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CONTENTS

Chairman: Mr. V. OUTRATA (Czechoslovakia)

Permanent invitation to the Arab League to attend sessions of the General Assembly (*continued*)

[Item 58 of the agenda]*

1. Mr. ROBINSON (Israel) paid tribute to the objectivity which most of the representatives, including the representative of Egypt, had displayed in the earlier discussions. In the same connexion he deplored the violence with which the representatives of Iraq and Lebanon had attacked the ethnic group to which the Israeli delegation belonged. The mendacious quotations, such as those attributed to Abraham Lincoln by the representative of the Lebanon, had emanated from the Nazi information service and were an outrage upon the dignity of an organization the aim of which was to practise tolerance and promote friendly relations between peoples. It was regrettable that the leader of the Iraqi delegation should have denied having said in 1950 that the deliberations of the Political Committee in Alexandria were "nothing but a waste of time and effort", as he doubted whether the delegation of Iraq could produce any written proof to the contrary. He would refrain, out of courtesy, from dwelling on the differences of opinion which had for long existed between Mr. Jamali and Azzam Pasha, the Secretary-General of the Arab League.

2. He wished to rectify certain inaccuracies which he had noted during the debate: firstly, only forty-seven and not fifty-three States, as the representative of Lebanon had said, had co-operated with the Secretary-General in the matter of Korea, as could be seen from page x of the Secretry-General's annual report (A/1287).

3. Secondly, Hans Kelsen had referred only very briefly to the Arab League in his book *The Law of the United Nations*[1] as an organization "which is considered to be a regional organization", but he himself had taken no stand whatsoever in the matter. In short, the studies made by Mr. Majid Khaduri and Professor Michel Mouskheli were the only accounts which dealt with the Arab League extensively and he had already stated in what terms.

4. Mr. Robinson then came to the Syrian draft resolution. The fact that there was no preamble to that resolution was easily explained: to begin with the invitation to be addressed to the Secretary-General of the Arab League was not based on the Charter and in no way implied the recognition of that League as a regional organization; moreover, since the meetings of the General Assembly and its Main Committees were open, there was nothing to prevent the Secretary-General of the Arab League from attending them as a member of the general public without waiting for a special invitation. Finally, the word "observer" had no definite legal meaning. Those were negative considerations.

5. When, however, one turned to the positive considerations, on which it might have been possible to draft a preamble, one found a bewildering diversity of arguments. Some representatives had dwelt in particular on the regional, and others on the political, character of the Arab League; some delegations believed that its aims conformed to the fundamental purposes of the Charter. But it should be noted that none of the speakers had said that the activities of the Arab League were consistent with the principles of the Charter. This could be easily explained since no report or other substantial material had been submitted to the Committee to assist it in its work. Several delegations had said that since the invitation in question was not based on the Charter, the League's constitution and principles did not come into consideration. Other delegations considered themselves bound by the resolutions adopted by the General Assembly during its third session, while yet others emphasized the lack of valid precedents. Thus not a single unanimously accepted argument, which could have constituted a preamble to the Syrian draft resolution, could be found.

6. Finally, if as most delegations seemed to think, the act was merely one of courtesy towards the Arab

* Indicates the item number of the General Assembly agenda.

[1] Published under the auspices of the London Institute of World Affairs, London, 1950.

League, one wondered why such a courtesy should emanate from Lake Success and not from Cairo.

7. The representative of Saudi Arabia had mentioned certain conversations which had taken place in 1947 between the Secretary-General of the Arab League and the Secretary-General of the United Nations. No real co-operation was possible between two organizations the aims of which were diametrically opposed. The Arab League had completely disregarded United Nations efforts for the restoration of peace. It would suffice to quote in support of that assertion the statements of the Secretary-General of the Arab League according to which the Arab countries would never cease to consider Israel as an enemy and an invader, and that they would use every possible weapon against it, including a boycott not only of Israel but of any nation maintaining economic relations with it. If the Secretary-General of the Arab League were invited to attend the sessions of the General Assembly, he would be given a wonderful opportunity to pursue his boycott campaign.

