United Nations

GENERAL ASSEMBLY

FIFTH SESSION

Official Records

SIXTH COMMITTEE 218th

MEETING

Thursday, 5 October 1950, at 3 p.m.

Lake Success, New York

CONTENTS

Chairman: Mr. V. OUTRATA (Czechoslovakia).

Reservations to multilateral conventions (A/1372) ***(continued)***

[Item 56]*

1. The CHAIRMAN called for further speakers on the item under discussion.

2. Mr. AMADO (Brazil) said that he was speaking as a member of the Brazilian delegation rather than as a member of the International Law Commission. It was, however, important to recall that the International Law Commission had been able to devote very little time to the question of reservations to multilateral conventions, because it had been instructed by the Assembly to give priority to other urgent problems on its agenda.

3. He wished to make a few general remarks on the subject in order to outline his government's attitude. The problem of reservations to multilateral conventions was beset with difficulties and was of relatively recent origin. The growing number of multilateral conventions had in recent times made reservations the rule rather than the exception. Reservations had become part of the normal procedure as a result of the desire to reconcile the principle of the autonomy of each contracting party with the desire to secure the greatest possible number of ratifications. The making of reservations meant actually entering into new negotiations since the convention was already made. The consent of the other parties concerned to such reservations was a basic requirement. It was in fact the mainspring of the whole system of reservations, as was stressed in all the major works on the subject, e.g., the study of the Harvard *Research in International Law*,[1] and in the Secretary-General's report (A/1372).

4. He congratulated the Secretariat for its penetrating study of the problem and expressed general agreement with its conclusions. There was, however, one point on which he did not share the views of the Secretariat, namely the proposal that the power to reject a reservation should be confined to the States which had actually ratified or acceded to the convention. That proposal differed fundamentally from the concept embodied in the Harvard draft Convention on the Law of Treaties (articles 14-16) which gave all the signatories to a convention the right to reject or accept a reservation. The authors of other works on the subject had even gone so far as to maintain that not only the signatories but all States which had taken part in the negotiation of the text should be entitled to reject reservations. As an example, he mentioned Mr. Brierly's preliminary report on the subject to the International Law Commission (A/CN.4/23). Mr. Brierly had also held the view that in that regard States became parties to international conventions from the time of signature and not as a result of ratification.

5. At the 53rd meeting of the International Law Commission, during the discussion on reservations, Mr. Kerno, Assistant Secretary-General in charge of the Legal Department had expressed the view that if the term "signatories" had to be defined, it should mean those signing on the occasion of the signing ceremony, as well as those signing within the period during which the treaty or convention was open for signature (A/CN.4/SR.53, paragraph 143). Mr. Amado concluded therefore that the Assistant Secretary-General had not, at that time, been completely convinced of the need to withhold the right to reject reservations from the signatories to conventions.

6. The Brazilian delegation favoured the adoption of the system set forth in the Harvard draft convention. He did not understand the need to confine the power to reject reservations to the minimum number of States. What was important, in his opinion, was to restrict the facilities hitherto granted to States to alter by reservations the contents of a treaty which had already been approved by the United Nations, for such alterations might impair the structure, purpose and legal force of the instrument. Furthermore, he did not agree that the solution proposed by the Secretariat would really secure a greater number of ratifications to international treaties. Although it was true that a signatory which objected to a reservation might refuse to ratify the treaty, it was even more likely that many signatories would be unable to ratify a convention, already distorted by reservations on which they had not been asked to give their views. It was suggested in paragraph 44 of the Secretary-General's report (A/1372), that objections by signatories to any reservations should be circu-

* Indicates the item number on the General Assembly agenda.

[1] "Law of Treaties", in the *American Journal of International Law* (Supplement), vol. 29.

lated, so that the parties to the convention might take them into account when deciding whether the reservation should be accepted. In his opinion, that would not be a sufficient safeguard for the interests of the signatories.

