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Chairman: Mr. Gonzalo ALCÍVAR (Ecuador).

AGENDA ITEM 94

**Declaration and resolutions adopted by the United Nations
Conference on the Law of Treaties:**

**(c) Resolution relating to article 66 of the Vienna Convention
on the Law of Treaties and the annex thereto
(continued) (A/7592; A/C.6/397; A/C.6/L.743, A/C.6/
L.774/Rev.1)**

1. Mr. MOSCARDO DE SOUZA (Brazil) agreed with the Venezuelan representative that the question dealt with in the resolution relating to article 66 was not yet ripe for consideration and that discussion of it should be deferred until the next session of the General Assembly, if only because of its financial implications.

2. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that of all the questions raised by agenda item 94 (c), the one dealt with in the annex to the Vienna Convention on the Law of Treaties should receive the Committee's main attention. At first glance, it might seem to be a question of no great importance; the contrary was true, however. The Committee was being invited to approve the charging to the United Nations of the expenses of any conciliation commission that might be established under article 66 of the Convention. Without any convincing argument being put forward in support of that proposal, the Committee was being asked to adopt draft resolution A/C.6/L.774/Rev.1, in other words to authorize the Secretary-General to incur expenses, including travel and subsistence of members of commissions and their remuneration, although there was no indication in the note by the Secretary-General (A/C.6/397) as to the volume of such expenses. It might reasonably be asked why those expenses should be borne by all the Members of the United Nations when some of them were not bound by the provisions of article 66 of the Convention. His reply to those who argued that considerable sums were not involved would be that the United Nations budget was in fact made up of a large number of small amounts. In any event, the real issue was the fact that some States were trying to make others share the unlawful expenses of any conciliation commissions that

might be established. That would be going against the interests of many States which did not approve the proposed procedure.

3. His delegation was therefore opposed to the draft resolution. The problem was not so urgent that its solution could not be left a while longer. Like many others, his delegation believed that consideration of the question should be postponed so that it could be studied in the context of the Vienna Convention as a whole.

4. Mr. DABIRI (Iran) said that his delegation would vote in favour of the draft resolution before the Committee. For the international community, the adoption of the Vienna Convention on the Law of Treaties had been an event of great importance in the codification and progressive development of international law, since that instrument was designed to promote better treaty relations among States and would thus help to strengthen peace and justice in the world. It was therefore to be hoped that the Convention could obtain a sufficient number of ratifications to bring it into force. The adoption of the draft resolution, whose purpose was to ensure the financing of the machinery for the settlement of disputes provided for in article 66 of the Convention, was necessary in order to make the Convention as widely acceptable as possible. While the financial problems of the United Nations should not be lost sight of, in his delegation's view the expenses entailed by the establishment of conciliation commissions would be negligible in relation to the Organization's expenses as a whole, and they would seem far less significant still if account was taken of the role assigned to such commissions under article 66 of the Convention and the annex thereto. Since their task would be to remove the risk of conflicts between States, the commissions would in fact be working to promote conditions of *détente* and co-operation.

5. Some speakers had questioned the wisdom of discussing the issue at the present time, since consideration of one part of the "package deal" had been postponed until the following session. He personally believed that it would be regrettable to make the attitude towards the question under consideration dependent on the decision to be taken on a point already settled judiciously by the Sixth Committee, not to mention the fact that deferment of consideration of it would delay the entry into force of the Convention. He was therefore unable to support the proposal for deferment.

6. Mr. KABBAJ (Morocco) recalled that his delegation had been one of those which, at Vienna, had taken part in the preparation of a compromise relating both to the question of the settlement of disputes arising out of the application and interpretation of the provisions of part V of the Vienna Convention on the Law of Treaties and to the question of

the participation of States in the Convention. His delegation had been especially gratified by the success of that compromise, because, as it approached the end of its work, the Conference had been on the point of failure. The provision in paragraph 7 of the annex to the Convention that the expenses of the conciliation procedure for the application and interpretation of part V of the Convention were to be borne by the United Nations had been one of the conditions set by a large number of delegations for the acceptance of that conciliation procedure, and it was in that spirit that his delegation had joined with other delegations in submitting the draft resolution.