8. For all these reasons, the Israeli delegation would maintain its negative attitude towards the draft resolution.

9. Mr. AMIN (Iraq), replying to the representative of Israel, pointed out that it was not his delegation which had taken the initiative in making personal attacks and reading quotations which everybody knew were sometimes not quite accurate. Nevertheless, Mr. Jamali could not but refute an incorrect statement which had been attributed to him personally.

10. As to the differences of opinion between Mr. Jamali and the Secretary-General of the Arab League, he said that an exchange of views, even entirely opposing views, often contributed towards a final understanding between the parties and to the establishment of a strong and permanent bond between them.

11. He thanked the many eminent jurists who had supported the Arab League in the Committee.

12. Mr. TARAZI (Syria), in reply to the representative of Israel, said that among the jurists who had dealt with the Arab League had been Professor Scelle, who had spoken at length on the League in his lectures on international law and on international federalism in 1947-1948 at the Faculty of Law in the University of Paris, citing the League as an example of a federation. He denied that Professor Mouskheli, who, moreover, was French and at present teaching at Strasbourg, had spoken of the League with any ill-will.

13. His draft resolution had no preamble merely because his delegation, modelling itself on the resolution adopted by the General Assembly during its third session (253 (III)) had tried to submit a draft which would be as simple and as concise as possible.

14. Referring to the remark of the Israeli representative that the courtesy should have emanated from Cairo and not from Lake Success, he said that to invite the Secretary-General of the Arab League to attend sessions of the General Assembly would be not only an act of courtesy but, and above all, one of equity, by granting the League the same privilege which had earlier been accorded to the Organization of American States.

15. Mr. MIKAOUI (Lebanon) remarked that, for reasons which would be easily understood by all, the names of Hitler and Goebbels were constantly in Mr. Robinson's mind.

16. Mr. Robinson had been the first to brand the Arab League's statements as mendacious. That was an epithet which the delegations of the Arab States could well apply to the assertions of the Israel representative, yet they had refrained from doing so.

17. From a practical point of view, he could not see why the Secretary-General of the Arab League should not be permitted to attend the debates of the General Assembly as an observer, since each of the Arab States was represented in the various organs of the United Nations by a delegation with the right to vote.

18. Mr. KURAL (Turkey) pointed out that the Arab League did not identify itself with the groups of countries which constituted the Middle East. There were at least six other countries, among them Turkey, which formed part of the Middle East but did not belong to the Arab League.

19. His delegation would vote for the Syrian draft resolution.

20. Mr. AMADO (Brazil) asked that the vote should not be given a significance which it did not possess, by amplifying or restricting the importance of the regional character of the Arab League. To do so would be to create confusion as to the scope of the vote. It was not necessary perhaps to compare the proposed invitation to the Arab League to the one addressed two years before to the Organization of American States. The Arab League was founded on a community of religious, cultural and racial characteristics and not on geographical and historical grounds like the Organization of American States, whose distant beginnings had been in the historical movement which had given rise to the Monroe Doctrine. The countries which were members of the Organization of American States had differing customs and usages, and to think that the Arab League also had a geographical basis might lead to a regrettable misunderstanding. There were countries in the Middle East, such as Turkey, Iran, Greece and, of course, Israel, which were not members of the League.

21. It was on other grounds, therefore, that Brazil would vote in favour of the Syrian draft resolution, because it recognized that the purposes of the Arab League were compatible with those of the United Nations, and because there was not a rule or even a word in the Charter prohibiting an invitation of that kind.

22. He was glad that a body such as the Arab League was anxious to draw closer to the United Nations, whose purposes were universal. It was desirable that the Arab League should send an observer, whose presence might permit closer contact between the United Nations and the members of the League, thus facilitating the establishment of a state of psychological osmosis between the countries which were struggling for peace. The decision which was about to be taken would not have the juridical status of a precedent.

