



Thursday, 16 November 1950, at 10.45 a.m.

Flushing Meadow, New York

CONTENTS

| | <i>Page</i> |
|--|-------------|
| Tribute to the memory of the President of the Military Junta of Venezuela | 383 |
| Installation of the Assistant Secretary-General in charge of the Department of Conference and General Services | 383 |
| Organization of a United Nations postal administration: report of the Fifth Committee (A/1507) | 384 |
| Expenses of the Permanent Central Opium Board. Assessment of non-members of the United Nations, signatories of the Convention of 19 February 1925 relating to narcotic drugs: report of the Fifth Committee (A/1497) | 384 |
| Permanent financial regulations of the United Nations: report of the Fifth Committee (A/1496) | 384 |
| Budget estimates for the financial year 1951: reports of the Fifth Committee . . | 384 |
| Reservations to multilateral conventions: report of the Sixth Committee (A/1494 and Corr.1) | 384 |
| Convention on the Declaration of Death of Missing Persons: reports of the Secretary-General (A/1329) and the Fifth Committee (A/1506) | 388 |
| Question of the representation of China in the United Nations: membership of the special committee | 390 |
| Former Italian colonies: (a) reports of the United Nations Commissioner in Libya and (b) reports of the administering Powers in Libya: reports of the <i>Ad Hoc</i> Political Committee (A/1457) and the Fifth Committee (A/1509 and Corr.1) | 393 |

President: Mr. Nasrollah ENTEZAM (Iran).

Tribute to the memory of the President of the Military Junta of Venezuela

1. The PRESIDENT (*translated from French*): We learned with horror and indignation of the assassination of the President of the Military Junta of Venezuela. Although I have already sent a telegram to the government of that country expressing the condolences of the United Nations, I should like to repeat today to the delegation of Venezuela the expression of our sincere sympathy; I invite representatives to rise and observe one minute of silence in memory of the deceased.

The representatives rose and observed one minute's silence.

2. Mr. GONZALEZ (Venezuela) (*translated from Spanish*): I wish to express to the President and to the members of the Assembly my personal thanks and

those of the Government of Venezuela and of my delegation for the tribute paid to the memory of the President of the Military Junta of Venezuela, who was vilely assassinated on 13 November.

3. The tribute is the more deeply appreciated by Venezuela because for us this grievous event represents the first occasion in the whole annals of the history of Venezuela that a President or any other public official has been struck down by the treacherous bullets of an assassin.

Installation of the Assistant Secretary-General in charge of the Department of Conference and General Services

[Agenda item 18]

At the invitation of the President, the Vice-Presidents took their places on the rostrum.

The Secretary-General accompanied Mr. Shamald-haree Lall, Assistant Secretary-General in charge of the Department of Conference and General Services, to the rostrum, and introduced him to the General Assembly.

At the request of the President, Mr. Lall took the oath in accordance with regulations 2 and 3 of the provisional staff regulations.

4. The PRESIDENT (*translated from French*): I congratulate the Secretary-General on his excellent choice and you, Mr. Lall, on your appointment; you have had a long and brilliant career and you are therefore particularly qualified to undertake the responsibilities of this high office. As an Iranian, I am very glad to see a son of India appointed an Assistant Secretary-General of the United Nations, and I sincerely wish you success in your post.

5. Mr. LALL (Assistant Secretary-General in charge of the Department of Conference and General Services): Thank you, Sir.

6. The PRESIDENT (*translated from French*): If there is no objection, I suggest that instead of going on to the second item on our agenda for this meeting, we should deal with the third, fourth, fifth, sixth and seventh items; those items concern reports of the Fifth Committee which it should be possible, I think, to approve in a few minutes.

It was so decided.

Organization of a United Nations postal administration: report of the Fifth Committee (A/1507)

[Agenda item 46]

The draft resolution contained in the report of the Fifth Committee was adopted unanimously.

Expenses of the Permanent Central Opium Board.

Assessment of non-members of the United Nations, signatories of the Convention of 19 February 1925 relating to narcotic drugs: report of the Fifth Committee (A/1497)

[Agenda item 45]

The draft resolution contained in the report of the Fifth Committee was adopted unanimously.

Permanent financial regulations of the United Nations: report of the Fifth Committee (A/1496)

[Agenda item 41]

The draft resolution contained in the report of the Fifth Committee was adopted unanimously.

Budget estimates for the financial year 1951: reports of the Fifth Committee

[Agenda item 39]

APPLICATION OF THE UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION FOR A LOAN FROM THE WORKING CAPITAL FUND (A/1498)

7. Mr. MALIK (Union of Soviet Socialist Republics) (*translated from Russian*): The USSR delegation proposes that the draft resolution on this question should be put to the vote.

8. The PRESIDENT (*translated from French*): It is indicated in paragraph 6 of the report that the draft resolution was approved by 34 votes to 1, with 5 abstentions. Since the Committee's decision was not unanimous, the request of the representative of the Soviet Union is quite justified and I shall put the draft resolution contained in the Fifth Committee's report to the vote.

The draft resolution was adopted by 48 votes to none, with 6 abstentions.

COMPENSATION TO MEMBERS OF COMMISSIONS, COMMITTEES OR SIMILAR BODIES IN CASE OF INJURY OR DEATH (A/1508)

The draft resolution contained in the report of the Fifth Committee was adopted unanimously.

Reservations to multilateral conventions: report of the Sixth Committee (A/1494 and Corr.1)

[Agenda item 56]

9. The PRESIDENT (*translated from French*): I call upon the Rapporteur to present the Sixth Committee's report on reservations to multilateral conventions.

10. Mr. KURAL (Turkey), Rapporteur of the Sixth Committee, (*translated from French*): I have the honour to submit to the General Assembly the Sixth Committee's report on its study of the question of reservations to multilateral conventions.

11. The question was placed before the General Assembly by the Secretary-General, who desired guidance concerning the procedure which he should follow regarding reservations made by States as a condition for acceding to multilateral conventions.

