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QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES
CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS

Report of the Sixth Committee

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I. INTRODUCTION

1. At its seventeenth session the General Assembly, having considered chapter II of the report of the International Law Commission covering the work of its fourteenth session^{1/}, which contained draft articles and commentaries on the conclusion, entry into force and registration of treaties, adopted on 20 November 1962 resolution 1766 (XVII), on the participation of new States in the general multilateral treaties mentioned in paragraph 10 of the commentary to articles 8 and 9 of the draft articles on the conclusion, entry into force and registration of treaties, drawn up by the International Law Commission^{2/}. The operative part of resolution 1766 (XVII), entitled "Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations", stated the following:

"1. Requests the International Law Commission to study further the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations, giving due consideration to the

1/ Official records of the General Assembly, seventeenth session, supplement No. 9 (A/5209).

2/ Official records of the General Assembly, seventeenth session, Annexes, agenda item 76, document A/5287.

views expressed during the discussions at the seventeenth session of the General Assembly, and to include the results of the study in the report of the Commission covering the work of its fifteenth session;

"2. Decides to place on the provisional agenda of its eighteenth session an item entitled 'Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations'."

2. In compliance with operative paragraph 1 of the above resolution, the International Law Commission considered the question and reached a series of conclusions, which appear in chapter III of the report on the work of its fifteenth session^{3/}.

3. At its 1210th plenary meeting, held on 20 September 1963, the General Assembly decided to include the item entitled "Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations" in the agenda of its eighteenth session and to allocate that item to the Sixth Committee.

4. The Sixth Committee considered that agenda item at its 794th to 801st meetings, held from 16 to 28 October 1963.

^{3/} Official records of the General Assembly, eighteenth session, supplement No. 9 (A/5509), paras. 18 to 50.

II. PROPOSAL AND AMENDMENTS

5. Australia, Ghana, Greece, Guatemala, Indonesia, Mali, Morocco, Nigeria and Pakistan submitted a draft resolution (A/C.6/L.532), under which the General Assembly would: (1) decide that the General Assembly is the appropriate organ of the United Nations which should exercise the power conferred by multilateral treaties of a technical and non-political character on the Council of the League of Nations to invite States to accede to those treaties; (2) record that those Members of the United Nations which are parties to the treaties referred to above assent, by this resolution to the decision in the preceding paragraph and express their resolve to use their good offices to secure the co-operation of the other parties to the treaties so far as this may be necessary; (3) request the Secretary-General (a) as depositary of the treaties referred to above, to bring to the notice of any party which is not a Member of the United Nations the terms of the present resolution; (b) to transmit copies of the present resolution to Members of the United Nations which are parties to these treaties; (c) to consult, where necessary, with the States referred to in sub-paragraphs (a) and (b) of this paragraph as to whether any of the treaties in question have ceased to be in force, have been superseded by later treaties, have otherwise ceased to be of interest for accession by additional States, or required action to adapt them to contemporary conditions; (d) to report on these matters to the General Assembly at its nineteenth session; (4) further request the Secretary-General to invite which, otherwise, is not eligible to become a party to the treaties in question, to accede thereto by depositing an instrument of accession with the Secretary-General of the United Nations; (5) decide to place on the provisional agenda of its nineteenth session an item entitled: "General Multilateral Treaties concluded under the auspices of the League of Nations".

6. At the 801st meeting, the co-sponsors of the nine-Power draft resolution (A/C.6/L.532) accepted a suggestion made by the representative of Poland at the 797th meeting and accordingly amended operative paragraph 3 (c) of the draft resolution to read: "to consult, where necessary, with the States referred to in sub-paragraphs (a) and (b) of this paragraph and with the United Nations organs and the specialized agencies concerned as to whether any of the treaties in question ...".

