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**Resolutions of the General Assembly concerning the Law of Treaties - Memorandum  
prepared by the Secretariat**

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# LAW OF TREATIES

[Agenda item 1]

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## RESOLUTIONS OF THE GENERAL ASSEMBLY CONCERNING THE LAW OF TREATIES: Memorandum prepared by the Secretariat

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[14 February 1963]

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### Introduction

1. In connexion with its work on the law of treaties, the International Law Commission requested the Secretariat to present to its fifteenth session "a memorandum reproducing various decisions taken by the General Assembly on the law of treaties and pertinent extracts from the reports of the Sixth Committee to the plenary Assembly, which constituted an explanation of the Assembly's decisions."<sup>1</sup>

2. In compliance with this request, the Secretariat has prepared this memorandum, which reproduces the provisions of the General Assembly resolutions dealing with the law of treaties adopted on recommendations submitted by the Sixth Committee. The memorandum also covers resolution 24 (I) on the transfer of certain functions, activities and assets of the League of Nations, which was adopted by the General Assembly on the recommendation not of the Sixth Committee but of the League of Nations Committee. This resolution is particularly important, especially for its enumeration of the depositary functions. It is accordingly the basic document in the transfer to the United Nations of the functions and powers previously exercised by the League of Nations under international instruments; the transfer was accomplished by means of protocols adopted by the General Assembly pursuant to resolutions noted in this memorandum. A list of all the resolutions covered by this memorandum is given below.

3. The memorandum also refers to the reports of the Sixth Committee and to other documents which explain

or facilitate understanding of the General Assembly resolutions and reproduces the texts of the resolutions, preceded where necessary by background notes giving all relevant information concerning their adoption.

4. As the table of contents indicates, the Assembly resolutions are presented according to subject, either under their own titles or under different headings intended to facilitate reference to them in connexion with the work on the law of treaties. Some sections of the memorandum are devoted to the provisions relating to the law of treaties in the multilateral treaties adopted by the General Assembly.

### List of General Assembly Resolutions covered by the Present Memorandum

Resolution 22 (I) of 13 February 1946: Privileges and Immunities of the United Nations.

Resolution 23 (I) of 10 February 1946: Registration of Treaties and International Agreements.

Resolution 24 (I) of 12 February 1946: Transfer of Certain Functions, Activities and Assets of the League of Nations.

Resolution 90 (I) of 11 December 1946: Privileges and Immunities of Members of the International Court of Justice, the Registrar, Officials of the Registry, Assessors, the Agents and Counsel of the Parties and of Witnesses and Experts.

Resolution 93 (I) of 11 December 1946: Accessions to the Convention on the Privileges and Immunities of the United Nations.

Resolution 97 (I) of 14 December 1946: Registration and Publication of Treaties and International Agreements: Regulations to give effect to Article 102 of the Charter of the United Nations.

<sup>1</sup> Report of the International Law Commission covering the work of its fourteenth session, *Official Records of the General Assembly: Seventeenth session, Supplement No. 9 (A/5209)*, para. 66.

Resolution 98 (I) of 14 December 1946: Interim Arrangement on the Privileges and Immunities of the United Nations concluded with the Swiss Federal Council, and Agreement concerning the Ariana Site.

Resolution 99 (I) of 14 December 1946: Arrangements required as a result of the establishment of the Permanent Headquarters of the United Nations in the United States of America.

Resolution 169 (II) of 31 October 1947: Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations.

Resolution 172 (II) of 14 November 1947: Registration and publication of treaties and international agreements.

Resolution 179 (II) of 21 November 1947: Co-ordination of the privileges and immunities of the United Nations and of the specialized agencies.

Resolution 254 (III) of 3 November 1948: Registration and publication of treaties and international agreements.

Resolution 255 (III) of 18 November 1948: Transfer to the United Nations of functions and powers previously exercised by the League of Nations under the International Convention relating to Economic Statistics, signed at Geneva on 14 December 1928.

Resolution 256 (III) of 3 December 1948: Transfer to the United Nations of the functions exercised by the French Government under the International Agreement of 18 May 1904 and the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, and the Agreement of 4 May 1910 for the Suppression of the Circulation of Obscene Publications.

Resolution 259 (III) of 8 December 1948: Privileges and immunities of the United Nations.

Resolution 260 (III) of 9 December 1948: Prevention and punishment of the crime of genocide.

Resolution 364 (IV) of 1 December 1949: Registration and publication of treaties and international agreements.

Resolution 366 (IV) of 3 December 1949: Rules for the calling of international conferences of States.

Resolution 368 (IV) of 3 December 1949: Invitations to be addressed to non-member States to become parties to the Convention on the Prevention and Punishment of the Crime of Genocide.

Resolution 369 (IV) of 3 December 1949: Draft Convention on the Declaration of Death of Missing Persons.

Resolution 478 (V) of 16 November 1950: Reservations to multilateral conventions.

Resolution 482 (V) of 12 December 1950: Registration and publication of treaties and international agreements.

Resolution 598 (VI) of 12 January 1952: Reservations to multilateral conventions.

Resolution 605 (VI) of 1 February 1952: Request of the Government of China for revision of the Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide.

Resolution 691 (VII) of 21 December 1952: Correction of the Chinese text of the Convention on the

Prevention and Punishment of the Crime of Genocide.

Resolution 794 (VIII) of 23 October 1953: Transfer to the United Nations of the functions exercised by the League of Nations under the Slavery Convention of 25 September 1926.

Resolution 795 (VIII) of 3 November 1953: Appeal to States to accelerate their ratifications of, or accessions to, the Convention on the Prevention and Punishment of the Crime of Genocide, and measures designed to ensure the widest possible diffusion of the nature, contents and purposes of the Convention.

Resolution 896 (IX) of 4 December 1954: Elimination or reduction of future statelessness.

Resolution 1105 (XI) of 21 February 1957: International conference of plenipotentiaries to examine the law of the sea.

Resolution 1450 (XIV) of 7 December 1959: International conference of plenipotentiaries on diplomatic intercourse and immunities.

Resolution 1452 (XIV) of 7 December 1959: Reservations to multilateral conventions: the Convention on the Inter-Governmental Maritime Consultative Organization.

Resolution 1685 (XVI) of 18 December 1961: International conference of plenipotentiaries on consular relations.

Resolution 1766 (XVII) of 20 November 1962: Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations.

### I. Adoption of Treaties by the General Assembly

5. Under some of the resolutions considered in the preparation of this memorandum, the General Assembly adopted several conventions and protocols which it opened for signature, accession or acceptance by States eligible to become parties to them. It also adopted some bilateral agreements to which the United Nations is a party. In this section a brief historical review will be given of the adoption of these conventions, protocols and agreements, and the methods used in negotiating and drafting them will be indicated.

#### A. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

6. This Convention is based on a draft Convention annexed to a study on privileges and immunities included in chapter VII of the report of the Preparatory Commission of the United Nations,<sup>2</sup> which was submitted to the General Assembly at its first session.

7. At its sixteenth plenary meeting held on 19 January 1946, the General Assembly referred to the Sixth Committee for consideration chapter VII of the report of the Preparatory Commission. In fulfilment of this task, the Sixth Committee submitted to the General Assembly a report<sup>3</sup> including, *inter alia*, a draft Convention on the privileges and immunities of the United Nations, which it recommended for adoption.

<sup>2</sup> Report of the Preparatory Commission of the United Nations, document PC/20, page 61.

<sup>3</sup> Document A/43/Rev.1.

8. At its thirty-first plenary meeting held on 13 February 1946, the General Assembly adopted resolution 22 (I) A in which it approved the draft Convention in the following terms :

" *The General Assembly* approves the annexed convention on the privileges and immunities of the United Nations and proposes it for accession by each Member of the United Nations."

#### B. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES

9. In its resolution 22 (II) D of 13 February 1946, the General Assembly, on the recommendation of the Sixth Committee<sup>4</sup> based on the views expressed by the Preparatory Commission,<sup>5</sup> noted " that there are many advantages in the unification as far as possible of the privileges and immunities enjoyed by the United Nations and the various specialized agencies ". It therefore instructed the Secretary-General to open negotiations with a view to the reconsideration of the provisions under which the specialized agencies enjoyed privileges and immunities.

10. In pursuance of this resolution, the Secretary-General submitted a report<sup>6</sup> to the General Assembly at its second session on the outcome of his consultations.

11. The question of the co-ordination of the privileges and immunities of the United Nations and of the specialized agencies was referred to the Sixth Committee and submitted by the latter to its Sub-Committee on Privileges and Immunities for study.

12. The Sub-Committee drew up a draft Convention, which the Sixth Committee approved and recommended to the General Assembly for adoption. In its report to the Assembly<sup>7</sup> submitting the draft Convention, the Sixth Committee made the following observations :

The two parts of the draft convention — standard clauses and annexes — form a complete body of provisions defining the privileges and immunities of each of the specialized agencies. But whereas the first part of the draft convention constitutes a definitive text submitted for final adoption by the General Assembly, the annexes contained in the second part are merely recommendations addressed to each of the specialized agencies.

It should be pointed out in this connexion that one of the questions which arose with respect to the choice of the method to be followed in order to give effect to the resolution of 13 February 1946 was whether, once the principle of a single convention had been approved, the definitive text of such a convention ought to be drafted in final form by the General Assembly of the United Nations or by a special conference at which all the States members of each of the specialized agencies would be represented, and to which the specialized agencies themselves would be invited.

The Committee thought it preferable to avoid the calling of a special conference; but, taking into account

the desirability of associating the specialized agencies and those of their members who are not Members of the United Nations with the drafting of the texts defining the privileges and immunities of these agencies, the Committee decided that the text of the annexes adjusting the standard clauses to each of the specialized agencies should be finally established in discussions conducted in conferences or assemblies of the specialized agencies themselves.

The method whereby the convention becomes applicable to the specialized agencies, and the procedure for the accession of States, are laid down in articles X and XI of the convention. These articles stipulate that the convention shall become applicable to a specialized agency only after the final text of the relevant annex has been adopted by the agency in question in accordance with its constitutional procedure, and has been transmitted to the Secretary-General of the United Nations (section 37).

States can then accede to the convention by depositing their instrument of accession with the Secretary-General of the United Nations (section 41).

Each State shall indicate in its instrument of accession the specialized agencies in respect of which it undertakes to apply the provisions of the convention. It can extend its accession to other specialized agencies by subsequent notification (section 43).

It should be pointed out that the benefits of the convention are not confined to the nine specialized agencies now in relationship with the United Nations. As indicated in article I (ii) (j), the convention applies equally to any other agency brought into relationship with the United Nations in accordance with Article 63 of the Charter.

As regards the annexes adapting the standard clauses of the convention to such new agencies, it is provided that the drafting of texts to be recommended to the specialized agencies concerned for adoption shall be entrusted to the Economic and Social Council, and that the definitive text of these annexes shall be adopted in accordance with the procedure indicated above.

13. At its 123rd plenary meeting held on 21 November 1947, the General Assembly adopted resolution 179 (II), which reads as follows :

#### A

##### *The General Assembly*

*Approves* the following Convention on the Privileges and Immunities of the specialized agencies and proposes it for acceptance by the specialized agencies and for accession by all Members of the United Nations and by any other State member of a specialized agency.

#### B

...

##### *The General Assembly*

*Recommends* that the constitutional instrument of any specialized agency which may hereafter be established should not contain detailed provisions relating to the privileges and immunities to be accorded to, or in connexion with, that specialized agency, but should provide that such privileges and immunities shall be governed by the said General Convention modified as may be required;

*Recommends* that any international conference at which the establishment of a specialized agency is considered should prepare a draft of the annex relating to the proposed agency contemplated in section 36 of the said General Convention

<sup>4</sup> Report of the Sixth Committee, document A/43/Rev.1.

<sup>5</sup> Report of the Preparatory Commission of the United Nations, document PC/20, page 60.

<sup>6</sup> Document A/339.

<sup>7</sup> Official Records of the General Assembly, Second Session, Annex 22 c, document A/503.

and that, if the agency is established, it should send such draft annex to the Secretary-General of the United Nations with a view to assisting the Economic and Social Council in preparing the draft annex which it will recommend, pursuant to section 35 of the said General Convention, after the agency has been brought into relationship with the United Nations, in conformity with the Charter and any recommendation of the General Assembly;

*Directs* the Secretary-General to transmit a copy of this resolution to the appropriate officer of any conference at which the establishment of a specialized agency is to be considered.

## C

...  
The General Assembly

*Recommends* that the States Members of the United Nations, pending their formal accession to the General Convention concerning the privileges and immunities of specialized agencies, including the annexes relating to each agency, should immediately accord as far as possible to, or in connexion with, the specialized agencies, the benefit of the privileges and immunities provided in the said General Convention and its annexes, it being understood that the specialized agencies will take any necessary parallel action in regard to those of their members which are not members of the United Nations.

C. CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

14. This Convention was originally drawn up, on the basis of a draft Convention prepared by the Secretariat, by an *ad hoc* Committee established by the Economic and Social Council. The Economic and Social Council, by resolution 47 (IV) of 28 March 1947, instructed the Secretary-General to prepare, with the assistance of experts, a draft Convention on the crime of genocide. In accordance with this resolution, the Secretary-General prepared a draft Convention which was transmitted to Member Governments for their comments and which, together with the comments received, was submitted to the second session of the General Assembly. By resolution 180 (II) adopted on 21 November 1947, the General Assembly requested the Economic and Social Council to continue its work concerning the suppression of this crime, including the study of the draft Convention prepared by the Secretariat. The Council, at its sixth session, established an *ad hoc* Committee to draw up a draft Convention on genocide. At its seventh session, the Economic and Social Council, by resolution 153 (VII) of 26 August 1948, transmitted to the third session of the General Assembly the draft Convention prepared by the *ad hoc* Committee.<sup>8</sup> The General Assembly, at its 142nd plenary meeting held on 24 September 1948, referred the draft Convention to the Sixth Committee, which devoted several meetings to preparing a final draft.<sup>9</sup>

15. The General Assembly, at its 179th meeting held on 9 December 1948, adopted resolution 260 (III) A, whereby it

*Approves* the annexed Convention on the Prevention and Punishment of the Crime of Genocide and proposes it for signature and ratification or accession in accordance with its article XI.

D. PROTOCOLS RELATING TO THE TRANSFER TO THE UNITED NATIONS OF FUNCTIONS AND POWERS EXERCISED UNDER INTERNATIONAL AGREEMENTS BY THE LEAGUE OF NATIONS OR BY CERTAIN GOVERNMENTS

16. The General Assembly adopted several protocols on this subject. Before indicating the procedure by which they were adopted, we should mention the General Assembly resolution on the transfer of certain functions, activities and assets of the League of Nations.

(a) *Transfer of certain functions, activities and assets of the League of Nations*

17. At its eighteenth plenary meeting held on 26 January 1946, the General Assembly referred to the League of Nations Committee the question of the transfer of certain functions, activities and assets of the League of Nations. After having considered the question on the basis of chapter XI of the report of the Preparatory Commission of the United Nations<sup>10</sup> and of the report of the Committee set up by the Preparatory Commission to discuss and establish with the Supervisory Commission of the League of Nations a common plan for the transfer of the assets of the League of Nations,<sup>11</sup> the League of Nations Committee transmitted to the General Assembly its recommendations concerning the transfer of certain functions, activities and assets of the League of Nations.<sup>12</sup>

18. At its twenty-ninth plenary meeting held on 12 February 1946, the General Assembly adopted resolution 24 (I), which in its entirety reads as follows :

I. FUNCTIONS AND POWERS BELONGING TO THE LEAGUE OF NATIONS UNDER INTERNATIONAL AGREEMENTS

Under various treaties and international conventions, agreements and other instruments, the League of Nations and its organs exercise, or may be requested to exercise, numerous functions or powers for the continuance of which, after the dissolution of the League, it is, or may be, desirable that the United Nations should provide.

Certain Members of the United Nations, which are parties to some of these instruments and are Members of the League of Nations, have informed the General Assembly that, at the forthcoming session of the Assembly of the League, they intend to move a resolution whereby the Members of the League would, so far as this is necessary, assent and give effect to the steps contemplated below.

*Therefore:*

1. *The General Assembly* reserves the right to decide, after due examination, not to assume any particular function or power, and to determine which organ of the United Nations or which specialized agency brought into relationship with the United Nations should exercise each particular function or power assumed.

2. *The General Assembly* records that those Members of the United Nations which are parties to the instruments referred to above assent by this resolution to the steps contemplated below and express their resolve to use their good offices to secure the co-operation of the other parties to the instruments so far as this may be necessary.

3. *The General Assembly* declares that the United Nations is willing in principle, and subject to the provisions of this resolution and of the Charter of the United Nations, to assume

<sup>8</sup> Document E/794.

<sup>9</sup> See Report of the Sixth Committee, *Official Records of the General Assembly, Third Session, Annexes*, agenda item 32, document A/760 and Corr. 2.

<sup>10</sup> *Report of the Preparatory Commission of the United Nations*, document PC/20, page 116.

<sup>11</sup> See documents A/18 and Add.1 and 2.

<sup>12</sup> *Report of the League of Nations Committee to the General Assembly*, document A/28.

the exercise of certain functions and powers previously entrusted to the League of Nations, and adopts the following decisions, set forth in A, B, and C below.

#### A. Functions pertaining to a Secretariat

Under certain of the instruments referred to at the beginning of this resolution, the League of Nations has, for the general convenience of the parties, undertaken to act as a custodian of the original signed texts of the instruments, and to perform certain functions, pertaining to a secretariat, which do not affect the operation of the instruments and do not relate to the substantive rights and obligations of the parties. These functions include: The receipt of additional signatures and of instruments of ratification, accession and denunciation; receipt of notice of extension of the instruments to colonies or possessions of a party or to protectorates or territories for which it holds a mandate; notification of such acts to other parties and other interested States; the issue of certified copies; and the circulation of information or documents which the parties have undertaken to communicate to each other. Any interruption in the performance of these functions would be contrary to the interests of all the parties. It would be convenient for the United Nations to have the custody of those instruments which are connected with activities of the League of Nations and which the United Nations is likely to continue.

#### Therefore:

The General Assembly declares that the United Nations is willing to accept the custody of the instruments and to charge the Secretariat of the United Nations with the task of performing for the parties the functions, pertaining to a secretariat, formerly entrusted to the League of Nations.

#### B. Functions and Powers of a Technical and Non-Political Character

Among the instruments referred to at the beginning of this resolution are some of a technical and non-political character which contain provisions, relating to the substance of the instruments, whose due execution is dependent on the exercise, by the League of Nations or particular organs of the League, of functions or powers conferred by the instruments. Certain of these instruments are intimately connected with activities which the United Nations will or may continue.

It is necessary, however, to examine carefully which of the organs of the United Nations or which of the specialized agencies brought into relationship with the United Nations should, in the future, exercise the functions and powers in question, in so far as they are maintained.

#### Therefore:

The General Assembly is willing, subject to these reservations, to take the necessary measures to ensure the continued exercise of these functions and powers, and refers the matter to the Economic and Social Council.

#### C. Functions and Powers under Treaties, International Conventions, Agreements and Other Instruments having a Political Character

The General Assembly will itself examine, or will submit to the appropriate organ of the United Nations, any request from the parties that the United Nations should assume the exercise of functions or powers entrusted to the League of Nations by treaties, international conventions, agreements and other instruments having a political character.