12. At the time the question was placed before the General Assembly, it had acquired a certain practical urgency in view of the special circumstances created by the possibility of the entry into force of the Convention for the Prevention and Punishment of the Crime of Genocide. Those circumstances made it imperative to decide whether States which had made reservations to which objections had been raised were to be counted among those whose accession was necessary for the entry into force of the convention.

13. It was only natural that during the debate on such a question certain important and general problems should have been raised and discussed. Among them was the problem of the right of States to make reservations and the effect of such reservations; there were also certain closely related problems, such as the competence of the Committee to give an opinion on the larger aspects of the problem, the organ of the United Nations to which the problem might be referred and the need for giving provisional instructions to the Secretary-General.

14. All these problems are of considerable interest from the general viewpoint of the development of international law and from the particular viewpoint of the procedure to be followed in the United Nations with regard to reservations to multilateral conventions.

15. During a particularly interesting debate which lasted two weeks, very divergent points of view and a number of different shades of opinion became apparent

in the Committee. The broad outline of the discussion may be found in the Committee's report [A/1494 and Corr.1]. The summary records of the meetings contain a more detailed description of the debates and show the various shades of opinion more clearly.¹

16. At the 222nd meeting of the Sixth Committee, held on 16 October, the Assistant Secretary-General in charge of the Legal Department announced that the Convention for the Prevention and Punishment of the Crime of Genocide had received a sufficient number of instruments of ratification and accession to make up the twenty required to permit its entry into force, whatever the theory adopted to determine the validity of instruments containing reservations. The majority in the Sixth Committee considered that the problem had thus lost some of its urgency and were inclined to favour the adoption of a compromise solution thanks to which the Committee would be able, for the time being, to defer a solution on the substantive problems which had been raised.

17. The draft resolution which was approved and which may be found at the end of the report provides that the International Court of Justice should be requested for an advisory opinion on certain questions concerning reservations made to the convention on genocide; it further provides that the International Law Commission should be invited to study the question of reservations both from the point of view of codification and from that of the progressive development of international law, and to submit its report to the General Assembly at the next session.

18. On behalf of the Sixth Committee, I urge the Assembly to adopt this draft resolution.

19. The PRESIDENT (*translated from French*): In conformity with rule 67 of the rules of procedure and with the practice of the Assembly, I shall take a vote on whether the Assembly wishes to discuss the draft resolution.

It was decided, by 38 votes to 6, with 7 abstentions, not to discuss the draft resolution.

20. The PRESIDENT (*translated from French*): We shall therefore proceed to the vote without discussion. There are two documents before the Assembly: the draft resolution submitted by the Sixth Committee [A/1494 and Corr.1], and an amendment submitted by thirteen delegations [A/1495] which calls for the addition of a paragraph to the draft resolution.

21. I shall put the amendment to the vote first. If it is adopted, I shall put to the vote the draft resolution as amended. If the amendment is rejected, I shall put to the vote the draft resolution as it stands.

The amendment was adopted by 36 votes to 6, with 9 abstentions.

22. The PRESIDENT (*translated from French*): I shall now put to the vote the draft resolution as amended by the addition of this paragraph.

23. Mr. MALIK (Union of Soviet Socialist Republics) (*translated from Russian*): The Soviet Union delegation proposes that a separate vote should be taken on paragraph 1 of the operative part of the draft re-

solution, dealing with a request to the International Court of Justice.

24. The PRESIDENT (*translated from French*): The request for division is in order. I shall therefore put the preamble to the vote and then the individual paragraphs of the operative part.

The preamble was adopted by 49 votes to 1, with 5 abstentions.

Paragraph 1 of the operative part was adopted by 40 votes to 10, with 7 abstentions.

Paragraph 2 of the operative part was adopted by 48 votes to 2, with 8 abstentions.

The draft resolution as a whole, as amended, was adopted by 47 votes to 5, with 5 abstentions.

25. The PRESIDENT (*translated from French*): Before considering the next item on the agenda, I call upon the representative of the Soviet Union to explain his vote.

26. Mr. MOROZOV (Union of Soviet Socialist Republics) (*translated from Russian*): The USSR delegation wishes to explain the reasons for its vote on the draft resolution of the Sixth Committee dealing with reservations to multilateral conventions. The delegation of the Soviet Union voted against the draft resolution as a whole and also against that part which relates to the request to the International Court of Justice for an advisory opinion; it also voted against the adoption of the amendment submitted by a group of delegations [A/1495].

27. In the opinion of the USSR delegation, the part of the resolution which requests the International Court of Justice to give an advisory opinion on questions connected with reservations to the Convention for the Prevention and Punishment of the Crime of Genocide should have been excluded. As we know, the question of reservations to multilateral conventions was submitted by the Secretary-General for the consideration of the Assembly after certain States had objected to the illegal practice of the Secretary-General, who had stated that if even a single party to the convention on genocide objected, he would refuse to receive instruments of ratification in respect of that convention which contained reservations [A/1372, annex I, section IV].

28. When this matter was discussed in the Sixth Committee, the delegation of the Soviet Union pointed out that such an attitude was contrary to the convention on genocide, which did not establish any limitations or any special procedure for the receipt of ratifications by the depositary.

29. The fact that the convention on genocide does not establish any limitations regarding reservations is wholly in accordance with the principle of State sovereignty. According to that principle, a State is free to determine its attitude towards any matter dealt with in a multilateral international convention. This principle is also confirmed by the practice followed in connexion with the conclusion of multilateral international conventions. One may cite such instances as The Hague conventions of 18 October 1907, to which some sixty reservations were made when they were signed, and the ratifications containing those reservations were accepted without any special requirements for the consent of other parties to

¹ See *Official Records of the General Assembly, Fifth Session, Sixth Committee*, 217th to 225th meetings inclusive.

the conventions. When the Geneva conventions of 1949 on the protection of war victims were signed, the United States, the United Kingdom, the Netherlands, Canada, Argentina, Brazil, Hungary, Italy, Poland, the USSR and a number of other countries made a series of reservations. Neither the depositary of the Geneva conventions of 1949—the Swiss Government—nor the parties to the conventions claimed that such reservations could be presented only with the consent of the other parties.

