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**Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations (General Assembly resolution 1766 (XVII)) - Note by the Secretariat**

Topic:  
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INTERNATIONAL LAW COMMISSION

Fifteenth session

Item 2 of the agenda

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

(General Assembly resolution 1766 (XVII))

Note by the Secretariat

Addendum

Summary of the discussions in the Sixth Committee of the  
General Assembly \*

\* This summary is intended to supplement the relevant passage in the Report of the Sixth Committee to the General Assembly, passage reproduced in A/CN.4/159.

1. The draft articles on the Law of treaties approved by the International Law Commission at its fourteenth session <sup>1/</sup> contain an article (article 9) on the opening of a treaty to the participation of additional States. Paragraph 10 of the Commission's commentary on that article refers to the problem of accession of new States to general multilateral treaties, concluded in the past, whose participation clauses were limited to specific categories of States. It was suggested that there were certain difficulties in the way of opening such existing treaties to new States by virtue of the provisions of the Commission's draft articles. Consequently the Commission suggested two alternative courses by which the problem could be settled more expeditiously. One was for "administrative action to be taken through the depositaries of the individual treaties to obtain the necessary consents of the States concerned in each treaty". The other was that "action to obtain the necessary consents might be taken in the form of a resolution of the General Assembly by which each Member State agreed that a specified list of multilateral treaties of a universal character should be opened to accession by new States". With regard to the latter alternative, the Commission observed that "there might be a few non-member States whose consent might also be necessary, but it should not be impossible to devise a means of obtaining the assent of these States to the terms of the resolution".

2. The problem was discussed in the Sixth Committee at the seventeenth session of the General Assembly <sup>2/</sup>. In response to requests by several delegations, the Secretariat submitted a list of multilateral agreements concluded under the auspices of the League of Nations, of which the Secretary-General acts as depositary, and which are not open to new States <sup>3/</sup>. Twenty-six agreements which have entered into force were listed in Part A, and five agreements which have not yet entered into force were listed in Part B. With respect to participation by States which were not Members of the League and which did not take part in the drafting, most of these treaties provided that they could be signed or acceded to only by those States to which the

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<sup>1/</sup> Report of the International Law Commission, covering the work of its fourteenth session (1962), Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209), Chapter II, page 12.

<sup>2/</sup> Mentioned by the representatives of Cameroon, Indonesia and Poland (740th meeting), Cyprus (741st meeting), and Israel (743rd meeting); formed the main subject of discussion at the 748th through 752nd meetings.

<sup>3/</sup> A/C.6/L.498

Council of the League had communicated a copy of the treaty for that purpose; in a few cases, however, participation by non-members was restricted to those who had been invited to or had participated in the conference that drafted the treaty, without any mention of invitations by the Council.

3. A draft resolution, twice revised by its sponsors <sup>4/</sup>, was introduced jointly by Australia, Ghana and Israel. The draft in its original form was not discussed by the Committee, since the first revision was submitted before the debate began. The draft as first revised requested the Secretary-General to ask the parties to the conventions listed in an Annex-- i.e. the twenty-six agreements which have entered into force, given in Part A. of the list prepared by the Secretariat-- to state, within twelve months from the date of the inquiry, whether they objected to the opening of the Conventions to which they were Parties, for accession by any State member of the United Nations or member of any specialized agency. If the majority of the Parties to a convention had not objected within that period, the Secretary-General would be authorized to receive in deposit instruments of accession thereto submitted by any such State. The draft concluded by recommending that the Parties to the conventions in question should recognize the legal effects of instruments so deposited <sup>5/</sup>.

4. The sponsors of the draft resolution pointed out that their draft involved three stages: first, an inquiry to the Parties whether they objected to opening a convention; second, an authorization to the Secretary-General to receive new instruments of accession; and third, a recommendation that the legal effect of new instruments deposited should be recognized. The first two stages relating to actions by the Secretary-General, were purely administrative in character, and did not affect legal relationships. The third stage, that of recognition of the legal effect of newly deposited instruments, would be only a recommendation of the General Assembly, and the method of such recognition was not affected by the draft resolution, but would be left to be determined by each of the Parties in the light of its constitutional and other

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<sup>4/</sup> A/C.6/L.504 and Revs.1 and 2.

