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CONTENTS

Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.445/Rev.3) (concluded)

1. Mr. SALAMANCA (Bolivia), introducing the third revision of the Bolivian draft resolution (A/C.6/L.445/Rev.3), said that the new text represented a compromise arrived at by the working party formed at the preceding meeting. The new text took into account the Polish suggestion (612th meeting) regarding the deletion of operative paragraphs 1 (b) and 2 of the second revised draft, while sub-paragraphs (ii) and (iii) of the operative part of that version had been amended to speak of a "summary" rather than of an "analysis", in order to meet the objection raised by the French representative (613th meeting). Lastly, on the suggestion of the representative of Uruguay (613th meeting), sub-paragraph (c) referred expressly to arbitral awards. It was indeed probable that a study of such awards would yield more relevant material than the study of judicial decisions. In those circumstances, the Bolivian delegation sincerely hoped that a generally acceptable common denominator had been found. The requested report would, of course, be purely preliminary.

2. With reference to the Turkish suggestion (613th meeting) that the initiative in the matter should come from the International Law Commission, he pointed out that in the case of many of the drafts already prepared by the Commission such initiative had in fact come from Governments. The General Assembly was perfectly competent to initiate studies on subjects of international law, and the Secretariat was the only international body which could call on Governments for the information without which the Commission could not carry out its tasks.

3. In conclusion, he expressed the hope that the preliminary report would be forthcoming in the relatively near future. He believed that it would confirm his delegation's view that the codification of the topic was possible.

4. Mr. CACHO ZABALZA (Spain) welcomed the revised draft resolution, which seemed to meet the wishes expressed by the majority of delegations. The Bolivian representative had repeatedly stated that his proposal envisaged only a study, and only after that study had been prepared would opinions on the substance of the subject be pertinent.

5. The Spanish delegation would support the draft resolution, in its third revised version, primarily because it no longer spoke of "international waters". That expression lent itself to many interpretations and the Uruguayan representative had rightly stressed that even one ineptly chosen word might give rise to serious disputes at a later stage. The use of the word "waters" would have been dangerous, for in its wide sense that term included seas as well as lakes and rivers.

6. Some delegations had argued that the Secretariat was not the proper organ to carry out the suggested work, and it was true that every project of codification involved some element of legislation. In his opinion, however, the Secretariat was fully competent to carry out the proposed task, as was demonstrated by the fact that all the work currently under study by the International Law Commission had been, to some extent, initiated by the Secretariat's legal staff. Moreover, since in the case under consideration the sole purpose was to determine whether the subject was suitable for codification, the Secretariat alone was competent to undertake the preliminary research.

7. His delegation was surprised that the Uruguayan amendment had never been circulated. It had not, after all, been a mere suggestion, and consequently rule 131 of the rules of procedure should have been applied. Similarly, the working party appointed at the preceding meeting had been somewhat sui generis. Normally the composition of a working party was not determined solely by the sponsor of the draft under consideration, but by the Chairman with the consent of the whole Committee. Despite those procedural peculiarities, however, the revised draft certainly appeared acceptable.

8. The CHAIRMAN pointed out that no working party had been formally appointed. A group of volunteers had been invited by the Bolivian representative and Bolivia alone was named as the sponsor of the final text.

9. Mr. TABIBI (Afghanistan) restated his delegation's view that the topic was not ripe for codification and that any attempt to codify it would inevitably give rise to conflicts. The views of States were always linked with historical, geographical, economic and political considerations, and the extent to which they required international rivers for irrigation or navigation varied considerably. In those circumstances no set of common rules could be found satisfactory to all, and the Afghan delegation would be unable to support the Bolivian

proposal. It would, however, abstain from voting on it, on the understanding that any study which might emerge would be purely informative, would not be binding on Members, and would be subject to correction by Member States.