23. The CHAIRMAN asked the representative of Bolivia whether he wished to make a formal proposal of the suggestion he had made at the 216th meeting to set up a sub-committee to consider whether the Arab League constituted a regional organization and whether its purposes were in conformity with those of the Charter of the United Nations.

24. Mr. DIEZ DE MEDINA (Bolivia) explained that he had said that the points to be examined by such a sub-committee ought to be whether the purposes of the Arab League conformed to those of the United Nations, and whether any invitation to that Organization would constitute a precedent. However, unless the suggestion was supported by other delegations, he would not make it a formal proposal.

25. Mr. MAURTUA (Peru) thought that the establishment of a sub-committee would distort the Syrian draft resolution and the discussion as a whole. If the invitation to the Arab League was simply a gesture of courtesy, it was superfluous to subject it to the investigation recommended by the Bolivian representative. In his own opinion, the documents distributed were enough to show that the purposes of the Arab League were compatible with those of the United Nations. He was therefore opposed to the setting up of the sub-committee since it was not necessary to enter into the substance of the matter.

26. Mr. DIEZ DE MEDINA (Bolivia) said that in that case the question ought to be sent to the Political Committee.

27. Mr. MIKAOUI (Lebanon) appealed to the representative of Bolivia not to press for the constitution of a sub-committee. The matter had been submitted to the Sixth Committee because it could have raised a legal question, although no representative had chosen to do so. The aim of the discussion was not to find out whether the Arab League constituted a regional organization but to make possible closer co-operation between the Arab League and the United Nations. He therefore appealed to the representative of Bolivia not to insist that his suggestion should be considered.

28. Mr. DIEZ DE MEDINA (Bolivia) thought that since the member countries of the League were not seeking juridical sanction the matter should be referred back to the Assembly as not being of a legal character. However, since the Bolivian delegation had received no support, it would make no formal proposal and would abstain from voting.

29. The CHAIRMAN said that at the request of the Cuban representative the vote on the Syrian draft resolution would be taken by roll-call.

The vote was taken by roll-call.

India, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: India, Indonesia, Iran, Iraq, Lebanon, Liberia, Luxemburg, Mexico, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Saudi Arabia, Sweden, Syria, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Argentina, Australia, Belgium, Brazil, Burma, Canada, Chile, China, Cuba, Denmark, Dominicán Republic, Ecuador, Egypt, France, Greece.

Against: Israel.

Abstaining: Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialists Republics, Bolivia, Byelorussian Soviet Socialists Republic, Czechoslovakia, Guatemala.

The Syrian draft resolution was adopted by 42 votes to one, with 7 abstentions.

30. Mr. MOROZOV (Union of Soviet Socialists Republics and Mr. HOFFMEISTER (Czechoslovakia) gave as the reason for their abstention the fact that, as on the occasion of the vote on the invitation addressed to the Organization of the American States at the 70th meeting of the Sixth Committee on 9 October 1948, their delegations considered that the Charter of the United Nations contained no provision envisaging such an invitation.

31. Mr. LACHS (Poland) said that he had abstained on the principle of equality of sovereignty among States and because he was opposed to the establishment of double representation in the Assembly. Since the Charter did not contain any provision authorizing such an invitation, the gesture might risk favouring the members of regional organizations. The Polish delegation had therefore abstained on non-political grounds, as it had done two years before.

32. Mr. URIBE CUALLA (Colombia) said that if he had been present when the vote was taken he would have voted for the Syrian draft resolution.

Reservations to multilateral conventions (A/1372, A/C.6/L.114, A/C.6/L.115)

[Item 56 of the agenda]

33. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) recalled that it was at the request of the Secretary-General that the question of reservations to multilateral conventions had been placed on the agenda of the General Assembly. Before the discussion was thrown open, he wished to make one or two remarks on the Secretary-General's report (A/1372).

34. It should be made clear first of all that, when States decided to conclude a multilateral treaty, they were obviously completely free to include provisions regarding reservations in the particular treaty or convention in question. The problem before the Committee only arose, therefore, in cases where the convention did not include any provisions of this kind.