30. These facts, and many others, show that the submission of reservations when signing or ratifying international conventions is the inalienable right of every State, a sovereign right which cannot be disputed by other States.

31. The proposal that reservations by a party to a convention should be made conditional upon the consent of all the other parties is also wrong for this reason, namely, that reservations are usually made because a State which was in a minority during the consideration of the text of a convention, but which agrees with the basic provisions of the convention, continues to hold that certain minor provisions which were included in the text of the convention despite its arguments are unacceptable. Consequently, the adoption of a proposal of this kind can only weaken international co-operation.

32. This fact should be particularly stressed since in the case in point we are dealing with an important convention—the Convention for the Prevention and Punishment of the Crime of Genocide. There is no need to prove that the United Nations is undoubtedly interested in seeing that as many States as possible assume the obligation to take measures for the prevention and punishment of so heinous a crime against the honour and conscience of nations as genocide. Consequently, in the case of the convention on genocide, it is particularly impossible to agree to measures at variance with that convention and calculated primarily to restrict the number of parties to the convention by setting up artificial barriers that may prevent a number of States which accept all its basic provisions, but make reservations regarding certain minor provisions, from acceding to the convention.

33. Despite the fact that there is no provision in the convention on genocide which prevents the submission of reservations, some delegations have maintained that the General Assembly should establish various limitations and set them forth in the form of provisional instructions to the Secretary-General. Such action is in conformity neither with the text nor with the spirit and purposes of the convention on genocide; it is merely an attempt to make arbitrary additions to the convention which has already been signed by laying down conditions whereby new legal relationships would be created among the parties to the convention. It is obvious that the General Assembly has no power to do that. Naturally, the proposals to that effect which were introduced by the delegations of the United States and the United Kingdom in the Sixth Committee had to be withdrawn, as most delegations refused to support such a view.

34. As regards the proposal that the International Court of Justice should be requested to give an advisory opinion on reservations to the convention on genocide, that proposal, too, was and is unacceptable to the USSR delegation. It follows from what I have said that the

text of the convention on genocide does not require any clarification in respect of the submission of reservations; consequently, in the opinion of the delegation of the Soviet Union, there were no grounds for requesting the International Court of Justice to give an advisory opinion on this matter. The USSR delegation therefore considered that the paragraph in the resolution relating to the request to the Court for an advisory opinion should be deleted, and it therefore voted against the adoption of that paragraph.

35. As I have said, the USSR delegation also voted against the amendment to the draft resolution of the Sixth Committee introduced by the delegations of the United States, the United Kingdom and other States [A/1495]; I shall explain why it did so.

36. Article XVII of the Convention on Genocide deals in detail with the Secretary-General's duties as depositary of the Convention, and provides that he shall notify the States concerned of all ratifications. The Secretary-General must do that irrespective of whether such ratifications contain reservations or not. The Convention does not, however, place upon the Secretary-General the duty of soliciting the approval of the parties to the Convention in respect of reservations made by other parties, as is proposed in the amendment. The delegation of the Soviet Union considered that this approval could not be adopted, since the Assembly is not competent to take decisions which might impose on parties to multilateral conventions already signed and ratified by several States, such as the Convention on Genocide, obligations which are not prescribed in those conventions.

37. The USSR delegation regarded the amendment as unacceptable also because, as I have already pointed out, the convention on genocide clearly lays down the duties of the Secretary-General as depositary and does not establish any limitations or special procedure for the submission of reservations when the convention is ratified.

38. For these reasons the delegation of the Soviet Union regards the resolution adopted by the General Assembly on the recommendation of the Sixth Committee as contrary to the real aims of the Organization, which are to develop and strengthen international co-operation.

39. The USSR delegation urges that the greatest possible number of States, both Members and non-members of the United Nations, should be parties to so important a convention as the Convention for the Prevention and Punishment of the Crime of Genocide, that heinous crime against humanity.

40. The PRESIDENT (*translated from French*): Two delegations, those of Peru and Poland, have asked to speak to explain their votes. I shall limit the time allowed for each explanation to seven minutes.

41. Mr. MAURTUA (Peru) (*translated from Spanish*): My delegation abstained from voting on paragraph 1 of the operative part of the resolution proposed by the Sixth Committee, because it considers that the function of the International Court of Justice is not to legislate or to create new rules but merely to apply the existing law, whether in the form of accepted norms, general principles or established custom.

42. Paragraph 1 of the resolution, under which an advisory opinion of the Court is requested, appears to be an unnecessary addition to the text of the resolution, which might perhaps be regarded, in view of its possible consequences, as creating a precedent in the matter of reservations.

43. My delegation considers that as the International Law Commission will give priority to the question of reservations, the preamble and paragraph 2 of the operative part of the resolution logically form an organic whole and that, as regards the implementation of those provisions, the Secretary-General will merely be guided by the instructions we have approved in the joint amendment, that is, will in practice permit governments to use either of the two main systems for the formulation of reservations.

44. Mr. LACHS (Poland): In explaining my vote on behalf of the Polish delegation, I want to stress at the very outset that both the Charter and practice have made the United Nations into a centre in which international treaties are drafted, conventions prepared and international instruments concluded. If this is so—and no one can deny the fact that it is so—the United Nations, in performing its functions, should act in accordance with the principles of the Charter and the principles of international law in general.

45. One part of the problem is the right of every State to enter into international instruments and to adhere to them whenever it sees fit to do so. It should of course be the goal of the Organization to try to bring together in whatever treaty it prepares the greatest possible number of States, both Members and non-members of the United Nations.

46. During the debate in the Sixth Committee on the subject of reservations to multilateral conventions, the delegation of Poland strongly maintained that every State was free to write into a treaty reservations compatible with its national interests. This indeed is a substantive rule of law well established in international relations. Our view is substantiated by practical legal opinions, and in particular by the long-standing practice of the States of the American continent.

47. Our view is that the principle of the freedom of reservations is a rule of law and cannot be altered by any decision of the General Assembly. We have therefore opposed any decision on the substance of the issue, and have particularly been opposed to any reference being made to the International Court of Justice.

