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Chairman: Mr. Manfred LACHS (Poland).

Reservations to multilateral conventions (*continued*):

- (a) Report of the International Law Commission covering the work of its third session (A/1858) (chapter II: Reservations to multilateral conventions)

Item [49 (a)]\*

- (b) Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide: advisory opinion of the International Court of Justice (A/1874)

[Item 50] \*

1. Mr. CASTAÑEDA (Mexico) said that his delegation at the fifth session of the General Assembly (220th meeting of the Sixth Committee) had maintained that the problem of reservations to multilateral conventions should be referred to the International Law Commission, because the Commission was studying the law of treaties, of which the question of reservations to multilateral treaties was a part.

2. The two opposing schools of thought seemed still to be seeking to find one single solution for dissimilar situations. At the previous session of the Assembly, his delegation had taken the view that, since the content and particularly the legal nature of treaties differed, the proper scientific approach to the problem of reservations would be to clarify the extent of the differences by a revision of the general theory of treaties and then to lay down the rules applicable to each type. Little progress had since been made in the matter of finding a scientific solution for the problem, for the protagonists

still stressed the relative merits of the systems they respectively advocated, just as if one single solution was possible.

3. Yet the Netherlands representative at the fifth session of the Assembly (219th meeting of the Sixth Committee) had pointed out that neither system could be adopted as a universal rule. Again, the Israel representative had recently stated (266th meeting) that the adoption of a particular system was closely linked with the problem of classification of treaties and that the system advocated by the Court in its advisory opinion<sup>1</sup> should be applied to law-making treaties like the Genocide Convention, by which governments undertook humanitarian obligations in favour of individuals. Professor Brierly in his report to the International Law Commission on reservations to multilateral conventions (A/CN.4/41) had also amply demonstrated that, because of the varying nature of such treaties, no rule would be satisfactory in every case. The logical consequence of that finding was that different rules should be applied to different situations. Nevertheless, the Commission had not developed that concept in its conclusions, although it fully recognized the significance of the point (A/1858, paragraph 28)<sup>2</sup>; it had suggested as a solution one single rule, which it nevertheless recognized as unsatisfactory because of its breadth, and as suitable only in some cases.

4. He did not imply, however, that the Commission should have undertaken a systematic classification of treaties, but rather that it had failed in its analysis through accepting the over-simplified premise that the majority of treaties under United Nations auspices were law-making in character and thus open to the application of one single and uniform rule with regard to reservations. Such a premise, even if sound, would

\* Indicates the item number on the General Assembly agenda.

<sup>1</sup> See *Reservations to the Convention on Genocide, Advisory Opinion*: I. C. J. Reports 1951, page 15.

<sup>2</sup> See *Official Records of the General Assembly, Sixth Session, Supplement No. 9, chapter II*.

not always justify giving priority to the principle of the integrity of a treaty over that of its universality.

5. Without entering into the difference between law-making and contractual treaties, he recalled that some publicists had shown that such an over-simplified distinction had little value, and drew attention to the danger of believing that the problem of reservations could be solved by such classification.

6. The Court was of the opinion that the Genocide Convention admitted of certain reservations. Had it been faced with a similar problem with regard to the Charter of the United Nations, it would undoubtedly have found that the Charter did not admit of reservations. In the circumstances, as both the Genocide Convention and the Charter were law-making in character, it seemed logical to conclude that there were different types of law-making treaties that required different treatment, so far as reservations were concerned, and that the law-making nature of such instruments did not necessarily justify the sacrificing of the universality to the integrity of treaties. In view of that essential distinction, and of its awareness of the Court's opinion, the Commission was not justified in proposing a uniform solution for the reservations problem in respect of those two groups of law-making treaties.

7. It had been said that the Court's opinion related to one specific convention, whereas the Commission had had to consider the problem from a general point of view. The Court, however, in dealing with that specific case had had to refer to the general rules of international law, which, in his view, could also be applied to treaties of the same legal nature as the Genocide Convention.

8. Thus, it seemed to follow that the Commission could and should have worked out different rules with regard to reservations for application to each of two types of law-making treaties: on the one hand law-making treaties of a constituent character, which established the basis of a general international legal and political system, and on the other law-making treaties like the Genocide Convention. He did not claim that the two types were the only, or even the most important, types within the genus, but they were the best known. Although the dividing line between those types might be difficult to ascertain, the International Law Commission should consider the categories of treaties, and should give future drafters of conventions guidance in the matter. The problem was not solved simply by recommending the insertion in conventions of reservation clauses. Such clauses had to be technically suitable to the particular type of convention.