35. The problem, as it presented itself, was summarized in paragraph 2 in the introduction to the Secretary-General's report. It was the lack of unanimity concerning the procedure to be followed by a depositary to obtain the necessary consent or concerning the legal effect of an objection lodged by a State against a reservation, which caused the difficulties encountered by the Secretary-General in exercising his functions as the depositary of the various multilateral instruments adopted by the General Assembly or concluded under the auspices of the United Nations.

36. The report explained the practice of the League of Nations and of the Secretary-General of the United Nations. It also contained the views of several eminent jurists, in which, moreover, it was possible to discern a certain similarity.

37. He also recalled that the question had already been considered by the International Law Commission and he was sure that the presence of Mr. Amado, Mr. Spiropoulos and Mr. Hsu, members of that Commission, would be of great help. The work of the

International Law Commission had been based on seven essential points from a report (A/CN.4/23) by Professor Brierly, namely: (*a*) a reservation was part of the bargain between the parties and therefore required their mutual consent to its effectiveness; (*b*) the text of a proposed reservation must be formally authenticated in accordance with a formal procedure; (*c*) the acceptance of a treaty subject to a reservation was ineffective unless or until the requisite consent had been obtained; (*d*) the requisite consent could be implicit or explicit; (*e*) if a proposed reservation related to a treaty which was not yet in force it would only have effect if it received the consent of all the States which had participated in negotiating the treaty; (*f*) a reservation submitted after the entry into force of a treaty must receive the consent of all the States parties to the treaty at the time; (*g*) a State which accepted a treaty implicitly agreed to all the reservations of which it had knowledge at the time.

38. The debates of the International Law Commission (A/CN.4/SR.53) showed that the essential difficulties arose over the question of whether consent could be tacit or must be expressed, and over the question of the identity of the States whose consent was necessary. The Secretary-General's report referred to the provisional conclusions in the report of the International Law Commission (A/1316). He recalled that the Commission would resume the examination of that question the following year.

39. Lastly, he noted that, since the Secretary-General's report had been submitted, Salvador had acceded to the Convention on Genocide, thus raising to eighteen the number of States which had ratified or acceded to the Convention. In addition, Australia had made it known through its permanent delegation that it did not consent to the reservations to the Convention formulated by certain States.

40. In conclusion, Mr. Kerno said that the Secretary-General wished to adopt a practice which would satisfy all the parties concerned and would therefore be glad to receive guidance from the General Assembly.

41. Mr. TATE (United States of America) said that the draft resolution submitted by his delegation (A/C.6/L.114) was designed as a guide to the Secretary-General in the performance of his function as the depositary of international conventions, while leaving it to States to determine the legal effects of reservations to such conventions pending the report of the International Law Commission on the subject.

42. The procedure which the Secretary-General followed in the matter was stated in paragraph 46 of his report in the following terms: "A State may make a reservation when signing, ratifying or acceding to a convention, prior to its entry into force, only with the consent of all States which have ratified or acceded thereto up to the date of entry into force; and may do so after the date of entry into force only with the consent of all States which have theretofore ratified or acceded."

43. That rule dealt with the determination by the Secretary-General of the legal consequences of a refusal by one State to accept a reservation proposed by another, and had no bearing on his functions as depositary. In the opinion of the United States delegation, it was sufficient to give the Secretary-General clear indications concerning the conditions under which he might accept or reject the deposit of an instrument of ratification containing a reservation. That was the purpose of the United States resolution.

44. According to the rule hitherto followed by the Secretary-General, a State might make a reservation only with the consent of all States which had ratified or acceded to a convention up to certain dates. A State thus had no alternative but to ratify a convention without reservation, if it did not wish to be excluded from participation in it in the event that one of the contracting parties objected to the reservation. The procedure proposed by the United States delegation would permit a State whose ratification was subject to a reservation to become a party to a convention notwithstanding the fact that, should objection be raised to the reservation, the Secretary-General might be obliged to delay his acceptance for deposit of the instrument of ratification containing the reservation.