48. The request made in this particular case concerns a convention drafted, signed and ratified by several States, but not all of them Members of the United Nations. The request to the Court, to our mind, amounts to an attempt to revise a document drafted and approved by the United Nations, because the procedure provided for in the resolution is not laid down in the text of the convention itself. What is more, it is a well established principle of international law that the right to interpret a treaty or to ask for an interpretation is reserved only to the parties which have signed and ratified the treaty.

49. For this very reason, we opposed the reference of the case to the International Court of Justice. We also opposed any decision on the substance of the question, since no such decision can change the basic rule of law—the right of every State to write into an international

instrument those reservations which it thinks suitable and compatible with its national interest.

50. Mr. INGLES (Philippines): Two separate but closely interrelated issues are raised in the resolution which has just been adopted. The first issue relates to the particular problem of the legal effect of reservations to the Convention for the Prevention and Punishment of the Crime of Genocide. The second issue relates to the general problem of the legal effect of reservations to multilateral conventions, especially those of which the Secretary-General is the depositary.

51. The resolution just adopted by the General Assembly submits the first issue, that is, the particular problem of reservations to the convention on genocide, to the International Court of Justice for an advisory opinion, and, at the same time, it refers the second issue, that is, the general problem of reservations to multilateral conventions, to the International Law Commission for study.

52. In order to explain the vote of my delegation against paragraph 1 of the operative part of the resolution, my delegation deems it necessary to discuss briefly what was the real problem presented to the General Assembly as a result of the item proposed by the Secretary-General. The Secretary-General submitted the general question of reservations to multilateral conventions [A/1372] to the attention of the General Assembly because, as the depositary of conventions adopted by the General Assembly and multilateral agreements concluded under the auspices of the United Nations, he desired guidance concerning the procedure he should follow regarding ratifications and accessions to such conventions or multilateral agreements made conditional upon reservations. The Secretary-General argued that the problem had acquired current importance in connexion with the convention on genocide because a dispute might arise as to the date of its entry into force.

53. While the question was pending in the Sixth Committee, however, the Secretary-General announced that a sufficient number of ratifications had been received to permit the entry into force of the convention on genocide, even disregarding those ratifications and accessions with reservations. The Secretary-General noted that the problem of the entry into force of the convention had thus been solved. He noted further that the problem of the legal consequences deriving from the deposit of the instrument of ratification of the Philippines and the instrument of accession of Bulgaria, which included reservations which had met with objections from one Member State, still remained to be settled. That problem, however, had ceased to have any urgency.

54. One would have thought that the convention on genocide no longer posed any special problem for the Secretary-General, apart from the general problem of the legal effect of reservations to multilateral conventions of which he is the depositary. So that the only problem that was in fact before the Sixth Committee, and before the General Assembly when the resolution was voted as a result of the item proposed by the Secretary-General, was the general problem of the legal effect of reservations to multilateral conventions.

55. My delegation was in favour of the resolution

adopted by the Assembly only in so far as it invited the International Law Commission to give priority to the study of the general problem, especially as regards multi-lateral conventions of which the Secretary-General is the depositary, and to report to the General Assembly at its next session. But my delegation was opposed to the inclusion in the resolution of the particular problem of the legal effect of reservations to the convention on genocide as a separate proposition, independent of the problem of the legal effect of reservations to multi-lateral conventions in general, and to the submission of that problem to a different organ, namely, the International Court of Justice, for an advisory opinion. In the view of my delegation, such a procedure not only confused the real issue before the Assembly, but invited conflicting or contradictory opinions from two different organs.

56. Apart from these logical and practical considerations, however, my delegation had strong legal objections to having the General Assembly take the initiative in referring specific questions relating to the application of the convention on genocide to the International Court of Justice. My delegation merely wishes to reiterate the legal arguments it advanced in support of its position in the Sixth Committee, which is that it should be left to the contracting parties themselves to submit any disputes as to the interpretation or application of the convention on genocide to the International Court of Justice, as is provided in article IX of the convention, and that it is not for the General Assembly but for the parties directly concerned to formulate the issues to be submitted to the judgment of the Court.

57. The PRESIDENT: I should like to remind you that each speaker is permitted seven minutes only.

58. Mr. INGLES (Philippines): My delegation only wishes to put on record the fact that it voted against paragraph 1 of the operative part of the resolution in order to safeguard its position.

Convention on the Declaration of Death of Missing Persons: reports of the Secretary-General (A/1329) and the Fifth Committee (A/1506)

[Agenda item 48]

59. The PRESIDENT (*translated from French*): I wish to point out that the General Assembly is not required to reach a decision on this item. Pursuant to resolution 369 (IV), a United Nations Conference on Declaration of Death of Missing Persons was convened and met at Lake Success from 15 March to 6 April 1950. A convention was established and opened for accession by States.

60. Article 8, paragraph 1 of that convention provides for the establishment within the framework of the United Nations of an international bureau for declarations of death, the seat, composition, organization and method of operation of which shall be determined by the Secretary-General. Article 15 of the convention—the part in which we are interested—states that the establishment of the bureau provided for in article 8 shall require the approval of the General Assembly of the United Nations. All that the Assembly need do, therefore, is to approve or not approve the establishment of the bureau.

61. The problem of the expenditure which the establishment of the bureau will entail, which is dealt with in the Fifth Committee's report, will probably not come up until next year, because the convention is not likely to come into force in the immediate future.

62. As this item of the agenda has not been examined in committee, delegations will perhaps desire to express their views before the General Assembly. I draw attention to the draft resolution submitted by the delegations of Belgium, Denmark, Sweden and Uruguay [A/1510], which invites the General Assembly to approve the establishment of the international bureau for declarations of death.

63. Mr. MOROZOV (Union of Soviet Socialist Republics) (*translated from Russian*): The proposal contained in the draft resolution submitted by Belgium, Denmark, Sweden and Uruguay [A/1510] for the establishment within the framework of the United Nations of an international bureau for declarations of death, on the ground that this is provided for in article 15 of the Convention on the Declaration of Death of Missing Persons, should, in the view of the Soviet Union delegation, be rejected. I shall give the reasons for that view.