9. Having linked the problem of reservations with the question of categories of treaties, he explained that he did not regard the admissibility or non-admissibility of a reservation as a criterion for the classification of a treaty. Nor did he think that the class of a treaty automatically governed the acceptance or otherwise of a reservation. Although the Charter did not permit of reservations, there was no strict legal impediment to the making of reservations to it. It could likewise be held that the reasons for the admissibility or otherwise of reservations to the Genocide Convention were reasons of convenience and not of legal necessity.

10. In such humanitarian conventions as the Genocide Convention and the future covenant on human rights, obligations and rights were not self-balancing and reciprocal as between States, but had a common content

directly affecting the interests of private individuals. There was, therefore, no question of a State being at a disadvantage by reason of a reservation. In the case of a convention giving a certain number of rights to individuals, it was preferable that a State which could grant some but not all of them should undertake such limited obligations rather than be excluded from the treaty because of an objection by another State to its reservation, which would not be incompatible with the object and purposes of the convention.

11. In view of the common content of the obligations of such treaties, he did not believe that the Brazilian representative's observations (267th meeting) with regard to compensating rights and duties were applicable to such treaties. That representative's comments in that respect would apply to other types of treaties, such as the Havana Charter, where it was reasonable that such a balance of rights and duties should exist and where it would not be logical, once the negotiations were concluded, for States to contract out of obligations by tendering reservations.

12. It was consequently justifiable to maintain the integrity of a convention at all costs only in treaties of the Havana Charter type. Professor Briery in his report (A/CN.4/41), moreover, had said that if the League of Nations system were to be applied universally, the tendency would be to prevent States from becoming parties, with a consequent impairment of the value of a convention. In his delegation's view, therefore, the League of Nations system could be adopted if restricted to constituent treaties such as the Havana Charter. Its aim, however, would be more simply achieved if the principle were laid down that such treaties should contain clauses prohibiting reservations.

13. On the other hand, he could not accept the Commission's conclusion, if it extended to conventions of the Genocide Convention category, and that for reasons he had already given.

14. As to the inter-American system, at least in its present form, he believed that it did not make sufficient allowance for the fact that in law-making treaties of the constituent type the principle of universality must necessarily be sacrificed to that of integrity. Where the remaining types of treaties were concerned, however, the American system was more flexible and realistic, because it enabled States to defend their positions, particularly in the existing state of world affairs.

15. As to conventions like the Genocide Convention, the Court's opinion represented a considerable advance on the American system, in that it developed a criterion for judging the admissibility or inadmissibility of reservations.

16. The problem of reservations to multilateral treaties came within the field of the development of international law, and any solution adopted at that stage would be unsatisfactory and should be regarded as provisional.

17. He hoped that the Commission in its work on the law of treaties would be able to work out a system of reservations based on the cardinal principle that the majority system must, as a rule, be tempered by the possibility of making reservations and that, in elaborating a set of precepts for the guidance of future drafters of conventions, it would give due consideration to the varying nature of treaties registered with the Secretary-General.

18. As to the directives to be given to the Secretary-General, he would state his delegation's view in the

course of the discussion on the various draft resolutions before the Committee.

19. Mr. BENNETT (Canada) said that he agreed with the representative of France concerning the advisory opinion (265th meeting), which was entitled to great respect. Once the advisory opinion was accepted for the Genocide Convention the problem before the Committee was to decide what recommendations to make for the guidance of the Secretary-General in his role as depositary of other conventions when those instruments did not provide specifically for the effect of reservations. Reservations, formerly unknown, had of recent years become increasingly common. There was an average of about two reservations to each international agreement of which the Secretary-General was depositary. But most of them were of a minor order, so that the practice of making reservations had not resulted in anything more than a technical fragmentation of multilateral treaties. All that it presented was a somewhat inconvenient technical and administrative problem.

20. In addition to the problem of reservations, there was the question of objections to reservations. Relatively few objections had been registered formally, but as the number of reservations increased a new category of State acts, i.e., formal objections to reservations, might be coming into existence. It ought to be possible to devise a rule of conduct which would not encourage the rapid development of such acts. At the same time the General Assembly ought to give the Secretary-General some guidance in performing his function, as depositary, of declaring whether sufficient valid ratifications or accessions had been received to bring a convention into force.