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7. Ghana, Indonesia, Mali, Morocco and Nigeria submitted an amendment (A/C.6/L.533 and Corr.1 and 2) to the nine-Power draft resolution (A/C.6/L.532) proposing that operative paragraph 4 of the draft resolution should be completed by the insertion of the words "... any State ...".
8. Australia, Greece and Guatemala submitted an amendment (A/C.6/L.534) to the nine-Power draft resolution (A/C.6/L.532) designed to complete the text of operative paragraph 4 of the draft resolution by the addition of the words "... each State Member of the United Nations or of a specialized agency...".
9. Colombia, Congo (Leopoldville), Jamaica and Nicaragua submitted a further amendment (A/C.6/L.536 and Add.1) to the nine-Power draft resolution (A/C.6/L.532). Under this amendment operative paragraph 4 of the draft resolution would be completed by the insertion of the following phrase: "each State which is a Member of the United Nations or of a specialized agency or a Party to the Statute of the International Court of Justice, or has been designated for this purpose by the General Assembly, and ...". At the 800th meeting Australia, Greece and Guatemala withdrew their amendment (A/C.6/L.534) in favour of the four-Power amendment (A/C.6/L.536 and Add.1).
10. At the 801st meeting, Ceylon submitted an oral amendment to the nine-Power draft resolution (A/C.6/L.532) for the deletion of operative paragraph 4 of the draft resolution.
11. The Secretary-General submitted a note (A/5528), for the convenience of delegations, reproducing the relevant parts of the summary records of the 712th and 713th meetings of the International Law Commission, at which the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations had been discussed.

III. DEBATE

12. The Committee discussed the merits of the nine-Power draft resolution (A/C.6/L.532) and of the amendments. The nine-Power draft resolution was based, generally speaking, on the conclusions reached by the International Law Commission.

13. All the representatives who spoke in the debate expressed warm approval for the ultimate aim of the draft resolution, namely the participation of new States in multilateral treaties of a technical and non-political character concluded under the auspices of the League of Nations, which had become closed as a result of the demise of the League. Many representatives pointed out that it could be inferred from the participation clauses in those treaties that it had been the intention of the Parties that they should be open treaties and that only an event foreign to the wishes of the Parties had changed them into closed treaties. Some representatives observed that wider participation in those treaties would be in the general interests of the international community and would at the same time strengthen the principle of the sovereign equality of all States.

14. The representatives who spoke in the debate also approved of the procedure proposed in the nine-Power draft resolution, though a number of them expressed doubts about the relevance of some of the provisions to the aim in view. For example, various representatives wondered what would happen if one or more of the Parties to the treaties voted against the nine-Power draft resolution or abstained in the vote. The sponsors of the draft resolution expressed the hope that there would be no opposition to it and said that if there were any abstentions an effort would have to be made to induce the States in question to change their attitude. It was pointed out that the procedure of a protocol of amendment would not rule out the possibility of one or more of the States Parties objecting to the amendment of the participation clauses.

15. Some representatives expressed the view that the procedure proposed in the nine-Power draft resolution would not ensure participation in the twenty-one treaties by the States referred to in the draft resolution's preamble. What was needed in many of those treaties, they held, was not mere adaptation of the participation clauses to enable the United Nations to assume the functions of the League of Nations, but revision of those clauses in order to renew a possibility which had ceased to exist long before the demise of the League. In accordance

with that interpretation of the participation clauses of a number of treaties, those treaties had become closed before the dissolution of the League of Nations; the United Nations General Assembly could not exercise powers which the Council of the League had no longer possessed at the time of the League's dissolution. Accordingly, to enable the new States to accede to those treaties it would be necessary to adopt the procedure of an amending protocol. In the resolution approving the protocol, the General Assembly could also request the States Parties to the treaties to sign the protocol and put it into effect without delay. Other representatives took the view that under a more liberal interpretation of the participation clauses of the treaties it might be considered that the powers of the Council of the League of Nations had not been limited in time. Lastly, some representatives held that the possible need to revise some treaties through an amending protocol should not impede the adoption of the nine-Power draft resolution. If in the course of time it proved necessary to employ the protocol procedure in certain cases, there was nothing to prevent that being done. In the meantime there should be no obstacle to the immediate participation by new States in those treaties to which accession would be made feasible simply by the adoption of the nine-Power draft resolution.

