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CONTENTS

Chairman: Mr. V. OUTRATA (Czechoslovakia).

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

[Item 56]*

1. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said that since the submission of the Secretary-General's report on Reservations to Multilateral Conventions (A/1372), in addition to the accession of El Salvador announced previously, Ceylon had deposited its instrument of accession to the Convention on the Prevention and Punishment of the Crime of Genocide on 12 October 1950, and by 14 October 1950 five States had deposited, with the Secretary-General, instruments of ratification or accession to the same Convention, namely: Haiti: ratification; Costa Rica: accession; France: ratification; Cambodia: accession; Republic of Korea: accession.

2. In accordance with article XIII of the Convention, on 14 October 1950, the Secretary-General had drawn up a *procès-verbal*, which Mr. Kerno read, stating that since the condition laid down in that article had been fulfilled, the Convention on Genocide would come into force on the ninetieth day following that date. Mr. Kerno noted that the problem of the entry into force of the Convention on Genocide had thus been solved. However, he also noted that the problem of the legal consequences deriving from the deposit of the instrument of ratification of the Philippines and the instrument of accession of Bulgaria, which included reservations which had met with objections from one Member State, still remained to be settled.

3. Mr. MOROZOV (Union of Soviet Socialist Republics) stated that the debates on reservations to multilateral conventions in the Sixth Committee had been somewhat complex. At least three points of view had so far emerged on the juridical nature of reservations and on their juridical effects in multilateral international conventions.

4. Widely varying views had also been expressed on the practical conclusions to be drawn by the Sixth Committee from the dissussion of the question.

5. Nevertheless, the Sixth Committee had not been convened for academic research as such, however interesting that might be. If its work was to be of value, it was therefore essential to leave aside anything that unnecessarily or artificially complicated and hindered the discussion of the question. Otherwise the debate might prove fruitless.

6. He considered that the basic principles of the Secretary-General's recommendations, and the draft resolutions of the United States (A/C.6/L.114 and A/C.6/L.114/Rev.1) and the United Kingdom amendment (A/C.6/L.115) were incompatible with the principles of national sovereignty and were therefore contrary to the fundamental principles of international law.

7. The Secretary-General's recommendations and the parts of the proposals of the United States and the United Kingdom which contained instructions to the Secretary-General were based on the premise that, if a State party to a multilateral convention made a reservation at the time of the ratification of or accession to a convention, the depositary, in this instance the Secretary-General of the United Nations, was entitled to refuse to accept the instruments of ratification if one of the States Parties to the convention objected to the said reservation.

8. The delegation of the Soviet Union considered that basic premise to be incorrect; it was incompatible with the principle of State sovereignty and was contrary to the fundamental principles of international law.

9. If, for example, a proposal was submitted to the effect that States Parties to multilateral conventions should be forbidden to make reservations at the time of signing, ratifying and acceding to those conventions, there could be no doubt that the proposal, submitted in that form, would be regarded as politically and juridically unfounded and as contrary to the fundamental principles of international law.

10. He thought that the adoption, by the Sixth Committee, of the Secretary-General's recommendations and the proposals of the United States and the United Kingdom would result in depriving States Parties to multilateral conventions of the inalienable right to formulate reservations at the time of the ratification of, or accession to, those conventions.

11. The present practice of preparing multilateral conventions made that clear. The texts of multilateral

* Indicates the item number of the General Assembly agenda.

conventions were, as a general rule, considered and adopted at conferences of the States interested in concluding the convention, or even in the General Assembly of the United Nations. The final texts of the conventions were adopted by a majority of the Parties. Reservations to such texts at the time of ratification were usually made because the State or States remaining in the minority continued to regard as unacceptable provisions which had been introduced into the text of the convention against their wishes.

12. Under those conditions, he considered that a State which had made such reservations could not seriously hope that the majority, which had rejected the relevant provision during the preparation of the convention would subsequently agree to accept it in the form of a reservation. According to the concepts of the Secretary-General and of the delegations of the United States and of the United Kingdom, however, the problem need not even be settled by the majority of the participants in the convention. It was enough for one of the Parties to the convention to object, for the State making the reservation to be denied the acceptance of its instrument of ratification.