21. His delegation therefore approved of paragraph 3 of the operative part of the United States draft resolution (A/C.6/L.188), which recommended that the drafters of a multilateral convention should consider the insertion of a reservations clause.

22. It was not in agreement, however, with the first two operative paragraphs of that resolution, which went too far in suggesting that the opinion of the Court had application outside the Genocide Convention; and it supported sub-paragraph (a) of the United Kingdom amendment (A/C.6/L.190, point 4), to operative paragraph 4 of the United States draft resolution as a more correct way of supporting the Court's opinion.

23. It supported the general conclusions of the Commission's report, but agreed with the United Kingdom representative's suggestion that the unanimity rule for acceptance of reservations might be replaced by one providing that reservations should be acceptable unless one-third or one-quarter of the signatory States objected to them. He did not support the system of the Organization of American States. The British Commonwealth of Nations had to face a problem somewhat similar to that confronting the American States and was sympathetic to the idea of loose arrangements among the members of a community of nations. But the British Commonwealth had no written constitution and few multilateral inter-Commonwealth instruments, and those there were contained no reservations. He felt that extension of the American system into the sphere of written international agreements could only lead to a jungle of mutilated conventions.

24. Lastly, his delegation believed that the question of reservations should be settled during the present session. The draft resolutions of Sweden (A/C.6/L.192)

and Israel (A/C.6/L.194), which proposed postponement, had the further defect of suggesting that the rules to be established by the Commission should only be based on the existing law.

25. He suggested that a sub-committee should be established soon to propose a series of rules for the guidance of the Secretary-General as depositary of conventions which did not contain reservation clauses. When that sub-committee was established, or when the various proposals made in the Committee came to be examined in detail, his delegation might make concrete proposals.

26. Mr. TARAZI (Syria) felt that any extreme solution was impossible because States were bound together only by an imperfect legal system. Brilliant as they had been, he had not been convinced by the arguments of the French (265th and 266th meetings) and Brazilian representatives, and maintained his own position at the fifth session (221st meeting of the Sixth Committee). The French representative had attempted to overthrow the idea of the *liberum veto* and to show that reservations were contrary to established international law and would lead to anarchy. Her arguments had largely been based on the theories of French jurists, in particular the theory of Hauriou concerning the *Institution*, which, however, applied only to internal law and could not be translated into the international sphere without danger. The State was self-determining, whereas the United Nations was not. The United Nations was an organization for co-ordinating the wills of States, and its General Assembly did not impose the decisions of the majority, but merely recommended that States should adopt them.

27. The French jurists Duguit and Jèze divided legal acts into the *acte-règle*, which laid down a rule, the *acte-condition* which laid down the application of the rule to a particular type of situation, and the *acte subjectif*, which gave rise to individual rights and obligations. The third could not have such wide effect as the first two and, unlike them, was subject to individual negotiation. In the international sphere multilateral conventions corresponded with the *acte subjectif*, creating rights and obligations for States. The solution the French representative recommended would have been acceptable only if the Charter had endowed the General Assembly with a composite will independent of the States' wills, which was not the case. States were entirely free to formulate reservations unless the convention otherwise provided.

28. Hauriou had moreover written that the members of the *Institution* simply tried to perform their functions rather than to use their power for egotistical ends. In the international sphere to refuse a reservation would be to pursue such ends.

29. He agreed with the Mexican representative that reservations were necessary as a manifestation of the sovereignty of the State and of the autonomy of the will. The Swedish draft resolution (A/C.6/L.192) appeared more realistic than the others. The problem required careful study. He reserved the right to discuss, in due course, the various texts submitted to the Committee.

30. Mr. MAKTOŠ (United States of America) said that if the majority of the Committee favoured such a course he could agree with the suggestion, contained in the Swedish draft resolution, that the Committee should postpone a decision until the International Law Commission had considered the question of reservations

while studying the whole subject of the law of treaties, since the Commission would doubtless take the views of the Committee into account. But he felt that it was dangerous to request the Secretary-General to continue to apply the unanimity rule pending a further opinion from the International Law Commission.