16. Some representatives pointed out that the procedure proposed in the nine-Power draft resolution might open the treaties to accession but not necessarily to effective participation by new States, since a resolution of the General Assembly could not bind States Parties in that respect. Those representatives took the view that the nine-Power draft resolution would be a temporary measure which might later yield positive results, depending on the outcome of the consultations requested of the Secretary-General. Other representatives expressed satisfaction at the conclusion reached by the International Law Commission to the effect that the special form of the participation clauses of the treaties appeared to diminish the force of the possible constitutional difficulties which some representatives had pointed out when the Sixth Committee had discussed the question at the seventeenth session.

17. As to the force and interest of the treaties in the present circumstances, the sponsors of the nine-Power draft resolution considered that, although some of

them were clearly in full effect and were of real and current interest to States, others might have ceased to be in force or lost their value or they might have been superseded by later treaties, or need to be adapted to the contemporary conditions of the world community. Therefore, the Secretary-General should consult the parties only where the state of the treaties seemed dubious, while in the remaining cases accessions of new States could be recorded immediately. Some representatives stated that it was illogical to seek the assent in abstracto of States Parties to the treaties without first studying the nature of the treaties in the light of contemporary conditions in order to determine whether they were of interest to new States. Others suggested that this need to study the treaties, coupled with the fact that the question was not especially urgent, made it advisable to examine the treaties before inviting new States to accede to them. Lastly, certain representatives expressed the opinion that the review should not be limited to the closed treaties but should also cover the treaties which did not have restrictive participation clauses. Such open treaties as were of interest to the new States and the international community should be brought up to date in their turn.

18. The paragraph of the nine-Power draft resolution which gave rise to the greatest amount of controversy was the one concerning the States that should be invited to accede to the treaties under consideration. Some representatives held that all States should be so invited (A/C.6/L.533 and Corr.1). They stressed the desirability and necessity of reaffirming the principle of universality with regard to participation in general multilateral treaties; the participation of all States in such treaties, specially those of a technical and non-political character, was an inherent right of the State deriving from the principle of the sovereign equality of all States and its disregard was detrimental to peaceful world-wide co-operation and to the progressive development of international law. The adoption of formulas discriminating against certain States was inadmissible, contrary to the true interest of the United Nations and incompatible with the Purposes and Principles of the Charter and with the rules of general international law. In support of this point of view it was argued that the principle in question had been recognized in the Moscow Treaty banning nuclear tests, in several resolutions of the General Assembly concerning the restoration of law

and order in the Republic of the Congo (Leopoldville), such as resolution 1474 (ES-IV), and in article 8 of the International Law Commission's draft on the conclusion, entry into force and registration of treaties.

19. Other representatives took the view that, in accordance with the practice followed up to the present by the United Nations, an invitation should be extended only to States Members of the United Nations or of the specialized agencies (A/C.6/L.534). Some of those representatives held that the right of all States to participate in general multilateral treaties was not an established rule of international law and that there was nothing contrary to international law in defining the States which might accede to a treaty. Moreover, an invitation extended to all States would make it impossible for some States Parties to the treaties to agree to the procedure proposed in the nine-Power draft resolution, thus defeating its purpose. It was also argued that a decision to invite all States to participate would place the Secretary-General in a position where he would be forced to refer the matter back to the General Assembly with a request for an exhaustive list of the States eligible to become parties to the treaties. Lastly, it was said that the Sixth Committee should refrain from deciding political issues which went beyond its competence. Those representatives considered that neither the Moscow Treaty banning nuclear tests, nor the General Assembly resolutions regarding the restoration of law and order in the Republic of the Congo (Leopoldville), nor yet article 8 of the International Law Commission's draft on the conclusion, entry into force and registration of treaties, justified the adoption of the "all States" formula.