45. Article XIII of the Convention on Genocide provided that it should come into force on the ninetieth day after the deposit of the twentieth instrument of ratification or accession with the Secretary-General. If nineteen States should ratify the Convention without reservation and the twentieth State ratify it with a reservation accepted by eighteen of the other States but not by the nineteenth, the Convention would enter into force on the ninetieth day after the deposit of the twenty-first instrument of ratification, if the twenty-first State ratified it without reservation. Under the rule to which to the Secretary-General adhered, the twentieth State could not become a party to the convention.

46. The United States proposal would on the other hand permit that State to become a party to the convention *vis-à-vis* the States which accepted its reservation. The rule established by the Secretary-General appeared to be too inflexible for application to all conventions. The United States proposal left States the right to determine the legal effect of a particular reservation. If the States concerned so desired, they might permit a State, whose ratification was subject to a reservation, to become a party to a convention notwithstanding an objection to the reservation, if the convention was of a type adaptable to such a procedure. The procedure proposed by the United States also permitted, if the States concerned so desired, the application of a convention between States ratifying with reservations and States objecting to those reservations in cases where it was considered practicable to apply between those States at least the provisions of the convention to which no reservation was made. Finally, it would permit States members of the Organization of American States to follow the rule defined by the Council of the Organization.

47. The United States representative was aware that the application of such a procedure would create a series of different obligations among parties to one and the same convention; it would, however, have the merit of enabling the maximum number of States to participate in a convention and would thus permit the wide application of the major portion of the convention.

48. With respect to the amendments to the United States draft resolution proposed by the United Kingdom

(A/C.6/L.115), Mr. Tate was of the opinion that the General Assembly was fully competent to determine the functions of the Secretary-General as the depositary of international instruments. As regards the legal consequences of objections by some States to reservations made by others, that was a question of the law of treaties. That subject was under consideration by the International Law Commission and there appeared to be no good reason for referring it to the International Court of Justice. It would probably be contended that the Court was in a position to give an opinion long before the International Law Commission. But the matter was of no special urgency—States had hitherto been able to conduct their relations and to conclude conventions without such an opinion. The only urgent matter was to determine the precise functions of the Secretary-General as the depositary of international instruments. The International Law Commission could moreover deal with the question raised by the United Kingdom representative in the course of its study of the whole subject.

49. If the proposal to consult the International Court of Justice was rejected, the United Kingdom delegation suggests the substitution of a different text for sub-paragraphs (*a*) and (*b*) of the third paragraph of the United States draft resolution. The alternative text required the consent not only of ratifying States but also of signatory States. Once the principle had been accepted that the Secretary-General must not accept a deposit of an instrument of ratification containing a reservation except with the approval of a certain number of States, it was of the utmost importance to determine the number of States required to give that consent. In that connexion, the United States delegation was in full agreement with the conclusions contained in paragraph 47 (*b*) of the Secretary-General's report, which reads as follows:

> "Since the attention of a very large number of States is normally directed at one stage or another to conventions of which the Secretary-General is made depositary, it is in the interests of efficiency to keep to a minimum the number of States required to give unanimous consent to a reservation. This can best be accomplished by confining the power to reject a reservation to the States most directly affected—namely, to actual parties to the convention in question."

50. For all the above mentioned reasons, the United States delegation could not support the amendments to its draft resolution submitted by the United Kingdom delegation.

51. In conclusion, Mr. Tate again stated that the purpose of the United States draft resolution was to give a precise definition of the Secretary-General's functions as depositary of international instruments concluded under the auspices of the United Nations, while leaving it to States to determine the legal effect of reservations, pending the completion of the International Law Commission's study of the matter.

52. Mr. JIMENEZ DE ARECHAGA (Uruguay) said that the views of his delegation differed from those stated in the Secretary-General's report on a number of important points affecting the substance of the matter.

53. It was universally accepted that the consent of all the governments which were parties to a multilateral convention must be obtained before a reservation was binding upon them. The divergence of opinion did not therefore concern that point but the legal effect of an objection entered by a State against a reservation.