### II. NON-POLITICAL FUNCTIONS AND ACTIVITIES OF THE LEAGUE OF NATIONS OTHER THAN THOSE MENTIONED IN SECTION I

1. The General Assembly requests the Economic and Social Council to survey the functions and activities of a non-political character which have hitherto been performed by the League of Nations in order to determine which of them should, with such modifications as are desirable, be assumed by organs of the United Nations or be entrusted to specialized agencies which have been brought into relationship with the United Nations. Pending the adoption of the measures decided upon as the result of this examination, the Council should, on or before the dissolution of the League, assume and continue provisionally the work hitherto done by the following League departments: the Economic, Financial and Transit Department,

particularly the research and statistical work; the Health Section, particularly the epidemiological service; the Opium Section and the secretariats of the Permanent Central Opium Board and Supervisory Body.

2. The General Assembly requests the Secretary-General to make provision for taking over and maintaining in operation the Library and Archives and for completing the League of Nations treaty series.

3. The General Assembly considers that it would also be desirable for the Secretary-General to engage for the work referred to in paragraphs 1 and 2 above, on appropriate terms, such members of the experienced personnel by whom it is at present being performed as the Secretary-General may select.

### III. TRANSFER OF THE ASSETS OF THE LEAGUE OF NATIONS TO THE UNITED NATIONS

The General Assembly, having considered the report of the Committee set up by the Preparatory Commission to discuss and establish with the Supervisory Commission of the League of Nations a common plan for the transfer of the assets of the League of Nations, approves of both the report of the Committee set up by the Preparatory Commission and of the common plan submitted by it (document A/18 and Corr.1, Add.1 and 2).

### IV. APPOINTMENT OF A NEGOTIATING COMMITTEE

The General Assembly approves of the setting up of a small negotiating committee to assist the Secretary-General in negotiating further agreements in connexion with the transfer of certain assets in Geneva, and in connexion with the premises in the Peace Palace in The Hague. This committee shall consist of one representative designated by the delegations, if they so desire, of each of the same eight Members as previously constituted the Committee created by the Preparatory Commission: Chile, China, France, Poland, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom and United States of America.

#### (b) Protocol amending the International Convention relating to Economic Statistics, signed at Geneva on 14 December 1928

19. As indicated above, the General Assembly, by resolution 24 (I), decided that the necessary steps should be taken to ensure the uninterrupted exercise of the functions and powers of a technical and non-political nature vested in the League of Nations by virtue of international conventions.

20. At its sixth session, the Economic and Social Council recommended, by resolution 114 (VI) of 2 March 1948, that the General Assembly should approve a draft resolution and protocol with an annex which would enable the United Nations to assume the functions and powers previously exercised by the League of Nations under the Convention of 14 December 1928 relating to economic statistics.

21. At its 142nd plenary meeting on 24 September 1948, the General Assembly referred this question to the Sixth Committee, which considered it at its 88th to 91st meetings, held on 30 October and from 2 to 4 November 1948.

22. On the recommendation of the Sixth Committee,<sup>13</sup> the General Assembly on 18 November 1948 adopted resolution 255 (III), in which it adopted a Protocol amending the International Convention relating to Economic Statistics, signed at Geneva on 14 December 1928.

<sup>13</sup> Report of the Sixth Committee to the General Assembly, *Official Records of the General Assembly, Third Session, Annexes*, agenda item 57, document A/713.

23. It may be useful to quote the following passages from this resolution and from the Protocol :

*The General Assembly*

...

*Approves* the Protocol which accompanies this resolution;  
*Urges* that it shall be signed without delay by all the States which are Parties to the International Convention relating to Economic Statistics, signed at Geneva on 14 December 1928;<sup>14</sup>

*Recommends* that, pending the entry into force of the aforementioned protocol, effect be given to its provisions by the Parties to the Convention;

*Instructs* the Secretary-General to perform the functions conferred upon him by the Protocol upon its entry into force.

**PROTOCOL AMENDING THE INTERNATIONAL CONVENTION RELATING TO ECONOMIC STATISTICS, SIGNED AT GENEVA ON 14 DECEMBER 1928**

The Parties to the present Protocol, considering that, under the International Convention relating to Economic Statistics, signed at Geneva on 14 December 1928, the League of Nations was invested with certain duties and functions for the continued performance of which it is necessary to make provision in consequence of the dissolution of the League of Nations, and considering that it is expedient that these duties and functions should be performed henceforth by the United Nations, hereby agree as follows:

**ARTICLE I**

The Parties to the present Protocol undertake that, as between themselves, they will, in accordance with the provisions of the present Protocol, attribute full legal force and effect to, and duly apply, the amendments to that instrument as they are set forth in the annex to the present Protocol.

**ARTICLE II**

The Secretary-General shall prepare a text of the Convention as revised in accordance with the present Protocol, and shall send copies for their information to the Governments of every Member of the United Nations and every State non-member of the United Nations to which this Protocol is open for signature and acceptance. He shall also invite Parties to the aforesaid Convention to apply the amended text of that instrument as soon as the amendments are in force, even if they have not yet been able to become Parties to the present Protocol.

**ARTICLE III**

The present Protocol shall be open for signature or acceptance by any of the Parties to the Convention of 14 December 1928 relating to Economic Statistics, to which the Secretary-General has communicated for this purpose a copy of this Protocol.

...

**ARTICLE VI**

In accordance with paragraph 1 of Article 102 of the Charter of the United Nations and the regulations pursuant thereto adopted by the General Assembly, the Secretary-General of the United Nations is authorized to effect registration of this Protocol and of the amendments made in the Convention by the present Protocol on the respective dates of their entry into force, and to publish the Protocol and the revised text to the Convention of 14 December 1928 relating to Economic Statistics as soon as possible after registration.

**ARTICLE VII**

The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations Secretariat. The Convention to be amended in accordance with the annex being in the English and French languages only, the English and French texts of the annex shall equally be the authentic texts and the Chinese, Russian and Spanish texts shall be translations.

A certified copy of the Protocol, including the annex, shall be sent by the Secretary-General to each of the States Parties to the Convention of 14 December 1928 relating to Economic Statistics, as well as to all States Members of the United Nations.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, signed the present Protocol on the date appearing opposite their respective signatures.

DONE at Paris this ninth day of December 1948.

**ANNEX TO THE PROTOCOL AMENDING**

In *article 2, section III (A)*: "Food and Agriculture Organization of the United Nations" shall be substituted for "International Institute of Agriculture".

*Article 8* shall read:

"In addition to the particular functions which are entrusted to the Economic and Social Council under the provisions of the present Convention and the instruments annexed thereto, the Council may make any suggestions which appear to be useful, for the purpose of improving or amplifying the principles and arrangements laid down in the Convention concerning the classes of statistics dealt with therein. It may also make suggestions in regard to other classes of statistics of a similar character in respect of which it appears desirable and practicable to secure international uniformity. It shall examine all suggestions to the same end which may be submitted to it by the Governments of any of the High Contracting Parties.

"The Economic and Social Council is requested, if at any time a desire to that effect is expressed by not less than half of the Parties to the present Convention, to convoke a conference for the revision and, if it seems desirable, the amplification of the present Convention."

*Article 10*: In its first paragraph, "Economic and Social Council" shall be substituted for "Committee of Experts referred to in article 8".

In its second paragraph, "Council" shall be substituted for "Committee".

*Article 11*: shall read:

"Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories, or all Trust Territories for which he acts as Administering Authority; and the present Convention shall not apply to any territories named in such declaration.

"Any High Contracting Party may give notice to the Secretary-General of the United Nations at any time subsequently that he desires that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice one year after its receipt by the Secretary-General of the United Nations.

"Any High Contracting Party may, at any time after the expiration of the five-year period mentioned in article 16, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates, overseas territories or all Trust Territories for which he acts as Administering Authority, and the Convention shall cease to apply to the territories named in such declaration six months after its receipt by the Secretary-General of the United Nations.

"The Secretary-General of the United Nations shall communicate to all Members of the United Nations and to non-member States to which he has communicated a copy of this Convention all declarations and notices received in virtue of this article."

*Article 12*: Its second paragraph shall read:

"The present Convention shall be ratified. As from the date of entry into force of the Protocol signed at Paris to amend this Convention, the instruments of ratification shall be transmitted to the Secretary-General of the United Nations, who shall notify their receipt to all Members of the United Nations and to non-member States to which he has communicated a copy of this Convention."

*Article 13* shall read:

"From the date of entry into force of the Protocol signed at Paris to amend this Convention, the present Convention may be acceded to on behalf of any Member of the United Nations or any non-member State to which the Economic and Social

<sup>14</sup> See *League of Nations Treaty Series*, volume CX 1930-1931, Nos. 1, 2, 3 and 4, page 172.

Council may decide officially to communicate the present Convention.

"The instruments of accession shall be transmitted to the Secretary-General of the United Nations, who shall notify their receipt to all Members of the United Nations and to non-member States to which he has communicated a copy of this Convention."

In its third paragraph, "Members of the United Nations" shall be substituted for "Secretary-General of the League of Nations".

*Article 16:* In its first paragraph, "Secretary-General of the United Nations" shall be substituted for "Secretary-General of the League of Nations" and "Member of the United Nations" shall be substituted for "Member of the League".

Its second paragraph shall read:

"The Secretary-General shall notify all Members of the United Nations and non-member States to which he has communicated a copy of this Convention of any denunciations received."

In its third paragraph, "Members of the United Nations" shall be substituted for "Members of the League".

*Article 17:* Its second paragraph shall read:

"The Governments of countries which are ready to accede to the Convention under article 13 but desire to be allowed to make any reservations with regard to the application of the Convention may inform the Secretary-General of the United Nations to this effect, who shall forthwith communicate such reservations to all Parties to the present Convention and inquire whether they have any objection thereto. If within six months of the date of the communication of the Secretary-General no objections have been received, the reservation shall be deemed to have been accepted."

(c) *Protocols amending the International Agreement for the Suppression of the White Slave Traffic, signed at Paris, on 18 May 1904, and the International Convention for the Suppression of the White Slave Traffic, signed at Paris, on 4 May 1910, as well as the Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris, on 4 May 1910.*

24. At the 99th meeting of the Economic and Social Council held on 29 July 1947, the representative of France proposed the transfer to the United Nations of the functions exercised by the French Government under the instruments which these Protocols sought to amend.

25. At its seventh session, on 13 August 1948, the Economic and Social Council adopted resolution 155 (VII) D, recommending that the General Assembly approve the transfer of functions and directing the Secretary-General, in consultation with the French Government, to prepare a protocol for the purpose of effecting the transfer and to submit the draft protocol to the General Assembly for its approval.

26. In conformity with that resolution, the Secretary-General submitted to the General Assembly at its third session a note (A/639/Rev.1) and the text of two draft protocols prepared in consultation with the French Government.

27. The question was referred to the Sixth Committee, which considered it at its 111th meeting held on 19 November 1948.

28. On the recommendation of the Sixth Committee,<sup>15</sup>

the General Assembly, on 3 December 1948, adopted resolution 256 (III), the text of which is as follows:

*The General Assembly*

Noting that the French Government exercises certain functions under article 7 of the International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic,<sup>16</sup> under articles 4, 8, 10 and 11 of the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, and under articles 1, 4, 5 and 7 of the Agreement of 4 May 1910 for the Suppression of the Circulation of Obscene Publications,

Taking note of the French Government's offer to transfer to the United Nations the functions exercised by it in virtue of these instruments,

Considering that, by resolution 126 (II) adopted on 20 October 1947, the General Assembly decided to assume the powers and functions previously exercised by the League of Nations under the International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children,<sup>17</sup> the International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age,<sup>18</sup> and of the International Convention of 12 September 1923 for the Suppression of the Circulation of and Traffic in Obscene Publications.<sup>19</sup>

Approves the transfer to the United Nations of the functions exercised by the French Government in virtue of the above-mentioned instrument;

Approves the Protocol which accompany this resolution;

Asks that each of these Protocols be signed without delay:

(a) By the States Members of the United Nations which are Parties to the Agreements or to the Convention which the Protocols seek to amend;

(b) By those States which are not Members of the United Nations and which are Parties to the Agreements or the Conventions which the Protocols seek to amend, and to which the Secretary-General shall have communicated a copy of the Protocols in conformity with international agreements in force and the recommendations contained in the resolutions of the General Assembly;

Recommends that, pending the entry into force of the aforesaid Protocols, effect be given to their provisions by the aforementioned States, each in respect of the instruments to which it is a Party;

Instructs the Secretary-General to perform the functions conferred upon him by the aforesaid Protocols upon their entry into force.

29. The provisions of the Protocols accompanying this resolution are identical, *mutatis mutandis*, with those of the Protocol amending the International Convention relating to Economic Statistics mentioned above.

(d) *Protocol amending the International Slavery Convention signed at Geneva on 25 September 1926*

30. By resolution 475 (XV) of 27 April 1953, the Economic and Social Council recommended that the General Assembly invite the States Parties, or which might become Parties, to the International Slavery Convention of 25 September 1926 to agree to the transfer to the United Nations of the functions undertaken by the League of Nations under the said Convention, and requested the Secretary-General to prepare a draft protocol to that end.

31. In conformity with that resolution, the Secretary-General prepared a draft protocol which he submitted to the General Assembly as an annex to his memoran-

<sup>16</sup> For the text of these instruments see document A/639/Rev.1.

<sup>17</sup> See *League of Nations Treaty Series*, volume IX, page 415.

<sup>18</sup> *Ibid.*, volume CL, page 431.

<sup>19</sup> *Ibid.*, volume XXVII, page 213.

<sup>15</sup> Report of the Sixth Committee to the General Assembly, *Official Records of the General Assembly, Third Session, Annexes*, agenda item 61, document A/741.

dum A/2435,<sup>20</sup> in which he also referred to the history of the question.

32. In his notes A/2435/Add.1, 2 and 3, the Secretary-General transmitted to the General Assembly the observations he had received from Governments on the draft protocol which he had transmitted to the States Parties to the International Slavery Convention in accordance with the request in Economic and Social Council resolution 475 (XV).

33. At its 435th plenary meeting held on 17 September 1953, the General Assembly referred the draft protocol prepared by the Secretary-General to the Sixth Committee, which considered it at its 369th and 470th meetings, held on 12 and 15 October 1953.

34. It may be useful to reproduce the following passages from the report of the Sixth Committee to the General Assembly :<sup>21</sup>

8. During the discussions in the Sixth Committee the question was raised, in connexion with the broader problem of the adaptation of League of Nations Conventions to the United Nations, whether a protocol was necessary for the transfer to the Organization of the functions and powers exercised by the League of Nations under the Slavery Convention. In that connexion, the Committee's attention was drawn to General Assembly resolution 24 (I) on the transfer to the United Nations of certain functions and activities of the League of Nations and to the resolution of the League of Nations Assembly of 18 April 1946. The United Nations General Assembly stated in section I of resolution 24 (I) that the Organization was prepared to accept the custody of international instruments formerly entrusted to the League of Nations and to charge the Secretariat of the United Nations with the task of performing for the parties the functions, pertaining to a secretariat, formerly entrusted to the League of Nations and set forth in part A of that resolution. There was therefore no need for a protocol for the transfer of such functions. An analysis of the Slavery Convention moreover showed that only article 7, which laid upon parties the obligation to inform the Secretary-General of the League of Nations of, *inter alia*, the laws and regulations enacted by them for the purpose of applying the Convention, might perhaps require a protocol before it could be sanctioned. But it was pointed out in that connexion that, even if that were the case, some practical remedy for the deficiency might easily be found. Finally, with regard to the invitation addressed to certain Member or non-member States which could not at the present stage accede to the Convention, it would be enough for the General Assembly to adopt a resolution to that effect (370th meeting)

9. Some delegations expressed the opinion that a protocol was desirable for the purpose of transferring to the United Nations the functions and powers exercised by the League of Nations under the International Slavery Convention so that non-member States which were Parties to the Convention might give their assent to such a transfer. The same

delegations also pointed out that there were several precedents.

10. The Secretary-General's representative said that the Secretary-General considered himself bound by the terms of part A of section I of General Assembly resolution 24 (I) of 12 February 1946. In accordance with the provisions of that resolution, the Secretary-General had always confined himself to the exercise of purely administrative functions and there had never been any objections. Thus, he had accepted, and notified the States concerned of, the depositing with him of instruments relating to Conventions which entrusted the Secretary-General of the League of Nations with the functions of depositary and which had never been the subject of a protocol of transfer. The adoption of a protocol, which the General Assembly had frequently thought desirable, would nevertheless not reflect upon the status of States which, by depositing an instrument of accession or ratification with the Secretary-General, had become Parties to such Conventions.

35. At its 453rd plenary meeting held on 23 October 1953, the General Assembly adopted resolution 794 (VIII), reading as follows :

*The General Assembly,*

*Considering Economic and Social Council resolution 475 (XV) adopted on 27 April 1953, concerning the transfer to the United Nations of the functions exercised by the League of Nations under the Slavery Convention of 25 September 1926,*

...

1. *Approves* the Protocol which accompanies the present resolution;
2. *Urges* all States Parties to the Slavery Convention to sign or accept this Protocol;
3. *Recommends* all other States to accede at their earliest opportunity to the Slavery Convention as amended by the present Protocol.

36. The text of the Protocol accompanying this resolution will not be reproduced here since its provisions are essentially the same as those of the Protocol amending the International Convention relating to Economic Statistics, the text of which has already been reproduced.

#### E. AGREEMENTS BETWEEN THE UNITED NATIONS AND CERTAIN GOVERNMENTS

(a) *Agreements relating to the privileges and immunities of Members of the International Court of Justice, the Registrar, Officials of the Registry, Assessors, the Agents and Counsel of the Parties and of Witnesses and Experts*

37. By resolution 22 (I) C of 13 February 1946, the General Assembly, with a view to ensuring that the International Court of Justice should enjoy the privileges, immunities and facilities necessary for the exercise of its functions, invited the Court to consider the question and to inform the Secretary-General of its recommendations.

38. As regards Netherlands territory, negotiations took place between representatives of the Netherlands Foreign Ministry and representatives of the Court, with a view to giving effect in the most satisfactory way possible to the above-mentioned resolution. These conversations led to an agreement set out in an exchange of letters

<sup>20</sup> *Official Records of the General Assembly, Eighth Session, Annexes, agenda item 30.*

<sup>21</sup> *Ibid.*, document A/2517.

dated 26 June 1946 between the President of the Court and the Minister for Foreign Affairs of the Netherlands.

39. At its 46th plenary meeting, held on 31 October 1946, the General Assembly referred the question to the Sixth Committee, which considered it on the basis of recommendations transmitted by the Court.<sup>22</sup>

40. At its 55th plenary meeting, held on 11 December 1946, the General Assembly adopted resolution 90 (I) whereby it approved "the agreements concluded between the International Court of Justice and the Netherlands Government, as recorded in the exchange of letters between the President of the Court and the Minister for Foreign Affairs of the Netherlands (Annex)."<sup>23</sup>

(b) *Interim Arrangement on the Privileges and Immunities of the United Nations concluded with the Swiss Federal Council, and Agreement concerning the Ariana Site*

41. These agreements were prepared by the Negotiating Committee set up under General Assembly resolution 24 (I) of 12 February 1946, in consultation with the Swiss Federal Council, to assist the Secretary-General in negotiating the agreements concerning the transfer to the United Nations of certain assets situated at Geneva and certain premises of the Palais de la Paix at The Hague.

42. In his report on the negotiations with the Swiss Federal Council<sup>24</sup> which contained the text of these agreements in its annexes I and II, the Secretary-General observed that these agreements "were initialled by representatives of the Swiss Federal Council and, on behalf of the Secretary-General, by the Negotiating Committee. These two agreements were signed first on behalf of the Swiss Federal Council, and on 1 July (1946) by the Secretary-General, on which date they duly entered into force."

43. At its 46th plenary meeting held on 31 October 1946, the General Assembly referred to the Sixth Committee the report by the Secretary-General containing, in addition, a letter dated 22 October 1946 from the Head of the Swiss Federal Political Department relating to the interpretation of the interim arrangement on privileges and immunities.