13. Thus, one State might, for reasons best known to itself, prevent a State which had made a reservation from participating in an agreement. The United Kingdom representative had gone even further and had proposed conferring that right upon any State which, although it had taken part in preparing the original text of the convention, had not yet signed — and might never sign it. Could there be any greater mockery of the principles of international co-operation and of the practice of concluding multilateral international conventions?

14. He thought that the real meaning of the recommendations and proposals at issue had also been made quite clear by the statement of the French representative, who had declared that the time had come to put an end to the evil of reservations to multilateral conventions. Nevertheless, the evil referred to by the representative of France was in fact the inalienable right of every sovereign State.

15. He considered that the Secretary-General's recommendations and the relevant parts of the United States and United Kingdom proposals were erroneous, not only with regard to their practical consequences, but also from the point of view of the theory of international law. He thought that that had already been brilliantly proved by the representative of Poland, Mr. Lachs, in his speech at the 220th meeting. He had considered that the adoption of the United States and United Kingdom proposals would lead to the limitation of the sovereign right of States freely to determine their positions on any questions raised in multilateral conventions. A State, and no one else, was competent to decide what international obligations it could and should undertake. A denial of that principle was unacceptable and would be tantamount to replacing international co-operation, based on the sovereign equality of States, by dictatorial action.

16. In his opinion, the consequence in law of a reservation made at the time of the signature or ratification of, or accession to, multilateral conventions was that the provisions of the convention in respect of which the reservation had been made would not apply between the State which had made the reservation and all the other participants in the convention.

17. Those who wished to deprive States of the right to make unconditional reservations maintained that it was necessary to do so because, in the contrary case, the Parties were placed in a position of inequality, since some of them accepted the provisions of the convention without reservations, whereas the others unilaterally absolved themselves from carrying out certain obligations.

18. However, the assertions concerning such an "inequality of Parties" did not correspond to the facts. States which had not made reservations at the time of the ratification of a convention were not obliged to observe, in their relations with a State that had made a reservation, any provisions of the convention in respect of which the reservation had been made. Thus, the principle of reciprocity in undertaking obligations was not violated by the unconditional right of each State to make reservations; that right, by its very nature, could not be denied by any other State.

19. With reference to the Uruguayan representative's statement, he pointed out that the Secretary-General's report did not represent an objective presentation of the data on the question, and was an attempt to use the erroneous deductions of certain jurists in the sphere of international law to justify the position of the Secretary-General by presenting them as the "generally-accepted principles of international law". The individual statements of international jurists, however, by no means represented the "generally-accepted principles of international law".

20. A correct view on any question of international law could be obtained by referring to instruments of international law, which expressed the views of States on certain questions. In that connexion, it was impossible to ignore such a document as the Havana Convention on Treaties of 20 February 1928 (*cf.* A/CN.4/23, annex B). Article 7 of that Convention provided that reservations were ". . . acts inherent in national sovereignty and as such constitute the exercise of a right which violates no international stipulation or good form". Article 6 of the same Convention defined the consequences of the formulation of a reservation made at the time of ratification of international agreements as follows: "In international treaties celebrated between different States, a reservation made by one of them in the act of ratification affects only the application of the clause in question in the relation of the other contracting States with the State making the reservation".

21. Those who supported the Secretary-General's position, being unable to object to any of those substantive arguments, alleged that the adoption of those provisions was connected with the special geographical position of the Latin-American States. That assertion had been made by the United Kingdom representative.

22. Mr. Morozov thought that the representatives of Uruguay, Poland and other States had proved convincingly that such allegations had no academic significance. It seemed that the authors of those allegations were aware of their weakness and had stated, in order to pacify the Latin-American States, that if the General

Assembly adopted a decision contrary to the principles acknowledged and implemented by these States, that would not interfere with the maintenance of those principles in the relations among the Latin-American States. The very reference to the possibility of the coexistence of two mutually exclusive systems served as a proof of the weakness of that argument.

23. He pointed out that a considerable number of multilateral conventions had been concluded with reservations made by individual States at the time of signature, ratification or accession to those conventions.

24. Sixty reservations had been made to the Hague Conventions of 18 October 1947. The Netherlands Government, which had acted as the depositary of the Conventions, had accepted instruments of ratification with those reservations without questioning the Parties and without having recourse to any vote on the matter.