20. Some representatives favouring an invitation to all States pointed out that in the case of open treaties for which the Secretary-General acted as depositary nothing prevented entities purporting to be States from acceding to the treaties. Other representatives taking the same position stated that it was illogical to limit accession to States Members of the United Nations or of the specialized agencies since that formula would be more restrictive than was desired by the parties to the treaties in question; the treaties authorized the Council of the League of Nations to invite the participation of States which were not members of the League.

21. Some representatives considered that, in principle, general multilateral treaties should be regarded as open except where the parties to it declared the

contrary. The consent of the parties was necessary since the principle of the sovereignty of States would be impaired by attempts to impose on a State the recognition of another State through accession to a treaty. Others stated, on the contrary, that a State was free to recognize another or not, but that it could not deny its existence as a State and consequently its right to participate in general multilateral treaties.

22. In view of the difference of views, some representatives proposed that the decision on which States were to be invited to accede to the treaties should be postponed until the next session of the General Assembly. Other representatives opposed that proposal. Finally, the Committee decided in favour of the formula proposed in the amendment (A/C.6/L.536 and Add.1), which was based in particular on the relevant provisions of the Vienna Conventions on Diplomatic Relations and Consular Relations of 1961 and 1963 respectively. The formula proposed in the amendment (A/C.6/L.536 and Add.1) was considered by some representatives to be a genuine compromise. Others, however, thought that in practice it did no more than perpetuate the discrimination against certain States. Finally, some representatives stated that although in the present circumstances the formula in question would continue to restrict participation in general multilateral treaties, it nevertheless meant some progress, since it authorized the General Assembly to invite any State which was not a member of the United Nations or of a specialized agency or a party to the Statute of the International Court of Justice.

23. Some representatives stated that the solution adopted on the question of extended participation in treaties concluded under the auspices of the League of Nations did not in any way prejudice the solution to be adopted in due course in the question of the succession of States and Governments. Finally, some representatives reserved the position of their Governments on the question of what measures might be taken in the future with regard to the substance of the treaties in question.

IV. VOTING

24. At its 801st meeting, on 28 October 1963, the Sixth Committee adopted by 35 votes to 33, with 17 abstentions, a motion for closure of the debate made by the representative of Lebanon. The Committee then proceeded to vote on the nine-Power draft resolution (A/C.6/L.532) as orally revised by its sponsors and the amendments to it. The result of the voting was as follows:

(a) The oral amendment by Ceylon proposing the deletion of operative paragraph 4 of the draft resolution (A/C.6/L.532) was rejected in a roll-call vote by 40 votes to 39, with 12 abstentions. The result of the voting was as follows:

In favour: Afghanistan, Albania, Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Cuba, Czechoslovakia, Dahomey, Ethiopia, Ghana, Guinea, Hungary, India, Indonesia, Iraq, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mongolia, Morocco, Niger, Nigeria, Poland, Romania, Sierra Leone, Sudan, Syria, Tanganyika, Togo, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia.

Against: Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Canada, Chad, Chile, China, Colombia, Costa Rica, Denmark, Ecuador, France, Greece, Guatemala, Iceland, Iran, Ireland, Israel, Italy, Jamaica, Japan, Liberia, Luxembourg, Malaysia, Netherlands, New Zealand, Nicaragua, Panama, Peru, Philippines, Spain, Sweden, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Central African Republic, Cyprus, Finland, Jordan, Kuwait, Libya, Mexico, Norway, Saudi Arabia, Uganda, Upper Volta, Yemen.

(b) The amendment (A/C.6/L.533 and Corr.1 and 2) submitted by Ghana, Indonesia, Mali, Morocco and Nigeria was rejected in a roll-call vote by 42 votes to 38, with 10 abstentions. The result of the voting was as follows:

In favour: Afghanistan, Albania, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Ceylon, Chad, Cuba, Czechoslovakia, Ethiopia, Ghana, Guinea, Hungary, India, Indonesia, Iraq, Ivory Coast, Mali, Mauritania, Mongolia,

Morocco, Niger, Nigeria, Poland, Romania, Sierra Leone, Sudan, Syria, Tanganyika, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Upper Volta, Yemen, Yugoslavia.

