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SIXTH COMMITTEE, 274th MEETING

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CONTENTS

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. PETRZELKA (Czechoslovakia) said that, although the question of reservations to multilateral conventions was highly important, it was not particularly urgent. Indeed, since the question had first been raised, the problem of the entry into force of the Genocide Convention had settled itself and special provisions for reservations had been inserted in the Convention on the Declaration of the Death of Missing Persons and the Convention relating to the Status of Refugees. As both the International Court of Justice and the International Law Commission had reached their conclusions by a majority vote, their recommendations could not have the full weight of unanimous conclusions of bodies of eminent international jurists.

2. As the USSR representative (269th meeting) had pointed out, there were various contradictions in the advisory opinion of the International Court of Justice[1]. Although the Court's opinion had not in any way altered the Czechoslovak delegation's views on the matter, it did nevertheless contain some good points. In the first place, the Court had stated clearly, in conformity with the law in force, that the admissibility of reservations to multilateral conventions was a positive rule of international law. Secondly, the Court had refused to recognize the system adopted by the League of Nations and defended by the Secretary-General of the United Nations as a rule of international law. In the third place, it had recognized that a reserving State could become a party to a convention even if other States objected to the reservation, and, finally, it had very properly stated that the Secretary-General's functions as the depositary of multilateral conventions should be limited to receiving reservations and objections and communicating them to the other contracting States.

3. The International Law Commission, for its part, had not shared the Court's views. However, the Commission had approached the problem with some hesitation and had itself admitted in paragraph 28 of its report (A/1858) [2] that its problem was not to recommend a rule which would be perfectly satisfactory, but that which seemed to it to be the least unsatisfactory.

4. In paragraph 34, sub-paragraph (1) of its report, the Commission had given far too broad a definition of the States to which reservations should be communicated, for, if that definition were adopted, the Secretary-General might have to communicate reservations to every State in the world. Secondly, in paragraph 34, sub-paragraph (2), the Commission, unlike the Court, had defined the Secretary-General's functions as the depositary of multilateral conventions far too broadly. Even the General Assembly could not grant to the Secretary-General such powers as the right to fix time-limits or to extend them, because they would involve additional treaty obligations for Member States.

* Indicates the item number on the General Assembly agenda.

[1] See *Reservations to the Convention on Genocide, Advisory Opinion : I. C. J. Reports 1951*, page 15 *ff.*

[2] See *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, chapter II.

5. As the USSR representative had so rightly pointed out, the whole issue had been raised in the General Assembly simply because the Secretary-General was determined to apply the rigid League of Nations system, which might have had some foundation in the days when the principle of unanimity had governed the negotiation of treaties, but which was now entirely outmoded with the advent of the rule of the majority. Even in the days of the League of Nations, certain reservations which were definitely incompatible with the object and purpose of a convention had been accepted in the interests, of international co-operation. Examples were the Swiss accession to the League of Nations Covenant with a reservation on permanent neutrality and the attitude adopted by Luxembourg towards sanctions against Fascist Italy.

6. As several delegations had pointed out, the number of reservations was constantly increasing. That was quite natural, since the submission of reservations was an inalienable right of all sovereign States, which also involved as a corollary the right to object to reservations; it was each State alone which decided what international obligations it should accept. Any analysis of the right to make reservations should be based on the United Nations Charter and the rules of customary international law. He referred in particular to Article 103, Article 1, paragraphs 2 and 3, and Article 2, paragraph 1, of the Charter.

7. The principle of the equality of States had been brought up as an argument against the admissibility of reservations, but the Polish representative (273rd meeting) had quite rightly replied that a reservation constituted a modification of a contractual text on the basis of the right of reciprocity. Some representatives had even advanced the surprising argument that to admit reservations would be to violate the rights of the majority of States which had originally adopted the text. In the first place, such an argument was quite incompatible with the principle of international co-operation. Secondly, a reservation was simply analogous to a new offer on a minor point not in any way affecting the essentials of the treaty. That offer could be tacitly or expressly accepted or rejected, but its rejection could not in any way affect the inalienable right of the reserving State to make the reservation. Consequently, to recognize the admissibility of reservations could not in any way affect the interests of the majority which had adopted the text, but to deny the admissibility of reservations would be a very definite violation of the rights of the minority.