64. In the *Ad Hoc* Committee of the Economic and Social Council, which met in Geneva in June 1949, the USSR representative pointed out² that the conclusion of an international convention on the declaration of death of missing persons was inexpedient inasmuch as the problem connected with such declarations of death should and could be solved by providing the governments of countries which had suffered enemy occupation during the first part of the war with full information as to the whereabouts of those of their nationals who fell within the category of displaced persons.

65. It was pointed out in the *Ad Hoc* Committee that these problems could also be solved by means of internal legislative measures to be adopted by each of the States concerned.

66. It was accordingly proposed at the time that States should be invited to adopt and to put into effect the following practical measures:

(a) States on whose territory refugees and displaced persons were to be found should communicate lists of such persons to the governments of the countries where they had been permanently domiciled before the war; and

(b) States in which the question of the procedure for declaring the death of missing persons had not been regularized by legislation should introduce appropriate legislative measures in accordance with their constitutional processes.

67. The USSR delegation considers that if those proposals had been adopted and implemented, they could have settled the entire question under discussion. Nevertheless, the majority in the *Ad Hoc* Committee and in the Economic and Social Council [resolution 249 (IX)] and later the majority in the General Assembly [resolution 369 (IV)] took a different path.

68. The conference which met in New York in the spring of 1950 drafted and adopted the Convention on the Declaration of Death of Missing Persons.

² See document E/1368.

69. It should be observed that doubts as to the expediency of concluding the convention were expressed not only by the delegation of the Soviet Union but also by a number of other delegations of Member States. Those doubts were reflected, for instance, in the fact that when the draft convention was discussed at the fourth session of the General Assembly [266th meeting], fifteen delegations abstained from voting and one delegation voted against it. Furthermore, the conference which was convened to draft the convention in New York in March 1950 was attended by only twenty-five States, or less than half the number of Member States. Lastly, and this too is a most striking fact, the convention was opened for accession on 6 April 1950, that is to say, more than seven months ago, yet not a single State has acceded to it, not even any of the States which took part in the conference and approved the text of the convention.

70. These circumstances speak for themselves and, in the view of the Soviet Union delegation, would constitute sufficient grounds for avoiding haste in considering the question of establishing the international bureau for declarations of death of missing persons, at least until the convention comes into force.

71. This is not all, however. Quite apart from the foregoing considerations, the establishment of this bureau within the framework of the United Nations is not essential even from the point of view of the provisions of the convention itself. Under articles 8, 9 and 10 of the convention, the bureau is called upon to act primarily as an information office on matters connected with the action taken by the competent tribunals of the various States with regard to declarations of death of missing persons. These articles of the convention show that the bureau is, in particular, to record and register all applications for declarations of death of missing persons which are being dealt with by the tribunals of the States signatories to the convention, to record and register the decisions of those tribunals, and to provide the organizations and persons concerned with information concerning that material.

72. There can be no doubt that if the governments concerned arrange to exchange information at the proper time on steps taken under the convention for the issue of declarations of death of missing persons and on the decisions of the tribunals on such matters, there will be no need to set up a special organ such as the above-mentioned bureau. If that one condition is fulfilled, all the work which is to be done by the proposed bureau can certainly be performed directly by the competent judicial or administrative authorities of the States concerned.

73. Incidentally, the report of the Advisory Committee on Administrative and Budgetary Questions, dated 6 November 1950 [A/1489], shows that the establishment of the bureau would involve considerable expense. At a very tentative estimate, the cost of maintaining the bureau during the initial period alone would be at least \$40,000.

74. It should also be noted that, although article 8 of the convention provides for the establishment of the bureau, the General Assembly is not, of course, bound by that provision in the sense that it must automatically approve the establishment of the bureau. That is the

construction that must be placed, for instance, on article 15 of the convention, which states that the establishment of the bureau provided for in article 8 shall require the approval of the General Assembly of the United Nations.

75. Taking into account all these considerations, as well as the circumstance that no Member State of the United Nations is really interested at this time in the establishment of the bureau, since, as we have already noted, not a single State has acceded to the convention, the USSR delegation will vote against the draft resolution submitted by Belgium, Denmark, Sweden and Uruguay; it feels that that draft should be rejected for the reasons already explained.

76. Mr. PETREN (Sweden) (*translated from French*): The draft resolution now before the General Assembly has been submitted by the delegations of Belgium, Denmark, Sweden and Uruguay, that is, by the same delegations whose proposal^a led the General Assembly, last year, to decide [*resolution 369 (IV)*] to convene the conference that drew up the Convention on the Declaration of Death of Missing Persons.

77. The President has already put the essence of the question far more succinctly than I could do. I should like, however, to say a few words about what the Soviet Union representative has just said.

78. I should like first to point out to him that, under this convention, various kinds of tribunals are competent to issue declarations of death. The following tribunals are listed in article 2, paragraph 2:

"(i) The tribunal of the place of the last domicile of the missing person or of his last voluntary or involuntary residence;

"(ii) The tribunal, in the country of which the missing person was a national, competent under applicable domestic law or, in its absence, the tribunal of the capital of that country;

"(iii) The tribunal of the place of the *situs* of property of the missing person;

"(iv) The tribunal of the place of decease of the missing person;

"(v) The tribunal of the place of domicile or residence of the applicant in the case of an application filed by any of the following relatives: ascendants, descendants, adopted children and their issue, brothers and sisters and their issue, uncles, aunts, or spouse."

79. It is therefore possible for several tribunals to deal with a matter. There is consequently a need for a co-ordinating body that will prevent duplication. Under article 9, the bureau provided for in article 8 of the convention will have the duty of co-ordinating information in the following manner: a tribunal to which an application for declaration of death is made or which has initiated such a proceeding on its own motion, shall, within fifteen days, communicate to the bureau such of the following information as it possesses: full name, nationality, place and date of birth of the missing person, his habitual residence, his last voluntary or involuntary residence, the names and addresses of his

^a See *Official Records of the General Assembly, Fourth Session, Plenary Meetings, Annex, document A/1192*.

closest relatives, the last known date on which he was probably alive according to the application, the name and address of the applicant, his interest and relationship, if any, to the missing person, and the date of institution of the proceedings. This system of information and communication is thus vital and absolutely necessary for the proper functioning of the convention and for the purpose of avoiding duplication.