25. The United States had acceded to the thirteenth Hague Convention in 1907, after eight Powers had already ratified the Convention. The Netherlands Government, which had been the depositary of the Convention, had accepted the United States instruments of ratification without requesting the agreement of those eight Powers to the United States reservation.

26. At the time when the Geneva conventions on protection of war victims were signed in 1949, a number of States had made important reservations. The United States, the United Kingdom, the Netherlands and Canada, among others, had reserved the right to impose the death penalty on civilians of occupied territories, contrary to the limitations laid down in article 68 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, under which the death penalty could be imposed only on protected persons provided that the offence concerned was punishable by death under the law of the occupied territory in force before the occupation began.

27. A number of reservations had also been made by Argentina, Brazil, Hungary, Italy, Israel, Poland, the Soviet Union and other States.

28. Neither the Swiss Government, which was the depositary of the Geneva Conventions of 1949, nor the signatories to the Conventions, including the United States and the United Kingdom, had raised the question that the agreement of all the other States acceding to the Conventions should be obtained to the formulation of those reservations, although two States had already ratified all four Conventions. The same applied to the reservations made by the Government of the Soviet Union at the time of the ratification of or accession to a number of multilateral international agreements and conventions, including the International Sanitary Convention of 21 June 1926 and the International Convention for the Suppression of Counterfeiting Currency of 20 April 1929.

29. He considered that the individual cases, mentioned in the Secretary-General's report, where the formulation of reservations was conditional on the agreement of the other signatories, should be considered as exceptions to the general rule and, in the light of the principles he had stated, could not be regarded as a precedent for the adoption of the Secretary-General's recommendations. He recalled that the Secretary-General had referred, in support of his recommendations, to the draft convention on international agreements prepared by the Harvard *Research in International Law* in 1935 (A/CN.4/23), and pointed out that that document was still a plan, although fifteen years had elapsed since it had been prepared. The second document mentioned in the report was a draft convention on agreements prepared by Professor Brierly and submitted by him to the International Law Commission in 1950 (A/CN.4/23); it contained provisions similar to the Secretary-General's recommendations, but was also still a plan and merely represented the opinions of Professor Brierly, who based himself, in large part, on the erroneous positions set forth in the Harvard project of 1935.

30. From all those considerations, therefore, it followed that, in the majority of cases where multilateral conventions and agreements had been ratified with reservations, the sovereign right of a State to set forth its attitude to any question referred to in the convention had been acknowledged.

31. Those were the fundamental juridical premises upon which, according to the Soviet delegation, the consideration of the question of the juridical nature of reservations to multilateral agreements and the juridical consequences of those reservations should be based, if the Sixth Committee was to be called upon to take any general decision on the matter.

32. He thought, however, that the Committee could not take any general or even specific decision on the matter, and in any case no decision that would have binding force. The Secretary-General had justified his activities in that regard and had explained the urgency of considering the question by alleging that the absence of the necessary instructions might lead to delay in the entry into force of the Convention on Genocide, which, under its article XIII, was to become effective on the ninetieth day following the deposit of the twentieth instrument of ratification or accession.

33. In view of the fact that the Convention on Genocide had been signed with reservations by some Governments and that those reservations would presumably be confirmed at the time of ratification, the Secretary-General was afraid, as he had himself stated, that he would be unable to accpet ratifications with reservations without the necessary instructions, unless all the other signatories of the Convention agreed to those reservations. Hence, he was allegedly unable to count among the twenty Governments referred to in article XIII the Governments which had ratified the Convention with reservations. The Secretary-General thereby tried to explain why he had actively, and we would even say importunately, questioned the Ministries for Foreign Affairs of various States which had ratified the Convention on Genocide with reference to the reservations made by certain States in signing the Convention. Mr. Morozov was referring to the Secretary-General's correspondence with the Ministry for Foreign Affairs of Guatemala and of Ecuador. Furthermore, the Secretary-General, exceeding his competence, had even seen fit to state that the consequence in law of any objection to the reservations would render him unable to accept for deposit ratifications submitted with reservations. In

that connexion, Mr. Morozov had in mind the letter of 2 August 1950 from the Top Ranking Director of the Legal Department.