8. He did not agree with the contention that a treaty should remain inoperative between a State making a reservation and a State objecting to that reservation. Logically, the convention should be in force between the reserving State and the objecting State on all points except those actually affected by the reservation. The adoption of that concept would solve all difficulties of the validity of signatures, ratifications and accessions and of determination of the date of entry into force, and would have the advantage of facilitating co-operation between all Member States in spite of their different political and economic systems. That, indeed, would be the only logical solution, for otherwise a State making some minor reservation, for example to the Genocide Convention, might find itself excluded from participation in the work of preventing and punishing the crime of genocide, in spite of its past association with the other Member States in the Nürnberg trials and in the adoption of General Assembly resolution 96 (I) of 11 December 1946.

9. He had not been in the least convinced by the United Kingdom representative's long statement (273rd meeting) against the admissibility of reservations. United Nations conventions were not without benefits to the States parties, though the benefits were not always of a selfish nature. Moreover, it would be absurd for a State to sign a convention without making any reservations if it knew in advance that it would be unable or unwilling to apply the provisions in full.

10. With regard to the Pan-American system, the USSR representative had already pointed out the inconsistency between article 6 of the Havana Convention on Private International Law of 20 February 1928, which was in full conformity with existing international law, and the resolution adopted by the Governing Board of the Pan-American Union on 4 May 1932. That resolution, while admitting reservations and safeguarding the rights of all States, was nevertheless illogical in that it excluded a treaty relationship between the reserving State and the State objecting to the reservation. However, the Pan-American system had its advantages, and contrary to what the International Law Commission had stated, it was not necessarily a system peculiar to the American States because of their common culture and tradition. In fact, there was no legal difference between the conventions concluded among the American States and those concluded in the United Nations. Many of the Pan-American conventions were law-making treaties.

11. The representatives who had based their arguments on the need to maintain the integrity of the texts of conventions were nevertheless prepared to admit reservations provided that they were accepted by all the other contracting States. That was surely somewhat inconsistent, since the admission of any reservation under any system whatever would still destroy the integrity of the text. The supporters of that theory were in fact trying to hamper the development of friendly relations among peoples and to deprive the minority States of their rights under the Charter. The adoption of their system might well involve a serious violation of the sovereignty of States, for a single objection would suffice to violate the rights not only of the State making the reservation, but also of all the States which were prepared to accept that reservation.

12. Several delegations had suggested, as a compromise solution, that a special clause on the admissibility of reservations should be inserted in all future conventions. However, as it was the practice to adopt conventions by a majority vote rather than by unanimous agreement, that proposal would only reinforce the rights of the majority to the serious detriment of the minority. The representative of Cuba (268th meeting) had already explained the reasons which led States to make reservations. He would only add that all States naturally had to take into account their different constitutional difficulties, their concept of public order and their existing international commitments. The insertion of a reservations clause would be an ideal solution provided that the clause itself was adopted unanimously. It would then inevitably sanction the right to make reservations, but as that right was already recognized under international law there was really no need for a special clause in each convention.

13. It had been argued that it would be dangerous to adopt too liberal an attitude towards reservations, but it should be borne in mind that the reserving State would always consider the situation very carefully before deciding to accede to the convention and to make its reservations. Obviously no State would ever make a reservation which would, in effect, undermine the whole purpose of the convention, because there would then be no point whatever in acceding. As for the compatibility test recommended by the International Court of Justice, it would be extremely difficult to apply in practice.

14. As he had already stated, his delegation could not agree to the International Law Commission's proposals or to the United Kingdom amendment (A/C.6/L.190) to the United States draft resolution (A/C.6/L.188). If those proposals were adopted, the Secretary-General, as the depositary of multilateral conventions, would have the right to take decisions over the heads of States and to saddle them with obligations which were not provided for in the conventions themselves. That system was designed to create artificial barriers to international co-operation, to deprive States of their sovereign rights under the Charter and to place the life of the international community completely in the hands of the States which could arrange for a majority in the United Nations.

15. Mr. SANTISO GALVEZ (Guatemala) observed that, despite all the efforts that had been made, no satisfactory solution had yet been found for the problem of reservations to multilateral treaties. Weighty as had been many of the arguments adduced, he was still not convinced that any other system was better than the Pan-American system. The question of reservations to multilateral treaties had created administrative problems for the Secretary-General who, in the light of modern developments, had had to raise the question whether the unanimity rule was still the best. The Secretary-General had seen that the principle of universality was embodied in the Charter and that some countries had adopted that principle in their international relations; he had also had in mind the possible need for considering the rights of the minority under international conventions. As things were, the achievement of universality, although possible, was remote and it was difficult, if not dangerous, to instruct the Secretary-General to adopt one particular system.