44. On the recommendation of the Sixth Committee,<sup>25</sup> the General Assembly, on 14 December 1946, adopted resolution 98 (I) reading as follows :

*The General Assembly*

*Has taken note* with satisfaction of the report<sup>26</sup> by the Secretary-General on the negotiations with the Swiss Federal Council;

*Considers* that the documents set out in that report, including the letter of 22 October 1946 from the Head of the Swiss Federal Political Department relating to the use of the United Nations buildings in Geneva, constitute a satis-

factory basis for the activities of the United Nations in Switzerland;

*Approves, therefore,* the arrangements concluded with the Swiss Federal Council.<sup>27</sup>

(c) *Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations*

45. By resolution 22 (I) B of 13 February 1946, the General Assembly authorized the Secretary-General, with the assistance of a Negotiating Committee, to negotiate with the competent authorities of the United States of America the arrangements required as a result of the establishment of the seat of the United Nations in the United States of America. This resolution provided that any agreement with the competent authorities of the United States resulting from these negotiations should be subject to approval by the General Assembly before being signed on behalf of the United Nations. Annexed to the resolution was a draft Convention between the United Nations and the Government of the United States of America intended for use by the Secretary-General as a basis for discussion during the negotiations. This draft Convention had been drawn up by the Sixth Committee<sup>28</sup> on the basis of a "draft treaty" prepared for the purpose by the Preparatory Commission of the United Nations.<sup>29</sup>

46. The Secretary-General and the Negotiating Committee submitted to the General Assembly at its first session a joint report<sup>30</sup> on the negotiations carried out with the authorities of the United States of America. This report contained an annexed draft agreement which had been reached in the course of the negotiations.

47. The General Assembly referred the report to the Sixth Committee. On that Committee's recommendation,<sup>31</sup> the General Assembly, on 14 December 1946, adopted resolution 99 (I) whereby it recognized that, having decided that the permanent headquarters of the United Nations should be located in the City of New York, the draft agreement resulting from the negotiations between the Secretary-General and Negotiating Committee and the competent authorities of the United States of America would need to be adapted to the circumstances of that site. In this resolution, the General Assembly also adopted the following decisions :

*The General Assembly,*

...

*Resolves, therefore :*

1. That the Secretary-General be authorized to negotiate and conclude with the appropriate authorities of the United States of America an agreement concerning the arrangements required as a result of the establishment of the permanent headquarters of the United Nations in the City of New York;

2. That in negotiating this agreement the Secretary-

<sup>22</sup> Report of the Sixth Committee to the General Assembly, document A/202.

<sup>23</sup> For the text of this exchange of letters which came into force on 11 December 1946, the date of its approval by the General Assembly, see *United Nations Treaty Series*, vol. 8, page 63.

<sup>24</sup> Document A/175, page 1.

<sup>25</sup> Report of the Sixth Committee to the General Assembly, document A/257.

<sup>26</sup> Document A/175.

<sup>27</sup> For the text of these Agreements, which entered into force by signature on 1 July 1946, see *United Nations Treaty Series*, vol. 1, pages 154 and 165.

<sup>28</sup> Report of the Sixth Committee to the General Assembly, document A/43/Rev.1.

<sup>29</sup> Report of the Preparatory Commission of the United Nations, document PC/20, page 75.

<sup>30</sup> Document A/67/Add.1.

<sup>31</sup> Report of the Sixth Committee to the General Assembly, document A/271.

General shall be guided by the provisions of the draft agreement set forth in document A/67;

3. That the agreement referred to in paragraph 1 shall not come into force until approved by the General Assembly;

4. That, pending the coming into force of the agreement referred to in paragraph 1, the Secretary-General be authorized to negotiate and conclude arrangements with the appropriate authorities of the United States of America to determine on a provisional basis the privileges, immunities and facilities needed in connexion with the permanent headquarters of the United Nations. In negotiating these arrangements, the Secretary-General shall be guided by the provisions of the draft agreement set forth in document A/67;

5. That the Government of the United States of America be requested to take the necessary steps as soon as possible to put into effect the Convention on the Privileges and Immunities of the United Nations, and to give effect to such arrangements as may be reached in accordance with paragraph 4 of this resolution.

48. In the report<sup>32</sup> submitted by the Secretary-General to the General Assembly at its second session, it was stated that in "pursuance of the resolution of 14 December, the Secretary-General resumed his negotiations with the competent United States authorities and on 26 June 1947 signed, with the Secretary of State of the United States of America, the 'Agreement between the United Nations and the United States of America regarding the headquarters of the United Nations'". An annex to this report contained the text of the agreement, section 28 of which, in conformity with paragraph 3 of the above-mentioned General Assembly resolution, stipulated that it:

. . . shall be brought into effect by an exchange of notes between the Secretary-General, duly authorized pursuant to a resolution of the General Assembly of the United Nations, and the appropriate executive officer of the United States, duly authorized pursuant to appropriate action of the Congress.

49. Section 20 of the Agreement also stipulated that:

The Secretary-General and the appropriate American authorities shall settle by agreement the channels through which they will communicate regarding the application of the provisions of this agreement and other questions affecting the headquarters district, and may enter into such supplemental agreements as may be necessary to fulfil the purposes of this agreement. In making supplemental agreements with the Secretary-General, the United States shall consult with the appropriate state and local authorities. If the Secretary-General so requests, the Secretary of State of the United States shall appoint a special representative for the purpose of liaison with the Secretary-General.

50. The text of the agreement was referred to the Sixth Committee, which requested its Sub-Committee on Privileges and Immunities to study it. The Sub-Committee, in its report to the Sixth Committee,<sup>33</sup>

expressed the following views with regard to sections 20 and 28 of the agreement:

(f) Section 20 provides for the conclusion between the Secretary-General and appropriate United States authorities of any supplemental agreements that may be necessary to fulfil the purposes of the Headquarters Agreement. The Sub-Committee was of the opinion that the Secretary-General should have authority to conclude such supplemental agreements and that the General Assembly should in all cases be informed of their contents. However, wherever, in the judgment of the Secretary-General, the proposed supplemental agreement involved any question of importance for which he had not already received authority, the Secretary-General should obtain the approval of the General Assembly before the supplemental agreement could become operative;

(g) With regard to section 28, the Sub-Committee was of the opinion that the notes exchanged for the purpose of bringing the Headquarters Agreement into force should be limited to effecting this purpose.

51. At its 101st plenary meeting held on 31 October 1947, the General Assembly adopted resolution 169 (II), reading as follows:

#### A

##### *The General Assembly,*

*Whereas* the Secretary-General pursuant to resolution 99 (I) of 14 December 1946 signed with the Secretary of State of the United States of America on 26 June 1947 an Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, and

*Whereas* the Secretary-General in accordance with the said resolution has submitted the said Agreement to the General Assembly;

*Having studied* the report prepared on this matter by the Sixth Committee,

*Endorses* the opinions expressed therein;

*Approves* the Agreement signed on 26 June 1947, and

*Authorizes* the Secretary-General to bring that Agreement into force in the manner provided in section 28 thereof, and to perform on behalf of the United Nations such acts or functions as may be required by that Agreement.<sup>34</sup>

## II. The Calling of International Conferences to adopt Treaties

52. Before enumerating the General Assembly resolutions calling such conferences, we should refer to resolution 366 (IV) of 3 December 1949, in which the General Assembly established rules for the calling of international conferences of States by the Economic and Social Council.

### A. RULES ESTABLISHED BY THE GENERAL ASSEMBLY FOR THE CALLING OF INTERNATIONAL CONFERENCES OF STATES BY THE ECONOMIC AND SOCIAL COUNCIL

53. By resolution 173 (II) of 17 November 1947, the General Assembly invited the Secretary-General to prepare, in consultation with the Economic and Social Council, draft rules for the calling of international conferences, as provided in paragraph 4 of Article 62

<sup>32</sup> Document A/371.

<sup>33</sup> Report of the Sixth Committee to the General Assembly, *Official Records of the General Assembly, Second Session, Annex 9 b*, document A/427.

<sup>34</sup> For the text of this Agreement which came into force on 21 November 1947 by an exchange of notes, in accordance with section 28, see: *United Nations Treaty Series*, vol. 11, page 11.

of the Charter, for consideration at the third session of the General Assembly.

54. Pursuant to this resolution, the Secretary-General prepared draft rules and submitted them to the Economic and Social Council. At its eighth session the Council discussed these draft rules and suggested certain modifications to which the Secretary-General agreed. In its resolution 220 (VIII) of 2 March 1949, the Council approved these draft rules and submitted them to the General Assembly. The Assembly referred them to the Sixth Committee, which considered them at its 187th meeting on 9 November 1949.

55. The Sixth Committee made a number of modifications in the draft rules<sup>35</sup> which were adopted in their amended form by the General Assembly in its resolution 366 (IV) of 3 December 1949. This resolution reads as follows :

*The General Assembly,*

*Recalling* its resolution 173 (II) of 17 November 1947 inviting the Secretary-General to prepare, in consultation with the Economic and Social Council, draft rules for the calling of international conferences,

*Having considered* the draft rules for the calling of international conferences prepared by the Secretary-General and approved by the Economic and Social Council on 2 March 1949 (resolution 220 (VIII)),<sup>36</sup>

*Approves* the following rules for the calling of international conferences of States:

*Rule 1*

The Economic and Social Council may at any time decide to call an international conference of States on any matter within its competence, provided that, after consultation with the Secretary-General and the appropriate specialized agencies, it is satisfied that the work to be done by the conference cannot be done satisfactorily by any organ of the United Nations or by any specialized agency.

*Rule 2*

When the Council has decided to call an international conference, it shall prescribe the terms of reference and prepare the provisional agenda of the conference.

*Rule 3*

The Council shall decide what States shall be invited to the conference.

The Secretary-General shall send out as soon as possible the invitation, accompanied by copies of the provisional agenda, and shall give notice, accompanied by copies of the provisional agenda, to every Member of the United Nations not invited. Such Member may send observers to the conference.

Non-member States whose interests are directly affected by the matters to be considered at the conference may be invited to it and shall have full rights as members thereof.

*Rule 4*

With the approval of the responsible State, the Council may decide to invite to a conference of States a territory which is self-governing in the fields covered by the terms of reference of the conference but which is not responsible for the conduct of its foreign relations. The Council shall decide the extent of the participation in the conference of any territory so invited.

<sup>35</sup>Report of the Sixth Committee to the General Assembly, *Official Records of the General Assembly, Fourth Session, Annexes*, Agenda item 52, document A/1165.

<sup>36</sup>*Official Records of the eighth session of the Economic and Social Council*, Resolutions, page 41.

*Rule 5*

The Council shall, after consultation with the Secretary-General, fix the date and place of the conference or request the Secretary-General to do so.

*Rule 6*

The Council shall make arrangements for financing the conference, except that any arrangements involving the expenditure of funds of the United Nations shall be subject to the applicable regulations, rules and resolutions of the General Assembly.

*Rule 7*

The Council:

(a) Shall prepare, or request the Secretary-General to prepare, provisional rules of procedure for the conference;

(b) May establish a preparatory committee to carry out such functions in preparation for the conference as the Council shall indicate;

(c) May request the Secretary-General to perform such functions in preparation for the conference as the Council shall indicate.

*Rule 8*

The Council may invite specialized agencies in relationship with the United Nations and non-governmental organizations having consultative status with the Council to take part in conferences called under these rules. The representatives of such agencies or organizations shall be entitled to the same rights and privileges as at sessions of the Council itself, unless the Council decides otherwise.

*Rule 9*

Subject to any decisions and directions of the Council, the Secretary-General shall appoint an executive secretary for the conference, provide the secretariat and services required and make such other administrative arrangements as may be necessary.

**B. SOME INTERNATIONAL CONFERENCES CALLED BY THE GENERAL ASSEMBLY**

56. Of the General Assembly resolutions consulted in the preparation of this memorandum we shall here refer to those in which the Assembly called the following conferences : Conference on Declaration of Death of Missing Persons (Resolution 369 (IV) of 3 December 1949), Conference on Elimination or Reduction of Future Statelessness (Resolution 896 (IX) of 4 December 1954), Conference on the Law of the Sea (Resolution 1105 (XI) of 21 February 1957), Conference on Diplomatic Intercourse and Immunities (Resolution 1450 (XIV) of 7 December 1959), Conference on Consular Relations (Resolution 1685 (XVI) of 18 December 1961).

57. It will be noted that in all these resolutions the method adopted for calling international conferences is identical. Under these resolutions, the General Assembly itself determines which States are to be invited to attend the conferences, refers to the conferences draft articles or conventions which have already been prepared in the United Nations, and requests the Secretary-General to submit to the conferences the necessary preparatory documents and appropriate recommendations concerning their method of work and procedures.

(a) *United Nations Conference on Declaration of Death of Missing Persons*

58. Resolution 369 (IV) of 3 December 1949 reads as follows :

*The General Assembly,*

...

Considering that the Economic and Social Council was not able to examine the draft Convention on the Declaration of Death of Missing Persons<sup>37</sup> prepared by the *Ad Hoc* Committee established to prepare the draft,

Considering that the General Assembly should undertake a detailed study of conventions prepared by small groups only if one of its main Committees disposes of the necessary time; that, when the contrary is the case, it can call a conference of plenipotentiaries for the purposes of studying and drafting the convention,

...

1. *Decides* that an international conference of Government representatives be convened not later than 1 April 1950 with a view to concluding a multilateral convention on the subject;

2. *Instructs* the Secretary-General:

(a) To issue invitations to the Governments of Member States to such a conference, asking all Governments interested to inform him as soon as possible of their acceptance;

(b) To take all other measures necessary for the convening of the conference;

3. *Refers* also the draft Convention on the Declaration of Death of Missing Persons to Member States to enable them to examine it and consider the possibility of adopting, if necessary, legislative measures on the legal status of persons missing as a result of events of war or other disturbances of peace during the post-war years until the present time;

4. *Requests* the Member States to transmit their comments to the Secretary-General so that he may report on them to the General Assembly at its next regular session.

(b) *Conference on Elimination or Reduction of Future Statelessness*

59. Resolution 896 (IX) of 4 December 1954 provides as follows:

*The General Assembly,*

...

Noting that the International Law Commission, at its fifth session in 1953, proposed<sup>38</sup> a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness, and invited Governments to submit their comments thereon,

Considering that comments were received from fifteen Governments, which comments were published in an annex to the report of the International Law Commission on the work of its sixth session,

Considering that the Economic and Social Council has approved<sup>39</sup> the principles of the two draft Conventions,

Considering that the International Law Commission revised, in the light of the comments received from Governments, the above-mentioned draft Conventions and submitted<sup>40</sup> the revised drafts to the General Assembly,

Recognizing the importance of reducing and, if possible, eliminating future statelessness by international agreement,

...

2. *Expresses its desire* that an international conference of plenipotentiaries be convened to conclude a convention for the reduction or elimination of future statelessness as soon as at least twenty States have communicated to the Secretary-General their willingness to co-operate in such a conference;

3. *Requests* the Secretary-General:

(a) To communicate, together with the present resolution, the revised draft Conventions to Member States and to each non-member State which is or hereafter becomes a member of one or more of the specialized agencies of the United Nations or which is or hereafter becomes a Party to the Statute of the International Court of Justice;

(b) To fix the exact time and place for the conference, to issue invitations to those States to which the revised draft Conventions have been communicated and to take all other measures for the convening of the conference and for its operation in case the condition stated in paragraph 2 above is met;

(c) To report on the matter to the General Assembly at its eleventh session;

4. *Requests* Governments of States to which reference is made in paragraph 3, sub-paragraph (a) above, to give early consideration to the merits of a multilateral convention on the elimination or reduction of future statelessness.

(c) *United Nations Conference on the Law of the Sea*

60. Resolution 1105 (XI) of 21 February 1957 reads as follows:

*The General Assembly,*

Having received the report of the International Law Commission covering the work of its eighth session,<sup>41</sup> which contains draft articles and commentaries on the law of the sea,

...

2. *Decides*, in accordance with the recommendation contained in paragraph 28 of the report of the International Law Commission covering the work of its eighth session, that an international conference of plenipotentiaries should be convened to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate;

...

4. *Requests* the Secretary-General to convoke the conference early in March 1958;

5. *Invites* all States Members of the United Nations and States members of the specialized agencies to participate in the conference and to include among their representatives experts competent in the fields to be considered;

6. *Invites* the interested specialized agencies and inter-governmental bodies to send observers to the conference;

7. *Requests* the Secretary-General to invite appropriate experts to advise and assist the Secretariat in preparing the conference, with the following terms of reference:

(a) To obtain, in the manner which they think most appropriate from the Governments invited to the conference any further provisional comments the Governments may wish to make on the Commission's report and related matters, and to present to the conference in systematic form any comments made by the Governments, as well as the relevant statements made in the Sixth Committee at the eleventh and previous sessions of the General Assembly;

(b) To present to the conference recommendations concerning its method of work and procedures, and other questions of an administrative nature;

(c) To prepare, or arrange for the preparation of, working documents of a legal, technical, scientific or economic nature in order to facilitate the work of the conference;

8. *Requests* the Secretary-General to arrange also for the necessary staff and facilities which would be required for the conference, it being understood that the technical services of such experts as are needed will be utilized;

9. *Refers* to the conference the report of the International Law Commission as the basis for its consideration of the various problems involved in the development and codification of the law of the sea, and also the verbatim records of the relevant debates in the General Assembly, for consideration by the conference in conjunction with the Commission's report;

10. *Requests* the Secretary-General to transmit to the conference all such records of world-wide or regional international meetings as may serve as official background material for its work.

11. *Calls* upon the Governments invited to the conference and groups thereof to utilize the time remaining before the

<sup>37</sup> Document E/1368.

<sup>38</sup> *Official Records of the General Assembly, Eighth Session, Supplement No. 9*, chapter IV.

<sup>39</sup> Economic and Social Council, resolution 526 B (XVII).

<sup>40</sup> *Official Records of the General Assembly, Ninth Session, Supplement No. 9*.

<sup>41</sup> *Official Records of the General Assembly, Eleventh Session, Supplement No. 9 (A/3159)*.

opening of the conference for exchanges of views on the controversial questions relative to the law of the sea;

12. *Expresses the hope* that the conference will be fully attended.

61. Before its adoption, operative paragraph 5 of this resolution was the subject of a discussion in the Sixth Committee, a record of which may be found in the following passages from the Sixth Committee's report to the General Assembly: <sup>42</sup>

. . . several representatives stressed the need for inviting to any future conference on the law of the sea all States desirous of attending, irrespective of whether they were as yet Members of the United Nations or of the specialized agencies.

. . . As regards the amendment submitted by Ceylon, India and Indonesia (A/C.6/L.389),<sup>43</sup> some representatives said that any conference on the law of the sea should be as universal as possible, and that it would not be right to draw up conventions which were intended to lay down rules of law for all States unless all States could have an opportunity to participate in the formulation of these rules. Other representatives, however, said that the amendment had political implications falling outside the scope of the Sixth Committee, and that it would raise difficulties of a practical nature. It was also pointed out that the formula contained in paragraph . . . [5 of the resolution] was a standard formula which had been used in regard to a number of recent international conferences.

#### (d) *United Nations Conference on Diplomatic Intercourse and Immunities*

62. Resolution 1450 (XIV) of 7 December 1959 reads as follows:

*The General Assembly,*

1. *Decides* that an international conference of plenipotentiaries shall be convoked to consider the question of diplomatic intercourse and immunities and to embody the results of its work in an international convention, together with such ancillary instruments as may be necessary;

2. *Requests* the Secretary-General to convoke the conference at Vienna not later than the spring of 1961;

3. *Invites* all States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice to participate in the conference and to include among their representatives experts competent in the field to be considered;

4. *Invites* the specialized agencies and the interested inter-governmental organizations to send observers to the conference.