7. The compromise proposal made at Vienna had constituted an indivisible whole which his delegation considered itself obliged to respect. However, the balance sought had not related directly to the problem of the financing of the proposed procedure but rather to the settlement of disputes and to the participation of States in the Convention. The question of the settlement of disputes had already been dealt with in the Vienna Convention itself by the compromise solution contained in article 66 and in the annex to the Convention. Many States had already signed the Convention and others had ratified it, so that there was no longer any question of reconsidering the solution adopted. The draft resolution before the Committee would merely regulate one aspect of the whole question, namely the financing of the conciliation procedure, which many delegations had accepted only on the condition that the expenses involved would be borne by the United Nations.

8. On the proposal of Mexico, the Committee had taken the decision (1153rd meeting) to defer consideration of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties until the following session. That decision was a wise one. However, his delegation believed that the question of financing the conciliation procedure was not another aspect of the compromise but rather a necessary complement of the question of the settlement of disputes. It was thus essential to take a decision concerning it, and he appealed to the Committee to adopt the draft resolution.

9. Mr. ZAVOROTKO (Ukrainian Soviet Socialist Republic) agreed that it was essential for the Committee to take a decision on the draft resolution. Its subject was of great importance and concerned the United Nations budget, which, as everyone knew, was increasing constantly. If his delegation was opposed to the draft resolution, it was not only because of purely financial considerations, but also because it was hard to see any justification for charging the expenses of establishing conciliation commissions in the same way as the expenses of the various United Nations organs. While the Members of the United Nations might be unanimous in agreeing, for example, that racial discrimination must be eliminated, the situation was very different with regard to the question under consideration, where agreement was far from being unanimous.

10. Moreover, if the draft resolution was adopted in its present form, it would place an excessive burden on the United Nations, because there would soon be such proliferation of conciliation commissions that it would be necessary to set up a special body to deal with them.

11. The General Act of 1928 for the pacific settlement of international disputes, to which General Assembly resolu-

tion 268 (III) had restored its original effectiveness, provided the best solution to the problem. It might legitimately be asked whether, since 1949, the United Nations had grown richer or States poorer or whether the number of disputes had been reduced so drastically that another solution might be resorted to.

12. For the benefit of those speakers who had indicated that for some delegations the issue of universal participation and that of expenses were so closely linked that if the first was accepted they would vote in favour of the second, he said that his delegation did not share that view, but it nevertheless felt that time should be allowed to do its healing work and that in the circumstances deferment was the wisest solution.

13. Mr. DADZIE (Ghana) said that he had made his delegation's position with regard to the draft resolution quite clear at the 1155th meeting. When article 66 of the Vienna Convention on the Law of Treaties and the annex thereto had been adopted, it had been understood that the expenditure entailed by the conciliation procedure prescribed in that article and in the annex would be borne by the United Nations. The way in which the expenses were to be settled was therefore part of the compromise reached at the Vienna Conference, and Ghana had certainly no intention of forsaking it, in view of the efforts it had made to ensure its success. His delegation still regarded that compromise as indivisible, of course, and did not really think the Committee could discuss one aspect of it while deferring its consideration of the other very important aspect—the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties—until the following year.

14. Having had consultations with various delegations, he would not do anything likely to impede the progress the Committee was making but he would like to remind it of its heavy responsibilities in regard to what had rightly been called the Vienna "package deal". Naturally, he himself would have preferred consideration of the draft resolution to be postponed, which would have been the logical decision; but in the spirit of compromise which had always prevailed in the Sixth Committee, his delegation would stand down on the question of the postponement of consideration of the draft resolution and would vote in favour of it. He was glad to note that in doing so it was joining with many other delegations of the group of non-aligned countries which had done him the honour of asking him to state on their behalf that although the question of the settlement of the expenses of conciliation commissions and that of universal participation in the Convention might appear separate technically, they were nevertheless linked strategically. By agreeing to take a decision on the former issue at the present session, the non-aligned countries were in no way prejudging the position they would adopt with regard to the latter issue at the next session. They hoped that the Committee would be strengthened by the comprehension displayed by the various delegations and would resume its discussions the following year with unimpaired faith.