31. The Brazilian representative, in criticizing the Pan-American rule and the United States draft resolution, had stated that politics should not interfere with international law; but the background of the discussion leading to adoption by the General Assembly (resolution 174 (II)) of the statute of the International Law Commission justified members of the Committee in expressing their views as the political representatives of States. Moreover, the unanimity rule was not international law, since it had not been generally accepted. The United States draft resolution did not leave the Secretary-General without instructions, since it requested that he should be guided by the Court's opinion, which recommended the compatibility rule.

32. The United Kingdom representative's objection (267th meeting) that the United States draft resolution would permit conventions to be so whittled down as to destroy them failed to take into account, among other things, the fact that the Charter did not admit of reservations and that the resolution recommended the inclusion of a reservation clause. Difficulties connected with the coming into force of treaties could be dealt with by international courts, which were accustomed to deal with similar matters. Other points raised by the United Kingdom representative, and by the Brazilian representative, would be dealt with in his enumeration of the advantages of the Pan-American rule, which he himself advocated.

33. The unanimity rule had several disadvantages. It was not international law. It subjected on the one hand the sovereignty, and on the other the will and intention of a reserving State and of an accepting State to those of an objecting State. The decision of the International Law Commission in its favour was not binding, though it was to be respected. The rule gave an objecting State the power to veto acceptance of a reservation by other States. As the United States representative had said in his introductory statement (264th meeting), the rule ensured uniformity at the expense of throttling the process of multilateral treaty-making; to destroy a State's reservation might destroy its participation; a widely accepted though not uniformly applicable treaty might be much better than a treaty, theoretically uniform, which was effective only between a few States; and a desire for uniformity, simplicity and certainty ought not to obscure the facts of political life which determined the action of States. The rule unwisely tried to decide in advance the legal rights of parties in different circumstances. It impaired wider acceptance of treaties if a State ratified with reservation, and still more if signatories were permitted to prevent a reserving State from becoming a party. Drafters of treaties without reservations clauses did not invariably intend to prevent reservations; an example was the Genocide Convention, where it had always been understood that reservations could be made. Though drafting matters should be settled by a majority decision, the unanimity rule applied to ratification imposed the will of a minority of even one State upon the accepting States. The Genocide Convention was not the only case in which the Secretary-General's practice of following the rule had given rise to difficulties. The rule had not been accepted by the American Republics, and it had been rejected by the

Court in its advisory opinion at least in connexion with the Genocide Convention, which constituted a precedent. The rule failed to distinguish between reservations which were and reservations which were not destructive of the purpose of treaties. And, lastly, it might discourage ratification, since ratifying authorities would know that a single objection to a reservation they might make would invalidate their ratification.

34. The United States draft resolution left it to States to decide whether they wished to accept a reservation or to reject it. The Pan-American rule had the following advantages. It expressed the will and intention of an objecting State, a reserving State and an accepting State, and supported the sovereign rights of those States. It encouraged wider acceptance of a treaty, and prevented conventions from remaining unratified documents. Reservations could be compatible with the object and purpose of a convention. The rule was even more valuable where there was a conflict of views, as in the United Nations, than in the family circle of the American Republics. It did not, as the Genocide Convention showed, make drafters of treaties more careless. It took into account political realities, as well as the need for greater flexibility in view of the majority rule prevailing in the United Nations.

35. Nevertheless, his delegation did not wish the Secretary-General to decide in advance the legal rights of parties to treaties, and therefore proposed in the resolution that he should continue to act as a depositary of treaties without passing on the legal effects of reservations. If in doubt as to his duties, the Secretary-General should seek the advice of the General Assembly or, through it, of the Court. Further, the resolution recommended that the inclusion of a reservations clause should be considered, and that United Nations organs should be guided by the advisory opinion of the Court.

36. It had been objected that the compatibility test recommended in the Court's opinion was too indefinite. However, in law there were not only exact rules but standards of a certain flexibility which could quite satisfactorily be interpreted by the courts. "Aggression" was a case in point. Moreover, the Court had laid down certain criteria of compatibility, and the common sense of the reserving, objecting and accepting States could be relied on in interpreting it.

37. His delegation wished that, in the absence of a reservations clause, each State should be free to refuse to accept even those reservations which it considered compatible with the purpose of the treaty.