10. Mr. HOLMBACK (Sweden) recalled that he had already stressed (612th meeting) that a study of international rivers should also comprise a study of lakes belonging to the same drainage basins as those rivers. The reason for that view was that all recent studies on such rivers had dealt with both those aspects. For example, the International Law Association, in considering "the uses of the waters of international rivers" at its New York Conference in 1958, had stated in a resolution that "a system of rivers and lakes in a drainage basin should be treated as an integrated whole". Those words had to be read in conjunction with the Association's definition of a drainage basin as "an area within the territories of two or more States in which all the streams of flowing surface water, both natural and artificial, drain a common watershed terminating in a common outlet or common outlets either to the sea or to a lake or to some inland place from which there is no apparent outlet to a sea".

11. Since his last statement, it had been suggested that the expression "international rivers" in the draft resolution should be changed to "international rivers and lakes". He would be perfectly satisfied, however, if the Sixth Committee's report to the General Assembly merely stated that the proposed Secretariat study should also comprise a study of connecting lakes. The Secretariat would undoubtedly follow those instructions and the Committee's resolution would not employ the somewhat uncommon term "international lakes".

12. Mr. TUNCEL (Turkey) said that, despite the Bolivian representative's commendable efforts, certain doubts remained. The very heading of the revised draft resolution clearly showed that the envisaged task was directly connected with the work of the International Law Commission. The proposed preliminary study would therefore inevitably fall within the Commission's general programme of work, and the Commission would be confronted with a wholly new topic, which, moreover, did not appear on the agenda of the General Assembly. In those circumstances, the Turkish delegation, lacking instructions in the matter, would have to abstain from voting.

13. The Bolivian representative had argued that the General Assembly was perfectly competent to initiate studies on international law. That was admittedly true, but article 18 of the Commission's Statute expressly entrusted the selection of topics for codification to the Commission itself. Similarly, the Bolivian representative's contention that the General Assembly alone could request the Secretariat to collate information seemed to be at variance with article 19, paragraph 2, of the Statute. The Turkish delegation had no objection to the study of the subject-matter envisaged in the draft resolution, but all such studies should be initiated by the Commission, and the General Assembly should only intervene in the last instance. The procedure proposed by the Bolivian representative should therefore be reversed.

14. Mr. CHOWDHURY (Pakistan) said that his delegation adhered to its belief that an attempt should be made to collate all the principles and other formulations applicable to the branch of international law to which the Bolivian proposal referred. The third revised version of the proposal still sought that objective, and the Pakistan delegation would accordingly support it.

15. Mr. CASTAÑEDA (Mexico) said that, since the problem created by the original reference to the twin aspects of "use" and "navigation" of international rivers had been resolved and the sponsors had decided to speak of a "summary" of the relevant treaties and case-law rather than of their "analysis", the Mexican delegation would support the revised draft resolution. In his delegation's view, however, the proposed study must not be permitted to acquire the force of a precedent or be construed as in any way affecting existing bilateral agreements.

16. Mr. GUZMAN (Ecuador) said that the original Bolivian proposal had drawn attention to a subject of undoubted universal interest. The final revised text (A/C.6/L.445/Rev.3), to his delegation's regret, greatly reduced the scope of that proposal, but at least it still stressed the interest of States in a study relating to the economic, political and juridical aspects of river navigation and other uses of non-maritime waters.

17. Ecuador was not directly concerned with that question from the international point of view, but it was nevertheless convinced of the need for an analysis of the principles which should govern navigation on rivers, lakes and canals. The Chairman of the International Law Commission had said (610th meeting) that while the question of navigation lent itself to such a study, with a view to the codification of the relevant rules, the use of inland waters for other purposes was a somewhat different matter, because it was normally regulated by conventions which reflected the special circumstances of each case. That view was certainly reasonable; the Ecuadorian delegation believed, however, that the true purpose of the Commission's work was generally to sift the relevant doctrine and to propose principles which would effectively systematize ideas of general application. In that connexion, he could not agree with the representative of the Soviet Union that economic considerations were always paramount, but he certainly shared that representative's opinion that law should be regarded as the superstructure of both national and international communal life. That was the reason, in fact, why the Ecuadorian delegation believed in the codification of all rules relating to international waterways. So far as the law of the sea was concerned, the progress made in reconciling special interests had been very heartening; and there was no reason why less importance should be attached to the rules governing rivers, lakes and canals. For while the principle of free navigation on the seas was no longer disputed, the unfettered use of inland waters and navigation thereon were still hampered by political and economic difficulties, States showing themselves excessively jealous of their national sovereignty.