34. The Secretary-General's functions in the matter were explicitly stated in article XVII of the Convention on Genocide. Under that article, the Secretary-General was to notify the States concerned of all instruments of ratification including instruments containing reservations. No special procedure was laid down in the Convention, however, for the acceptance of instruments of ratification containing reservations, nor any limitations or conditions in connexion with reservations at the time of signature, ratification or accession. Hence, the instruments of ratification containing reservations should be included in the twenty instruments of ratification which were necessary for the entry into force of the Convention.

35. Thus, the difficulties to which the Secretary-General referred could not in fact arise. After the statement made by the Assistant Secretary-General in charge of the Legal Department at the current meeting on the ratification of the Convention on Genocide by over twenty States, there could be no delay in the entry into force of the Convention on Genocide, even from the point of view of the Secretary-General, a point of view which the Soviet delegation considered to be erroneous.

36. The Secretary-General's allegation that he had the right to refuse to accept instruments of ratification containing reservations was tantamount to asserting that the Secretary-General had the right to insert new provisions into the Convention on Genocide at his own discretion.

37. If those activities by the Secretary-General, irrespective of the motives behind them, were continued, they might create artificial obstacles to the ratification of or accession to the Convention, and might thus lead to the undermining of international co-operation in that field.

38. Thus, in connexion with the only practical aspect of the question raised by the Secretary-General, namely, in connexion with the Convention on Genocide, there was no problem whatsoever that might call for the adoption of any decision by the Sixth Committee and the Assembly.

39. The Secretary-General, as the depositary, should simply comply with the text of the Convention on Genocide.

40. He did not think that the General Assembly was competent to take any decision which might impose upon the signatories of any multilateral convention or conventions which had already been signed and ratified, any obligations which were not provided for in those conventions.

41. The proposals of the United States and of the United Kingdom had been drawn up in the form of instructions to the Secretary-General in the name of the General Assembly. The substance of those proposals, however, involved the inclusion of a new provision which was not to be found either in the Convention on Genocide or in any other multilateral conventions and agreements of which the Secretary-General acted as depositary. That provision formally limited and actually eliminated the right of States to formulate reservations at the time of ratification and accession.

42. Thus, the General Assembly was to be confronted with a decision, in the form of instructions to the Secretary-General, obliging all States participating in multilateral conventions (including the Convention on Genocide) to adopt an additional provision which was not contained in the texts of the conventions. But the Assembly was not competent to take decisions which were binding on Member States of the Organization. Under Article 10 of the United Nations Charter, the Assembly could make only recommendations.

43. The parts of the United States and the United Kingdom proposals containing those instructions to the Secretary-General were therefore unacceptable, apart from any other considerations, because they were contrary to the United Nations Charter.

44. He considered that the proposal to refer the question to the International Court of Justice for an advisory opinion, in order that its decision might serve as a directive to the Secretary-General, was also unacceptable. It represented an attempt, under the guise of obtaining an advisory opinion, to add to existing multilateral conventions a provision which was not contained in those conventions. That was clear from the wording of the question to be submitted for an advisory opinion and from the proposal, in the French draft resolution, for example, that any opinion given by the International Court of Justice in the matter should be binding upon all signatories of multilateral conventions, since it was also proposed to decide that the answer of the Court would serve as an instruction to the Secretary-General as the depositary. It was also noteworthy that if certain delegations continued to question the right of States to formulate unconditional reservations to the Convention on Genocide, the question would not be an abstract and juridical one, as the matter was being presented, but a dispute, as the Iranian representative had rightly stated, which could not be considered by the International Court of Justice in accordance with the procedure laid down in Article 96 of the United Nations Charter. Thus, the proposal to request an advisory opinion from the International Court of Justice should also be rejected.

45. With regard to the draft resolution submitted by Uruguay, he pointed out that, unlike the recommendations of the Secretary-General and the proposals of the United States and of the United Kingdom, that draft provided that it was unnecessary for all the signatories of a convention to agree to accept reservations.

46. Nevertheless, he did not consider that the Assembly was competent to adopt that proposal, for it could not, even under the guise of instructions to the Secretary-General, although those instructions were allegedly temporary, introduce into any of the existing multilateral conventions provisions which were in fact additional clauses binding upon the signatories of those conventions.