38. Mr. STABELL (Norway) said that his delegation, although more in sympathy with the joint dissenting opinion of four Judges published with the Court's advisory opinion (pages 31-48), wished to respect the authority of the Court and therefore supported the proposal, contained in sub-paragraph (a) of the United Kingdom amendment (A/C.6/L.190, point 4) to operative paragraph 4 of the United States draft resolution, that the advisory opinion of the Court should be taken as guide and that the Secretary-General should conform his practice to it so far as the Genocide Convention was concerned. As regards reservations to multilateral conventions in general, however, his delegation agreed in the main with the Commission's report. The Court clearly regarded the Genocide Convention as an exceptional case and did not intend it to serve as a basis for general rules.

39. Point (a) of the item under discussion related to



the rules to be followed by the United Nations, and in particular by the Secretary-General as depositary, regarding reservations relating to conventions other than the Genocide Convention. Two questions were involved: what the law regarding such reservations was, and what the practice of the Secretary-General should be within the latitude left him by that law.

40. It was the former question which had chiefly engaged the Committee's attention, and the first step should therefore be to determine what the existing United Nations law regarding reservations was before the Committee passed on to consider how it might be altered; to try to do both things at once would lead to confusion. Even if the Committee decided to change the law, the new law must not be made retroactive, nor apply to treaties already negotiated. The necessity for clarity about what the Committee was doing was shown by the fact that the eight-State joint draft amendment (A/C.6/L.191) to the United States draft resolution proposed that the Pan-American system should be adopted bodily by the United Nations, which undoubtedly meant changing existing United Nations law. Whatever that law was, it was certainly not the rules which had been adopted by the Organization of American States. The uncertainty as to whether the Committee was considering the problem *de lege ferenda* or *de lege lata* was no doubt due to the fact that the Commission had not made it clear to which category the conclusions in its report belonged. But before embarking on the detailed discussion the Committee must make up its mind which of the two things it was trying to do.

Mr. Perez Perozo (Venezuela), Vice-Chairman, took the chair.

41. Mr. BERNSTEIN (Chile) observed that delegations of countries very closely connected with his own had repeatedly stated that a basic doctrine of American international law would be endangered if the view taken by the International Law Commission with regard to reservations to multilateral conventions was adopted. If that had really been true, the Chilean delegation would naturally have been one of the first to protest. However, the Chilean delegation was not deviating from any American doctrine when it failed to share the views of its fellow-members of the Organization of American States.

42. An examination of the works of the most distinguished American jurists had shown, surprisingly enough, that they were far from united with regard to that matter; in fact, it seemed that most of them disagreed with what had wrongly been called the inter-American doctrine. Furthermore, four of the five American members of the International Law Commission had signed its report, which opposed that thesis. Even Mr. Yepes had referred to the "so-called" Pan-American system of making reservations;<sup>3</sup> thus he had shown that he did not believe in an American doctrine in that connexion, but simply in a Pan-American system. Moreover, Judge Alejandro Alvarez, in his dissenting report on the advisory opinion of the International Court of Justice,<sup>4</sup> obviously did not believe there was such a doctrine.

43. Thus it was perfectly legitimate to criticize a mere practice followed by an office which had had no political functions before 1948, but had been simply the administrative organ of a regional system. Furthermore, no speaker had in fact even intimated that the

American system should be altered; all that had been said was that it might not be applicable to the United Nations.

44. The United Nations should adopt the American regional system only if it were really a panacea, and it was really nothing of the sort. The abuse of reservations to multilateral treaties had in fact led to something like chaos. To the General Treaty of Inter-American Arbitration signed at Washington in 1929, magnificent instrument though it had seemed, thirteen of the twenty countries which had signed it had formulated reservations of considerable moment designed to restrict the scope of the disputes subject to the general arbitration agreed on therein. Finally, the treaty in its original form had been in force among only six countries; but there was such a jungle of bilateral relationships among countries which had signed without reservations and those which had signed with reservations and among the latter themselves that the most distinguished jurist could hardly find his way among them. The opportunity to achieve a multilateral treaty on a subject so important as arbitration had thus been lost.

45. The Pan-American system of reservations was no panacea and gave rise to difficulties and problems. For example, the Bustamante Code of Private International Law had numerous reservations made by eight countries, including Chile and affecting seventy of its articles. The Chilean reservations required a very full knowledge of domestic Chilean legislation if another State wished to invoke it with regard to his country. Tradition and a brotherly spirit had helped the American States to overcome many of their difficulties. The system, however, was not suitable for a world-wide organization where political, cultural and legal diversity was enormous.