7. It was a question of choosing between the signatories to the convention and the parties submitting reservations. In that connexion, he cited the opinion given by the Harvard *Research in International Law:*[2]

> "In either case, since a choice must be made, reason and the necessity for preserving multipartite treaties as useful and effective instruments of international co-operation indicate that the preference should be given to the States which find the treaty satisfactory as it stands, and that the inconvenience, if any, of non-participation in the treaty should fall upon the State which seeks to restrict its effectiveness by reservations."

8. He then remarked that the constitutional procedure necessary for ratification often took a certain amount of time. It would obviously be unfair to withhold the power to decide on the admissibility of reservations from a State simply because it had been unable to complete the necessary constitutional procedure in time. He therefore proposed that the rule submitted by the Secretariat should be altered to include the signatories to a convention among the States entitled to reject reservations, so long as the conventions had not yet entered into force, and if a State signs, accedes or ratifies with reservations after the treaty has been brought into force, to extend the same right to the States which have became signatories or parties to the treaty prior to the signature, accession or ratification by that State.

9. In conclusion, he said he had given his views on the Secretariat proposal and at the same time indirectly on the United States proposal (A/C.6/L.114). With regard to the United Kingdom amendment (A/C.6/L.115), his views were to a large extent consistent with it, but he reserved the right to state his opinion later on the proposal to refer the question to the International Court of Justice.

10. With regard to the Uruguayan amendment (A/C.6/L.116), he observed that the Organization of American States was based on a common background and related systems of government. The same could not, however, be said of the world as a whole and he did not think that the Organization should attempt to extend the methods which were suitable for its members to the rest of the world. The problem should be considered as a world-wide problem and it was for that very reason that it was so complex.

11. Mr. CHAUMONT (France) said that he would not discuss the substance of the question of reservations to multilateral conventions, but would confine his remarks, which were in the nature of a preliminary statement, to the procedural aspects of the matter. In his view, that was the most urgent question and should be settled first. When a decision with regard to the procedure had been taken, however, he reserved the right to speak on the substance of the matter.

[2] *Ibid.*, p. 87.

12. The technical difficulties of the question of procedure were manifest. In the debate, moreover, it had become apparent that the Member States held highly divergent views as to what was the best solution.

13. The essential point, however, was to determine which of those States which had participated in the drafting of an instrument should be entitled to accept or reject reservations put forward by another State wishing to become a party to the instrument.

14. In the United Kingdom amendment (A/C.6/L.115), the United States draft resolution (A/C.6/L.114) and the Uruguayan amendment (A/C.6/L.116) the Committee was seized of three possible solutions, two of which were, in his opinion, extreme solutions, and one a compromise solution.

15. The most conservative one was the United Kingdom proposal that reservations should be accepted only with the consent of all the signatory States. That view had been endorsed to a great extent by the representative of Brazil.

16. The most liberal proposal was that put forward by the representative of Uruguay which advocated a procedure similar to the one followed by the Organization of American States. It permitted States to present reservations which would become operative only between those States accepting the reservations. That system resulted in the existence of a series of secondary treaties within a treaty.

17. The third proposal, contained in the United States text, corresponded to the solution proposed by the Secretary-General.

18. Probably, even more solutions would be proposed in the course of the discussion.

19. The problem was extremely difficult, for each of those solutions, if adopted, would entail important legal consequences, and at least three different views as to the best solution had been put forward in the Committee.

20. It would therefore be extremely difficult to give the Secretary-General any directives concerning the procedure to be followed with regard to reservations. The most satisfactory solution would be not to draft a resolution for adoption by the General Assembly on the substantive aspects of the matter, but to adopt the course followed by the Sixth Committee in the past when it had been unable to reach accord on a problem, namely to refer the matter to an organ which in the view of the General Assembly was qualified to hand down a legal interpretation of the question. The only two bodies so qualified were the International Law Commission and the International Court of Justice, which was the principal judicial organ of the United Nations and which had been assigned important functions in the Charter.

21. The United States proposal suggested that the matter should be referred to the International Law Commission, whereas the United Kingdom proposal suggested that an advisory opinion should be requested from the International Court of Justice.