18. Ecuador believed that the question of internal waters raised the issue of their common enjoyment by the different members of the international community. It could not share the view that international rivers, lakes and canals and the riches which they contained could ever be the exclusive property of any one people. Such waters should serve as a bond between nations and not as a frontier which divided them. Ecuador considered, in fact, that even waters which were physically under a single sovereignty might be regarded as under an international régime. A similar view had apparently also been held by the authors of the Barcelona Convention of 20 April 1921.

19. The principles of free navigation on waterways and of the rational use thereof had been conceived in the earliest days of international law. Until the nineteenth century, however, the notion had been one of a "closed community", the free exercise of those freedoms being permitted only to the riparian States. Fortunately, that view had gradually become outdated; and in the twentieth century, when isolation was no longer possible, any closed system of that nature would be an anachronism. He did not wish to exaggerate the scope of the rights enjoyed by mankind as a whole, but only on that basis would it be possible to indicate the particular rights of States fortunate enough to have direct access to the great inland waterways.

20. As the Bolivian representative had rightly stated, the problem of the use of non-maritime waters was not new. It had already been dealt with by the League of Nations, and the integrated development of drainage basins had been the subject of a study by the United Nations.[1] The American countries had dealt with those subjects for many years in multilateral conventions, bilateral treaties and unilateral declarations. Rules on free navigation had been formulated as far back as the Lima Congresses of 1847 and 1874, and much other relevant material could be found relating to widely separated parts of the American Continent. The principles which the American countries had always sought to affirm had been correctly expounded by President Truman in his Proclamation of 28 September 1945.

21. For those reasons, the Ecuadorian delegation would support the revised Bolivian draft resolution, although it believed that the original text would have been preferable.

22. Mr. PATHAK (India) said that the Indian delegation would support the revised Bolivian proposal, as it believed that all studies on important branches of International law should be encouraged. A study of the complex subject introduced by the Bolivian delegation would reveal whether a codification of the relevant rules was possible.

23. The CHAIRMAN put to the vote the Bolivian revised draft resolution (A/C.6/L.445/Rev.3).

At the request of the Bolivian representative, a vote was taken by roll-call.

The Dominican Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Dominican Republic, Ecuador, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Italy, Japan, Jordan, Lebanon, Liberia, Libya, Mexico, Netherlands, New Zealand, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sudan, Sweden, Thailand, 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, Venezuela, Yemen, Yugoslavia, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark.

Against: None.

Abstaining: Israel, Peru, Turkey, Afghanistan, Brazil.

The Bolivian revised draft resolution (A/C.6/L.445/Rev.3) was adopted by 66 votes to none, with 5 abstentions.

AGENDA ITEM 65

Reservations to multilateral conventions: the Convention on the Inter-Governmental Maritime Consultative Organization (A/4188, A/4235)

GENERAL DEBATE

24. The CHAIRMAN invited the Committee to discuss the second item on its agenda.

25. Mr. PATHAK (India) briefly reviewed his country's maritime background and the steps by which it had become a signatory to the Convention on the Inter-Governmental Maritime Consultative Organization (IMCO) on 6 March 1948. On 6 January 1959 his Government had deposited with the Secretary-General of the United Nations an instrument of acceptance by India of the IMCO Convention subject to a condition (A/4235, annex I). There had been nothing in that instrument which had been in any way inconsistent with the purposes of IMCO as set forth in article 1 (b) of its Convention. Nevertheless, on 13 January 1959, a resolution moved by the United Kingdom had been passed by the Assembly of IMCO which requested the Secretary-General of the United Nations to circulate the Indian instrument of acceptance to member States of IMCO and which provided that until those States had had an opportunity of expressing their views, the representatives of India should be free to take part, without vote, in the proceedings of the Assembly. The Indian representative had then stated that although India had duly deposited an instrument of acceptance in accordance with article 57 of the Convention, IMCO's attitude towards the status of India appeared to be based on the view that the terms in which India had accepted the Convention constituted a reservation; and that, in consequence, India could not be treated as a party until all other signatories had accepted the terms laid down in the Indian instrument of acceptance.

