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DECLARATION AND RESOLUTIONS ADOPTED BY THE UNITED NATIONS CONFERENCE
ON THE LAW OF TREATIES: RESOLUTION RELATING TO ARTICLE 66 OF THE VIENNA
CONVENTION ON THE LAW OF TREATIES AND THE ANNEX THERETO

BUDGET ESTIMATES FOR THE FINANCIAL YEAR 1970

Administrative and financial implications of the draft resolution
and the draft decision recommended by the Sixth Committee in its
report (A/7797, paras. 19 and 20)

Report of the Fifth Committee

Rapporteur: Mr. Gregor WOSCHNAGG (Austria)

1. At its 1343rd meeting, held on 8 December 1969, the Fifth Committee, in compliance with rule 154 of the rules of procedure of the General Assembly, considered the statement by the Secretary-General (A/C.5/1272) and the related report of the Advisory Committee on Administrative and Budgetary Questions (A/7832) on the administrative and financial implications of the draft resolution and the draft decision contained in paragraphs 19 and 20 of the report of the Sixth Committee (A/7797).
2. Under the terms of the draft resolution, the General Assembly would approve the provisions of paragraph 7 of the annex to the Vienna Convention on the Law of Treaties^{1/} and request the Secretary-General to take action accordingly. Paragraph 7 states that the Secretary-General shall provide any conciliation commission set up in accordance with the Convention with such assistance and facilities as it may require, and that the expenses of such commissions shall be borne by the United Nations.

^{1/} A/CONF.39/27 and Corr.1.

3. As for the related draft decision, it would have the General Assembly decide on certain specific aspects of the obligations which the Secretary-General would assume. Thus it would be decided:

(a) That commissioners appointed to a conciliation commission would receive honoraria in addition to payments for travel and subsistence; the chairman of such a commission would receive a sum equal to that received by an ad hoc judge of the International Court of Justice (at present fixed at \$54 a day) and the other four members would receive half that amount;

(b) That the Secretary-General be authorized to hold meetings of a conciliation commission in Geneva (as well as at United Nations Headquarters in New York);

(c) That the Secretary-General be authorized to provide verbatim records exceptionally at the request of a commission; and

(d) That he be authorized to incur necessary expenses for conciliation commissions under the terms of resolutions relating to unforeseen and extraordinary expenses.

4. In his statement of administrative and financial implications, the Secretary-General sets out his understanding of the responsibilities under paragraph 7 of the annex to the Convention, taking into account the separate decisions recommended by the Sixth Committee.

5. The Secretary-General recalled that, in his note on the financial and administrative implications of the conciliation procedure provided in the Vienna Convention he had suggested that, to the greatest extent possible, conciliation commissions be treated in the same way as other United Nations organs, and that, unless the General Assembly specifically decided otherwise, he would provide services and facilities "within the limits of his administrative possibilities and in accordance with the regulations, rules, decisions and practices applicable to United Nations organs in general".^{2/} The expenses to be borne by the United Nations would be those involved in the functioning of a commission as a body, but not those incurred before a commission was constituted or after it had finished its work, nor the individual expenses of the parties.

^{2/} A/C.6/397, para. 3.