22. There were weighty arguments in support of both solutions, but the Sixth Committee should not make its decision on the basis of substantive or legal reasons,

for he felt that equally strong legal justification could be put forward in favour of either of them. The Committee should rather base its decision on considerations of practical expediency. For the reasons put forward by the United Kingdom delegation during the 217th meeting, he felt the second solution would be preferable. In that connexion, he would add that there were precedents for requesting advisory opinions from the International Court of Justice. Moreover, the Committee knew how the General Assembly had dealt with those opinions, which, it should be borne in mind, were merely advisory and in no way binding upon the Assembly, although it could not alter them in any way but must either accept or reject them as a whole. Their only purpose was to present a re-statement of the existing law on a specific question. The Committee would recall that in the past the Assembly had requested (in resolution 258 (III)) an advisory opinion of the Court in the matter of reparation for injuries incurred in the service of the United Nations.

23. On the other hand, the International Law Commission was a subsidiary organ of the General Assembly engaged in carrying out the specific directives of its parent body which could review its work in the light of the views of the Assembly as a whole.

24. For his part, however, the representative of France felt that either solution would be acceptable, but a practical problem might arise regarding certain international instruments, such as the Convention on the Prevention and Punishment of the Crime of Genocide. At that juncture, he availed himself of the opportunity to reiterate his government's wholehearted support of that instrument.

25. In connexion with that Convention, a solution to the question of reservations might be urgently needed. There was the argument that, if the solution to that problem were delayed because the matter had been referred to either the International Law Commission or the International Court of Justice, the Secretary-General might be confronted with the difficult decision as to how to deal with instruments of ratification or accession accompanied by reservations. It had been suggested that a temporary solution should be devised which the Secretary-General could apply during an interim period until a final decision had been reached.

26. Article XIII, paragraph 2, of the Convention on Genocide which read as follows: "The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession", seemed, however, to argue in favour of the latter of the two solutions he had proposed. If the matter were referred forthwith to the International Court of Justice, it could prepare its advisory opinion within the three-month period mentioned in article 13. Mr. Chaumont recalled that with regard to reparations for injuries incurred in the service of the United Nations, the General Assembly had adopted a resolution on 3 December 1948 (258 (III)) requesting an advisory opinion of the Court. That opinion had been transmitted to the General Assembly on 11 April 1949,[3] that is to say, within a period of four months. If the Court were informed that the matter was of particular urgency, he felt sure it would be able to give its opinion within three months' time.

27. If, however, it were necessary for the General Assembly to accept the idea of an interim solution, it should be made clear that that did not constitute a precedent. It should be borne in mind, moreover, that the use of a temporary solution would have many disadvantages. For example, with regard to the Convention on Genocide, should the Secretary-General decide to follow the procedure advocated in his memorandum (A/1372) and should the International Court of Justice recommend another solution at variance with the Secretary-General's policy, considerable difficulties and very complex legal consequences would arise.

28. He was of the opinion, therefore, that it would be better to eschew any temporary solution until the view of the International Court of Justice had been received. In the resolution, the Committee should request the Court for an opinion forthwith, and should inform the Court of the possible consequences of any delay in forwarding its views. As the next session of the General Assembly would not be held until the fall of 1951, the resolution should authorize the Secretary-General to act in accordance with the advisory opinion of the Court.

29. He supported the Brazilian representative's contention that the underlying cause of the many difficulties surrounding the complex question of reservations was the fact that an unduly liberal use of reservations had been made. It might therefore be advisable in the resolution to recommend that in so far as possible reservations to conventions should be avoided.

30. With reference to the United States draft resolution, he said he would speak on the substance at a later date. At this juncture he was simply expressing the French delegation's view that reservations should be approved by both the States signatory to a convention and the States ratifying the instrument.

31. In accordance with the remarks he had just made, he suggested that the following text (A/C.6/L.118) should be substituted for the second and third paragraphs of the United States proposal (A/C.6/L.114):

"*Noting* that the Members of the United Nations hold divergent opinions concerning the legal value and the scope of such reservations,

"*Requests* the International Court of Justice to furnish an advisory opinion on the following question: Where no express provision is made in the actual text of the conventions, what are the conditions governing the validity of the reservations made to multilateral Conventions and, in particular, what legal effect is to be ascribed to any objections made to such reservations?