26. In his letter of 6 February 1959, the Secretary-General had informed the Government of India that in cases where instruments of acceptance were accompanied by a reservation or by a declaration in the nature of a reservation and where such instruments related to agreements concluded before the adoption on 12 January 1952 by the General Assembly of its resolution 598 (VI) on reservations to multilateral conventions and where the agreement did not contain any clause on reservations, it was the practice of the Secretary-General to circulate the text of the reservation or declaration to all States parties in order to determine their attitude in that respect. The Secretary-General had further indicated that, if he received no objection to the declaration from a State party, India would be listed as a party to the Convention. From that letter it clearly appeared: first, that the Secretary-General had treated the declaration as a reservation; secondly, that he intended to follow his practice relating to reservations on the ground that the Convention had been concluded prior to 12 January 1952, the date of General Assembly resolution 598 (VI); and thirdly, that he would list India as a party to the Convention

[1] Integrated River Basin Development (United Nations publication, Sales No.: 58.II.B.3).

provided no State party thereto raised any objection to India's declaration.

27. In a communication dated 7 July 1959, the Permanent Representative of India to the United Nations had informed the Secretary-General, in reply to his letter, that the Government of India considered that all action relevant to and arising from the Secretary-General as depositary of the instrument of acceptance and the declaration connected with it was fully discharged. The position taken by his Government, therefore, was that India had fulfilled the requirements of the law by depositing the instrument of acceptance, that it had automatically become a full-fledged member of IMCO, and that there was no question of any State party to the Convention raising any objection. Furthermore, the communication stated that the Government of India could not believe that it could be the intention of the Secretary-General to introduce in that regard by such a statement, arising from his functions as depositary, a rule or principle of unanimity. In that latter connexion, his Government had relied on the advisory opinion of the International Court of Justice on the Convention on the Prevention and Punishment of the Crime of Genocide.[2]

28. The principal question was whether the declaration appended to the instrument of acceptance constituted a reservation. His 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, which stated: "... assistance and encouragement given by a Government for the development of its national shipping and for purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade". It should be borne in mind that the members who had participated in the conference which had framed the Convention had been conscious of the fact that there were under-developed countries in the world which could not develop their national shipping except by assistance and encouragement. Under-developed countries were an object of special concern to the United Nations and it could not be the desire of any Power to do anything which would retard the progress which could be made only by means of such assistance and encouragement.

29. It should also be remembered that the functions of IMCO as provided for in article 2 were "consultative and advisory"; IMCO could only make a recommendation by way of consultation or advice. It was for the States parties to accept or not to accept such recommendations. Advice could always be accepted or rejected; the statement in the Indian declaration, therefore, that any recommendations that might be adopted by the Organization would be subject to re-examination by the Government of India was only the necessary consequence of the advisory and consultative functions of IMCO. Another necessary corollary of those functions was that the advice received by a party State, being subject to rejection, could not have the effect of altering its national laws. Accordingly, there was nothing in the Convention which could be said to be inconsistent with article 2 of the Convention either. He pointed out that that point of view, as well as the view that the Indian declaration did not constitute a reservation, had been amply confirmed in the letter dated 30 June 1959 from the United States representative addressed to the Secretary-General (A/4235, annex III).