15. His delegation reserved its position with regard to honoraria and would explain it in the Fifth Committee. His own immediate reaction was that the honoraria should be

determined in accordance with the practice followed in similar cases and in the light of the time devoted to each individual dispute. His delegation had an open mind on the subject and would consider any other formula that might be proposed before the question was put to the vote.

16. Mr. POLLARD (Guyana) associated himself with the Ghanaian representative's statement and withdrew the proposal made by his delegation at the 1155th meeting that the vote on the draft resolution should be deferred and that agenda item 94 (c) should be considered simultaneously with item 94 (a).

17. Mr. ROSENNE (Israel) welcomed the statements of the two previous speakers and saw them as evidence of the continuing efforts of the African delegations to ensure the success of the Vienna Conference. His delegation had made its position known with regard to article 66 of the Vienna Convention on the Law of Treaties both in its statements and by its vote, and it would vote in favour of the draft resolution. He wished, however, to place on record his reservations to the interpretations given to article 66 during the discussion; they were interpretations he could not necessarily support. His reservations extended to the administrative matters dealt with in the note by the Secretary-General (A/C.6/397) and the foot-note to the draft resolution.

18. Mr. HOUBEN (Netherlands) said that, during the present debate on the method of financing of conciliation commissions established pursuant to article 66 of the Vienna Convention on the Law of Treaties, primarily two objections had been raised against the draft resolution, of which the Netherlands was a sponsor. Apart from a widely shared objection to one specific element of substance, the sponsors' intention of having the draft voted on at the present stage also met with the disapproval of several delegations. In the view of those delegations, completing the procedure for the settlement of disputes should go hand in hand with ensuring "the widest possible participation". He noted with satisfaction the statement made by the Ghanaian representative on behalf of the group of non-aligned countries, indicating that postponement would no longer be insisted upon, on condition that a vote on agenda item 94 (c) would in no way prejudge the completion, at the twenty-fifth session of the General Assembly, of the other part of the "package deal" concerning universal participation in the Convention. His delegation was most appreciative of the efforts by which the course of action involved in the sponsors' proposal had now become acceptable in many quarters. In that connexion his delegation, for its part, would like to state that the Netherlands had voted in favour of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, but, although it recognized the importance of the Declaration, it had considered that it could not bind States Members of the United Nations with respect to any particular invitation the General Assembly might wish to consider, since the Conference had not been empowered to issue instructions to the Assembly. At the same time, the Netherlands believed that international agreements of fundamental interest to the international community as a whole could not operate effectively unless they possessed universal validity. The application of uniform rules of treaty law was necessary for the conclusion, as well as the

implementation, of such agreements. Participation in the Convention should therefore be as wide as possible. Those would be the considerations which would govern his delegation's vote on the question of the Declaration at the next session.

19. Turning to the proposed draft resolution, he noted that some delegations feared that the conciliation procedure might entail heavy expenditure. That was precisely why it should be borne by the United Nations. Commitment to that expenditure seemed justified, since the provisions of part V of the Vienna Convention on the Law of Treaties involved matters of great importance for the stability of treaty relations and, consequently, for peaceful and friendly relations and co-operation among States. Moreover, as some delegations had pointed out, many countries would not become parties to the Convention unless the decision taken at Vienna on the cost of the conciliation procedure was accepted by the General Assembly. Since the financial provisions of the annex to the Convention were considered to be essential elements of the compromise, the General Assembly could not allow itself to hamper speedy ratification by States.

20. The sum proposed for the honoraria in the foot-note to the draft resolution seemed open to criticism. His delegation sympathized with the arguments which had been put forward, and in particular with the objection to the amount proposed for the chairman of a conciliation commission. The sponsors considered that the chairman of such a commission bore a particular responsibility for the outcome of the implementation of the conciliation procedure, in view of the fact that he represented the main impartial element. Thus, in their proposal they suggested that the chairman of a conciliation commission should receive twice the amount a member of the International Law Commission received, which would be equal to \$500 less than a special rapporteur of the Commission received. The proposed amount for the chairman would also be \$500 less than the President of the United Nations Administrative Tribunal received.¹