5. *Requests* the Secretary-General to present to the conference all relevant documentation, and recommendations relating to its methods of work and procedures and to other questions of an administrative nature;

6. *Requests* the Secretary-General to arrange also for the necessary staff and facilities which would be required for the conference;

7. *Refers* to the conference chapter III of the report of the International Law Commission covering the work of its tenth

session,<sup>44</sup> as the basis for its consideration of the question of diplomatic intercourse and immunities;

8. *Expresses the hope* that the conference will be fully attended.

63. The question of the States to be invited to participate in the Conference — a question dealt with in operative paragraph 3 of the aforesaid resolution — gave rise to a divergence of views<sup>45</sup> in the Sixth Committee, which was in general similar to that which had emerged during the consideration of the draft resolution on the calling of the International Conference on the Law of the Sea.

#### (e) *United Nations Conference on Consular Relations*

64. Resolution 1685 (XVI) of 18 December 1961 is worded as follows:

*The General Assembly,*

*Having considered* chapter II of the report of the International Law Commission covering the work of its thirteenth session,<sup>46</sup> which contains draft articles and commentaries on consular relations.

*Recalling* that, according to paragraph 27 of that report, the International Law Commission decided to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft on constitute a good basis for the preparation of a convention on the subject,

*Noting with satisfaction* that the draft articles on consular relations prepared by the International Law Commission constitute a good basis for the preparation of a convention on that subject.

*Desiring* to provide an opportunity for completing the preparatory work by further expressions and exchanges of views concerning the draft articles at the seventeenth session of the General Assembly,

2. *Requests* Member States to submit to the Secretary-General written comments concerning the draft articles by 1 July 1962, in order that they may be circulated to Governments prior to the beginning of the seventeenth session of the General Assembly;

3. *Decides* that an international conference of plenipotentiaries be convened to consider the question of consular relations and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

4. *Requests* the Secretary-General to convoke the conference at Vienna at the beginning of March 1963;

5. *Invites* States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice to participate in the conference and to include among their representatives experts competent in the field to be considered;

6. *Invites* the specialized agencies and the interested inter-governmental organizations to send observers to the conference;

7. *Requests* the Secretary-General to present to the conference documentation and recommendations concerning its methods of work and procedures;

8. *Requests* the Secretary-General to arrange for the necessary staff and facilities which will be required for the conference;

9. *Refers* to the conference chapter II of the report of the International Law Commission covering the work of its thirteenth session, together with the records of the relevant debates

<sup>42</sup> *Official Records of the General Assembly, Eleventh Session, Annexes, Agenda item 53, document A/3520, paras. 70 and 74.*

<sup>43</sup> An amendment which would delete the words: "Members of the United Nations and States Members of the specialized agencies".

<sup>44</sup> *Official Records of the General Assembly, Thirteenth Session, Supplement No. 9 (A/3859 and Corr.1).*

<sup>45</sup> *Report of the Sixth Committee to the General Assembly, Official Records of the General Assembly, Fourteenth Session, Annexes, Agenda item 56, document A/4305, para. 18.*

<sup>46</sup> *Official Records of the General Assembly, Sixteenth Session, Supplement No. 9 (A/4843).*

in the General Assembly, as the basis for its consideration of the question of consular relations;

65. The report of the Sixth Committee to the General Assembly<sup>47</sup> notes the divergent opinions expressed in that Committee on the question of which States should be invited to the Conference — a question dealt with in operative paragraph 5 of this resolution. This question gave rise to the same divergence of views as had emerged during consideration of the two draft resolutions calling the Conference on the Law of the Sea and the Conference on Diplomatic Intercourse and Immunities.

### III. Procedures laid down in the Treaties adopted by the General Assembly by which interested States may become parties to them

66. In this section we indicate the various procedures provided for the accession of States to the multilateral treaties adopted by the General Assembly, and at the same time give the categories of States which, under the terms of those treaties, may become parties to them.

#### A. ACCESSION

67. In some treaties, only one method is followed: accession.

68. For instance, in resolution 22 (I) A, approving the Convention on the Privileges and Immunities of the United Nations, the General Assembly "proposes it for accession by each Member of the United Nations". In line with this, section 31 of the Convention provides as follows:

*Section 31.* This convention is submitted to every Member of the United Nations for accession.

69. It may be of interest to note here that in resolution 93 (I) of 11 December 1946, the General Assembly invited Members of the United Nations to accede at as early a date as possible to the Convention on the Privileges and Immunities of the United Nations. It also recommended that Members, pending their accession to the Convention, should follow, so far as possible, the provisions of the Convention in their relations with the United Nations, its officials, the representatives of its Members and experts on missions for the Organization. In resolution 259 (III) of 8 December 1948, the General Assembly again invited those States Members which had not yet acceded to the Convention on the Privileges and Immunities of the United Nations to deposit their instruments of accession to the said Convention with the Secretary-General at the earliest possible moment.

70. In resolution 179 (II), by which it approved the Convention on the Privileges and Immunities of the Specialized Agencies, the General Assembly also proposed the Convention "for accession by all Members of the United Nations and by any other State member of a specialized agency". The procedure by which a State can become a party to this Convention and assume its obligations in respect of the different specialized agencies is laid down in article XI, sections 41, 42, and 43 of which provide as follows:

*Section 41.* Accession to this Convention by a Member of the United Nations and (subject to section 42) by any State member of a specialized agency shall be effected by deposit with the Secretary-General of the United Nations of an instrument of accession which shall take effect on the date of its deposit.

*Section 42.* Each specialized agency concerned shall communicate the text of this Convention together with the relevant annexes to those of its members which are not Members of the United Nations and shall invite them to accede thereto in respect to that agency by depositing an instrument of accession to this Convention in respect thereof either with the Secretary-General of the United Nations or with the executive head of the specialized agency.

*Section 43.* Each State party to this Convention shall indicate in its instrument of accession the specialized agency or agencies in respect of which it undertakes to apply the provisions of this Convention. Each State party to this Convention may by a subsequent written notification to the Secretary-General of the United Nations undertake to apply the provisions of this Convention to one or more further specialized agencies. This notification shall take effect on the date of its receipt by the Secretary-General.

#### B. SIGNATURE FOLLOWED BY RATIFICATION OR ACCESSION

71. The Convention on the Prevention and Punishment of the Crime of Genocide provides both for signature up to a certain date, followed by ratification, and for accession. In resolution 260 (III) approving this Convention, the General Assembly "proposes it for signature and ratification or accession in accordance with its article XI", which provides as follows:

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-Member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

72. It is to be noted that on 3 December 1949, the General Assembly adopted resolution 368 (IV) concerning the invitations to be addressed to non-member States to become parties to the Convention on the Prevention and Punishment of the Crime of Genocide. The resolution reads as follows:

*The General Assembly,*

*Considering* that article XI of the Convention on the Prevention and Punishment of the Crime of Genocide, approved by General Assembly resolution 260 A (III) of 9 December 1948, provides, *inter alia*, that the Convention shall be open to signature and ratification or to accession on behalf of any non-member State to which an invitation has been addressed by the General Assembly.

<sup>47</sup> *Ibid.*, Sixteenth Session, Annexes, Agenda item 69, document A/5013, para. 25.

Considering that it is desirable to send invitations to those non-Member States which, by their participation in activities related to the United Nations, have expressed a desire to advance international co-operation.

1. *Decides* to request the Secretary-General to dispatch the invitations above-mentioned to each non-member State which is or hereafter becomes an active member of one or more of the specialized agencies of the United Nations, or which is or hereafter becomes a Party to the Statute of the International Court of Justice;

2. *Remains convinced* of the necessity of inviting Members of the United Nations which have not yet done so to sign or ratify the Convention on the Prevention and Punishment of the Crime of Genocide as soon as possible.

73. In resolution 795 (VIII) of 3 November 1953, the General Assembly reiterated its appeal to States to ratify or accede to this Convention as soon as possible.

#### C. SIGNATURE OR ACCEPTANCE

74. The Protocols relating to the transfer to the United Nations of functions and powers exercised under international agreements by the League of Nations or by certain Governments leave interested States free to accede to them either by signature only, or by signature followed by acceptance, or by acceptance only.

75. Thus articles III and IV of the Protocol amending the International Convention relating to Economic Statistics signed at Geneva on 14 December 1928 provide as follows :

#### ARTICLE III

The present Protocol shall be open for signature or acceptance by any of the Parties to the Convention of 14 December 1928 relating to Economic Statistics, to which the Secretary-General has communicated for this purpose a copy of this Protocol.

#### ARTICLE IV

States may become Parties to the present Protocol by :

- (a) Signature without reservation as to acceptance;
- (b) Signature with reservation as to acceptance, followed by acceptance;
- (c) Acceptance.

Acceptance shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations.

76. Identical provisions are included in the corresponding articles of the following Protocols:<sup>48</sup> Protocol amending the International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, and the International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910; Protocol amending the Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris on 4 May 1910; Protocol amending the Slavery Convention signed at Geneva on 25 September 1926.

#### IV. Procedures for entry into force laid down in the Treaties adopted by the General Assembly

77. Some treaties provide for their entry into force in respect of each State on the date of that State's accession to them.

78. Section 32 of the Convention on the Privileges and Immunities of the United Nations provides that the Convention.

. . . shall come into force as regards each Member on the date of deposit of each instrument of accession.

79. The Convention on the Privileges and Immunities of the Specialized Agencies contains a similar clause. Under section 41 of that Convention, accession

. . . shall be effected by deposit with the Secretary-General of the United Nations of an instrument of accession which shall take effect on the date of its deposit.

80. Section 44 of this Convention also contains the following special provisions regarding its entry into force for a State party to the Convention in respect of a specialized agency :

This Convention shall enter into force for each State party to this Convention in respect of a specialized agency when it has become applicable to that agency in accordance with section 37 and the State party has undertaken to apply the provisions of the Convention to that agency in accordance with section 43.

81. Article XIII of the Convention on the Prevention and Punishment of the Crime of Genocide prescribes the following procedure for entry into force :

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

82. Article V of the Protocol amending the International Convention relating to Economic Statistics signed at Geneva on 14 December 1928 makes the following provision for its entry into force :

The present Protocol shall come into force on the date on which two or more States shall have become Parties thereto.

The amendments set forth in the annex to the present Protocol shall come into force when fifteen States have become Parties to the present Protocol, and consequently any State becoming a Party to the Convention, after the amendments thereto have come into force, shall become a Party to the Convention as so amended.

83. Similar provisions are to be found in the other Protocols mentioned above (section I D). They all provide for their entry into force on the date on which a specified number of States have become Parties to them. The date specified for the entry into force of the amendments in the annexes to these Protocols is also that on which a specified number of States have become Parties to the Protocols.

<sup>48</sup> See above, Section I D.

**V. Other matters relating to the Law of Treaties specified in the Treaties adopted by the General Assembly**

**A. TEMPORAL VALIDITY OF TREATIES**

84. The following Conventions adopted by the General Assembly contain provisions regarding the duration of their validity.

85. Section 35 of the Convention on the Privileges and Immunities of the United Nations reads as follows :

This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

86. Section 47 of the Convention on the Privileges and Immunities of the Specialized Agencies provides as follows :

1. Subject to the provisions of paragraphs 2 and 3 of this section, each State party to this Convention undertakes to apply this Convention in respect of each specialized agency covered by its accession or subsequent notification, until such time as a revised convention or annex shall have become applicable to that agency and the said State shall have accepted the revised convention or annex. In the case of a revised annex, the acceptance of States shall be by a notification addressed to the Secretary-General of the United Nations, which shall take effect on the date of its receipt by the Secretary-General.

2. Each State party to this Convention, however, which is not, or has ceased to be, a member of a specialized agency, may address a written notification to the Secretary-General of the United Nations and the executive head of the agency concerned to the effect that it intends to withhold from that agency the benefits of this Convention as from a specified date, which shall not be earlier than three months from the date of receipt of the notification.

3. Each State party to this Convention may withhold the benefit of this Convention from any specialized agency which ceases to be in relationship with the United Nations.

4. The Secretary-General of the United Nations shall inform all member States parties to this Convention of any notification transmitted to him under the provision of this section.

87. Article XIV of the Convention on the Prevention and Punishment of the Crime of Genocide provides as follows:

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

**B. APPLICATION OF TREATIES UNDER DOMESTIC LAW**

88. The above-mentioned Conventions (section V A) also contain provisions regarding their application under the domestic law of the States which become parties to them.

89. Thus, section 34 of the Convention on the Privileges and Immunities of the United Nations provides as follows:

It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

90. Similar provisions are to be found in section 46 of the Convention on the Privileges and Immunities of the Specialized Agencies.

91. Article V of the Convention on the Prevention and Punishment of the Crime of Genocide provides as follows:

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

92. Article 1 of the Protocol amending the International Convention relating to Economic Statistics signed at Geneva on 14 December 1928, provides as follows:

The Parties to the present Protocol undertake that, as between themselves, they will, in accordance with the provisions of the present Protocol, attribute full legal force and effect to, and duly apply, the amendments to that instrument as they are set forth in the annex to the present Protocol.

93. Similar provisions are to be found in the other Protocols mentioned above (section I D).

**C. TERRITORIAL APPLICATION**

94. Article XII of the Convention on the Prevention and Punishment of the Crime of Genocide provides:

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

**D. SETTLEMENT OF DISPUTES**

95. Section 30 of the Convention on the Privileges and Immunities of the United Nations contains the following provisions regarding the settlement of disputes:

All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the Parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

96. Identical provisions are to be found in section 32 of the Convention on the Privileges and Immunities of the Specialized Agencies.

97. Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide contains the following provisions:

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

#### E. REVISION

98. Under section 48 of the Convention on the Privileges and Immunities of the Specialized Agencies,

At the request of one-third of the States parties to this Convention, the Secretary-General of the United Nations will convene a conference with a view to its revision.

99. In accordance with article XVI of the Convention on the Prevention and Punishment of the Crime of Genocide,

a request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

#### F. DEPOSIT AND DEPOSITARY FUNCTIONS

100. The text of resolution 24 (I) of 12 February 1946 on the transfer of certain functions, activities and assets of the League of Nations has been reproduced earlier in this memorandum. This resolution enumerates the depositary functions, the exercise of which, previously entrusted to the Secretary-General of the League of Nations, has devolved upon the Secretary-General of the United Nations.

101. We give below the provisions concerning deposit and notification by the depositary which are contained in the Conventions and Protocols adopted by the General Assembly.

102. The Convention on the Privileges and Immunities of the United Nations contains the following provisions on this point:

*Section 32.* Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations . . .

*Section 33.* The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

103. The Convention on the Privileges and Immunities of the Specialized Agencies provides as follows:

*Section 45.* The Secretary-General of the United Nations shall inform all Members of the United Nations, as well as all members of the specialized agencies, and executive heads of the specialized agencies, of the deposit of each instrument of accession received under section 41 and of subsequent notifications received under section 43. The executive head of a specialized agency shall inform the

Secretary-General of the United Nations and the members of the agency concerned of the deposit of any instrument of accession deposited with him under section 42.

*Section 49.* The Secretary-General of the United Nations shall transmit copies of this Convention to each specialized agency and to the Government of each Member of the United Nations.

104. Similarly, the Convention on the Prevention and Punishment of the Crime of Genocide contains the following provisions:

#### ARTICLE XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in article XI.

105. Similar provisions are to be found in the transfer Protocols mentioned in section I D of this memorandum. For instance, the Protocol amending the International Convention relating to Economic Statistics signed at Geneva on 14 December 1928 provides as follows:

#### ARTICLE VII

The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations Secretariat. . . . A certified copy of the Protocol, including the annex, shall be sent by the Secretary-General to each of the States Parties to the Convention of 14 December 1928 relating to Economic Statistics, as well as to all States Members of the United Nations.

#### VI. Reservations to multilateral conventions

106. The General Assembly has adopted the following resolutions on the subject of reservations to multilateral conventions: resolution 478 (V) of 16 November 1950, the chief object of which was to request the International Court of Justice to give an advisory opinion on certain questions connected with reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and objections to those reservations; resolution 598 (VI) of 12 February 1952, principally giving effect to the advisory opinion of the Court; and resolution 1452 (XIV) of 7 December 1959, entitled "Reservations to multilateral conventions: the Convention on the Inter-Governmental Maritime Consultative Organization". Before reproducing the text of these resolutions *in extenso*, we shall describe the circumstances in which they were adopted and the discussions which preceded their adoption.

##### A. RESOLUTION 478 (V) OF 16 NOVEMBER 1950

107. It was at the suggestion of the Secretary-General that the Assembly considered the question of reservations to multilateral conventions. As depositary of conventions which have been adopted by the General Assembly, as well as of many other multilateral agreements which have been concluded under the auspices of the United Nations, the Secretary-General had requested the General Assembly, at its fifth session in 1950, for guidance concerning the procedure to be fol-

lowed regarding reservations made by States as conditional to their accession to such conventions.

108. At the time the Secretary-General put this question before the General Assembly, the subject had a certain practical urgency because of the Convention on the Prevention and Punishment of the Crime of Genocide. A number of States had made reservations as to various articles of the Convention, to the substance of which some States had objected. The Secretary-General had therefore had to decide whether States making reservations to which objection had been raised were to be counted among those necessary to permit the entry into force of the Convention.

109. At its 285th plenary meeting held on 26 September 1950, the General Assembly referred the question to the Sixth Committee, which considered it at its 217th to 225th meetings, from 6 to 20 October 1950. The Sixth Committee had before it a report of the Secretary-General,<sup>49</sup> in which he gave an account of the practice followed by the Secretariat of the United Nations, showing how this compared with the practice of the League of Nations, and reviewed the opinions of numerous international jurists and the actions of Governments in this respect.

110. The practice followed by the Secretary-General in the absence of specific provisions in a convention governing reservation procedures was summarized as follows in the report:<sup>50</sup>

A state may make a reservation when signing, ratifying or acceding to a convention, prior to its entry into force, only with the consent of all States which have ratified or acceded thereto up to the date of entry into force; and may do so after the date of entry into force only with the consent of all States which have theretofore ratified or acceded.

111. At the same time, the report of the Secretary-General drew attention to the system followed by the Pan American Union as to multilateral conventions concluded among the American States for which it serves as depositary. The essence of this rule has been established as follows:<sup>51</sup>

1. The treaty shall be in force, in the form in which it was signed, as between those countries which ratify it without reservations, in the terms in which it was originally drafted and signed.

2. It shall be in force as between the governments which ratify it with reservations and the signatory States which accept the reservations in the form in which the treaty may be modified by said reservations.

3. It shall not be in force between a government which may have ratified with reservations and another which may have already ratified, and which does not accept such reservations.

112. The main questions raised in the course of the debates were the following: competence of the Committee to make any determination governing the larger aspects of the problem; to what organ of the United Nations it might be appropriate for the question to be referred; the relative need for interim guidance to be given to the Secretary-General by the General Assembly pending the

results of any such referral; what rule it would be preferable for the Secretary-General to follow in the event of such a provisional instruction; and, finally, what general recommendations to States might serve to eliminate the occurrence of the difficulties previously encountered in connexion with reservation?

113. The relevant passages of the report of the Sixth Committee<sup>52</sup> are reproduced below:

8. On the question of competence a number of delegations were of the opinion that, since the question before the Committee concerned only the procedure to be followed by the Secretary-General as depositary of multilateral conventions, the General Assembly was competent to give him instructions on the manner in which he should administer that function. A large majority of the Committee, however, believed that it was not appropriate, in the time now available, for the General Assembly to establish, without further examination, rules which would have the effect of determining legal relations among States under United Nations conventions.