30. The procedure adopted by the Secretary-General in treating the Indian declaration as a reservation was therefore ultra vires. He did not say that in a spirit of criticism, as he had the highest respect for the Secretary-General. His delegation could not accept the legal positions set out in the Secretary-General's report (A/4235). The function of a depositary was of a purely administrative character. When an instrument of acceptance was submitted to him and he found that it did not contain any reservation, he had to accept the instrument in deposit without further question. In case of ambiguity, he had to ascertain from the submitting State whether it had intended the instrument to constitute a reservation and he had to accept the statement made by the State in reply. He himself had no power to decide whether the declaration constituted a reservation. He (the Indian representative) could not agree to the statement in the report (A/4235, para. 29) that "the circulation by the Secretary-General being thus inherently an interim measure, he was serving strictly as agent of the IMCO assembly, acting at its request". Under the Convention, the Secretary-General, as a functionary of the United Nations, was designated solely for a limited purpose, namely that of receiving instruments of acceptance in deposit and informing the States concerned of the date when a State became a party. He was not required by the Convention or by anything in the Charter to follow any instructions of IMCO. Under Article 97 of the Charter, the Secretary-General was the chief administrative officer of the Organization, and under Article 98 he was to perform such other functions as were entrusted to him by the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council. There was no provision in the Charter whereby the Secretary-General was required to perform any functions entrusted to him by any specialized agency. Any other view would result in the situation that while the Charter had excluded bodies other than those listed in Article 98 from entrusting functions to the Secretary-General, such functions could be imposed on him by resorting to the doctrine of agency. That would amount to an amendment of the Charter. The idea of agency was repeated in the report (A/4235, para. 29), which stated that under certain circumstances the Secretary-General might be confronted with "a direct conflict between the authority given him by IMCO as its agent and the views of the General Assembly as a principal organ of the United Nations". However, that supposed position of the Secretary-General as the agent of IMCO was inconsistent with the provisions of the Charter, since Article 100 stated that in the performance of their duties the Secretary-General and the staff should not seek or receive instructions from any Government or from any other authority external to the Organization. If the Secretary-General agreed to act as the agent of IMCO, he would be responsible to that body as well as to the United Nations, and would thereby create an inadmissible situation. While the Secretary-General could act as the depositary of international instruments without thereby prejudicing his position as the chief

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

administrative officer of the United Nations, he could not in the performance of his duties as depositary of the instruments of acceptance establishing IMCO seek or receive instructions from that body. In the present instance he had done both and his acts were ultra vires on that account.

31. It was necessary to distinguish clearly between a depositary and an agent. The act of deposit was part of the process of becoming a member of IMCO and as such was outside the functions of that organization. The General Assembly and not IMCO was the only body which could give instructions to the Secretary-General in relation to the process of deposit or could pronounce upon the legal effects of an instrument of acceptance. If the Secretary-General felt that he needed instructions he should seek them from the General Assembly and from no other body. Article 102 of the Charter provided that treaties should be registered with the Secretariat, and it was apparently by virtue of that process that most treaties now provided that the Secretary-General of the United Nations should be their depositary.

32. It might be asked whose agent the Secretary-General had been before IMCO had come into existence. The Secretary-General had under article 60 of the Convention been able to act as the depositary of instruments of acceptance of the Convention before IMCO had been established. Accordingly, the Secretary-General's presumed function as agent did not stem from his being a depositary. He could not become an agent at a later date when the Convention had come into force if he had not been an agent earlier, since there was no provision to that effect in the Convention. The Secretary-General's position was therefore not affected by the entry into force of the Convention.

33. If the Secretary-General was the agent of IMCO he would, by the same reasoning, be the agent of other specialized agencies also. If different agencies took different views on the procedure relating to reservations, the result would be chaos. Indeed, if IMCO had any jurisdiction over the process of deposit, it would be the duty of the General Assembly to recommend one policy to all the specialized agencies in accordance with Article 58 of the Charter.