46. At the same time he could not share the view that the American system of reservations made it easier for States to ratify conventions; he cited eleven conventions concluded within the past twenty-eight years which, despite the system of reservations, had not been ratified by more than a fraction of the number of States required for entry into force.

47. On the other hand, the Anti-War Treaty of Non-Aggression and Conciliation dated 1933 and the Inter-American Treaty of Reciprocal Assistance of 1947 had been unexpectedly widely accepted. Yet the former contained a clause which prevented contracting parties and States acceding to the pact from formulating other limitations at the time of signature, ratification or accession than the four contained in its text. Despite the restriction in the matter of reservations, that treaty had been ratified by twenty-one American countries.

48. The success of the second of those two treaties, which was only four years old and to which only certain declarations of a territorial character, which did not constitute true reservations, had been made, was due, not to the fact that reservations could be made to it, but to the fact that it had been most carefully studied and drafted. That was the crux of the matter. A properly prepared treaty precluded the need for reservations, as was the case with treaties concluded under United Nations auspices, which had been carefully and thoughtfully drafted.

49. Broadly speaking, his delegation favoured the Secretary-General's practice, first because the League

<sup>3</sup> *Ibid.*, page 5, note 15.

<sup>4</sup> See *Reservations to the Convention on Genocide, Advisory Opinion: I. C. J. Reports 1951*, pages 49-55.

of Nations had applied it successfully for so long and without detriment to the interests of those American States which had subscribed to it; and secondly, because the General Assembly had asked for and received the views of a body of eminent jurists, the International Law Commission. When a report was requested, it was for the purpose of considering it in a spirit of goodwill, and not with a view to its rejection because it did not conform to individual views.

50. His delegation started from the point of view that no system of reservations was perfect, and consequently supported the system which it regarded as best suited for the purposes of a world-wide organization and as having been already successfully followed in that sphere.

51. While aware of the right of veto inherent in the Secretary-General's system, his delegation regarded it as a democratic right, based on the legal equality of States and thus not to be feared.

52. Finally, he would request the United Kingdom representative to give shape to the suggestion he had made with regard to a two-thirds or three-fourths formula for the acceptance of reservations, which might possibly meet the difficulties of many delegations.

53. Mr. TOVAR CHAVES (Colombia) said that the debate showed a divergence between the supporters of the inter-American legal system and the European; with regard to reservations to multilateral conventions, the former favoured the priority of universality and the latter the integrity and uniformity of the texts. The Colombian delegation was glad to see that the great majority of the delegations of American States favoured the inter-American system.

54. The supporters of the priority of the integrity of texts had based themselves on the opinion of the International Law Commission and had adduced in their favour the practice of the League of Nations, followed in principle by the Secretary-General of the United Nations.

55. It had been argued that the advisory opinion of the International Court of Justice could be applied to all multilateral conventions; but it had in fact applied only to the Genocide Convention. As the United Kingdom representative had rightly observed, the criterion recommended by the Court, based on the compatibility or incompatibility of reservations with the aim and purpose of the convention concerned, could not be applied objectively. On the other hand, the French representative had definitely taken up a position in favour of the system advocated by the majority of the International Law Commission and against the adoption of the inter-American system by the United Nations. In that connexion, it was interesting that those who criticized the inter-American system regarded it as adequate for the American States, and thereby recognized its value; there seemed to be no reason why a system which had proved satisfactory for the legal relations among twenty-one States should not also be adequate to cover such relations among other States.

56. The argument that the inter-American system suited the American States because they were a unified group was an approach to the situation from the wrong end; the system was not what it was because the group was unified, but the group was unified because of the system. Yet that system was not rigid; the States comprising the Organization of American States differed in language, customs and legal institutions. All those basic influences, however, had come together in a new

specifically American system, which in its turn could hope to exercise an international influence.