9. Accordingly, the Committee gave detailed consideration to the problem of referring the question to a qualified organ. Opinion was divided as to whether the International Law Commission or the International Court of Justice was more suitable in the circumstances. Many delegations favoured the International Law Commission because it already had under preparation a report on the law of treaties, and had in fact, at its second session, briefly discussed the subject of reservations. Moreover, it was considered that the International Law Commission, unlike the Court, would not be restricted to existing principles of international law in a field in which there had been insufficient development of general principles and in which the main legal systems of the world in fact differed. It was felt by many that on the present problem the Court would be confined to an interpretation of the law, whereas what was involved, in part at least, was not strictly a question of law but the development of appropriate procedures for which the Commission was well suited. It was especially felt that in so far as concerned a general solution broadly applicable to a variety of cases, what the General Assembly required was a study to serve as a basis for future discussion.

10. The contrary position, favouring a request by the General Assembly for an advisory opinion of the International Court of Justice, was based upon the view that it was not the function of the International Law Commission to solve controversial questions; its function was to codify law, whereas it was the duty of the International Court of Justice to settle just such conflicts in matters of law and to state the law when it was doubtful. On the level of immediate practical considerations, it was also noted that the Court would be in a position to render an earlier decision, the more so in view of the heavy burden of work, on a variety of major subjects, which already weighed upon the programme of the International Law Commission. In fact, it was suggested by France (A/C.6/L.118) that a prompt submission to the Court of a precisely formulated question might permit the Secretary-General to give effect to the opinion before the end of the ninety-day period which would bring the Convention on Genocide into force. Further-

<sup>49</sup> *Official Records of the General Assembly, Fifth Session, Annex, agenda item 56, document A/1372.*

<sup>50</sup> *Ibid.*, para. 46.

<sup>51</sup> *Ibid.*, para. 26.

<sup>52</sup> *Ibid.*, document A/1494, paras. 8-27.

more, it was noted by other delegations that if a difference were to arise between given States on any of the matters now under debate, these very questions would eventually be referred to the Court in accordance with article IX of the Convention on Genocide — from which it seemed logical to make the submission immediately.

11. In either case, a majority of the representatives considered that the General Assembly would wish to discuss the content of an advisory opinion of the Court, or of the study made by the International Law Commission, before the recommendation of either body could be put into practice by the Secretary-General, in so far as depositary procedures were affected.

12. Because the Convention on Genocide, which had caused the Secretary-General to submit the problem to the General Assembly, was in prospect of entering into force, a substantial number of delegations felt that some instructions to the Secretary-General were warranted pending the outcome of the reference of the matter to the International Law Commission or the International Court of Justice. For this purpose three leading proposals were made. Although a few delegations would have inclined toward the position that the depositary was competent to proceed without interim instructions, the main debate centred upon these three proposals. The United States of America submitted a draft resolution (A/C.6/L.114/Rev.1) designed to avoid delay in the entry into force of a convention by permitting the Secretary-General to follow his previous procedure, for the purposes of entry into force, in any case where reservations were submitted. But this was to be without prejudice to the legal status of the parties, of ratifications or accessions, or of acceptances or rejections of reservations.

13. The United Kingdom, on the other hand, placed before the Committee an amendment (A/C.6/L.115) designed, in its first three paragraphs, to continue the League of Nations rule as applied by the Secretary-General of the United Nations, pending the formulation of a final policy. As noted in paragraph 5 above,<sup>53</sup> this rule would treat an adherence subject to a reservation as valid and acceptable by the depositary only if it first received the consent, tacit or implied, of all the other States concerned.

14. At the same time, Uruguay proposed an amendment (A/C.6/L.116) to the United States draft, instructing the Secretary-General to follow a rule modelled after that of the Pan American Union, pending the final decision. As noted in paragraph 6 above,<sup>54</sup> this rule enables a convention to be in force between a State proposing a reservation and any other party accepting that reservation, while not in force as between the reserving State and any party expressing its disagreement with the reservation.

15. Numerous delegations favoured the United States proposal because it facilitated the entry into force of conventions and still sought not to compromise the question of the legal position of States as parties. Some delegations, however, argued against the United States proposal on the ground that it was preferable to adopt one or the other traditional rules.

16. The principal reasons adduced in favour of the United Kingdom amendment were that it maintained a

convention in the form of one integral text applicable to the legal relations among all parties, and prevented an alteration by means of a reservation of any of the terms of that text against the will of the States concerned. On the other hand, many of the delegations opposing the League of Nations practice considered that it would now constitute an extension of the rule of unanimity with its corollary, the veto. It would enable one State arbitrarily to exclude the participation of another even though the reservation might be proposed only on some reasonable adjustment of the framework of the convention to the internal legal system of the reserving State. Such a result would derogate from the sovereignty of the reserving State.

17. The practice of the Pan American Union was strongly advocated by many delegations. They argued that by facilitating reservations the system enabled the maximum number of States to accede to conventions, thus speeding their entry into force, and so favouring the progressive development of international law while nevertheless respecting the national sovereignty of each State. Although opposing this system, those delegations which favoured the practice thus far followed by the League of Nations and the Secretary-General of the United Nations acknowledged the advantages of the Pan American method and emphasized its applicability to a regional organization. They also stressed that any rule adopted by the United Nations would not prejudice the right of other organizations to follow a system of their own choosing. Their objection to the Uruguayan proposal, as a provisional measure, was that it would upset the procedures and the relations among States thus far prevailing, for what might prove to be only an interim period. As regards long-term legal considerations, it was objected that this system, although it facilitated adherences to conventions, did so only, in effect, by breaking down a uniform multilateral text into a composite of bilateral agreements between some pairs of adhering States but not between other pairs. To those delegations emphasizing the law-making character of United Nations conventions, it seemed undesirable to turn to a system which would theoretically permit the obligations of States under broad rules of international conduct to obtain between some States adhering to the convention but not between others. It was for this reason that the representative of Chile offered an amendment (A/C.6/L.120) to the Uruguayan proposal in order that it might not apply where the text of the convention had been adopted by the General Assembly. He urged that a minority ought not to be able to make its views, outvoted on the floor of the Assembly, prevail by the device of reservations.

18. A number of subsidiary questions were raised in connexion with the problem of interim instructions. If the League of Nations rule requiring consent to reservations were to be followed, it would be necessary to decide what groups of States should have the power to exclude, by objecting to a reservation, the participation of a State ready to take part subject to the conditions presented. One element of the United Kingdom draft (A/C.6/L.115) was that signatory States, having an interest to protect in the text of a convention in the form in which it was signed, should — up to the date of entry into force — be able to prevent reservations from altering that text against their will. Carrying this

<sup>53</sup> See para. 110 of this memorandum.

<sup>54</sup> See para. 111 of this memorandum.

view one step further, Sweden entered an amendment (A/C.6/L.121) permitting such an objection, by a signatory to a convention which prescribes a time-limit for signature, up to the date of the expiry of that time-limit. The report of the Secretary-General, on the other hand, had presumed that only ratifying or acceding States would be in a position to exercise this power to exclude. Each position received support in the course of the debates. The Netherlands, however, raised the possibility of a compromise system whereby signatories might be permitted to make so important an objection only on declaring their intention to ratify within a specified period of time.

19. So also, Iran submitted a draft, by way of amendment (A/C.6/L.119), which would have recommended to States Members of the United Nations the insertion, in all conventions to be concluded by them in the future, of a clause defining the procedure to be adopted by the depositary when a reservation is entered by a State and the legal effect of an objection to such a reservation put forward by another State. The French draft already referred to (A/C.6/L.118), while making the same point, included a recommendation that Member States dispense as far as possible with the use of reservations to conventions adopted under the auspices of the United Nations.

20. As the debates carried forward the analysis of these various positions on the whole subject of reservations, a general feeling developed that any questions to be referred to another organ would require very exact formulation. With this in mind, Egypt, France, Greece, Iran and the United Kingdom presented a joint draft resolution (A/C.6/L.123) requesting an advisory opinion from the International Court of Justice on precise questions affecting the validity of any adherence subject to a contested reservation, as well as the classes of States having the power to make an effective objection. A joint amendment to this draft, offered by Belgium, Denmark, Netherlands, Norway and Sweden (A/C.6/L.124), proposed that these questions be determined solely in respect of those multilateral conventions which had been listed by the Secretary-General as yet to come into force.

21. Meanwhile, the importance of permitting reservations was stressed by numerous delegations, the representative of Poland traced the origin of the use of reservations to the development of the majority vote in the drafting of conventions, as opposed to the earlier use of unanimity even in the preparation of the text. Since the drafting conference itself no longer required the full agreement of all prospective parties before the final text could be adopted, he noted that reservations were the counterpart device which permitted the minority nevertheless to continue as parties. He therefore urged the Committee not to adopt a rule which would permit the majority not only to impose its will in the choice of the text but also as to the conditions under which the minority might adhere — a possibility which he could not justify by considerations either of theory or of practice.

22. The representatives of the Union of Soviet Socialist Republics and the Byelorussian Soviet Socialist Republic stated that the theory of the inability of the Secretary-General to receive an instrument of ratification in definitive deposit if even one of the States

parties to a convention objected to a reservation was incompatible with the principle of State sovereignty and contrary to the fundamental principles of international law. In fact, in their view, the recommendations of the Secretary-General would have the effect of prohibiting the submission of reservations, since a State in the minority when the text of a convention was drafted could not hope that there would be no State objecting to a reservation; for a reservation was usually made because corresponding provisions had been rejected during the drafting of the text of the convention. The attitude of the Secretary-General, they contended, was contrary both to the principles of international law and to its practice in the conclusion of multilateral treaties; the indisputable right of a State to make reservations had been recognized during the signing of many treaties. As to the Convention on Genocide, the representative of the USSR was of the opinion that the Secretary-General should be strictly guided by its text, which did not contain any special procedure for the deposit of ratifications with reservations; neither did it contain any limitations of the right to submit reservations. The legal implications of a reservation at the signing of a convention, in the opinion of the USSR representative, would be that those provisions of a convention which were the subject of the reservation would not apply to relations between the State which made the reservation and all other parties to the convention. He believed that the General Assembly was not competent to give instructions to the Secretary-General, which would in effect be complementary to the text of the Convention on Genocide, since it would lead to the creation of new legal relations, not contemplated by the Convention, between States parties to the Convention. Reinforcing this stand, the representative of Czechoslovakia observed that the rule of unanimity would convert the State disagreeing with a reservation into a judge of the State which put in forward.

23. In the view of most delegations, the character of the problem before the Committee altered when, on 16 October 1950, the Assistant Secretary-General in charge of the Legal Department was able to announce that the Convention on the Prevention and Punishment of the Crime of Genocide had received a number of ratifications and accessions on 14 October, so that the twenty instruments necessary for its entry into force were now at hand, irrespective of the theory used in determining the validity of those containing reservations. In the minds of a majority of the representatives in the Committee this fact removed much of the urgency of any answer from the International Law Commission or the International Court of Justice, and significantly affected the formulation of the questions which had thus far been proposed for submission to either body. Moreover, from a list of other multilateral agreements of which the Secretary-General is the depositary, submitted to the Committee by the Secretary-General (A/C.6/L.122), together with their provisions concerning reservations (A/C.6/L.122/Add.1), it appeared that there was no urgency, in so far as these other conventions were concerned, for the Secretary-General to receive particular directives.

24. At this point the thirteen delegations which had previously submitted drafts bearing on any aspect of the problem withdrew all prior drafts and offered in

their place a joint proposal, which they submitted to the Committee at its 224th meeting (A/C.6/L.125). This draft formulated specific questions arising under the Convention on Genocide, to be referred to the Court with a request for an advisory opinion. At the same time, it invited the International Law Commission, in the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions, giving priority to the subject in order to report to the General Assembly at its sixth session.

25. It was also pointed out that, as a result of the entry into force of the Convention, it no longer seemed necessary, in view of the little likelihood of a similar situation arising in the near future, for the Sixth Committee to attempt to elaborate any interim procedure for the Secretary-General to follow until the substantive question could be settled. It would be sufficient for the depositary to continue to handle the deposit of instruments in the same manner as heretofore so long as he avoided any legal interpretation being made as to the effect of contested reservations upon the status of the parties, pending the adoption of a final solution. This would also prevent any possible prejudgement of the eventual outcome.

26. Likewise, for the reason that the joint proposal was designed to obtain not only an advisory opinion under a specific convention but also a study which might choose between distinctly different theories as to the effect of reservations, it was generally concluded that it would be premature for the General Assembly at this session to make any recommendations to States on the broader question of eliminating the difficulties which have been encountered in connexion with reservations. It was felt that it would be better to await the taking of a more definitive position at the sixth session of the General Assembly before including recommendations on the over-all subject of reservations and related procedures, since the nature of any recommendation might vary according to the type of system adopted.

27. Although approving the text of the request submitted to the International Law Commission by the joint proposal, a number of delegations were nevertheless still unable to agree to the request for an advisory opinion from the International Court of Justice on a subject of this nature. A number also believed that it was contradictory to submit the problem to two different bodies at once. The Philippine representative felt that it should be left to the contracting parties themselves to submit to the International Court of Justice any dispute as to the interpretation or application of the Convention on Genocide, as provided in its article IX; and that it was not for the General Assembly but for the parties directly involved to formulate the issues to be submitted to the judgement of the Court. For that reason the USSR proposed an amendment (A/C.6/L.127) to the joint proposal, deleting the request to the Court for an advisory opinion. When, however, it was asked that the parts of the joint draft resolution concerning the two submissions should be voted upon separately, it was agreed that it would be unnecessary to vote upon the USSR amendment.

114. At its 305th plenary meeting, held on 16 November 1950, the General Assembly adopted resolution 478 (V), which reads as follows:

*The General Assembly,*

*Having examined* the report<sup>55</sup> of the Secretary-General regarding reservations to multilateral conventions,

*Considering* that certain reservations to the Convention<sup>56</sup> on the Prevention and Punishment of the Crime of Genocide have been objected to by some States,

*Considering* that the International Law Commission is studying the whole subject of the law of treaties, including the question of reservations,<sup>57</sup>

*Considering* that different views regarding reservations have been expressed during the fifth session of the General Assembly, and particularly in the Sixth Committee,<sup>58</sup>

1. *Requests* the International Court of Justice to give an advisory opinion on the following questions:

“ In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification:

“ I. Can the reserving State be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others?

“ II. If the answer to question I is in the affirmative, what is the effect of the reservation as between the reserving State and:

“ (a) The parties which object to the reservation?

“ (b) Those which accept it?

“ III. What would be the legal effect as regards the answer to question I if an objection to a reservation is made:

“ (a) By a signatory which has not yet ratified?

“ (b) By a State entitled to sign or accede but which has not yet done so? ”;

2. *Invites* the International Law Commission:

(a) In the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions both from the point of view of codification and from that of the progressive development of international law; to give priority to this study and to report thereon, especially as regards multilateral conventions of which the Secretary-General is the depositary, this report to be considered by the General Assembly at its sixth session;

(b) In connexion with this study, to take account of all the views expressed during the fifth session of the General Assembly, and particularly in the Sixth Committee;

3. *Instructs* the Secretary-General, pending the rendering of the advisory opinion by the International Court of Justice, the receipt of a report from the International Law Commission and further action by the General Assembly, to follow his prior practice with

<sup>55</sup> *Official Records of the General Assembly, Fifth Session, Sixth Committee, Annexes, agenda item 56, document A/1372.*

<sup>56</sup> Resolution 260 A (III).

<sup>57</sup> *Official Records of the General Assembly, Fifth Session, Supplement No. 12, paras. 160-164.*

<sup>58</sup> *Ibid.*, Sixth Committee, 217th-225th meetings.

respect to the receipt of reservations to conventions and with respect to the notification and solicitation of approvals thereof, all without prejudice to the legal effect of objections to reservations to conventions as it may be recommended by the General Assembly at its sixth session.

#### B. RESOLUTION 598 (VI) OF 12 FEBRUARY 1952

115. On 28 May 1951, the International Court of Justice gave its advisory opinion on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>59</sup> The International Law Commission devoted chapter II of its report on the work of its third session to the general subject of reservations to multilateral conventions.<sup>60</sup>

116. On 13 November 1951, the General Assembly decided to include the advisory opinion of the Court and the International Law Commission's report in the agenda of its sixth session.

117. The opinion of the Court and chapter II of the report of the International Law Commission were referred to the Sixth Committee, which considered them at its 264th to 278th meetings, from 5 December 1951 to 5 January 1952, under the general heading of "Reservations to multilateral conventions".

118. The debates in the Sixth Committee concerned three principal problems. The first was the effect of objections to reservations in the case of the Convention on Genocide; the second was the practice to be followed concerning reservations to conventions to be drafted in the future; and the third concerned the practice to be followed with respect to reservations and objections to them in the case of existing conventions other than the Convention on Genocide.

119. These debates are summarized as follows in the report of the Sixth Committee to the General Assembly:<sup>61</sup>

26. As to the first problem, most delegations thought that reservations to the Convention on Genocide should be governed by the principles of the advisory opinion of the International Court of Justice, under which the test of compatibility with the object and purpose of the Convention would be applied to reservations. Others, however, took the view that States had an absolute right to make whatever reservations they chose to that Convention. Still others expressed the opinion that such reservations required the unanimous consent of the parties, or that no reservations whatever were admissible in that case.

27. Many delegations thought that the second problem, that relating to conventions in general, could be largely solved by recommending, in accordance with the suggestion of the International Law Commission (A/1858, paragraph 33), that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the

admissibility or non-admissibility of reservations and to the effect to be attributed to them. Some thought that such a provision should be included in all cases, while others preferred to leave it open to negotiators to determine the advisability of inserting such a clause. Others, however, opposed the inclusion of clauses on reservations unless such clauses had been adopted by unanimous vote of the drafting conference.

28. Apart from wide agreement on the question of the Convention on Genocide and on the insertion of reservations clauses in future conventions, there was a marked divergence of opinion in the Sixth Committee.

29. Some delegations supported in general the system proposed by the International Law Commission, under which the unanimous consent of States which had ratified or acceded to a convention and, within certain limitations, of signatories thereto, would be necessary for a State to become a party subject to a reservation.

30. Others advocated that, at least for the time being, the Secretary-General should continue his prior practice, under which only States which had ratified or acceded to a Convention had the right to object to reservations so as to prevent the reserving State from becoming a party.

31. Some of the delegations which in general supported the principle of unanimous acceptance of reservations thought that it might operate inequitably if a single State, by objecting to a reservation, could exclude a reserving State from a convention and thereby frustrate the desires of a large majority of the parties, who might wish the reserving State to be a party and be willing to accept the reservation. To obviate this difficulty, it was suggested that the requirement of unanimous acceptance might be replaced by one of acceptance by three-fourths, two-thirds, or a simple majority of the States concerned.

32. A large number favoured more liberal systems on reservations in order to make it easy for States to become parties to multilateral conventions. Some of these advocated the practice adopted by the Organization of American States, whereby a reservation is first circulated to the signatory States for comments; if it is maintained by the State making it, that State becomes a party with respect to the States which accept the reservation, but the convention does not enter into force between the reserving State and a State which does not accept the reservation.

33. Others, while recognizing that the nature of some multilateral conventions made reservations to them impossible without unanimous consent, nonetheless were of the opinion that the principles of the advisory opinion of the International Court of Justice should be applied either to all conventions of a humanitarian character or to an even wider group of conventions. Under these principles, a State making a reservation which had been objected to by a party to the convention could nevertheless be regarded as being a party if the reservation was compatible with the object and purpose of the convention. The question of the compatibility of a reservation with that object and purpose would be left, at least in the first instance, to the appreciation of each individual party. These delegations insisted that the effect of a reservation or of an objection thereto should in no event be passed on by the Secretary-

<sup>59</sup> International Court of Justice, *Reports of Judgements, Advisory Opinions and Orders*, 1951, p. 15.