54. As an illustration, it was interesting to compare the practice of the League of Nations and that of the Pan-American Union.

55. According to the practice followed by the League of Nations, in order that a reservation might be valid, it was essential that it should be accepted by all the Contracting Parties. Otherwise, not only was the reservation itself invalid, but the State making it did not become a Party to the convention. A refusal on the part of a single Contracting Party was sufficient.

56. On the contrary, under the practice followed by the Pan-American Union that State would not be so excluded. That was a more realistic attitude, which he would illustrate by a hypothetical example. Supposing there were a multilateral convention among twenty-one American Republics; eighteen States might accept and ratify it without reservation. One State, say Uruguay, might ratify it with a reservation. Of the eighteen States which had ratified the convention, seventeen might accept the Uruguayan reservation, but the last State, say Cuba, might refuse it. Uruguay would become a Party to the convention notwithstanding. The only consequence would be that the convention would not enter into force between Uruguay and Cuba.

57. The Secretary-General of the United Nations, as the depositary of international conventions, had hitherto followed the practice of the League of Nations and had given his reasons in the report submitted to the Committee. Mr. Arechaga thought the report (A1372) was excellent but regretted that it pleaded in favour of the League system and he was stating the arguments in favour of a change in attitude since the Secretary-General had consulted the Sixth Committee on the matter.

58. The Secretary-General had not given arguments in the strict sense of the word but had simply quoted the authorities on the subject — eminent jurists or organizations, which had expressed themselves in favour of the League of Nations system. The legal merits of the Pan-American Union system were undeniable and were proved by its satisfactory functioning over a long period among twenty-one American States.

59. As both systems were equally valid from a legal point of view, it was necessary to consider the practical advantages which each afforded.

60. In that respect, the superiority of the Pan-American Union system was manifest and thus had been recognized by the Secretary-General in paragraph 30 of his report. Among those advantages the following might be mentioned: reservations were more easily made; it was possible for the maximum number of States to become Parties to a convention; there was no delay in the entry into force of a convention. In short, the system in question furthered the progressive development of international law through multilaterial conventions.

61. On the other hand, the practice followed by the League of Nations seriously jeopardized the position of States making reservations, since those States might find themselves prevented from acceding to a convention. The system also resulted in considerable delay in the entry into force of a convention, and enabled one State arbitrarily to exclude from participation in a convention another State which might have made only the most insignificant reservations. Finally, that system brought into play the rule of unanimity and its corollary, the right of veto. The United Nations, therefore, should adopt the method used by the Pan-American Union, and eliminate the right of veto, which was inadmissible in such matters.

62. Mr. Jiménez de Arechaga pointed out that it was obviously necessary to give reliable guarantees to a State ratifying a convention which was unable to accept a reservation made by another State. The rule that a treaty would not enter in force between the State making the reservation and the State refusing to accept it, provided exactly such a guarantee.

63. Finally, Mr. Jiménez de Arechaga refuted the argument contained in the Secretary-General's report, to the effect that the procedure used by the Pan-American Union was well adapted to the needs of a regional body, but was not suited to the purposes of a larger organization such as the United Nations. He recalled that many more conventions had been signed under the aegis of the Pan-American Union than under the auspices of the United Nations, without ever encountering any difficulty due to reservations. Mr. Jiménez de Arechaga admitted that unanimous agreement was necessary in the case of certain conventions. Such conventions, however, represented rare exceptions to the rule; and it would be obvious to the members of the Sixth Committee that rules must be made applicable to the majority of cases rather than to the exceptions. Moreover, in such exceptional cases, the Parties could always insert a special clause.

64. In conclusion, he turned to the draft resolution submitted by the United States, and reviewed the three points contained in that proposal. Those points were, first, that the question should be referred to the International Law Commission; second, that the particular provisions of each convention should be respected in all cases; and third, that pending the submission of an opinion by the International Law Commission, the method advocated by the Secretary-General should be applied. Mr. Jiménez de Arechaga declared that his delegation could support the first two points without a reservation, but that its views differed from those of the United States delegation on the third point.