21. However, his delegation was, for its part, sensitive to the arguments voiced by some delegations to the effect that \$2000 might be too much for the chairman of a conciliation commission who fulfilled his function for a very short period and too little for a person who undertook the chairmanship during a full year. It was, therefore, prepared to envisage another formula likely to command the Committee's support. His delegation had been unable to consult all its co-sponsors and therefore proposed, on its own behalf, that the latter part of paragraph (a) reproduced in the foot-note to the draft resolution should be amended to read: "The chairman of a conciliation commission shall receive a sum equal to that received by a judge *ad hoc* of the International Court of Justice and the other members of a commission shall receive a sum equal to half of that received by a judge *ad hoc* of the International Court of Justice." The emoluments of the members of the International Court of Justice had been laid down in General Assembly resolution 2366 (XXII), which provided that the fee of an *ad hoc* judge was \$54 for each day on which he exercised his functions. The proposal to pay the sum of \$54

¹ See General Assembly resolution 2489 (XXIII), annex.

a day to the chairman of a conciliation commission and half that sum to each of the other members of the commission would meet the criticisms levelled at the sponsors of the draft resolution for having proposed honoraria which were too high where the work of a conciliation commission was short and too low where it was long. The proposal would, in accordance with rule 154 of the rules of procedure of the General Assembly, have to be submitted to the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee before the General Assembly could take action on it.

22. With regard to the objections which had been raised to the provision in the foot-note authorizing the Secretary-General to hold meetings of a conciliation commission at Geneva, he said that the parties to a dispute were free to choose any other place for their meetings on the understanding that the provisions of General Assembly resolution 2116 (XX) would apply in such cases. Similarly, if they decided that the working language was to be other than an official language, they would have to bear the resulting cost.

23. Mr. BLIX (Sweden) said he could understand the misgivings of some delegations about recommending to the General Assembly the steps proposed in the draft resolution. It was clear, however, at the present stage of the discussion, that unless the Committee took a decision on the resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the annex thereto, the prospect of the Convention's success could be jeopardized. His delegation therefore welcomed the Ghanaian representative's statement to the Committee on behalf of the non-aligned countries to the effect that they had decided to support the draft resolution.

24. With regard to the text for inclusion in the Committee's report, his delegation thought that the changes proposed by the Netherlands representative were justified and should be accepted. The Secretary-General needed directives if he was to implement the kind of proposal under consideration, and it was logical that the Sixth Committee should be the body to give them—naturally without prejudice to the Fifth Committee's competence in that respect—in view of its experience and its over-all responsibility for legal matters. The objections which had been raised to the text seemed pertinent, since the scale of remuneration for which it provided ignored the duration of the duties of the members of conciliation commissions and was therefore too rigid. The new formula proposed by the Netherlands representative remedied that defect, and his delegation, as a sponsor of the draft resolution, supported it.

25. He pointed out that, although paragraph (b) of the text in question authorized the Secretary-General to hold meetings of a conciliation commission at Geneva, it did not require him to do so; the parties could always decide to hold their meetings elsewhere, in which case they would bear any additional expenditure resulting from their decision. The same would apply if languages other than official languages were used at those meetings.

26. Mr. SPACIL (Czechoslovakia) said that he shared the views of those delegations that had been in favour of

maintaining the "package deal" agreed upon at Vienna. His delegation still believed that it would have been preferable to defer until 1970 consideration of the Declaration on Universal Participation in the Convention and of the resolution relating to article 66 and the annex to the Convention. Since that course of action had not been adopted, it was bound to conclude that the Vienna "package deal" was no longer valid and that now that the two questions were separated, it was free to consider the draft resolution before the Committee in the light of its advantages and drawbacks. Furthermore, if the draft resolution was adopted, Czechoslovakia could not regard the solution as constituting a precedent for similar cases that might arise in future.

27. Mr. ROMPANI (Uruguay) thought that, with respect to the financial implications of the draft resolution, the best formula was that contained in paragraph 13 of the note by the Secretary-General (A/C.6/397), in which it was suggested that, if the General Assembly agreed to the request of the United Nations Conference on the Law of Treaties, it should authorize the Secretary-General, under the terms of the annual General Assembly resolution relating to unforeseen and extraordinary expenses, to incur such expenses as might be required, with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions. The advantage of such a formula was that it had been used on various occasions in the past and was thus supported by useful precedents. He was therefore in favour of that suggestion.

28. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that he could not agree with the assertion of the representative of Guyana (1155th meeting) that a vote against the draft resolution would be a breach of the "package deal" concluded at Vienna. His delegation considered that the compromise no longer existed, now that one of its components had been separated from the others. It would therefore vote against the draft resolution. It also wished to emphasize that, whatever the Committee decided to do in the matter, the adoption of such a solution should not create a precedent that would apply to all conciliation commissions established in the future.

29. Mr. ROSENSTOCK (United States of America) also felt that the Committee's decision on the draft resolution should not affect the decision it was to take at the twenty-fifth session with regard to the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties. However, his delegation was not sure what "package deal" the USSR and Czechoslovakia could have in mind, since both countries had voted against article 66 of the Convention. The United States would vote in favour of the draft resolution and would also support it in the Fifth Committee and in the General Assembly.

30. Mr. JACOVIDES (Cyprus) said that he approved of the proposed Netherlands amendment to the foot-note to the draft resolution. The new formula, which took account of the length of the terms of office of members of conciliation commissions, seemed more reasonable and more logical. Subject to whatever decisions might be taken by the Fifth Committee and the General Assembly, his delegation would therefore support it.

31. The CHAIRMAN declared the debate on the draft resolution closed and invited any delegations wishing to do

so to explain their votes before a vote was taken on the draft.

32. Mr. MacKERNAN (Ireland) said that his delegation had voted for the “package deal” at Vienna and would therefore vote in favour of the draft resolution.

33. Mr. BREWER (Liberia) requested a separate vote on the foot-note to the draft resolution.

At the request of the USSR representative, the vote on the draft resolution, excluding its foot-note, was taken by roll-call.

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

In favour: Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia, Zambia, Argentina, Austria, Barbados, Belgium, Bolivia, Cambodia, Canada, Ceylon, Chile, Colombia, Congo (Democratic Republic of), Cyprus, Dahomey, Denmark, Ecuador, Finland, Ghana, Greece, Guatemala, Guyana, Iceland, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Libya, Malaysia, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Niger, Norway, Panama, Philippines, Senegal, Sierra Leone, Spain, Sudan, Sweden, Togo, Trinidad and Tobago.

Against: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, France, Gabon, Hungary, Mongolia, Poland, Romania.

Abstaining: United Arab Republic, United Republic of Tanzania, Venezuela, Afghanistan, Algeria, Australia, Brazil, Burma, Cameroon, Central African Republic, Chad, China, Congo (Brazzaville), Ethiopia, India, Indonesia, Mali, Nepal, Rwanda, South Africa, Southern Yemen, Syria, Thailand, Tunisia, Turkey.

The draft resolution (A/C.6/L.774/Rev.1) was adopted by 57 votes to 12, with 25 abstentions.

At the request of the USSR representative, the vote on the foot-note to the draft resolution, as amended orally by the Netherlands representative, was taken by roll-call.

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

In favour: Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Kuwait, Malaysia, Mauritius, Morocco, Nepal, Netherlands, New Zealand, Niger, Norway, Panama, Senegal, Sierra Leone, Sweden, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Argentina, Austria, Ceylon, Chile, Congo (Democratic Republic of), Cyprus, Dahomey, Denmark, Ecuador, Finland, Guatemala, Iceland.

Against: Mongolia, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, France, Gabon, Hungary.

Abstaining: Iraq, Jamaica, Lebanon, Liberia, Libya, Mali, Mexico, Philippines, Rwanda, South Africa, Southern Yemen, Spain, Sudan, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia, Afghanistan, Algeria, Australia, Barbados, Belgium, Bolivia, Brazil, Burma, Cambodia, Cameroon, Canada, Central African Republic, Chad, China, Colombia, Congo (Brazzaville), Ethiopia, Ghana, Greece, Guyana, India, Indonesia.

The foot-note to draft resolution A/C.6/L.774/Rev.1, as amended orally by the Netherlands representative, was adopted by 36 votes to 12, with 46 abstentions.

The meeting rose at 6.5 p.m.