<sup>5/</sup> The second revision (A/C.6/L.504/Rev.2) replaced the references to "accession" by references to "acceptance", and added provisions recommending that Parties to the conventions should communicate to the Secretary-General their consent to participation by States depositing instruments of acceptance, and requesting the Secretary-General to inform members of such communications.

legal requirements. The second revision of the draft contained a recommendation that Parties to the conventions should communicate to the Secretary-General their consent to participation by States depositing instruments of acceptance; it was explained that it was not intended that such consent should be given each time a new instrument was deposited, but rather that it should be given in advance, so that any State depositing an instrument would be able to avail itself of that consent.

5. There was wide agreement in the Sixth Committee on the desirability of opening the League treaties to new Parties. The provisions of the three-power draft resolution, however, were subjected to various criticisms. Some representatives, including those of Italy, France and Chile, felt that what was really involved in the first stage was the agreement of the Parties to change a rule on participation which had been laid down in the conventions, and that for reasons of international and constitutional law consent to such a change could not be given informally or tacitly, by a mere failure to object. They therefore considered that a procedure of formal express consent was essential. Some stated that the course which was legally preferable in order to avoid uncertainty and constitutional difficulties was to prepare a protocol of amendment of the League conventions, as had been done several times before by the General Assembly. The sponsors of the three-power draft and some other delegations, however, believed that a requirement of express consent would mean a delay of years in the participation of new States, and that such a requirement was cumbersome and unnecessary.

6. Some representatives, including those of Hungary and Czechoslovakia, considered that the fact that some new States might have become bound by the League conventions through succession to Parties which were their predecessors made it difficult to determine the list of Parties to the conventions, which would have to be done under the draft resolution. The representative of France considered that inviting new States to accede to the conventions appeared to ignore the possibility that they might have become Parties by succession, and that such an invitation would prejudice the work of the International Law Commission on State succession. The sponsors replied that the question of opening the conventions for new accessions was wholly unconnected with succession of States, and could not prejudice the latter question.

7. A number of representatives, including those of Hungary, Czechoslovakia, Poland and Tunisia, thought that the conventions should be opened to all States, instead of only to States Members of the United Nations or members of any specialized agency, as provided in the draft. It was answered that many States were unwilling to undertake treaty obligations in respect of various countries whose existence as States was in dispute, and therefore the limitation had to be maintained.

8. Various other criticisms were made respecting the three-power draft. The representative of Chile considered that its provision for a simple majority was in conflict with the requirement of a two-thirds majority in paragraph 1 (a) of article 9 of the provisional draft articles on the law of treaties adopted by the International Law Commission. The representative of France thought that it should have been made clear that accessions made in accordance with the resolution should be without reservations, since it was doubtful that the recent practice with regard to reservations could be followed with respect to the older conventions.

9. The majority of the Sixth Committee felt that there had not been sufficient time to study and obtain instructions on the three-power draft, which raised complex questions of law, technique and practice. It was therefore desired to examine the matter further at the eighteenth session of the General Assembly in 1963. In view of this feeling, the sponsors of the three-power draft decided not to request that it be voted on at the seventeenth session.

10. The representatives of India and Indonesia then introduced a draft resolution <sup>6/</sup> which would request the International Law Commission to study and report on the question of participation of new States in general multilateral treaties concluded under the auspices of the League of Nations, with special reference to the three-power proposal and the views expressed in the discussions, and would place the question on the provisional agenda of the eighteenth session. After a discussion, which mainly centred around the expression "new States" and possible replacements for it, India and Indonesia, joined by Ghana, submitted a revised version of the draft <sup>7/</sup>. The revised version asked the Commission to study the question of "extended participation" in the treaties, and omitted the special reference to the proposal of Australia, Ghana and Israel. That draft was unanimously adopted by the Sixth Committee at its 752nd meeting. On the Committee's report <sup>8/</sup>, the General Assembly, without discussion, unanimously adopted the resolution as resolution 1766 (XVII).

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<sup>6/</sup> A/C.6/L.508

<sup>7/</sup> L/C.6/L.508/Rev.1

<sup>8/</sup> L/5287 and Corrs.1 and 2.