80. It may also be said that this convention is a part of the general humanitarian activities of the United Nations. Its purpose is to facilitate the remarriage of spouses, proceedings for the distribution of estates, and the adoption of children of missing persons.

81. My delegation and the delegations of Belgium, Denmark and Uruguay have accordingly submitted the draft resolution which is now before the General Assembly.

82. The PRESIDENT (*translated from French*): I think that we may now vote on the matter. I put to the vote the draft resolution submitted by Belgium, Denmark, Sweden and Uruguay [A/1510], which reads as follows:

"The General Assembly,

"Having regard to article 15 of the Convention on the Declaration of Death of Missing Persons established by the United Nations Conference on Declaration of Death of Missing Persons (A/Conf. 1/),

"1. Decides to approve the establishment of the International Bureau for Declarations of Death provided for in article 8 of the aforementioned convention;

"2 Decides that the expenses of the International Bureau should be assessed upon such non-member States as may become parties to the convention, in accordance with the principle adopted in this respect in connexion with the expenses of the International Court of Justice."

The draft resolution was adopted by 38 votes to 6, with 13 abstentions.

83. The PRESIDENT (*translated from French*): I call upon the representative of Poland, who wishes to explain his vote.

84. Mr. KATZ-SUCHY (Poland): The delegation of Poland wishes to put it on record that it opposed the conclusion of the Convention on the Declaration of Death of Missing Persons. In accordance with the Charter and the general principles of law, the problem involved is one which is essentially within the domestic jurisdiction of States and should be decided by internal legislation only. The delegation of Poland holds, therefore, that there is no need to establish the organ envisaged in the convention. Poland is undoubtedly one of the States concerned with the problem and, unfortunately, is familiar with it. But our practice has shown that the competent organs of the State, in the normal course of their activities, can deal with it adequately.

85. We therefore voted against the establishment of the International Bureau for Declarations of Death. The points raised by the representative of Sweden cannot change the situation, as the existing conflict of legislation can never be solved by this type of bureau.

86. Mr. BARTOS (Yugoslavia) (*translated from French*): I have asked to speak in order to explain my vote.

87. My delegation considers that this convention is *res inter alios acta* for those States which have concluded it, since it has never been examined or approved by the General Assembly. No general conclusions can therefore be drawn from it.

88. Secondly, and without repeating the arguments which my delegation has already adduced, we cannot support the text of this convention. We hold it to be contrary to established principles concerning the competence of courts in disputes on the delicate question of the status of persons.

89. Thirdly, we feel that this convention is harmful as regards the general principles and international practice governing such matters. We think it would cause a kind of anarchy since it provides for five different tribunals which are all to have competence in the matter.

90. In conclusion, I wish to say that we are opposed to this convention and to the establishment of these tribunals and that we do not consider ourselves bound even by the general principles embodied in the convention. Furthermore, applicants may always bring questions concerning the settlement of such matters before the Yugoslav courts in accordance with the principles of private international law.

Question of the representation of China in the United Nations: membership of the special committee

91. The PRESIDENT (*translated from French*): We cannot proceed to take up the ninth item of our agenda for today, as it concerns a report of the *Ad Hoc* Political Committee, which is in session at this time. I should like to take advantage of the few minutes remaining to us to discharge a duty placed upon me by the Assembly.

92. At the first meeting of this session, on the proposal of the Canadian delegation, the Assembly adopted a resolution on the representation of China instructing the President to nominate seven members to form a special committee, such nominations to be submitted to the General Assembly for approval. With your permission, I should like to submit for your approval the list I have in mind.

93. I propose that this special committee should be made up of representatives of the following States: Belgium, Canada, India, Iraq, Mexico, Philippines, Poland.

94. Are there any objections to the proposed composition of this special committee?

95. Mr. MALIK (Union of Soviet Socialist Republics) (*translated from Russian*): The USSR delegation considers that, in order to approach this question fairly, it is necessary to select the members of the committee on a different basis from the one referred to by the President.

96. A cursory study of the list of States which, according to the President, should be included in this committee shows, unless I am mistaken, that only two

have recognized the People's Republic of China. Such a ratio of five to two in the committee will, clearly, considerably hamper from the start any objective and comprehensive consideration of this question and the adoption of an unbiased decision. That decision must take into account all the circumstances that have arisen; it must take into account the fact that, as a result of the great and historic events which have taken place in China, a new government has been established, which justly claims—as the representative of one of the original Members of the Organization and one of the States which participated directly in preparing for its establishment—that it has the right to take part in the work of the United Nations and its organs.

97. At the present time China is not represented in the Organization. Its place has been usurped by the representatives of a political group which represents no one but itself. That point was quite clear at the very first meeting of the General Assembly at this session.

98. It is quite clear that with a committee composed in this way it will be difficult to reach the just decision which is required. The position, on this issue, of the overwhelming majority—five to two—will presumably not favour a rapid settlement of this acute and painful problem confronting the United Nations, a problem which so vitally affects the cause of international co-operation and the strengthening of peace and security.

99. The delegation of the Soviet Union therefore considers that the President of the General Assembly should give further thought to the composition of the committee and suggest, if possible, a somewhat different composition, particularly as his proposal today was rather unexpected and was made rather suddenly. The question is not on the agenda and I imagine that a number of delegations which intend to submit their own proposals are possibly not prepared to do so forthwith.

100. It would therefore be expedient not to consider this question and to discuss it either at the afternoon meeting today, or tomorrow.

101. The PRESIDENT (*translated from French*): I should explain why I decided on that proportion. It is true that on the list I have submitted there are only two States which have recognized the Peking Government. But I took as a basis the proportion of Member States of the United Nations which have recognized that government. Seventeen States out of sixty have done so. Unless I am mistaken, that is less than one-third and, in a committee of seven members, the corresponding proportion would be two. That is the proportion I adopted.