16. The Court's opinion, although directed primarily to the Genocide Convention, contained a number of general principles applicable to many other multilateral conventions; in the circumstances its content had not been exhausted. The Court had rightly advocated the notion of the compatibility test, and, generally speaking, the work it had done on the Genocide Convention could well be used as a guide for further study of the problem of reservations to multilateral treaties.

17. While the Pan-American system was not perfect, it had definite advantages. The sovereignty of States was not impaired; there was no obligation on States to accept reservations; States were free to adopt a position consistent with constitutional considerations; and the system enabled the greatest possible number of States to accept conventions. It therefore seemed that there was definite advantage in adopting it. The United Nations being a more comprehensive organization than the League of Nations, every effort should be made to see that multilateral conventions gave effect to the principle of universality in the greatest possible degree.

18. He could not agree that a solution of the problem should be postponed, and adhered to his earlier idea that a sub-committee should be set up with a view to reconciling the various points of view expressed in the debate, basing its work on all the systems proposed and the various types of conventions in force. His delegation therefore welcomed the proposal of Iraq to that effect (A/C.6/L.199).

19. Mr. ALEMAYEHOU (Ethiopia) said that the debate had revolved around two different points of view, following on the opinions of the International Court of Justice and the International Law Commission. The Court had held that a reservation to the Genocide Convention was admissible, even if one State objected to it, provided the other contracting States had accepted it and provided it was compatible with the object and purpose of the Convention. The Court had also pointed out that the replies it had been called upon to give were necessarily and strictly limited to the Genocide Convention.

20. The International Law Commission had rejected the Court's opinion because it introduced the compatibility criterion which, the Commission considered, had certain undesirable consequences and it suggested that a reservation, to be valid, must be accepted by all States which had ratified, acceded to, or signed the Convention.

21. The Court had based its opinion on the intention of the parties. While respecting and following that opinion, he felt that the application of the criterion it stated was too subjective to be taken as a basis for laying down rules for reservations to multilateral treaties in general. While the point was open to argument, it seemed to him that the General Assembly's intention had been to rule out reservations to the Genocide Convention; if it had been the intention to admit reservations, Member States could have so provided during the negotiation of the Convention. The principle of universality and the principle of integrity were not mutually exclusive, but he would give preference to the latter.

22. The International Law Commission had applied the universally recognized and objective rule of the common consent of the parties. The concept of common consent was easy to define and should automatically be the basis of all treaties and, by analogy, of all modifications of treaties such as reservations. Unilateral reservations would not only render multilateral treaties ineffective by splitting them up into a series of bilateral treaties, but would also defeat the purpose by thus introducing an element of inequality between the parties. In the circumstances, in order to avoid administrative and legal anomalies, reservations to a multilateral treaty should not be admissible unless accepted by all contracting parties.

23. His delegation had no objection to reservations, providing they were not made in a haphazard manner, but the question was whether reservations should be subject to a system of rules or whether the matter should be left to the individual States. Reservations could be useful to the small and under-developed countries which might find it difficult, for economic or technical reasons, to carry out all the provisions of a convention. Reservations must, however, be accepted either at the time of signature or at the time of ratification or accession.

24. Since the Court had carefully stated that its replies were necessarily limited to the question of reservations to the Genocide Convention, it would seem to be a mistake to apply its conclusions to all conventions, the more particularly as the members of the Court were

far from unanimous on the question and the International Law Commission had taken a different view. The question of rules governing reservations to multilateral treaties required still further study and should be referred to the International Law Commission. Any immediate decision on the part of the Sixth Committee would prejudice the work of the Commission on the law of treaties, because such a decision would be influenced by political rather than legal considerations. He would therefore support reference of the matter to the International Law Commission, which should take into account the opinion of the Court and the draft resolutions and amendments thereto that had been submitted to the Committee. He would reserve comment on those draft resolutions and amendments until they came up for consideration.