Against: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Costa Rica, Dahomey, Denmark, Ecuador, Finland, France, Greece, Guatemala, Iceland, Iran, Ireland, Israel, Italy, Jamaica, Japan, Liberia, Luxembourg, Madagascar, Malaysia, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Philippines, Spain, Sweden, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Burma, Cyprus, Jordan, Kuwait, Lebanon, Libya, Mexico, Saudi Arabia, Togo, Uganda.

(c) The amendment (A/C.6/L.536 and Add.1) submitted by Colombia, Congo (Leopoldville), Jamaica and Nicaragua was adopted by 57 votes to 12, with 14 abstentions.

(d) Operative paragraph 4 of the nine-Power draft resolution (A/C.6/L.532) as completed by the amendment (A/C.6/L.536 and Add.1) was adopted by 63 votes to 10, with 15 abstentions.

(e) The nine-Power draft resolution as a whole (A/C.6/L.532) as orally revised by its sponsors and completed by the amendment (A/C.6/L.536 and Add.1) was adopted by 69 votes to none, with 22 abstentions.

V. RECOMMENDATION OF THE SIXTH COMMITTEE

25. The Sixth Committee therefore recommends that the General Assembly adopt the following draft resolution:

The General Assembly,

Having considered the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations and the report of the International Law Commission thereon,^{4/}

Noting that there are twenty-one such treaties of a technical and non-political character which by their terms authorized the Council of the League of Nations to invite additional States to become parties, and thus were not intended to be closed to new States,

Further noting that since the Council of the League ceased to exist a large number of new States have come into being and that many of them have been unable to become parties to the treaties in question through lack of an invitation to accede,

Recalling the recommendation of the Assembly of the League of Nations at its final session, that Members of the League of Nations should facilitate in every way the assumption by the United Nations of functions and powers entrusted to the League of Nations under international agreements of a technical and non-political character,^{5/}

Further recalling that the General Assembly, in resolution 24 (I) of 12 February 1946, declared that the United Nations was willing in principle to assume the exercise of certain functions and powers previously entrusted to the League of Nations under international agreements,

1. Decides that the General Assembly is the appropriate organ of the United Nations to exercise the power conferred by multilateral treaties of a technical and non-political character on the Council of the League of Nations to invite States to accede to those treaties;

4/ Official Records of the General Assembly, Eighteenth Session, Supplement No. 9 (A/5509), chapter III.

5/ League of Nations, Official Journal, Special Supplement No. 194, p. 57.

2. Records that those Members of the United Nations which are parties to the treaties referred to above assent by the present resolution to the decision set forth in paragraph 1 above and express their resolve to use their good offices to secure the co-operation of the other parties to the treaties so far as this may be necessary;

3. Requests the Secretary-General:

(a) As depositary of the treaties referred to above, to bring to the notice of any party which is not a Member of the United Nations the terms of the present resolution;

(b) To transmit copies of the present resolution to Members of the United Nations which are parties to those treaties;

(c) To consult, where necessary, with the States referred to in sub-paragraphs (a) and (b) above, and with the United Nations organs and the specialized agencies concerned as to whether any of the treaties in question have ceased to be in force, have been superseded by later treaties, have otherwise ceased to be of interest for accession by additional States or require action to adapt them to contemporary conditions;

(d) To report on these matters to the General Assembly at its nineteenth session;

4. Further requests the Secretary-General to invite each State which is a Member of the United Nations or of a specialized agency or a party to the Statute of the International Court of Justice, or has been designated for this purpose by the General Assembly, and which, otherwise, is not eligible to become a party to the treaties in question, to accede thereto by depositing an instrument of accession with the Secretary-General of the United Nations;

5. Decides to place on the provisional agenda of its nineteenth session an item entitled "General multilateral treaties concluded under the auspices of the League of Nations".