57. The Colombian delegation whole-heartedly supported Mr. Yepes' minority view in the International Law Commission. It had also listened with interest to the United States representative's arguments. The inter-American States had deemed it better to begin by guaranteeing universality and then to proceed to the uniformity or integrity of the texts. It must be assumed at the outset that a multilateral convention of any kind was not signed and ratified with the idea of denouncing it at the first opportunity. Obviously, in the short time available for negotiation, agreement could not be complete. States were often prevented from ratifying a multilateral convention with reservations by its incompatibility with legislation in force or owing to temporary political circumstances. The virtue of the inter-American system was that it prevented excessive haste in ratification with reservations. It might be said that a State should abstain from ratifying if it could not do so without reservations; but such a State should not lose the opportunity of adhering even partially to the convention, because it was more probable that in the course of time a State would abandon the reservations which it had made to a multilateral convention than that it would wait for favourable circumstances to ratify without reservations. The practice of withdrawing reservations was a well-established part of the inter-American system. In 1929, the number and nature of reservations made to the Treaty of Inter-American Arbitration had required some method of permitting it to come into force as a whole as the reasons for the reservations were removed. A protocol for progressive arbitration had therefore been annexed to the treaty permitting States which had made reservations to renounce them unilaterally. Similar methods might well be employed by the United Nations whenever reservations were sufficiently numerous.

58. Furthermore, if priority was given to the integrity of the text, any hope of subsequently achieving universality might be lost. Thus, although the integrity of the text might be just as important as universality, in practice it would be better to ensure universality, which, unlike integrity, was not exclusive, but was of much greater importance in widening the scope of application of international law.

59. Professor Brierly's definition of a reservation was happy. A reservation was a conditional acceptance of a treaty. If such a condition was acceptable to some of the parties, there seemed no good reason, from the point of view of contractual law, why parties prepared to accept the instrument conditionally should not do so. To justify the League of Nations system, it would be necessary to show that each of the parties to a multilateral convention contracted obligations with all other parties jointly. That could be accepted with regard to the constituent conventions of international organizations; but as to other treaties the very serious consequences that such a thesis would have with regard to the legal personality of States went far to refute it. The contractual relations between sovereign States in a multilateral convention were established between each party and each other party. Otherwise any multilateral convention contracted through the United Nations would entail obligations between each of the Member States and the United Nations itself. Formally, such conventions were multilateral because more than two parties were concerned in their negotiation; but that

did not mean that such conventions necessarily gave rise to multilateral obligations by binding each party as against the parties jointly. That, however, did not prevent the text which bound each of the parties with each other party being uniform if such a convention was ratified without reservations or if the reservations with which it had been signed and ratified were withdrawn.

60. Thus, there was no real legal basis for the criticisms advanced against the inter-American system. The concise and simple rules adopted by the American States were wholly satisfactory. The question was not in fact that of the system of reservations, which was one that the Assembly would have to solve only after the International Law Commission submitted its conclusions with regard to the codification of the law of treaties; it was that of the effect of objections raised by the contracting parties in a multilateral convention to the reservations which one or more of them made to it. The solution of the Governing Body of the Pan-American Union covered all possible cases and fully respected the legal personality of States. The three hypotheses advanced in that formula met all possible cases, and universality was given priority without excluding the possibility of achieving integrity subsequently.

61. Thus, the integrity of the text would prevail at the outset between the parties which ratified without reservations. Secondly, as between the parties which ratified with reservations and those which accepted those reservations, the integrity of the text of the convention would be limited or modified in accordance with the conditions embodied in the reservations

accepted; but that limitation would not be permanent, because States making reservations could withdraw them. Thus, universality would obtain as between those parties. Thirdly, the convention would not enter into force between the governments which ratified with reservations and those which had already ratified and did not accept those reservations; but that also would not be permanent, since such reservations could be withdrawn, and in that case the integrity of the text and the universality of the convention would arise simultaneously.

62. No doubt the inter-American system was not entirely perfect; but it was the most nearly perfect of those which had hitherto been worked out. Although the Colombian delegation was convinced that the American system with regard to reservations and to the effect of objections to them was legally firm and administratively effective, it had in a spirit of compromise associated itself gladly with the view that in all multilateral conventions negotiated through the United Nations there should eventually be embodied clauses relating to reservations and to the effects of objections to them, whenever they did not give rise to difficulties likely to jeopardize the results of negotiations. There were several examples of stipulations of that kind among inter-American multilateral treaties. Whenever it might be unwise to insist on those stipulations during negotiations, the inter-American procedure should be employed. Accordingly, the Colombian delegation, jointly with other Latin-American delegations, had presented an amendment (A/C.6/L.191) to the United States draft resolution.

The meeting rose at 6.30 p. m.