102. Under the resolution adopted by the General Assembly on 19 September 1950, the President is to make nominations; but, as in the case when someone is proposed for the chairmanship of a committee, you are free to elect or not to elect those proposed by the President. I am merely making a proposal; it is for the Assembly to decide.

103. There are two possible solutions. Either you are prepared to approve my suggestion or—and this seems to me the only alternative—we can proceed to a secret ballot, each delegation putting on its ballot paper the names of the seven States it wishes to elect to the special committee.

104. Mr. KATZ-SUCHY (Poland): The committee whose appointment is proposed at this meeting of the General Assembly has to fulfil an enormously important task. It has to deal with the problem of the representation of the Chinese people in the United Nations, a problem which has caused many difficulties in this Organization for quite a long time. We know that the action, in the United Nations and outside it, which has been taken by certain States in order to prevent the proper representation of China in this Organization is responsible for the many difficulties which this Organization and the world at large faces today.

105. I think, therefore, it is most important that, before appointing the committee, most careful consideration should be given to its composition. That consideration should not concern arithmetic or figures but should face the issue squarely. We know that two viewpoints are represented in connexion with this problem. One view, although a minority view in the General Assembly, is at the same time a view held by an enormous majority in the world; it is that the only government legally qualified to represent China in the United Nations is the Central People's Government of the People's Republic of China. There is a group of States—at the moment a majority—which prevents the entry of representatives of that country into the United Nations and maintains in the Organization a fictitious political group, obedient to it, which claims to represent a State.

106. I do not think that the problem should be dealt with on the basis of the number of countries which have recognized the Government of the People's Republic of China, or that the degree of recognition extended to that government should decide the proportion of the proposed committee. That is the only basis on which that list seems to have been drawn up, and that is why my delegation has grave doubts as to the wisdom of appointing a committee composed of such States.

107. If the General Assembly wants to face the issue and wants to give real consideration to the matter with some degree of impartiality, quite a different approach must be adopted. We all know that such a composition of the proposed committee, with two States recognizing the Central People's Government and five States not recognizing that government—although by mathematical calculations that would be in proportion to the number of States which have recognized that government—prejudges the issue. It shows what the result of the deliberations of the proposed committee will be. That is something that should be avoided by the General Assembly.

108. The problem of the representation of China, in the first place, should never have come up. Had it not been for certain sinister political purposes which are contrary to the principles of the Charter, that problem never would have come up. But if we have to face it, let us ensure a certain amount of impartiality in the composition of such a committee. Let us ensure that both views expressed in the General Assembly are equally represented and therefore give equal representation to each. In that way, each view will have a chance of prevailing. To do anything else is to prejudge the issue.

109. I must repeat that the problem of the representation of China is an important one. Its solution in the

spirit and letter of the Charter will help this Organization to proceed with the solution of many problems; the continuation of the present state of affairs, even if justified and subscribed to by some committee, the composition of which prejudices the issue, will surely not help this Organization in the solution of those problems.

110. The PRESIDENT (*translated from French*): I should perhaps refresh representatives' memories a little. As I have said already, the resolution was adopted at the first meeting of the session. The committee we are now to appoint is not to settle the question of the representation of China. The resolution says that the committee is "to consider the question of Chinese representation and to report back, with recommendations, to the present session of the General Assembly, after the Assembly shall have considered item 62 of the provisional agenda (Cuban item)".⁴ The report and recommendations of the committee will therefore be discussed by the General Assembly.

111. In order to avoid a lengthy discussion, we might choose one of the two following alternatives: either I shall put my proposal to the vote, or the Assembly will take a vote by secret ballot.

112. I shall now put the matter to the Assembly. Will members in favour of a vote by secret ballot kindly raise their hands.

113. The USSR representative has asked for the floor: he may speak only on the vote, as the voting has started.

114. Mr. MALIK (Union of Soviet Socialist Republics) (*translated from Russian*): The delegation of the Soviet Union has suggested a third alternative. The President has made a proposal and suggested the States which should compose the committee now under discussion. Representatives should be given a chance to think over the President's proposal before a vote is taken. I consider that delegations have a right to ask the President to give them an opportunity to do so, if only for two or three hours. That is the right of every delegation which intends to vote on any proposal submitted not in accordance with the rules of procedure. In accordance with the rules of procedure, a proposal may be put to the vote only if it is submitted twenty-four hours before the opening of a meeting.

115. The question of the membership of the committee is an important one and I cannot agree with the President that the committee will be of no importance, since it will merely make recommendations. It is not as simple as that. We are setting up a committee to study a most important question, to review all the available material on the subject, and to study the history and substance of the matter as well as the legal, political and even moral aspects of this question. The committee will therefore have to give most serious consideration to the task assigned to it and submit its recommendations to the General Assembly in plenary meeting.

116. It is our experience that only rarely does the Assembly set aside or reject the recommendations of committees. It is therefore impossible to agree that this particular committee will be of no importance. That is my first point.

117. My second point is that the reasons given for determining the membership of the committee on the basis of the fact that seventeen Member States of the United Nations have recognized the People's Republic of China, while the remainder have not recognized it, cannot be considered convincing. Hitherto membership of the United Nations has never been based on the principle of recognition. The Members of the United Nations determine their stand in the light of the principle that lack of recognition or the absence of diplomatic relations as between particular Members of the Organization is not an obstacle to their co-operation in the United Nations in the interests of universal peace and the development of friendly relations and co-operation among nations.

118. I consider, therefore, that there are insufficient grounds for adopting the principle on the basis of which the President has made his proposal. As far as I remember, the Secretary-General's memorandum on this question [S/1466], issued, I believe, in March 1950, stressed the point that the decision taken on this question by the organs of the United Nations and the Member States should not be based on the principle of recognition or non-recognition. Hence, if the President bases his selection of the members of the committee on the fact that seventeen Member States of the United Nations have accorded recognition to the Government of the People's Republic of China, while the remainder have not, I consider that this cannot constitute a valid argument.