6. The Secretary-General indicated that it would be his intention to pay for the travel and subsistence of members of commissions in accordance with General Assembly resolution 1798 (XVII) of 11 December 1962. As for the recommendation of the Sixth Committee on the payment of honoraria, he observed that this would constitute a specific further exception to the basic principle laid down in General Assembly resolution 2489 (XXIII) of 21 December 1968.
7. The Secretary-General also indicated the difficulties that could arise as to the timing of sessions of commissions and the consequent impact on the level of additional resources that might be required.
8. As to the recommendation in paragraph 3 (b) above, the Secretary-General pointed out that the holding of sessions in Geneva - as against United Nations Headquarters - would be subject to administrative possibilities. Meetings could be held at other sites at the invitation of Governments, provided that they agreed to defray the additional costs involved, as provided in General Assembly resolution 2116 (XX) of 21 December 1965.
9. On the subject of language services, the Secretary-General indicated in his statement that the United Nations would provide services only in one or more of its official languages.^{3/}
10. As for the recommendation in paragraph 3 (c) above, the Secretary-General noted that his capacity to provide verbatim records on request would be subject to the administrative possibilities open to him.
11. On the basis outlined in his statement and in accordance with the recommendation of the Sixth Committee mentioned in paragraph 3 (d) above, the Secretary-General suggests that he be authorized, under the terms of the annual resolution on unforeseen and extraordinary expenses, to incur such expenses as may be required for conciliation commissions set up under the terms of the Vienna Convention, with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions.
12. In its report, the Advisory Committee noted that the Vienna Convention on the Law of Treaties is not yet in force, and that it was therefore impossible to forecast accurately at what time - if any - the financial obligations inherent

^{3/} A/C.5/1272, para. 9.

in the conciliation procedure which it envisages would arise. However, it appreciated the Secretary-General's desire that the General Assembly should clearly express itself as to the nature of the expenses which he would be authorized to incur.

13. With reference to the recommendation that conciliation commissioners receive honoraria in addition to payments for travel and subsistence, the Advisory Committee had been informed by the Secretary-General that such commissioners normally receive some compensation. It, therefore, agreed with the Secretary-General that authorization by the General Assembly of payment of such honoraria would constitute a specific further exception to the principle laid down in resolution 2489 (XXIII); should the Assembly make such an authorization, it should therefore explicitly state its exceptional nature.

14. Furthermore, in the light of paragraph 3 (c) of the same resolution, the Advisory Committee believed that the obligation to pay honoraria to members of conciliation commissions could be dependent on whether the persons concerned were in the service of their Governments; the Advisory Committee would take this factor into account in considering any specific request by the Secretary-General for the payment of such honoraria.

15. With respect to the holding of sessions of conciliation commissions in Geneva rather than in New York, the Advisory Committee noted the statement of the Secretary-General that it would be subject to administrative possibilities. In so far as any request for a session in Geneva might have financial implications over and above those which would arise from a session at United Nations Headquarters, the Advisory Committee would expect that, in seeking its concurrence to incur expenditures, the Secretary-General would clearly indicate to the Advisory Committee the level of such additional requirements.

16. The third recommendation of the Sixth Committee is that the Secretary-General be authorized to provide verbatim records exceptionally at the request of a commission (paragraph 3 (c) above). The Advisory Committee noted the Secretary-General's observation that such records are generally not desired by conciliation commissions, and believes that any request would be associated with truly exceptional circumstances.

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17. During the discussions on this item, two delegations were of the view that the cost of the conciliation commission should be borne by the parties to the dispute since they felt that the work of the commission would not fall within the purview of the Organization.

18. Another delegation entered the same reservations that it had made when the proposals were being considered by the Sixth Committee.

RECOMMENDATION OF THE FIFTH COMMITTEE

19. Since the extent of the expenditures by the United Nations with respect to the application of the procedures of conciliation proposed by the Sixth Committee in the draft resolution and the draft decision contained in paragraphs 19 and 20 of its report (A/7797) cannot be determined at this stage, the Fifth Committee decided by a vote of 59 to 9, with 7 abstentions, to recommend:

(a) That the General Assembly should authorize the Secretary-General to incur, under the provisions of the annual resolution on unforeseen and extraordinary expenses and with the prior concurrence of the Advisory Committee, any expenses involved in implementing the proposals;

(b) That, should the Assembly decide that honoraria are to be paid to the commissioners, specific authority be given to the Secretary-General to make payments, as an exception to the principle laid down in resolution 2489 (XXIII), and that these payments should be authorized in the light of the provisions of paragraph 3 (c) of that resolution.