"*Urges* the Court to render its opinion as promptly as possible so that the opinion may be used by the Secretary-General without delay;

"*Requests* the Secretary-General to follow, in the case of ratifications or accessions subject to reservations, the procedure to be described in the advisory opinion of the Court; and

"*Recommends* the Members of the United Nations to dispense as far as possible with the use of reserva-

[3] See *Official Records of the General Assembly, Fourth Session, Sixth Committee, Annex*, document A/955.

tions when ratifying or acceding to multilateral Conventions concluded under the auspices of the United Nations, and, in cases where they deem it advisable to provide for the possibility of such reservations, to lay down the procedure therefor in the text of the Convention."

32. Mr. PETREN (Sweden) associated himself with the preceding speakers in expressing appreciation of the Secretary-General's report on reservations to multilateral conventions (A/1372).

33. The Swedish delegation's position on that question was similar to that stated in the United Kingdom amendment to the United States draft resolution (A/C.6/L.115). The constitutional machinery in Sweden operated rather slowly; his government therefore required some time for ratification of conventions. For that reason it favoured the United Kingdom amendment which safeguarded the right of all signatory States to state their views on reservations to a convention made by other States in their instruments of ratification or accession.

34. He had, however, one comment to make on the United Kingdom amendment. Some United Nations conventions contained provisions leaving the convention open for signature for a certain period, whilst the convention would enter into force after a certain number of ratifications had been deposited with the Secretary-General. Theoretically, therefore, such conventions might enter into force before the time limit for signature had expired. As a result, States which were late to sign might find themselves, at the time of their signature, faced with a text altered by reservations made in the meantime by some States in their instruments of ratification. To prevent that possibility, the United Kingdom amendment should be modified slightly to provide that ratifications containing reservations should be accepted only after the expiration of the time limit for signature, and with the consent of all States which had signed the convention within the prescribed time limit.

35. Subject to that change, the Swedish delegation supported the United Kingdom amendment.

36. Mr. PATHAK (India) said his delegation considered that the question of the validity of reservations to conventions was a very complex and important one, as it had a direct bearing on the law of treaties. It was a substantive, rather than a procedural problem. By referring the matter to the International Court of Justice, the General Assembly would obtain a rapid decision. In the meantime the Secretary-General could continue the practice he had hitherto followed as depositary of multilateral conventions. The Indian delegation agreed, in that connexion, with the reasons put forward by the United Kingdom delegation in favour of referring the matter to the International Court.

37. His delegation was further of the opinion that the practice followed by the Organization of American States with regard to reservations to conventions would not be appropriate in the case of the multilateral or the "law-making" conventions with which the Secretary-General would be mainly concerned. It agreed with the conclusions in the Secretary-General's report as amplified by the United States, that the right to exclude the participation of a State making reservations should be confined to those States which were actually parties to the convention.

38. In conclusion he wished to join the other representatives in paying a tribute to the Secretary-General for his report and to the United Kingdom for its valuable memorandum on the question.

39. Mr. ROBERTS (Union of South Africa) had intended to state his government's views on the question of reservations to multilateral conventions but in view of the fresh proposals which had been submitted, he would prefer to give the whole matter further consideration. Moreover, some delegations had only recently received the relevant documentation, and had, therefore, been unable to obtain the necessary instructions from their governments. In view of these considerations, he proposed that the debate on that item should be adjourned until 12 October, and that the Committee should proceed to consider the next item on the agenda.

40. Mr. LACHS (Poland) thought that the South African representative's view was well founded, but wondered whether, instead of interrupting the consideration of the question, it might not be more advisable to adjourn the debate only until the following Monday, which would give delegations sufficient time for further study and consultation.

After some further discussion, in which the representatives of Australia, the Union of South Africa, the Union of Soviet Socialist Republics, Greece and the Chairman took part, it was decided to adjourn the debate on the question until the first meeting of the following week.

The meeting rose at 4.35 p.m.

Printed in U.S.A.

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