25. Mr. ROLING (Netherlands) wished to introduce the joint draft resolution submitted by Denmark, India, Iran, Israel, Mexico, Netherlands, Peru and Sweden (A/C.6/L.198). He had been struck by the difference of opinion in the Committee not only on the question of the law of reservations and the instructions to be given to the Secretary-General, but also on the importance of the problem itself. It was essential to realize the exact scope of the problem so as to facilitate its solution. The principle of universality would not necessarily be served by opening the doors wide. Nor would the principle of integrity be served by narrowing the access to participation in conventions. He believed, in fact, that there would be advantage in seeking to combine both systems. It was a problem of expediency rather than of principle, and the need was for a technical system that would ensure the smooth functioning of multilateral treaties. The joint draft resolution thus invited the Secretary-General to follow his prior practice with regard to the receipt of reservations to conventions and with regard to the notification and solicitation of approval, all without prejudice to the legal effect of objections to reservations; requested the International Law Commission to give further consideration to the matter; and recommended that consideration be given by the organs of the United Nations, specialized agencies and States to the insertion in multilateral conventions of provisions relating to the admissibility or non-admissibility of reservations.

26. The sponsors of the joint draft resolution, although not at one on all points of substance, agreed that there was no advantage in taking a final decision at that stage on the law of reservations, and that, as it was desirable that every opportunity be taken to arrive at a solution, such an opportunity should be sought by referring the matter to the International Law Commission for reconsideration in the light of the Committee's deliberations.

27. The draft resolutions and relevant amendments before the Committee fell into two groups : those that recommended an immediate decision with regard to the law on reservations and those recommending reference of the matter to other bodies. It seemed to him that the Committee should decide whether or not it would go into the substance of the problem or refer it elsewhere, and consequently that the proposal for postponing the decision should be voted on first. He therefore moved that the joint draft resolution should be taken first.

28. With regard to document A/C.6/L.200, the joint amendment by Afghanistan, Egypt, Iraq, Lebanon, Saudi Arabia, Syria and Yemen to the United States draft resolution (A/C.6/L.188), he noted that it left each State to draw all the legal consequences from the communications it received with regard to reservations and the like. Such a procedure would be unfortunate since it would leave matters in the existing state of uncertainty; it was also a very grave matter not to accept the opinion of the Court. Nor did the document suggest how the International Law Commission should tackle the problem of reservations to multilateral treaties; the Committee's discussions were of sufficient value for an account of them to be passed on to the Commission.

29. Mr. CASTAÑEDA (Mexico) observed, with regard to the joint draft resolution (A/C.6/L.198), that some of its sponsors, of which his delegation was one, favoured the Pan-American system while others preferred the system recommended by the Commission. His delegation favoured the maximum possible admissibility of reservations and felt there was room for improvement in reservations system, which should be made to match the exigencies of the modern world.

30. The sponsors agreed that Member States differed to such an extent as to the best method that no one system could with advantage be adopted at that stage, and consequently that the Commission should be requested to reconsider the subject and that no decision should be taken by the Committee.

31. The joint draft resolution did not deal specifically with the Court's opinion on the Genocide Convention; although the subject was closely linked with that of the Commission's report, the two were separate problems. As his delegation favoured the application of the compatibility test to the Genocide Convention, it supported the Israel draft resolution (A/C.6/L.193/Rev.1). It also believed that that test could well be extended to other similar conventions, although that view was not shared by the other sponsors of the joint draft resolution. That was a subject which could also be given further study.

32. The fourth paragraph of the preamble and the third operative clause of the joint draft resolution emphasized the need for the Commission to undertake a study. By referring in the fifth operative clause to the " prior practice " and not to the prior system adopted by the Secretary-General, thus refraining from implying acceptance or extension of the system advocated by the Commission, the sponsors had attempted to take into account the fears of some delegations that the Secretary-General's practice might come to be regarded as the law in the matter. It would also be noted that the Secretary-General was invited to follow his prior practice without prejudice to the legal effect of objections to reservations.

33. Mr. MAJID ABBAS (Iraq) withdrew his delegation's draft resolution (A/C.6/L.199) to refer the item for study to a sub-committee which would report back within two weeks. He had been persuaded in private conversation that it would not, as he had thought, forward the Committee's work. In place of it he submitted, with other delegations, amendments (A/C.6/L.200) to the United States draft resolution (A/C.6/L.188), which would make that resolution acceptable to the Arab States. The discussion had shown that there was too wide a divergence of opinion for it to be possible to combine the best in the League and Pan-American systems, the course he had advocated in his previous statement.