34. An examination of the relationship between the General Assembly or the United Nations on the one hand and the specialized agencies on the other clearly showed that the specialized agencies were no more than instruments through which the purposes of the United Nations were achieved. Under Article 59 of the Charter, the United Nations was responsible for initiating negotiations for the creation of new specialized agencies. Under Article 60, the Economic and Social Council was made responsible, under the authority of the General Assembly, for the discharge of the United Nations functions set forth in Chapter IX of the Charter. One of the Organization's responsibilities under Article 58 of the Charter was the co-ordination of the policies and activities of the specialized agencies. The result was that the United Nations or the General Assembly was at the apex and had the right to supervise the activities of its specialized agencies. While the latter were independent within their own sphere, their policies on common matters must be co-ordinated by the General Assembly. Thus, having regard to the relationship between the United Nations and its specialized agencies, it could not be claimed that the latter were empowered to rule upon the legal effect of acts done in the course of the process of deposit.

35. In addition, no resolution of any specialized agency could create jurisdiction for or grant powers to any organ of the United Nations. Thus the IMCO resolution depriving India of voting rights was ultra vires. The only reason why the General Assembly should take notice of the IMCO resolution was so that it could express its views on the subject and determine the nature of any recommendations to be made to IMCO or instructions to be given to the Secretary-General. In addition, it would be remembered that, under Article 103 of the Charter, Members were bound to obey the Charter in preference to a convention in case of conflict.

36. In his report (A/4235, para. 24) the Secretary-General had referred to article 55 of the IMCO Convention. The present question, however, was not one of the interpretation or application of the Convention, and even if IMCO had jurisdiction to decide whether the Indian declaration amounted to a reservation or whether the unanimity rule or the opposite rule should apply, that jurisdiction could not override the jurisdiction of the General Assembly. Both in law and for reasons of propriety the General Assembly was the most suitable forum for the examination of the questions involved.

37. Supposing that the case involved a reservation in the real sense of that term, it would be necessary to determine what was the current law on the subject and, if the Convention itself was silent on the point, to determine what rule should be applied. Various views on the subject had been expressed in the Sixth Committee during the fifth session of the General Assembly and the Assembly itself in resolution 478 (V) had requested the International Court of Justice to give an advisory opinion in the matter with specific reference to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. The main issue had been whether the rule of unanimity or the rule of universality should prevail. The International Court of Justice, while failing to provide a workable legal rule, had stated that the view was gaining ground that the principle of unanimous consent to reservations was not well suited to the requirements of international intercourse characterized by multilateral conventions of a general character, and that it was impracticable and unwarranted to give one State the right to prevent another State from becoming a party to a convention, although almost all contracting parties considered the reservation appended by it to be compatible with the objects of the Convention. While it was true that that view applied strictly to the Convention on Genocide, it must be considered as having a direct bearing on reservations in general.

38. The International Court of Justice had therefore recognized that it did not appear that the conception of the absolute integrity of a convention had been transformed into a rule of international law. The reasons given by the Court in support of its conclusions [3] made it quite clear that the Court's opinion was based upon a finding of a general character, namely, that there was no rule of international law known as the unanimity rule. His delegation took the same view and therefore maintained that one or two States could not prevent India from becoming a member of IMCO even if India had made a reservation.

[3] See footnote 2.

39. It was worthy of note that the IMCO Convention closely resembled the Convention on Genocide in regard to the material particulars which weighed with the International Court of Justice. The Court had observed that the latter Convention had been the result of a series of majority votes which, while facilitating the conclusion of multilateral conventions, also made it necessary for certain States to make reservations. That fact was confirmed by the great number of reservations to multilateral conventions made in recent years. In the case of the IMCO Convention the majority principle had been applied at all stages of the proceedings. Furthermore the IMCO Convention, like the Convention on Genocide, dealt with a matter of universal concern. The principle of the opinion given by the International Court of Justice in the case of the Convention on Genocide would therefore be applicable to the present case, even if India had in fact made a reservation.

