepare and which would be of the greatest value to all Governments. It also hoped that the conclusions of the International Law Commission would be submitted, if that could be done without disturbing the orderly conduct of the Commission's business, in the relatively near future, following the due procedures laid down in its Statute.

26. Mr. RAO (India) said he wished to reaffirm once again the position described by his delegation in its statement at the 614th meeting.

27. The Indian delegation had taken note with satisfaction of the important statement which the Legal Counsel had made at the preceding meeting concerning the procedure which the Secretary-General would apply in future and which had been supported by the sponsors of the new draft resolution. On the basis of that statement, the Indian delegation would vote in favour of that draft, except for the phrase "until such time as the General Assembly may give further instructions", which it considered superfluous.

28. Sir Gerald FITZMAURICE (United Kingdom) said that although he would not exercise his right of reply he must not be taken as agreeing with some of the things that had been said in the course of the debate. He emphasized however that any compromise between two parties necessarily contained elements which were partially favourable and elements which were partially unfavourable to each side. He appealed to the delegations which had exhorted the sponsors of the two earlier draft resolutions to try to produce a common text to look upon the compromise as a co-ordinated whole, and consequently to vote for the whole of the text even if different stipulations thereof were voted upon separately.

29. The CHAIRMAN invited the Committee to vote on the nineteen-Power draft resolution (A/C.6/L.451 and Add.1). He would put to the vote separately the phrase "until such time as the General Assembly may give further instructions", in operative paragraph 1.

That phrase was adopted by 41 votes to 12, with 8 abstentions.

Operative paragraph 1 as a whole was adopted by 61 votes to 1.

2/ Yearbook of the International Law Commission, 1959, Vol. II (United Nations publication, Sales No.: 1959.V.1, Vol. II), document A/CN.4/121.

At the request of the United States representative, a vote was taken by roll-call on operative paragraph 2.

Yemen, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Yugoslavia, Argentina, Australia, Austria, Belgium, Brazil, Burma, Cambodia, Canada, Ceylon, Chile, China, Colombia, Cuba, Denmark, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Liberia, Mexico, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Portugal, Saudi Arabia, Spain, Sweden, Thailand, Turkey, Union of South Africa, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Against: None.

Abstaining: Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Operative paragraph 2 was adopted by 53 votes to none, with 9 abstentions.

At the request of the Belgian representative, a vote was taken by roll-call on the draft resolution as a whole.

Venezuela, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Venezuela, Yemen, Yugoslavia, Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Liberia, Mexico, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sweden, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Against: None.

Abstaining: Ethiopia.

The draft resolution as a whole (A/C.6/L.451 and Add.1) was adopted by 62 votes to none, with 1 abstention.

30. The CHAIRMAN invited members of the Committee to explain their vote.

31. Mr. CASTAÑEDA (Mexico) said that his favourable vote was based on the interpretation given by the representative of the Secretary-General, at the preceding meeting, of the practice which the Secretary-General would follow in the future in his capacity as depositary and on the fact that two of the sponsors had stated that that interpretation was correct.

32. He asked the Rapporteur to give due account of the circumstances in the Sixth Committee's report and to include the Legal Counsel's statement in full.

33. Mr. SAHOVIC (Yugoslavia) said that he had voted for the draft resolution because the solution which the sponsors proposed concerned solely the position of the Secretary-General as depositary, without prejudicing the fundamental right of the contracting parties to settle the question of the admissibility of reservations on their own account.

34. At the same time, operative paragraph 2 envisaged that the International Law Commission might prepare, as part of its task of codifying the law of treaties, new general rules which took account of recent trends in the procedure followed by depositaries and particularly by the Secretary-General.

35. That new draft resolution should enable difficulties encountered thus far to be avoided, by paving the way for the gradual adjustment of the rules governing the functions of the Secretary-General in his capacity as depositary of multilateral conventions.