34. Mr. HOLMBÄCK (Sweden) was willing that joint draft resolution A/C.6/L.198 should be voted on before his own (A/C.6/L.192).

35. Mr. PÉREZ PEROZO (Venezuela) said that he wished his delegation's amendment (A/C.6/L.197) to the Israel resolution (A/C.6/L.193) to relate, not to the Israel draft resolution, but to paragraph 1 of the operative part of the United States draft resolution (A/C.6/L.188), so that it might be considered with the joint amendment of the Arab States A/C.6/L.200 to the latter resolution.

36. His delegation's revised amendment (A/C.6/L.197/Rev.1) would replace paragraph 1 of the operative part of the United States draft resolution by the following text :

" 1. Recommends to all States that they be guided in regard to the Convention on Genocide and in framing other multilateral conventions of a humanitarian nature by the advisory opinion of the International Court of Justice of 28 May 1951; ".

37. It would not, as certain representatives had protested, be difficult to determine what such humanitarian conventions were. They were conventions which dealt with means of improving living conditions and of remedying evils in general, without reference to particular States; conventions to implement any of the rights named in the Universal Declaration of Human Rights; and future conventions the humanitarian nature of which might be made clear during their drafting. The conventions on the traffic in persons, narcotic drugs and the status of refugees also were examples.

38. The CHAIRMAN said that six draft resolutions remained before the Committee, together with proposed amendments to certain of them. He invited the Committee to consider the Netherlands proposal that joint draft resolution A/C.6/L.198 should be voted upon first.

39. Mr. MAKTOS (United States of America) wished, in the first place, to thank the representative of Iraq for his courteous withdrawal of the Iraqi draft resolution.

40. The Netherlands proposal was procedural in appearance only. Its adoption would mean deferring consideration of the United States draft resolution till the following year, when it would stand less chance of adoption. If the question of reservations was referred back to the International Law Commission for study, the Commission might decide in favour of some form of majority rule, and that decision might sway the existing narrow majority in the Committee which was in favour of allowing each State to decide on the effect of reservations for itself. All those States, Arab and American alike, which shared the view of the United States delegation ought therefore to vote against the Netherlands proposal. He hoped that the minor differences between the Arab, Latin-American and United States views would not prevent those States from co-operating on the main point upon which they were agreed. The Committee must lay down a definite rule at once, stating that the legal effect of reservations was a matter for decision by the individual States.

41. Mr. ROLING (Netherlands) failed to see the force of the United States representative's argument about postponement. He also wondered about the wisdom of taking a decision now for the reason that a different decision might be taken next year, after further study.

42. Mr. FITZMAURICE (United Kingdom) supported the Netherlands proposal, which was procedurally logical. The question whether or not to postpone a decision should be taken before the decision itself. If it were decided for postponement, a vote would not need to be taken on the specific solutions proposed.

43. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics) did not share the United States representatives view about the possible loss of a majority the following year. Nevertheless he would vote against the Netherlands proposal. The question of reservations to multilateral conventions had already taken much time at two sessions, and there were other important matters to be dealt with. There were no pressing problems of reservations to be settled. If the matter was postponed, there would be a repetition next year of the current debates. The Committee should vote at once on the various resolutions before it.

44. Mr. BARTOS (Yugoslavia) said that the Committee was considering questions of international law, not merely the guidance to be given to the Secretary-General, and therefore should give the matter very careful study before taking a decision. If it took a decision at once, by a majority which would probably be small, it might wish to alter it the following year. He was consequently in favour of priority being given to joint draft resolution A/C.6/L.198.

45. Mr. MAKTOS (United States of America) felt that his remark that postponement of the decision might result in the United States draft resolution being rejected had been misinterpreted. It was a question of a narrow majority which might change and tip the balance.

46. He moved the closure of the debate.

The motion was adopted by 29 votes to 9, with 10 abstentions.

47. The CHAIRMAN put to the vote the Netherlands proposal that joint draft resolution A/C.6/L.198 should be voted upon first.

48. Mr. WENDELEN (Belgium) said that he would vote against the proposal because it was the Committee's first task to give the Secretary-General instructions, and those instructions should be more positive than the instructions contained in joint draft resolution A/C.6/L.198.

The proposal was rejected by 25 votes to 22, with 2 abstentions.

49. The CHAIRMAN stated that the Committee would consequently vote upon the documents before it in the order in which they had been submitted.

The meeting rose at 1.10 p. m.

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