<sup>60</sup> *Official Records of the General Assembly, Sixth Session, Supplement No. 9, A/1858*.

<sup>61</sup> *Ibid.*, *Sixth Session, Annexes*, agenda item 49, document A/2047, paras. 26-41.

General, but should be left to be settled by the States concerned by any of the methods available for the settlement of international disputes. Some of those which declared in favour of the generalization of the advisory opinion, however, also maintained the right of a party, in so far as its own relations with a reserving State were concerned, to refuse to accept a reservation whether or not it was compatible with the object and purpose of a convention, and further argued that an objection to a reservation might affect only the article or section of the convention to which the reservation had been made.

34. Other delegations believed that the right to make reservations was a necessary consequence of the sovereignty of States and of the system of majority votes in adopting the texts of multilateral conventions. They advanced the view that this was existing law. In their opinion, a State could always make whatever reservations it wished, and the convention would enter into force between the reserving State and all the other parties, subject to the reservation. An objection to a reservation would be without legal effect, and would be an attempt to interfere in matters which were exclusively within the competence of the reserving State.

35. Some declared it was impossible to apply a single rule on reservations to all multilateral conventions, and thought that a careful study should be made with the object of defining categories of such conventions and establishing the rules applicable to each.

36. Others doubted that any of the proposed rules constituted in all its details an existing rule of international law, and referred to the great diversity of opinions which had been expressed. They were of opinion that there were no pressing problems of objections to reservations at present and probably none would arise in the future which would make a rule necessary, and consequently were not in favour of the Assembly's attempting to lay down such a rule.

37. Other delegations thought it inopportune to take a final decision on the matter, perhaps by a narrow majority, at the sixth session of the General Assembly. In their opinion, further study might make it possible to arrive at a rule which would combine the best features of all those advocated so far, and which could obtain very wide agreement. For this reason, these delegations favoured referring the matter back to the International Law Commission to be dealt with in the course of the Commission's work on the codification of the law of treaties.

38. On the other hand, it was pointed out that even without a new formal request by the General Assembly, the International Law Commission would take up this subject and make recommendations *de lege ferenda* in the normal course of its work on the law of treaties.

39. Further, many desired that the subject should be disposed of by a final decision at the current session. They thought that a postponement would not contribute toward reaching a solution acceptable to them, or feared that it might mean a repetition next year of the debates of the last and current sessions.

40. Several delegations insisted that any rule on reservations laid down by the General Assembly for the guidance of the Secretary-General could not be retroactive and could not apply to existing multilateral

conventions. Such a rule, they argued, would involve a determination of the law. A declaration of the present law or the establishment of new law by the Assembly could in no case be binding on the parties to existing conventions, and would be beyond the Assembly's competence.

41. Others, however, thought that the General Assembly was fully competent to give instructions to the Secretary-General relating to reservations to existing conventions.

120. At its 360th plenary meeting, held on 12 January 1952, the General Assembly adopted resolution 598 (VI), which reads as follows:

*The General Assembly,*

*Bearing in mind* the provisions of its resolution 478 (V) of 16 November 1950, which (1) requested the International Court of Justice to give an advisory opinion regarding reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and (2) invited the International Law Commission to study the question of reservations to multilateral conventions,

*Noting* the Court's advisory opinion<sup>62</sup> of 28 May 1951 and the Commission's report,<sup>63</sup> both rendered pursuant to the said resolution,

1. *Recommends* that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility or reservations and to the effect to be attributed to them;

2. *Recommends* to all States that they be guided in regard to the Convention on the Prevention and Punishment of the Crime of Genocide by the advisory opinion of the International Court of Justice of 28 May 1951;

3. *Requests* the Secretary-General:

(a) In relation to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, to conform his practice to the advisory opinion of the Court of 28 May 1951;

(b) In respect of future conventions concluded under the auspices of the United Nations of which he is the depositary:

(i) To continue to act as depositary in connexion with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and

(ii) To communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each State to draw legal consequences from such communications.

C. RESOLUTION 1452 (XIV) OF 7 DECEMBER 1959

121. In a letter dated 16 August 1959,<sup>64</sup> addressed to the Secretary-General, the Permanent Representative of India proposed for inclusion in the provisional agenda of the fourteenth session of the General Assembly an item entitled "Reservations to multilateral conventions:

<sup>62</sup> See document A/1874.

<sup>63</sup> *Official Records of the General Assembly, Sixth Session, Supplement No. 9.*

<sup>64</sup> A/4188.

the Convention on the Inter-Governmental Maritime Consultative Organization".

122. On 22 September 1959, at its 803rd plenary meeting, the General Assembly placed the item on the agenda of the fourteenth session and referred it to the Sixth Committee, which considered it at its 614th to 629th meetings held between 19 October and 9 November 1959, having before it a report on the question submitted by the Secretary-General.<sup>65</sup> The Committee took up successively the particular question of the Indian acceptance of the Convention on the Inter-Governmental Maritime Consultative Organization and, thereafter, the general question of reservations to multi-lateral conventions. The debates on these two questions are to be found in the report of the Sixth Committee to the General Assembly.<sup>66</sup> With regard to the first question, the report states:

5. Introducing the item, the representative of India reviewed the history of his Government's association with IMCO. India had participated in the United Nations Conference, convened under a resolution of the Economic and Social Council in 1948, which concluded the Convention; and on the date on which it was opened for signature, India had signed the Convention. The Convention having entered into force in 1958, an instrument of acceptance by India was then deposited with the Secretary-General, as depositary of the Convention, on 6 January 1959, the date on which the first session of the Assembly of IMCO was convened. The terms of the instrument stipulated that the acceptance was subject to a number of stated conditions concerning the consistency with the purposes of IMCO, as defined by its Convention, of any measures of the Government for assisting its national shipping. The Secretary-General informed the IMCO Assembly of his receipt of the instrument and of the text of the conditions. That Assembly adopted a resolution requesting the Secretary-General of the United Nations to circulate the Indian document to States members of IMCO; it resolved that, until the member States had had an opportunity of expressing their views, India should be free to take part without vote in the IMCO Assembly proceedings. The Secretary-General thereupon advised the Indian Mission to the United Nations that the practice as to the circulation of reservations or declarations, applicable to conventions adopted prior to General Assembly resolution 598 (VI) of 12 January 1952 on reservations, would be followed. Both in IMCO and in correspondence with the Secretary-General, the Government of India took the position that these actions amounted to an application of the "unanimity rule", whereas India considered itself automatically a full member of IMCO, there being no question of another State party raising any objection. Two States members of IMCO, however, transmitted formal objections to the Indian condition.

6. The representative of India submitted, as the principal matter before the Committee, the question whether the stipulation in the instrument of acceptance constituted a reservation. He explained that the Indian Government had merely made a declaration of policy, not amounting to a reservation, and intended only to

restate the purposes, and the advisory and consultative functions, of IMCO, with which any measure adopted by the Government would be consistent.

7. It was therefore the position of India that the Secretary-General should have accepted the instrument without further question, that it was *ultra vires* and contrary to the Charter for him to act under the instructions of IMCO in circulating the declaration, and that his procedure violated General Assembly resolution 598 (VI).

8. A number of representatives raised the preliminary question of the competence or the propriety of the General Assembly's taking jurisdiction of a question affecting membership in IMCO or the interpretation of its Convention. They noted that that Convention expressly conferred upon IMCO organs the authority to settle any dispute concerning the interpretation of its provisions, which necessarily included those relating to membership. They also pointed out that two members of IMCO were not represented in the General Assembly, while many United Nations Members were not members of IMCO. The Secretary-General, these representatives held, derived his depositary authority in this connexion from the final articles of the IMCO Convention and from the request in the IMCO Assembly resolution. They therefore considered that for the General Assembly to give other instructions either to the Secretary-General or to IMCO would amount to exercising a supervisory authority over a separate international organization over which the United Nations General Assembly did not have jurisdiction. According to this school of thought, therefore, IMCO alone had the responsibility for settling any question having to do with the determination of its own membership. A contrary body of opinion, however, held to the view that it was normal for the General Assembly to take up any question of the exercise by the Secretary-General of his functions and to make suitable recommendations to specialized agencies in fulfilment of the co-ordinative function of the United Nations under the Charter. Moreover, it was felt that other international organizations, in availing themselves of the depositary services of the Secretary-General, impliedly consented to the General Assembly's authority to give guidance to the common depositary, who in any case acted in the name of the United Nations as a whole.

9. Those representatives who considered that it was basically an IMCO responsibility to determine any question affecting the membership of that organization also adhered to the view that the Secretary-General had acted correctly in referring the matter to IMCO and then seeking to ascertain the attitude of its member States towards the Indian conditions in accordance with the IMCO Assembly resolution. These representatives felt that the nature of the Indian declaration raised sufficient doubt that its submission to the membership concerned was requisite, and compliance with the request to circulate it was a normal depositary function. Those who held to the contrary proposition did so either on the grounds that the depositary should have turned to India to resolve any ambiguity in the instrument or on the grounds that in any case he should always accept an instrument in deposit and give due notice to the parties without any other action, whether or not the instrument contained a reservation.

<sup>65</sup> *Official Records of the General Assembly, Fourteenth Session, Annexes*, agenda item 65, document A/4235.

<sup>66</sup> *Ibid.*, document A/4311, paras. 5-11 and 14-19.

10. The Committee paid considerable attention to the Indian argument that the actions of the Secretary-General in this case had not been in conformity with resolution 598 (VI) of the General Assembly. Many representatives were satisfied by the fact that the practice established by that resolution regarding reservations related to "future" conventions only, while the IMCO Convention had been concluded some years before. Others emphasized that the whole purpose of the resolution had been to reject the theory of the rule of unanimity, while the procedures followed in the present situation at least admitted of the impression that such a rule had been applied to India. A similar difference of approach was shown regarding the advisory opinion of the International Court of Justice on the reservations to the Genocide Convention: many representatives noted that the conclusions of the Court were expressly limited to that particular Convention, but others stressed the clear denial by the Court that the principle of unanimity had been transformed into a rule of international law.

11. The Committee was virtually unanimous in welcoming the statement by the representative of India that his Government had merely made a declaration of policy intended to be consistent with the Convention and not amounting to a reservation; the Committee was also unanimous in acknowledging the great importance of the full participation of India in the work of IMCO. It therefore welcomed the proposal of the representative of India that a practical solution could be found for the whole question . . . .

123. On the subject of reservations to multilateral conventions in general, the report of the Sixth Committee states:

14. The representatives who supported a seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2),<sup>67</sup> providing that the Secretary-General should be requested to apply the procedure of resolution 598 (VI), paragraph 3 (b), to all conventions which did not contain a provision to the contrary, stressed the practical advantage of the uniformity to be obtained from authorizing the Secretary-General to apply the same depositary procedures to reservations to all conventions regardless of whether they had been concluded before or after General Assembly resolution 598 (VI). In general, they opposed the study of other possible systems, at least until the International Law Commission had completed its work on the codification of the whole law of treaties. A number of representatives particularly emphasized the desirability of continuing and extending the application of resolution 598 (VI) as constituting in itself the best means of furthering international co-operation by affording to multilateral conventions the widest possible application among the greatest possible number of States; these representatives saw little practical significance in any request to the International Law Commission to report on the subject, since its report on the law of treaties would, in any case, be submitted in due course and in its whole context. A number

<sup>67</sup> The text read as follows:

"The General Assembly,

...

"Decides to amend paragraph 3 (b) of resolution 598 (VI) by requesting the Secretary-General to apply the aforesaid paragraph 3 (b) in respect of all conventions of which he is the depositary and which do not contain provisions to the contrary."

of representatives considered the entire question too complex to justify haste, but felt that the extension of the compromise they found in resolution 598 (VI) provided the best administrative practice in the interim.

15. The supporters of a ten-Power draft resolution (A/C.6/L.450 and Add.1)<sup>68</sup> calling for reports by the Secretary-General and the International Law Commission and for further consideration by the General Assembly at its sixteenth session, analysed the extreme complexity of the reservations question and its bearing on the depositary function. They argued that the system instituted by resolution 598 (VI) could not be extended to all conventions without exception unless a thorough technical study of all aspects of the problem were made. They pointed to the number of different systems that might be established to govern the legal effect of reservations and objections. Among the difficulties found in the seven-Power draft resolution (A/C.6/L.449 and Add.1 and 2) were its retroactivity and the fact that it did not precisely conform to the terms of the resolution it was extending, as resolution 598 (VI) had been confined to conventions concluded under United Nations auspices. In addition, they felt that neither resolution 598 (VI) nor its proposed extension would provide a clear rule or a lasting solution. They especially noted that that resolution had been adopted on the basis of several reports or opinions presented to two sessions of the General Assembly, whereas delegations to the present session had not come prepared to dispose of the question of reservations, nor had they ever received a study of depositary practices as such.

16. A substantial body of opinion in the Sixth Committee adhered to the view that the two draft resolutions were in reality more complementary than inconsistent. They urged the sponsors of both to seek means of merging the two in a single text.

17. The sponsors of both draft resolutions thereafter withdrew the two previous versions and introduced a single new draft resolution (A/C.6/L.451 and Add.1), representing an agreed minimum text acceptable to both groups. The Secretary-General was to be asked, as far as concerned the deposit of documents containing reservations with regard to the conventions concluded prior to the adoption of resolution 598 (VI), to adhere to the same practice which he was requested to follow in respect of the conventions concluded after the

<sup>68</sup> The text read as follows:

"The General Assembly,

...

"1. Requests the Secretary-General to circulate to Member States, prior to the sixteenth session, a report on his current practice in respect of reservations to multilateral conventions for which he is the depositary authority, and objections to such reservations, together with any other directly related matters;

"2. Invites States and international organizations acting as depositaries of multilateral conventions to furnish appropriate information to the Secretary-General on their practice in respect of the matters set out in paragraph 1 above;

"3. Invites the International Law Commission to expedite as much as possible that part of its work on the codification and development of the law of treaties as relates to the question of reservations to multilateral conventions and the functions of depositary authorities, with a view to reporting thereon to the General Assembly at its sixteenth session;

"4. Decides to place on the provisional agenda of its sixteenth session the question of reservations to multilateral conventions and of the functions of the Secretary-General as depositary authority."

adoption of that resolution. Resolution 598 (VI) should, it was provided, now also apply to all conventions concluded under the auspices of the United Nations prior to its adoption, provided these conventions do not contain provisions to the contrary. The combined sponsors agreed that the provision that the Secretary-General should act in this manner "until such time as the General Assembly may give further instructions" did not alter the nature of the instructions already given in resolution 598 (VI); nor did it imply that the General Assembly would necessarily give further instructions at some future date: the phrase was merely designed to leave the door open for whatever action the General Assembly might deem appropriate in the light of additional studies. The new draft neither asked the International Law Commission to separate the question of reservations from its regular place in the context of the Commission's consideration of the law of treaties nor required that the item be placed on the agenda of any particular session of the General Assembly; it was thought that this compromise would satisfy those who had cautioned against haste as well as those who desired to ensure further consideration of the matter.

18. Some representatives felt that the phrase extending the application of resolution 598 (VI) "until such time as the General Assembly may give further instructions" was redundant, since the General Assembly could always revise a previous decision and the International Law Commission would in any case be reporting on the subject in due course. Some also objected to the limitation to conventions concluded under the auspices of the United Nations.

19. The Legal Counsel was asked to clarify the practice which would be followed by the depositary pursuant to the adoption of the compromise draft. He stated that when the Secretariat had to apply a General Assembly resolution which requested Secretariat action, it had only one rule — to be as loyal as possible to the spirit and to the letter of the resolution. That was not always easy, as there might be some discrepancy between the spirit and the letter. The present draft resolution would amend paragraph 3 (b) of resolution 598 (VI) by requesting the Secretary-General to apply this paragraph to his depositary practice until such time as the General Assembly may give further instructions in respect of all conventions concluded under the auspices of the United Nations which do not contain provisions to the contrary. Resolution 598 (VI) was very definite in a matter of concern to the Secretary-General — namely, that he should continue to act as depositary, in connexion with the deposit of documents containing reservations or objections without passing upon the legal effect of such documents. Its paragraph 3 (b) requested the Secretary-General to communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each State to draw the legal consequences from such communications. He considered it obvious that in no case would the Secretariat have to pass upon the legal effect of such reservations or objections, as it would leave to each State the function of drawing legal consequences therefrom. He stated that this procedure was quite clear and that the Secretariat would continue to adhere to it. If an instrument of ratification was received with a reservation (no question arising if there were no reservation), the Secre-

tariat would circulate to the States parties to the Convention a notice of the receipt of the instrument and of the reservation. This being the main Secretariat function, it would not draw the attention of States to any aspect but would merely communicate the facts as to the instrument, together with the terms of the reservation. If the Secretariat received objections, it would circulate the objections to the States concerned. Once the Secretariat had accepted an instrument of ratification or accession, it would include the country concerned in all the processes of the operation of the Convention as regards the Secretary-General's functions with respect to the Convention. That might, for instance, include the circulation in every case, to the State which made the reservations objected to, of all documents just as if there were, for the purposes of the Secretariat, no objections. He believed that the foregoing statement, while somewhat condensed, indicated exactly what the situation would be, and established a system which could operate to the satisfaction of all parties concerned. Nevertheless, he wished to refer to the remote possibility that, in the operation of this system, the Secretariat might find itself confronted with a real legal problem which could not be anticipated at the present moment. Supposing that such a case arose, there would be only one possibility for the Secretariat, since it was not to exercise any powers of appreciation, particularly of a legal character. The sole possibility would be for the Secretary-General to request the General Assembly for an advisory opinion of the International Court of Justice. While he trusted that this could occur only in an extreme situation, he thought it clear that such an authority was required to settle a specific legal question, as it would not be within the competence of the Secretariat.

124. On 7 December 1959, at its 847th plenary meeting, the General Assembly adopted resolution 1452 (XIV), which reads as follows:

#### A

##### *The General Assembly,*

*Having considered* the item entitled "Reservations to multilateral conventions: the Convention on the Inter-Governmental Maritime Consultative Organization", as well as India's instrument of acceptance of the Convention on the Inter-Governmental Maritime Consultative Organization and the report of the Secretary-General,

*Noting* that the Secretary-General of the United Nations acts as the depositary authority in respect of that Convention,

*Noting* the statement made on behalf of India at the 614th meeting of the Sixth Committee on 19 October 1959, explaining that the Indian declaration was a declaration of policy and that it does not constitute a reservation,

1. *Expresses its appreciation* of the information and materials made available to the General Assembly;
2. *Expresses the hope* that, in the light of the above-mentioned statement of India, an appropriate solution may be reached in the Inter-Governmental Maritime Consultative Organization at an early date to regularize the position of India;
3. *Requests* the Secretary-General to transmit to

the Inter-Governmental Maritime Consultative Organization the present resolution together with the relevant records and documentation.

## B

### *The General Assembly,*

Recalling its resolution 598 (VI) of 12 January 1952,

1. *Decides* to amend paragraph 3 (b) of that resolution by requesting the Secretary-General to apply the aforesaid paragraph to his depositary practice, until such time as the General Assembly may give further instructions, in respect of all conventions concluded under the auspices of the United Nations which do not contain provisions to the contrary;

2. *Requests* the Secretary-General to obtain information from all depositary States and international organizations with respect to depositary practice in relation to reservations, and to prepare a summary of such practices, including his own, for use by the International Law Commission in preparing its reports on the law of treaties and by the General Assembly in considering these reports.