65. He therefore proposed an amendment (A/C.6/L.116) to the third part of the United States draft resolution.

66. Mr. ROBERTS (Union of South Africa) asked the representative of the United Kingdom whether the opinion of the International Court of Justice mentioned in the United Kingdom amendment and the report of the International Law Commission mentioned in the United States draft resolution would have binding force without a General Assembly resolution to that effect.

67. Mr. FITZMAURICE (United Kingdom) explained the position of his delegation with respect to reservations made to multilateral conventions. Except on one point, the United Kingdom delegation fully approved the conclusions given in the Secretary-General's report, which was a masterly study of the question. He would not, therefore, review the arguments set forth in the report, in particular those relating to the method adopted by the Organization of American States, which was supported by the Latin-American delegations. In fact, although such a system might function smoothly and efficiently among States situated in the same geographical region and linked together by common interests, it would not be effective if applied on a world-wide scale among States in widely differing geographical situations; moreover, it was not suited to the type of convention drawn up under the auspices of the United Nations.

68. The point on which the United Kingdom delegation disagreed with the Secretary-General was the question of determining which States should be given decisive power to raise valid objections to a reservation made by another State at the time of its signature, ratification or accession. In the opinion of the Secretary-General, that right should belong to States which became, in actual fact, Parties to the convention by accession or ratification. The arguments set forth by the Secretary-General in support of that point of view were weighty, especially in view of the type of convention drawn up under the auspices of the United Nations.

69. Nevertheless, the United Kingdom delegation was convinced that a more liberal system should be adopted, a system which would permit any signatory State (even though it might not yet be a Party to the convention) to raise valid objections to the reservations of another State. Indeed, in the opinion of the United Kingdom delegation, any country which was authorized to become a Party to a convention, by signature, ratification or accession had the right to object even if it had not yet signed the convention, provided that it had participated in drawing up the convention or was a member of the international organization sponsoring it. That system was discussed in the Secretariat's report and was advocated by Professor Brierly with respect to conventions which had not yet entered into force. It was on the basis of that principle that the Government of the United Kingdom had recently objected to the reservations made by certain States to the Convention on Genocide.

70. At all events, the United Kingdom delegation did not wish to go so far. It would be satisfied if the right to object to the reservations of other States was limited to the signatories of the convention. In point of fact, if a signatory was not actually a Party to the convention, and therefore did not have definitive rights as such, it still had certain provisional rights. It had the right to ratify the convention, and to ratify it in the precise form in which it had signed it. It had the right, when the time came for ratification, not to find the convention completely altered by far-reaching reservations.

71. In that respect, the representative of the United Kingdom drew attention to two important considerations mentioned in paragraph 40 of the Secretary-General's report. There were certain countries, such as

Switzerland and the United States, which, owing to their slow constitutional procedures, could not ratify a convention until a considerable time after having signed it.

72. It was possible, however, that before such States were in a position to ratify it, the convention might have entered into force subject to important reservations agreed upon by the countries which, by their ratification, had put it into effect. Moreover, it was well known that in many cases only a small number of ratifications was necessary to bring a convention into force. Thus, if the other signatories did not have the right to object to the reservations made, it would be possible for a small group of States, acting together with a common aim, to bring a convention into force with important reservations agreed upon by them, and to place the majority of signatories in the position of being forced to accept the reservations or not to become Parties to the convention. In the opinion of the United Kingdom delegation, such a procedure would be contrary to all the rights of signatory States. It would permit States or groups of States to re-introduce into the text of a convention clauses which had been expressly rejected in the course of the negotiations, or to eliminate clauses which had been deliberately included. That, in fact, had been the purpose of the different reservations made to the Convention on Genocide. Moreover, such a procedure would prevent a large number of States from signing a convention. If Members of the United Nations, after taking infinite pains to draw up a convention, had reason to believe that when they were in a position to ratify it, they would find themselves faced with a large number of reservations to which they were powerless to object, they would hesitate to sign the convention, or, at the very least, would delay their signature. As regards the United Kingdom, in view of the negotiations and legislation required before it could become a Party to an international convention, the government would be very reluctant to sign a text which was not definitive.