36. Mr. WOODARD (Australia) said that he had been able to support the draft resolution because it had narrowed down the issues raised in the general debate to the administrative question of the proper functions of the depositary. The Australian delegation recognized the necessity of adopting some new provisions of an interim nature governing the actions of the Secretary-General as depositary. It also recognized the need, stressed in operative paragraph 2, of further study relating to the role of the depositary and to the question of reservations in general. While the unanimity rule might in some circumstances be dead, it was impossible to accept the doctrine of unilateralism.

37. Mr. PERERA (Ceylon) supported the Mexican representative's request that the Rapporteur should include in the Committee's report the statement made by the Legal Counsel, and he thanked the latter for having facilitated the Committee's task by throwing light on a confused question.

38. His delegation had abstained on the phrase "until such time as the General Assembly may give further instructions", as it considered those words superfluous. But it had voted in favour of the draft resolution as a whole, in deference to the opinion of the majority.

39. Mr. CHAYET (France) explained that, although it had voted for the draft resolution, the French delegation did not feel entirely satisfied with the compromise it represented. The text tended merely to standardize an administrative practice without settling the basic question of the effect of reservations on the parties concerned.

40. That favourable vote should not be interpreted as an abandonment of the principle of the integrity of conventions, to which France had always been attached in the very interests of the international community.

41. Mr. PETREN (Sweden) said that his delegation had supported the draft, because it represented a compromise, but would have preferred the Committee to await the results of the study mentioned in paragraph 2 before extending the scope of resolution 598 (VI), paragraph 3 (b).

42. Mr. SEYERSTED (Norway) said that his delegation had supported the draft resolution while reserving its position on the substance of the matter.

43. It did not believe it was absolutely necessary to extend the application of resolution 598 (VI), but it had nevertheless voted in favour of paragraph 1

because the draft resolution, as clarified in the statements made by the representative of the Secretary-General and by the sponsors of the draft at the 628th meeting, concerned merely administrative matters and did not instruct the Secretariat to pass upon questions of substance such as the bringing into force of a convention when some of the requisite number of accessions were accompanied by reservations.

44. As to paragraph 2, his delegation hoped that the study carried out by the International Law Commission would enable the General Assembly later to take a clear decision concerning the system to be applied to reservations and to give the Secretary-General more satisfactory instructions on his functions as depositary.

45. However, as several representatives had emphasized, the problem was too complex to be solved by a single formula. It was not a question of recommending the universal application of a particular system in preference to another but of deciding what system was most adequate for each type of convention. In so doing, it was important to strike a balance between the integrity of conventions and their universality, by procedures which would counteract reservations being made too lightly or unreasonably, without excluding from participation in a treaty States which formulated reasonable reservations because of their own special difficulties.

46. The Committee might thus hope to reach a practicable system which would provide real guidance regarding the functions of the Secretary-General and make it possible for States to know what treaties were in effect in respect of what parties.

47. Mr. MOROZOV (Union of Soviet Socialist Republics) said that his delegation had voted for the draft resolution as a whole both for the reasons stated at the 615th meeting and in deference to the wishes of the majority.

48. His delegation thought that it would have sufficed to continue to apply resolution 598 (VI) in its present form, without taking a new decision on that point. Nevertheless, for strictly practical reasons, it had decided to subscribe to the general view and had voted in favour of paragraph 1.

49. It had voted against the phrase "until such time as the General Assembly may give further instructions", believing the words superfluous.

50. Paragraph 2 was also unnecessary since the work mentioned therein would be carried out by the International Law Commission in any case. The USSR delegation had abstained from voting on it, however, since the majority favoured its adoption.

51. Its vote for the draft as a whole was based on an interpretation which coincided with the statement made by the representative of the Secretary-General and which had been supported by two of the sponsors. He agreed with the Mexican representative that the Committee's report should give due emphasis to those statements.

The meeting rose at 4.55 p.m.

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