## VII. Registration and publication of treaties

125. On the subject of the registration and publication of treaties and international agreements, the General Assembly has adopted several resolutions, which will be mentioned in this section. In one of these resolutions, the General Assembly adopted regulations to give effect to Article 102 of the Charter. In two other resolutions, the Assembly amended these regulations.

### A. RESOLUTION 23 (I) OF 10 FEBRUARY 1946

126. At its first session, the General Assembly submitted the question of the registration of treaties and international agreements to the Sixth Committee for consideration. The Sixth Committee, which considered the question at meetings held on 28 January and 4 February 1946, made the following observations in its report to the General Assembly:<sup>69</sup>

Article 102 of the Charter imposes an obligation upon all Members to register all treaties and international agreements entered into after the coming into force of the Charter; provides for publication by the Secretariat; and bars any party to any such treaty or international agreement which has not been registered from invoking it before any organ of the United Nations.

These provisions make it possible to establish a system of registration and treaty series which will take the place of registration and publication by the League of Nations. The reason for establishing a system of registration and publication is one of practical convenience to the nations of the world, rather than of according any particular recognition or approval to any of the nations whose treaties or agreements are accepted for publication. It has been pointed out that publicity is a source of moral strength in the administration of laws and agreements which exist between nations; it permits public control, awakens public interest and removes some causes for distrust and conflict; it contributes to the formation of a clear and indisputable system of international law.

<sup>69</sup> Document A/31.

127. On 10 February 1946, at its 28th plenary meeting, the General Assembly adopted resolution 23 (I), on the recommendation of the Sixth Committee, which states *inter alia*:

The Executive Secretary sent a circular letter to the Members of the United Nations on 8 November 1945 informing them that, from the date of the entry into force of the Charter, treaties and international agreements would be received and filed on a provisional basis until the adoption of detailed regulations prescribing the procedure to be followed in the registration and publication of treaties and international agreements under the provisions of Article 102 of the Charter. The Executive Secretary also invited the Governments of Members to transmit to the Secretariat for filing and publication treaties and international agreements not included in the treaty series of the League of Nations and entered into in recent years before the date of the entry into force of the Charter.

It is desirable, as a matter of practical convenience, that arrangements should be made for the publication of any treaties or international agreements which non-member States may voluntarily transmit . . .

*Therefore, the General Assembly instructs the Secretary-General:*

1. To submit to the General Assembly proposals for detailed regulations and other measures designed to give effect to the provisions of Article 102 of the Charter;

2. To invite the Governments of Members of the United Nations to transmit to the Secretary-General for filing and publication, treaties and international agreements entered into in recent years, but before the date of entry into force of the Charter, which had not been included in the League of Nations treaty series, and to transmit for registration and publication treaties and international agreements entered into after the date of entry into force of the Charter.

3. To receive from the Governments of non-member States, treaties and international agreements entered into both before and after the date of entry into force of the Charter, which have not been included in the League of Nations treaty series and which they may voluntarily transmit for filing and publication; and to dispose of them in accordance with the foregoing provisions, and subject to such detailed regulations and other measures as may hereafter be adopted.

### B. RESOLUTION 97 (I) OF 14 DECEMBER 1946

128. In accordance with General Assembly resolution 23 (I), the Secretary-General prepared draft regulations<sup>70</sup> which were submitted to the Sixth Committee for consideration. The Sixth Committee referred the draft regulations to a Sub-Committee, delegations not represented on the Sub-Committee being invited to submit proposals for the improvement of the regulations.

129. In its report to the General Assembly,<sup>71</sup> the Sixth Committee mentioned the following observations made by the Sub-Committee:

4. The Sub-Committee, in framing the draft regula-

<sup>70</sup> Document A/138.

<sup>71</sup> Document A/266.

tions, carefully considered the written proposals submitted by the . . . delegations, which were not represented on the Sub-Committee . . .

Two of the proposals submitted were regarded as beyond the competence of the Sub-Committee, namely, a proposal that an effort should be made to interpret the meaning of paragraph 2 of Article 102 of the Charter . . .

5. In settling the terms of the regulations, the Sub-Committee had regard to the following considerations:

(a) The importance of the orderly registration (or filing) and publication of treaties and international agreements and of the maintenance of precise records;

(b) The desirability of adhering closely both to the Charter and to the General Assembly's resolution of 10 February 1946, in particular, the distinction drawn in the resolution between *registration* (applicable only to treaties and international agreements subject to Article 102) and *filing* (applicable to other treaties and international agreements covered by the regulations) . . .

(c) The undesirability of attempting at this time to define in detail the kinds of treaty or agreement requiring registration under the Charter, it being recognized that experience and practice will in themselves aid in giving definition to the terms of the Charter.

6. The Sixth Committee, at its thirty-third meeting on 13 December 1946, considered the report of the Sub-Committee, presented by its Rapporteur, Mr. E. R. Hopkins (Canada), and adopted the substance of the report.

7. The Sixth Committee also considered a memorandum prepared by the Secretariat upon the request of the Sub-Committee summarizing the discussions in the latter with respect to the preamble and each of the articles of the regulations.

In this connexion, the Committee desires to mention the following points:

(a) It was agreed that registration is effected by the act of one of the parties (or pursuant to article 4 of the regulations) and not by any action taken by the Secretariat;

(b) It was recognized that, for the purposes of article 1 of the regulations, a treaty comes into force when, by agreement, it is applied provisionally by two or more of the parties thereto;

(c) Article 10 of the proposed regulations is intended to carry out the recommendations made by the General Assembly in its resolution of 10 February 1946 on the filing of treaties and international agreements not subject to Article 102 of the Charter. This provision does not apply to any treaty or agreement concluded by one or more Members of the United Nations after 24 October 1945, the date on which the Charter came into force; ”.

130. At its 65th plenary meeting held on 14 December 1946, the General Assembly adopted resolution 97 (I) containing regulations to give effect to Article 102 of the Charter of the United Nations. The text of this resolution was as follows:

*The General Assembly,*

*Considering* it desirable to establish rules for the application of Article 102 of the Charter of the United Nations which provides as follows:

“ 1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

“ 2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.”

*Recognizing*, in making provision therefor, the importance of orderly registration and publication of such treaties and international agreements and the maintenance of precise records:

*Adopts* accordingly, having given consideration to the proposals of the Secretary-General submitted pursuant to the resolution of the General Assembly of 10 February 1946, the following regulations:

## PART ONE

### REGISTRATION

#### *Article 1*

1. Every treaty or international agreement, whatever its form and descriptive name, entered into by one or more Members of the United Nations after 24 October 1945, the date of the coming into force of the Charter, shall as soon as possible be registered with the Secretariat in accordance with these regulations.

2. Registration shall not take place until the treaty or international agreement has come into force between two or more of the parties thereto.

3. Such registration may be effected by any party or in accordance with article 4 of these regulations.

4. The Secretariat shall record the treaties and international agreements so registered in a Register established for that purpose.

#### *Article 2*

1. When a treaty or international agreement has been registered with the Secretariat, a certified statement regarding any subsequent action which effects a change in the parties thereto, or the terms, scope or application thereof, shall also be registered with the Secretariat.

2. The Secretariat shall record the certified statement so registered in the Register established under article 1 of these regulations.

#### *Article 3*

1. Registration by a party, in accordance with article 1 of these regulations, relieves all other parties of the obligation to register.

2. Registration effected in accordance with article 4 of these regulations relieves all parties of the obligation to register.

#### *Article 4*

1. Every treaty or international agreement subject to article 1 of these regulations shall be registered *ex officio* by the United Nations in the following cases:

(a) Where the United Nations is a party to the treaty or agreement;

(b) Where the United Nations has been authorized by the treaty or agreement to effect registration.

2. A treaty or international agreement subject to article 1 of these regulations may be registered with the Secretariat by a specialized agency in the following cases:

(a) Where the constituent instrument of the specialized agency provides for such registration;

(b) Where the treaty or agreement has been registered with the specialized agency pursuant to the terms of its constituent instrument;

(c) Where the specialized agency has been authorized by the treaty or agreement to effect registration.

## Article 5

1. A party or specialized agency, registering a treaty or international agreement under article 1 or 4 of these regulations, shall certify that the text is a true and complete copy thereof and includes all reservations made by parties thereto.

2. The certified copy shall reproduce the text in all the languages in which the treaty or agreement was concluded and shall be accompanied by two additional copies and by a statement setting forth, in respect of each party:

- (a) The date on which the treaty or agreement has come into force;
- (b) The method whereby it has come into force (for example: by signature, by ratification or acceptance, by accession, et cetera).

## Article 6

The date of receipt by the Secretariat of the United Nations of the treaty or international agreement registered shall be deemed to be the date of registration, provided that the date of registration of a treaty or agreement registered *ex officio* by the United Nations shall be the date on which the treaty or agreement first came into force between two or more of the parties thereto.

## Article 7

A certificate of registration signed by the Secretary-General or his representative shall be issued to the registering party or agency and also to all signatories and parties to the treaty or international agreement registered.

## Article 8

1. The Register shall be kept in the five official languages of the United Nations. The Register shall comprise, in respect of each treaty or international agreement, a record of:

- (a) The serial number given in the order of registration;
- (b) The title given to the instrument by the parties;
- (c) The names of the parties between whom it was concluded;
- (d) The dates of signature, ratification or acceptance, exchange of ratification, accession, and entry into force;
- (e) The duration;
- (f) The language or languages in which it was drawn up;
- (g) The name of the party or specialized agency which registers the instrument and the date of such registration;
- (h) Particulars of publication in the treaty series of the United Nations.

2. Such information shall also be included in the Register in regard to the statements registered under article 2 of these regulations.

3. The texts registered shall be marked "*ne varietur*" by the Secretary-General or his representative, and shall remain in the custody of the Secretariat.

## Article 9

The Secretary-General, or his representative, shall issue certified extracts from the Register at the request of any Member of the United Nations or any party to the treaty or international agreement concerned. In other cases he may issue such extracts at his discretion.

## PART TWO

## FILING AND RECORDING

## Article 10

The Secretariat shall file and record treaties and international agreements, other than those subject to registration under article 1 of these regulations, if they fall in the following categories:

- (a) Treaties or international agreements entered into by the United Nations or by one or more of the specialized agencies;
- (b) Treaties or international agreements transmitted by a Member of the United Nations which were entered into before the coming into force of the Charter, but which were not included in the treaty series of the League of Nations;

- (c) Treaties or international agreements transmitted by a party not a member of the United Nations which were entered into before or after the coming into force of the Charter which were not included in the treaty series of the League of Nations, provided, however, that this paragraph shall be applied with full regard to the provisions of the resolution of the General Assembly of 10 February 1946 set forth in the Annex to these regulations.

## Article 11

The provisions of articles 2, 5 and 8 of these regulations shall apply, *mutatis mutandis*, to all treaties and international agreements filed and recorded under article 10 of these regulations.

## PART THREE

## PUBLICATION

## Article 12

1. The Secretariat shall publish as soon as possible in a single series every treaty or international agreement which is registered, or filed and recorded, in the original language or languages, followed by a translation in English and in French. The certified statements referred to in article 2 of these regulations shall be published in the same manner.

2. The Secretariat shall, when publishing a treaty or agreement under paragraph 1 of this article, include the following information: the serial number in order of registration or recording; the date of registration or recording; the name of the party or specialized agency which registered it or transmitted it for filing; and in respect of each party the date on which it has come into force and the method whereby it has come into force.

## Article 13

The Secretariat shall publish every month a statement of the treaties and international agreements registered, or filed and recorded, during the preceding month, giving the dates and numbers of registration and recording.

## Article 14

The Secretariat shall send to all Members of the United Nations the series referred to in article 12 and the monthly statement referred to in article 13 of these regulations.

## C. RESOLUTION 172 (II) OF 14 NOVEMBER 1947

131. In a report<sup>72</sup> submitted to the General Assembly at its second session, the Secretary-General reported to the Assembly the progress made in the matter of the registration and publication of treaties and international agreements. On 23 September 1947, the General Assembly referred this report to the Sixth Committee, which began its consideration of the report at its 54th meeting on 29 October 1947.

132. In its report<sup>73</sup> to the General Assembly, the Sixth Committee recorded as follows certain passages of the Secretary-General's report, which the Secretary of the Committee had supplemented by a number of oral explanations and observations:

The Secretariat also drew attention to the difficulties which had been encountered whenever it had been sought to define in detail the scope of the term "international agreement" contained in Article 102 of the Charter. Nevertheless, on the strength of the interpretation given to that term in the report of Committee IV/2, at San Francisco, the Secretariat had considered it was bound to register *ex officio* the instruments of accession presented

<sup>72</sup> Document A/380.

<sup>73</sup> Document A/457.

by new States Members of the United Nations and statements recognizing as compulsory the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of the Statute of the Court. The Secretariat considers that the practice of *ex officio* registration will have to be given a somewhat wider extension.

As regards the technique of registration, the Secretariat suggested that it would be desirable when a multilateral agreement was in question that this should be presented for registration by the Government or the authority having the custody of the original document, and that these should also register all subsequent actions in accordance with article 2<sup>74</sup> of the regulations adopted by the General Assembly on 14 December 1946.

The Secretariat pointed out in conclusion, as regards the registration of subsequent actions, that whereas the registration of an ordinary statement would be sufficient when there is a change in the parties to a registered treaty, nevertheless, when the scope or application of the agreement was modified, the document to be registered should not be an ordinary statement but the actual instrument — for example, the exchange of notes or additional protocol, etc. — which had brought about the modification in question.

On the basis of the report and of the additional oral explanations given by the Secretariat, the Committee proceeded to a general discussion which it was agreed would be recorded fairly fully in the summary record. . . .

133. At its 113th plenary meeting held on 14 November 1947, the General Assembly adopted resolution 172 (II) in which it took note of the report of the Secretary-General (document A/380) and drew the attention of Member States to the obligations imposed by Article 102 of the Charter.

#### D. RESOLUTION 254 (III) OF 3 NOVEMBER 1948

134. The Secretary-General submitted to the General Assembly at its third session a report<sup>75</sup> in which he recounted the progress achieved and the material and technical difficulties encountered in the actual process of registration and publication of treaties and international agreements during the year.

135. On 24 September 1948, the General Assembly decided to refer the question to the Sixth Committee, which considered it at meetings held on 20 and 21 October 1948.

136. On 3 November 1948, at its 155th plenary meeting, the General Assembly, on the recommendation of the Sixth Committee,<sup>76</sup> adopted resolution 254 (III), which reads as follows:

#### A

##### *The General Assembly,*

*Considering* that the United Nations Charter requires that treaties and international agreements be not only registered but also published as soon as possible; and

*Considering* that the practical value, for Governments, scientific institutions and all the circles concerned, of publishing treaties and international agreements also depends in large

measure upon the degree of accuracy and precision of the published translations,

*Instructs* the Secretary-General to take all the necessary steps to ensure that registered treaties or agreements shall be published with the least possible delay and that translations shall reach the highest possible level of accuracy and precision.

#### B

##### *The General Assembly,*

*Having considered* the report of the Secretary-General on the registration and publication of treaties and international agreements (A/613),

*Having noted* that relatively few treaties and other international agreements have been registered to date, and that less than half of the number of States Members of the United Nations have registered any treaties or other international agreements,

*Considering* that all Member States have by Article 102 of the Charter, assumed the obligation to register with the Secretariat every treaty and every international agreement entered into by them after the coming into force of the Charter,

*Having noted* that resolution 172 (II) of 14 November 1947 drew the attention of Member States to this obligation,

*Therefore requests* that each of the Member States take cognizance of its obligation under Article 102 and take immediate steps to fulfil this obligation.

#### E. RESOLUTION 364 (IV) OF 1 DECEMBER 1949

137. The Secretary-General submitted to the General Assembly at its fourth session a report<sup>77</sup> on the registration and publication of treaties and international agreements. This report stated the following:<sup>78</sup>

The Secretary-General has, on various occasions, stressed that it is desirable, in the case of multilateral agreements, that the depositary should submit them for registration. This point was taken up in the Sixth Committee's report<sup>79</sup> on the registration and publication of treaties and international agreements, during the second regular session of the General Assembly. However, when the United Nations is the depositary of a multilateral agreement to which it is not a party, that agreement cannot be registered *ex officio* unless the agreement expressly provides for such registration, since article 4 of the regulations to give effect to Article 102 of the Charter of the United Nations does not contain any provision to this effect. Difficulties have arisen in practice in this connexion, and it might therefore be well to supplement the regulations by adding to the first paragraph of article 4 a sub-paragraph (c) permitting registration *ex officio* in all cases in which the United Nations is the depositary of a multilateral treaty.

138. At its 224th plenary meeting held on 22 September 1949, the General Assembly referred to the Sixth Committee for study the question: "Registration and publication of treaties and international agreements: report of the Secretary-General". The Sixth Committee considered the question at its 174th meeting on 26 October 1949 and heard "various opinions . . . regarding the legal position of the depositary of a treaty in relation to the power to register it and regarding the right and duty which may be implied in Article 102 of the Charter".<sup>80</sup>

<sup>74</sup> See *Resolutions adopted by the General Assembly* during the second part of its first session, page 190.

<sup>75</sup> *Official Records of the General Assembly, Third Session, Annexes*, agenda item 30, document A/613.

<sup>76</sup> Report of the Sixth Committee to the General Assembly, *ibid.*, document A/698.

<sup>77</sup> *Official Records of the General Assembly, Fourth Session, Annexes*, document A/958.

<sup>78</sup> *Ibid.*, para. 5.

<sup>79</sup> Document A/457.

<sup>80</sup> Report of the Sixth Committee to the General Assembly, *Official Records of the General Assembly, Fourth Session, Annexes*, agenda item 53, document A/1100.

139. At its 262nd plenary meeting held on 1 December 1949, the General Assembly adopted resolution 364 (IV) amending the regulations to give effect to Article 102 of the Charter, which it had previously adopted. This resolution reads as follows:

## A

*The General Assembly,*

Having considered the report<sup>81</sup> of the Secretary-General on the registration and publication of treaties and international agreements,

1. Notes with satisfaction the progress achieved in regard to the registration and publication of treaties;
2. Notes, moreover, that the number of treaties registered during the past twelve months has considerably increased;
3. Requests the Secretary-General to take all necessary measures to bring about the earliest possible publication of all registered agreements and treaties.

## B

*The General Assembly,*

Approves the addition of the following sub-paragraph (c) to paragraph 1 of article 4 of the regulations to give effect to Article 102 of the Charter of the United Nations adopted by the General Assembly on 14 December 1946 (résolution 97 (1)):

“(c) Where the United Nations is the depositary of a multilateral treaty or agreement.”

## F. RESOLUTION 482 (V) OF 12 DECEMBER 1950

140. The question of the registration and publication of treaties was again put on the agenda of the fifth session of the General Assembly. The General Assembly referred it to the Sixth Committee, which considered it at its 246th meeting held on 29 November 1950.

141. The Sixth Committee had before it a report of the Secretary-General<sup>82</sup> on the progress made in the registration and publication of treaties and international agreements and the economies which might be effected in that respect.

142. The discussion centred mainly on the question of the publication of annexes to treaties. The report of the Sixth Committee to the General Assembly notes the following opinions expressed on this subject during the discussion:<sup>83</sup>

7. It was pointed out in this connexion that an annex was normally an integral part of a treaty or agreement and often constituted the most important part of the whole text, that the omission from publication of annexes would defeat the underlying purpose of Article 102 of the Charter, that such procedure, if adopted, might provide a loophole which would enable States to withhold vital details of a treaty from publication, and that it was clear from the provisions both of Article 102 of the Charter and article 5 of the regulations, that what should be published was a “true and complete” copy of the agreement. Attention was also drawn to certain difficulties which might face the Secretary-General should a procedure be adopted whereby, with the consent of a registering party, he could refrain from publishing an annex to a treaty. Similar fears were also expressed in connexion with the amendment which would authorize the Secretary-

General to refrain from publishing in its entirety a treaty or agreement, the text of which was almost identical with the text of one which had already been published, especially in view of the imprecise meaning of the words “almost identical”.