73. The representative of the United Kingdom then explained his delegation's reasons for presenting its amendments (A/C.6/L.115) to the United States draft resolution. The amendment to request an advisory opinion from the International Court of Justice, rather than a report from the International Law Commission, had been based upon four essential considerations.

74. First, it was well known that the question of reservations to multilateral conventions was a highly complex and controversial matter. But it was not the function of the International Law Commission to solve controversial problems of law; its function was to codify existing law. On the other hand, it was the duty of the International Court of Justice to settle controversial questions of law and to determine the tenor of existing law. Consequently, when an organ of the United Nations was in doubt concerning the precise juridical position on a given point, it should appeal to the Court as the principal judiciary organ of the United Nations.

75. Second, it was evident that the International Law Commission, in codifying the law relating to treaties, could undertake only a general study of the question. It could not consider specific cases of conventions drawn up under the auspices of the United Nations. It was its duty to prepare rules which would be applicable to all treaties, of whatever type, negotiated between States or groups of States. It was by no means certain, therefore, that the directives required by the Secretary-General could be obtained from the International Law Commission.

76. Third, the time factor must be considered. The International Law Commission would not be able to finish the codification of the law of treaties before the end of two years, at the earliest. Moreover, the term of office of the present members of the Commission would expire during the next year. Other members might be elected and further delay would thus be caused. Those considerations did not apply to the International Court of Justice, which would be able to give an opinion by the following March or April at the latest.

77. The final consideration was of a general nature. It was the view of the United Kingdom delegation that the General Assembly should avail itself of the services of the International Court of Justice to the greatest extent possible. The Court was not over-burdened with work, as was the International Law Commission, and would be able to devote to the question at issue the close attention it deserved. Moreover, the procedure of the Court provided for the submission of written or oral comments by any country on any question; in the present case that procedure would enable the Court in arriving at its decision to take into consideration the points of view of the various States. Such a possibility did not exist in the case of the International Law Commission, whose decisions were founded on the research work of its own members.

78. For the reasons set forth, the United Kingdom delegation earnestly requested that the question of reservations to multilateral conventions should be referred to the International Court of Justice for an advisory opinion. If its proposal was adopted, the delegation would not oppose the Secretary-General's continuing the procedure followed in the past, pending receipt of the advisory opinion of the Court. In that connexion, the United Kingdom would propose certain drafting amendments to sub-paragraphs (*a*) and (*b*) of the United States draft resolution.

79. If its proposal to refer the matter to the International Court of Justice was rejected, the United Kingdom delegation would be unable to support, even as a provisional measure, the procedure suggested in the Secretary-General's report and in the United States draft resolution, in view of the fact that the International Law Commission would not be able to present a report on the question for some time. In that event, the United Kingdom delegation would insist upon the adoption of a system which would permit signatory States to raise valid objections to reservations made by other States.

80. In conclusion, Mr. Fitzmaurice declared that the considerations he had mentioned were not intended to influence the members of the Organization of American States to abandon the system in use by them with respect to reservations to multilateral conventions negotiated among themselves. The United Kingdom proposal concerned only conventions drawn up under the auspices of the United Nations, of which the Secretary-General was the depositary.

81. Finally, replying to the question raised by the representative of the Union of South Africa, Mr. Fitzmaurice said that the opinions of the International Court of Justice were "advisory" in character and were not binding upon the General Assembly. The Assembly was free to accept or reject them, as was also the case with regard to any draft code prepared by the International Law Commission.

82. Mr. KURAL (Turkey), supported by Mr. GARCIA AMADOR (Cuba), Mr. CHAUMONT (France) and Mr. ABDOH (Iran), proposed that the meeting of the Committee arranged for the afternoon of Friday, 6 October, should be cancelled.

It was so decided.

The meeting rose at 3 p.m.

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