119. In the light of the foregoing considerations, the delegation of the Soviet Union proposes as a third alternative that we should defer voting at the present time and return to the question when we meet again either this afternoon or tomorrow morning; in this way all representatives will have an opportunity to consider more carefully the membership proposed by the President and will then be able to express their views on the composition of the committee by open or secret ballot.

120. The USSR delegation therefore formally proposes that the vote on the composition of this committee should not be taken here and now, but should be deferred.

121. The PRESIDENT (*translated from French*): Mr. Malik, if you had submitted your proposal in that form at the outset, I should have accepted it at once. You have asked me, as a matter of courtesy no doubt, to review my proposal or to present a new one. I think that is not necessary. If, after two months of thought, I have not arrived at a better proposal than this one, a few more hours cannot change anything.

122. Nevertheless I find it quite normal that you should ask for time to consider the matter, so normal, indeed, that it is not even necessary to put your proposal to the vote. For my part, I accept your proposal. That is what I should have done from the very beginning if you had submitted it in that form.

123. We shall therefore proceed to the vote either this afternoon, towards the end of the meeting, if you think that will give you enough time to consider the matter, or tomorrow. I ask you, however, not to begin a debate on the substance of the question. I shall not give the floor to anyone for that purpose, because we had come to the vote. The USSR proposal concerned the vote; it was

⁴ Item 61 of the agenda as adopted.

therefore in accordance with the rules of procedure. At the end of the meeting this afternoon, or tomorrow, we shall proceed to the vote. At that time, if there are differing proposals concerning the voting procedure, I shall put them to the vote.

Former Italian colonies: (a) reports of the United Nations Commissioner in Libya and (b) reports of the administering Powers in Libya: reports of the *Ad Hoc* Political Committee (A/1457) and the Fifth Committee (A/1509 and Corr.1)

[Agenda item 21]

Mr. López (Philippines), Rapporteur of the Ad Hoc Political Committee, presented the report of the Committee and the accompanying draft resolution (A/1457).

124. The PRESIDENT (*translated from French*): I shall first ask the General Assembly whether it wishes to have a debate on this item of our agenda.

A vote was taken by show of hands.

125. The PRESIDENT (*translated from French*): Thirteen votes have been cast in favour and 24 against; thus more than one-third of the members present and voting have expressed the desire that a debate should be held. I therefore call upon the first speaker on the list, the representative of France.

126. Mr. PLAISANT (France) (*translated from French*): Since the General Assembly is called upon to take a decision on the draft resolution approved by the *Ad Hoc* Political Committee after that organ had considered the report of the United Nations Commissioner in Libya [A/1340⁵ and A/1405] and the reports of the Administering Powers in Libya [A/1387 and A/1390 and Add.1], the French delegation deems it necessary to make its position clear.

127. As was recalled in the *Ad Hoc* Political Committee by the representative of France, the French delegation was unable last year to support the recommendation concerning Libya [resolution 289 A (IV)]. It abstained, not because it objected to the principle set forth in that recommendation—the establishment of an independent Libya—but because it felt that the methods prescribed by the General Assembly to give effect to that principle failed to take sufficiently into consideration the geographical, political and economic factors of the problem. It drew the Assembly's attention to the disadvantages and even dangers which might result from the enforcement of provisions inspired by the need to maintain stability and security in an area whose development, like that of every other part of the world, should proceed smoothly and without hitches.

128. The new resolution suggested by the *Ad Hoc* Political Committee, however, not only confirms the recommendations contained in resolution 289 A (IV), but goes even further. It lays down arbitrary rules for the achievement of the successive stages in which the constitutional development of Libya is to take place, it specifies further details concerning that development and the transfer of authority, and it thus strengthens the already debatable provisions adopted last year and, moreover, infringes upon the natural rights and prerogatives of the population.

129. The reports of Mr. Pelt, United Nations Commissioner in Libya, and his statements to the *Ad Hoc* Political Committee, have merely strengthened the conviction of the French delegation as to the controversial nature of these provisions. The Commissioner emphasized on more than one occasion the difficulties with which he would be faced, both in the political and in the administrative, economic and financial fields, were he to enforce the recommendations made in 1949. In that connexion I must quote at least the first of Mr. Pelt's reports:

"Libya, like any other State, cannot base its independence on the mere constitution of a government. If the new State is to acquire and maintain a stable position in the family of nations, a properly organized and competent administration with a carefully planned budget, supported by a viable economy, is no less essential.

"None who have read the preceding chapters will be astonished if the Commissioner expresses the belief that the establishment of an effective administration, a sound financial system, and a viable economy offering the prospect of a gradually improving standard of life for the Libyan people, is certain to take more time than the period set for the achievement of Libyan independence."⁶

130. In the light of this report and of the facts of the situation the French delegation was constrained to make certain reservations in the *Ad Hoc* Political Committee with regard to the new recommendations. However, in order to dispel any doubts, I shall say at once that it does not intend to vote against the adoption of the draft resolution now before us. The French Government, which is bound by the obligation it assumed when it signed the Treaty of Peace with Italy, and which is always anxious to play its part in furthering international co-operation, will accept the General Assembly's recommendation. It will take the necessary measures, as it did in the case of the resolution adopted in 1949, to implement that recommendation, without in any way prejudging the results of the work of the Libyan national assembly. The French Government hopes that that organ will be duly representative of the peoples concerned and will reflect the specific characteristics of the three territories which make up Libya, because, in the final analysis, it is the aspirations and wishes of those peoples that must determine the Libyan constitution, which must in no circumstances be imposed from without.

131. The French delegation notes the statement made by the *Ad Hoc* Political Committee to the extent that no provision of the draft resolution was intended to have a restrictive meaning, excluding certain sections of the population from equal participation in the life of the new State.

132. In conclusion, I wish to confirm, on behalf of my delegation, that France, both as an administering Power and through its representative on the United Nations Council for Libya, will abide by the General Assembly's resolution and the wishes of the various peoples of Libya as expressed in the future national assembly.

The meeting rose at 1 p.m.

⁵See *Official Records of the General Assembly, Fifth Session, Supplement No. 15.*

⁶*Ibid.*, pages 36 and 37, paragraphs 259 and 260.