143. At its 320th plenary meeting held on 12 December 1950, the General Assembly adopted resolution 482 (V) amending the regulations on the subject which it had adopted. The text of this resolution is given below:

*The General Assembly,*

Having considered the report of the Secretary-General on the registration and publication of treaties and international agreements and the observations in this regard of the Advisory Committee on Administration and Budgetary Questions,

1. Notes with satisfaction the progress achieved in regard to the registration and publication of treaties;
2. Invites Member and non-member States parties to treaties or international agreements subject to publication under article 12 of the regulations to give effect to Article 102 of the Charter of the United Nations, to provide the Secretary-General, where feasible, with translations in English or French or both as may be needed for the purposes of such publication;
3. Amends article 7 of the regulations to give effect to Article 102 of the Charter of the United Nations to read:

“A certificate of registration signed by the Secretary-General or his representative shall be issued to the registering party or agency and also, upon request, to any party to the treaty or international agreement registered”;

4. Amends the first sentence of paragraph 1 of article 8 of the regulations to give effect to Article 102 of the Charter of the United Nations to read:

“1. The register shall be kept in the English and French languages”;

5. Requests the Secretary-General, when acting under article 12 of the regulations, to give effect to Article 102 of the Charter of the United Nations, to continue, as economically as practicable, without undue delay and without sacrifice of uniformity in style and record permanence, to publish all treaties and international agreements in their full and unabridged form, including all annexes, provided however that, in the reproduction of annexes, he may in his discretion employ less expensive methods of reproduction;

6. Requests the Secretary-General regularly to review the free mailing list with a view to its possible reduction.

### VIII. Correction of errors in the texts of Treaties for which a Depositary exists

144. We shall refer here to a case involving the correction of a lack of concordance between the original versions of a multilateral treaty approved by the General Assembly, for which the Secretary-General is depositary. The correction involved concerned the Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide.

145. The General Assembly, by resolution 260 (III) of 9 December 1948, approved this Convention which, in accordance with article XIII thereof, came into force on 12 January 1951.

146. Articles X and XVI of the Convention provide:

## ARTICLE X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

## ARTICLE XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by

<sup>81</sup> *Ibid.*, document A/958.

<sup>82</sup> *Ibid.*, Fifth Session, Annexes, agenda item 54, document A/1408.

<sup>83</sup> *Ibid.*, document A/1626.

means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such a request.

147. The Permanent Representative of China to the United Nations signed the Convention on 20 July 1949 and, on 19 July 1951, he duly deposited with the Secretary-General the formal instrument of ratification by his Government of the Convention. Concurrently with his deposit of the instrument of acceptance by China of the Convention, the Permanent Representative of China transmitted to the Secretary-General a letter in which he requested the latter to take steps to revise the Chinese text of the Convention. He submitted a new Chinese text incorporating the amendments proposed by his Government with a view to bringing the Chinese text into greater uniformity with the other authentic texts of the Convention. The Secretary-General formally acknowledged receipt of the proposed revised text but noted that, in view of the provisions of article X of the Convention and of the fact that the Convention had been adopted and had entered into force, he was without authority to undertake the revision.

148. The permanent representative of China thereupon confirmed that his letter transmitting the proposed revised text should be deemed to constitute the notification envisaged in the first paragraph of article XVI of the Convention, by which any Contracting Party might at any time request revision. The Secretary-General accordingly placed that request of China on the provisional agenda of the sixth session of the General Assembly, in order that the General Assembly might, in conformity with the second paragraph of article XVI of the Convention, "decide upon the steps, if any, to be taken in respect of such request".

149. On 13 November 1951, the General Assembly included the item in that session's agenda and referred it to the Sixth Committee, which considered it at its 303rd meeting held on 29 January 1952.

150. On the recommendation of the Sixth Committee,<sup>84</sup> the General Assembly, at its 369th plenary meeting held on 1 February 1952, adopted resolution 605 (VI) whereby, considering that the elements necessary for the discussion of the question were not yet at its disposal, it decided to defer consideration of the question until its seventh session.

151. The item was included in that session's agenda and was first considered by the General Assembly in plenary meeting without reference to a committee. The Assembly had before it a memorandum by the Secretary-General<sup>85</sup> in which it was stated that the Language Services Division of the Secretariat had made a comparative study of the original Chinese text of the Convention and the revised Chinese text submitted by the Government of China (annex IV of the memorandum). It appeared that "the revised Chinese text submitted by the permanent representative of China introduces only revisions which are in the main of a linguistic

nature and does not in any sense alter the substance or meaning of the Convention as expressed in the other four official texts". Alternative methods were set forth, for the information of the General Assembly, by which effect could be given to such alterations in the Chinese text of the Convention in the event that the General Assembly should decide to do so. Those were (1) the drawing up of a protocol listing the alterations agreed upon and (2) the adoption by resolution of the General Assembly of such alterations. Precedents for the latter method were explained in annexes I and II to the memorandum. The revised Chinese text of the Convention submitted by China was reproduced in annex III to the same document.

152. The item was considered at the 400th plenary meeting on 4 December 1952. Following that discussion, the General Assembly decided to refer the item to the Sixth Committee, which considered it at its 354th to 357th meetings, inclusive, held on 18 and 19 December 1952.

153. The Sixth Committee, in its report to the General Assembly,<sup>86</sup> summarizes its debates on the item as follows:

13. During the consideration of the second revised text,<sup>87</sup> the representative of China accepted an oral amendment proposed by the representative of France to replace, in the first paragraph of the preamble, the expression "official Chinese text" by "authentic Chinese text" and that of "the other official texts" by "the other authentic texts". With regard to the second paragraph of the preamble, the representative of China accepted a suggestion of the Chairman to amend the paragraph so as to read: "Considering the memorandum (A/2221) submitted to the General Assembly by the Secretary-General". The representative of China further accepted another oral amendment, proposed by the representative of France, to delete the words "to the corrected Chinese text" in the operative paragraph (which had been paragraph 3 of the operative part of the original draft resolution).

14. In opening the debate on the item, the representative of China stated that the sole purpose of his Government's request for revision of the existing

<sup>86</sup> *Ibid.*, document A/2351.

<sup>87</sup> This document was a draft resolution worded as follows (*Ibid.*, document A/C.6/L.283/Rev.2):

"The General Assembly,

"Considering that the Government of China has made a request for correction of the official Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide, with a view to bringing the Chinese text into greater harmony with the other official texts of the Convention, and had for this purpose submitted a corrected text (A/2221, annex III),

"Considering that it is stated in the memorandum (A/2221), submitted to the General Assembly by the Secretary-General, that the Chinese text submitted by the Government of China introduces only corrections "which are in the main of a linguistic nature and does not in any sense alter the substance or meaning of the Convention as expressed in the other four official texts" of the Convention.

"Requests the Secretary-General to transmit a certified copy of the corrected Chinese text of the Convention, as well as a copy of the present resolution, to all Members of the United Nations and to the non-member States contemplated in article XI of the Convention, and to request States signatories of or parties to the Convention to notify him of their acceptance of or objection to the corrected Chinese text."

<sup>84</sup> Report of the Sixth Committee to the General Assembly, *Official Records of the General Assembly, Sixth Session, Annexes*, agenda item 56, document A/2092.

<sup>85</sup> *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 56, document A/2221.

Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide was to bring that text into greater conformity with the other authentic texts of the Convention. He pointed out that the existing Chinese text was defective, and he gave several examples to substantiate his contention. The Chinese text<sup>88</sup> submitted by his Government would, in the opinion of experts in China, remove such defects.

15. Some representatives expressed themselves in favour of accepting the request of China in principle. It was emphasized that the Convention on the Prevention and Punishment of the Crime of Genocide did not grant any rights but only imposed obligations on parties to it. In requesting revision of the Chinese text, the Government of China could not be suspected of seeking advantage from the Convention. It was motivated solely by a desire to rectify some inaccuracies in the Chinese text, and its good faith was beyond question. On the other hand, refusal by the General Assembly of the request of the Government of China could not fail to do harm to the Convention, since that Convention would suffer from the inability of that Government to enforce it. The text submitted by China had been studied by the Language Services Division of the Secretariat, and the Secretary-General had stated that it introduced changes of a linguistic nature only and that it did not alter the substance or meaning of the Convention as expressed in the other four authentic texts. In the circumstances, it would be inadmissible to maintain a text that was defective in language.

16. It was pointed out also that, in the light of the advisory opinion of 28 May 1951 of the International Court of Justice on Reservations to the Convention on Genocide, the General Assembly was undoubtedly competent to deal with such a question as that raised in the request of China, even if that request were not in the nature of a request for revision within the meaning of article XVI of the Convention. That was so for the reason that it was the General Assembly that had prepared and approved the Convention and had proposed it for signature and ratification or accession. It was, therefore, appropriate for the Secretary-General to transmit the Chinese text submitted by China to all the parties to the Convention, which would be free to accept or reject the text. Such a procedure was in conformity with international law.

...

19. As to the substance of the draft resolution submitted by China, various legal objections were raised. It was said that the Convention on the Prevention and Punishment of the Crime of Genocide had entered into force among forty States, of which eleven were not members of the United Nations. The General Assembly should, therefore, use great care in taking measures that might affect those non-member States. Moreover, in the likely event that some States parties to the Convention accepted the new Chinese text while others did not, confusion might result in the relations among such States. Some representatives questioned whether the request of China under consideration constituted a request for revision within the meaning of article XVI of the Convention. In the law of treaties, it was urged, revision was usually construed to mean modification of

substance or such modifications of language as were substantive in nature. Accordingly, it was suggested that the Chinese draft resolution should refer to "correction" instead of "revision", and any reference therein to article XVI of the Convention should be omitted. The last-mentioned suggestion was accepted by the representative of China.

20. It was also contended by some representatives that, as most of the members were not well versed in the Chinese language and hence could not be in a position to appraise the Chinese text of the Convention submitted by China, the Committee could not recommend that the General Assembly should "approve" that text, as provided in operative paragraph 1 of the Chinese draft resolution.<sup>89</sup> For the same reason the Committee could not ask the General Assembly to recommend that States signatories of or parties to the Convention should accept the new text, as called for in paragraph 2 of the operative part of the draft resolution. Nor could the Committee make the assertion that the Chinese text submitted by China was in closer harmony with the other authentic texts of the Convention than the existing Chinese text, as was the purport of the fourth paragraph of the preamble to the Chinese

<sup>89</sup> This was a draft resolution submitted to the plenary Assembly as document A/L.116 and to the Sixth Committee as document A/C.6/L.283. The text was as follows (*ibid.*):

"The General Assembly,

"Considering that the Government of China, in accordance with article XVI, paragraph 1, of the Convention on the Prevention and Punishment of the Crime of Genocide, has made a request for the revision of the official Chinese text of the Convention, with a view to bringing the Chinese text into greater harmony with the other official texts of the Convention, and had for this purpose submitted a revised text (A/2221, annex III),

"Considering that, as stated in the memorandum (A/2221) submitted to the General Assembly by the Secretary-General, the revised Chinese text submitted by the Government of China 'introduces only revisions which are in the main of a linguistic nature and does not in any sense alter the substance or meaning of the Convention as expressed in the other four official texts' of the Convention,

"Considering that the official texts in different languages of a convention should be in as close harmony as possible,

"Considering that the revised Chinese text of Convention submitted by the Government of China satisfies the foregoing requirement better than the existing text,

"Having regard to article XVI, paragraph 2, of the Convention, under which the General Assembly is empowered to decide upon the steps, if any, to be taken in respect of any request for the revision of the Convention,

"1. Approves the revised Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide submitted by the Government of China and annexed to the present resolution;

"2. Recommends that States signatories of or parties to the Convention accept the revised Chinese text as the official Chinese text of the Convention, in lieu of the existing Chinese text of the Convention;

"3. Requests the Secretary-General to transmit, in accordance with article XVIII of the Convention, a certified copy of the revised Chinese text of the Convention, as well as a copy of the present resolution, to all Members of the United Nations and to the non-member States contemplated in article XI of the Convention, and to request States already signatories of or parties to the Convention to notify him, within the period of ninety days from the date of the transmission of the revised Chinese text of the Convention of their acceptance of or objection to the revised Chinese text, it being understood that States which fail to signify their objection within the said period shall be deemed to have accepted the revised Chinese text."

<sup>88</sup> *Ibid.*, document A/2221, annex III.

draft resolution. As to the third paragraph of the preamble, stating that the official texts in different languages of a convention should be in as close harmony as possible, that was said to be a truism which it was superfluous to affirm. It was in view of those objections that the representative of China withdrew all those paragraphs. The fifth paragraph of the draft resolution, which made reference to article XVI, paragraph 2, of the Convention, was similarly withdrawn by the representative of China, since he had agreed with the construction that the request of China constituted a request not for revision but rather for correction of the Chinese text.

21. There was also objection to the latter part of operative paragraph 3, which provided for a presumption of consent where a State signatory of or party to the Convention failed to signify its objection within the period of ninety days. It was said that, since the General Assembly had only the power of recommendation, it was doubtful whether it could make such a binding rule. The time-limit of ninety days, provided in the same paragraph, within which States signatories of or parties to the Convention were to be requested to signify their acceptance of or objection to the new Chinese text was criticized as being too rigid. Replies from governments in a treaty matter often required a longer delay. Furthermore, it was also suggested that such replies, called for under the draft resolution, should not be so restricted as to relate only to "the revised Chinese text", which phrase should be omitted. All those passages to which objections had been raised were withdrawn by the representative of China.

154. On the recommendation of the Sixth Committee, the General Assembly, at its 411th plenary meeting held on 21 December 1952, adopted resolution 691 (VII), which reads as follows:

*The General Assembly,*

*Considering* that the Government of China has made a request for correction of the authentic Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide, with a view to bringing the Chinese text into greater harmony with the other authentic texts of the Convention, and had for this purpose submitted a corrected text,

*Considering* the memorandum submitted to the General Assembly by the Secretary-General,

*Requests* the Secretary-General to transmit a certified copy of the corrected Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide, as well as a copy of the present resolution, to all Members of the United Nations and to the non-member States contemplated in article XI of the Convention, and to request States signatories of or parties to the Convention to notify him of their acceptance or objection.

**IX. Question of extended participation in general multilateral Treaties concluded under the auspices of the League of Nations**

155. The question of extended participation in multilateral treaties concluded in the past and open to the participation of only certain categories of States was raised in the Sixth Committee at the seventeenth session of the General Assembly. The Sixth Committee began to study this question during its debate on the draft articles on the conclusion, entry into force and registration of treaties submitted by the International Law

Commission,<sup>90</sup> draft article 9 of which deals with the "opening of a treaty to the participation of additional States".

156. The different views expressed and proposals made in connexion with this question are to be found in the following passages of the report of the Sixth Committee to the General Assembly:<sup>91</sup>

30. In accordance with the suggestion made by the International Law Commission in paragraph 10 of the Commentary on draft articles 8 and 9, it was agreed that since the sole purpose of the draft articles is to establish a general system for the future, it would be desirable to study separately the problems arising from treaties concluded in the past, and more particularly those concluded under the auspices of the League of Nations, since they constitute an important part of the contemporary international law of treaties.

31. A number of representatives submitted a draft resolution (A/C.6/L.504) which was not discussed in its original form, since a revised text (A/C.6/L.504/Rev.1) was submitted before the debate on the question had started. This latter text proposed that the General Assembly should adopt, at its present session, a resolution authorizing certain measures so that the Secretary-General of the United Nations could receive in deposit such instruments of acceptance to the conventions still in force and concluded under the auspices of the League of Nations as might be handed to him by any State Member of the United Nations or member of a specialized agency.

32. The draft resolution authorized the Secretary-General to receive in deposit the instruments of acceptance of new States Members of the United Nations or members of a specialized agency, if the majority of the States Parties to those conventions had not objected, within a period of twelve months, to opening the conventions in question to accession.

33. The representatives who presented the proposal pointed out that the question was of interest to more than half of the States Members of the United Nations. Many representatives recognized the practical and immediate importance of the question, but expressed doubts regarding the proposed procedure as well as concerning some of the rules contained in it.

34. It was pointed out, for example, that the drafting of a formal protocol on the opening to accession of the aforementioned conventions, which would enter into effect when it had been accepted by the number of parties regarded as necessary by the protocol itself, would be more in accordance with international practice and the domestic constitutional laws of many States.

35. It was also pointed out that the consent of the Parties should be expressed and not, as proposed, in the form of a mere assumed tacit acquiescence. That suggestion was taken up by the sponsors of the proposal in a further revised version (A/C.6/L.504/Rev.2), in the part relating to the legal effects of the instruments of acceptance deposited. They explained that this was

<sup>90</sup> Report of the International Law Commission covering the work of its fourteenth session, *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209)*, para. 23.

<sup>91</sup> *Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 76*, document A/5287 and Corr.1, paras. 30-39.

their intention in the part of the original proposal relating to the legal effects of the instruments of acceptance deposited.

36. Several representatives were against any restriction of the principle of universality by reserving the procedure to be followed to specific categories of States, while excluding others. It was pointed out that the use of the term "all States" in the subsequent revision of the draft resolution [A/C.6/L.504/Rev.2] would affirm the principle of universality and would raise no difficulties for anyone—the draft providing for the express consent of the parties to the convention—in the matter of the legal effects of the instruments of acceptance deposited. Every contracting State would thus be completely free to establish, or not to establish, treaty relations with any State wishing to accede to the convention or conventions in question. This interpretation was, however, rejected by one of the co-sponsors of the draft resolution.

37. The relationship between this proposal [A/C.6/L.504/Rev.2] and the question of the succession of States aroused the concern of a number of representatives. In their view, the determination of the States now parties to the conventions in question involves a problem of the succession of States, since new States have been able to accede to old conventions under agreements made on their behalf by the States which formerly represented them in the international field. It was also pointed out that the proposal was meant to apply to situations in which there were no problems of succession of States.

38. With regard to the nature of the acceptance, some representatives felt that it should be made clear that such acceptances could not be accompanied by "reservations", since that was a practice which had been introduced since the conclusion of conventions under the auspices of the League of Nations.

39. Finally, most representatives considered that a more thorough study was needed of the possible implica-

tions of the question. A number of representatives submitted a draft resolution (A/C.6/L.508), which was subsequently revised (A/C.6/L.508/Rev.1), requesting the International Law Commission to study the problem further—with special reference to the debate in the General Assembly—and to inform the General Assembly of the result of its studies in the report on the work of its fifteenth session, and requesting the inclusion of the question on the agenda of the next session of the General Assembly. Although some representatives considered that the problem involved in the participation of new States in treaties concluded under the auspices of the League of Nations would be more appropriately resolved by the General Assembly and had doubts regarding the suitability of referring the question to the International Law Commission, the Sixth Committee adopted the proposal contained in the draft resolution (A/C.6/L.508/Rev.1).

157. On the recommendation of the Sixth Committee, the General Assembly adopted, at its 1171st meeting, held on 20 November 1962, resolution 1766 (XVII) on the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations. The text of this resolution is reproduced below:

*The General Assembly,*

*Taking note* of paragraph 10 of the commentary to articles 8 and 9 of the draft articles on the law of treaties contained in the report of the International Law Commission covering the work of its fourteenth session,

*Desiring* to give further consideration to this question,

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 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".

## DOCUMENT A/CN.4/156 and Add.1-3

### Second report on the law of treaties, by Sir Humphrey Waldock, Special Rapporteur

[Original: English]  
[20 March, 10 April,  
30 April and 5 June 1963]

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