40. In its explanatory memorandum (A/4188), the Government of India had stated that it did not know of any resolution or decision of the General Assembly authorizing the application of the unanimity rule in regard to multilateral conventions concluded under the auspices of the United Nations. It could not be argued that General Assembly resolution 598 (VI) of 12 January 1952 instructed the Secretary-General to apply the unanimity rule or any practice founded upon that rule in regard to conventions which had come into existence before adoption of that resolution. The reference given in paragraph 28 of the Secretary-General's report (A/4235) could not be cited as evidence that the Secretary-General had been instructed to apply the rule of unanimity or his former practice based on that rule in respect of conventions concluded prior to 12 January 1952, since there was no express provision to that effect in the text of the General Assembly resolution. Statements made in the course of the "travaux préparatoires" could not be used for the purpose of creating provisions in a resolution, when the resolution itself was silent.

41. The question of the General Assembly's jurisdiction and whether the item could properly be considered by the General Assembly was one that related to the powers and functions of the Secretary-General. Under Article 10 of the Charter, the General Assembly could discuss any questions within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter; under Article 7, the Secretariat was one of the principal organs of the United Nations and, under Article 97, the Secretariat consisted of the Secretary-General and his staff; it would therefore seem that the General Assembly was the proper forum for the discussion of the question relating to the Secretary-General's powers and functions. The fact that the Secretary-General had performed the acts in question at the instance of another body did not alter the fact that the matter related to his powers and functions, particularly when the contention was that the act in question was not within the scope of those powers and functions.

42. Article 10 of the Charter was relevant for another reason. In Chapter IX, the Charter provided for measures to promote international economic co-operation and IMCO had been established for that purpose. If as the result of the application of procedures not warranted by law a Member of the United Nations was unable fully to take part in an organization created at the initiative of the United Nations, that was certainly a matter which the General Assembly could discuss. In its opinion given on the Convention on Genocide, the International Court of Justice had agreed with that view.

43. Furthermore, the General Assembly might wish to pass a resolution clarifying or amplifying its resolution 598 (VI). No other body but the General Assembly would be competent to explain or clarify a previous General Assembly resolution and he was certain that it would be in the interest of the Secretariat itself that the General Assembly should clarify the position and give proper guidance to the Secretary-General. Moreover, the question was one of general application which might arise in connexion with other specialized agencies or other conventions, and IMCO would have no power to give any guidance in respect of procedures to be adopted in relation to other specialized agencies or other conventions.

44. The question before the General Assembly concerned the powers and functions of the Secretariat and its discussion would not involve any modification of the IMCO Convention or the taking of a decision on the interpretation of treaties. Accordingly, if the General Assembly expressed its views on the subject and made suitable recommendations to IMCO, no complications would be likely to arise and the General Assembly would not be assuming the role of a court of appeal, as the Secretary-General seemed to fear in paragraph 30 of his report.

45. He wished to deal briefly with the objections raised against the Indian instrument of acceptance by France and the Federal Republic of Germany (A/4235, annexes II and IV). France, without considering whether the declaration amounted to a reservation or not, had raised objection on the ground that the unanimity rule applied, and had stated that the reservations were valid only if they were accepted by all the States parties to the treaty. That objection could only be valid if the Indian declaration, which was a declaration of policy, had amounted to a reservation. The French statement further noted that a reservation, to be acceptable, must be precise and strictly limited and that the reservation made by the Government of India was not of that nature. No other Government had put a similar interpretation on the Indian declaration, which was in fact entirely clear and merely restated the terms of article 1 (b) of the Convention. The objection raised by the Federal Republic of Germany was for its part based on an incorrect reading of the Indian declaration.

46. The legal effect of the deposit by India of the instrument of acceptance with the Secretary-General of the United Nations was that India had become a member of IMCO, because no reservation had been made and even if one had been made the objections raised by France and the Federal Republic of Germany could not and did not in law prevent India from becoming a member. Indeed, ever since the deposit of the instrument of acceptance, India had been a member of IMCO with all the rights pertaining to such membership.

47. In conclusion he expressed the hope that the Committee would support the Indian point of view, would make suitable recommendations to IMCO, and give appropriate instructions to the Secretary-General.

The meeting rose at 6.10 p.m.

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