47. He thought that, in spite of the widely varying views expressed by the members of the Committee, the majority would agree that the Secretary-General should not be given any so-called temporary instructions on the procedure of accepting ratifications containing reservations.

48. The contrary decision would be beyond the competence of the Assembly.

49. In the contrary case, one group of States would inevitably impose upon another group a decision on the substance of the matter which, as the discussion had shown, would be diametrically opposed to the views of the more or less important group of States in the minority.

50. It was obvious that such a decision could not be legally binding and would continue to be questionable, since it would represent an attempt to insert an additional clause into multilateral agreements which had already been concluded, and within the framework of which all questions relating to those agreements should be considered, including questions relating to the right of the States participating in the multilateral agreements to formulate reservations at the time of signature and ratification.

51. Mr. FITZMAURICE (United Kingdom) said he would have apologized for speaking again, but he thought it his duty, in the light of recent discussions, to warn the members of the Committee against a grave error which they might commit. The main point at issue was not whether the body consulted was to be the International Court of Justice or the International Law Commission; although he thought that the Court was the more appropriate body of the two, he did not think that that was a vital issue.

52. A much graver matter was the desire of the Latin-American countries to see their system adopted for the purpose of United Nations Conventions; and the fact that they could count on a large number of votes in the Committee made the danger even more serious. It was in order to avoid the consequences of the application of the Pan-American system to the United Nations that he was trying to persuade the representatives of the Latin-American countries to reconsider their attitude.

53. Taking as an example the International Covenant on Human Rights, he pointed out that that was a Convention intended to bind countries to universal principles of justice. If the Pan-American system were applied to it, and one State made a reservation, even a reservation concerning some fundamental provision, and only one State were to accept that reservation, the State making it would still become Party to the Covenant. The abuses to which such a practice might lead were immediately apparent. It would be possible for a State which was desirous of making important reservations to find a friendly State which would accept — or at least not make express objections to — such a reservation. As a consequence, the State making the reservation would become a Party to the Covenant, although it would not be in force between that State and the other Parties which had not accepted such reservations. The Covenant would thereby be brought into serious disrepute.

54. The International Covenant on Human Rights was not a special case. The same argument would apply to the Convention on Genocide, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and most other United Nations conventions. The reason was that those conventions were not a set of mutually reciprocal rights and obligations operating between each State a Party to them, and each other State also a Party. They consisted of obligations owed by each Party to the other Parties as a whole or to the United Nations itself, and it did not make sense that there should be a convention to which two States were Parties although the convention was not in force between them.

55. For example, in the case of the Charter, which was also not a special case, it would have been inconceivable that it could have been in force between a State making a reservation and States which had accepted the reservation, and not in force between the State making the reservation and the other States which had not accepted them. Such a position would be a contradiction in terms, and quite inadmissible. Yet if the Pan-American system had been applied to the Charter that would have been the result, and the Charter would have been unworkable. If international conventions must be in force, they must be in force in respect of and between all the States which were Parties to them, and if that were not so, they would lose all meaning.

56. In a convention such as the International Covenant on Human Rights, if, for instance, country A ratified it and thus undertook not to use torture, and the Pan-American system were applied, the Covenant would not be in force between country A and countries B and C, which might have formulated reservations considered unacceptable by country A. As far as those States were concerned, A would thus be entitled to use torture. It was impossible to torture and not to torture the same person at the same time. It was thus absurd to claim that law-making conventions were not in force between certain States when all were Parties to them.

57. Another case in point was the Convention on the Privileges and Immunities of the United Nations to which it would be equally inconvenient to apply the Pan-American system. It would be inconceivable that the tax-gatherers of a State, Party to that Convention, should try to collect taxes from a member of the United Nations staff under the pretext that the Convention was not in force between that State and a country A which had made reservations which the State had not accepted.

58. He said he could give many other examples, but hoped that those he had chosen would be enough to convince the representatives of the Latin-American countries. It was not a question of prestige, or of the superiority of one system over another. The Pan-American system was excellent in the case of regional conventions, but it could not be applied satisfactorily in the case under discussion. That was why he urged the members of the Committee, particularly the representatives of the Latin-American countries, to wait before they took a final decision until they had heard the opinion of the International Court of Justice or the International Law Commission and, in the meantime, to let the Secretariat continue to apply the existing procedure.

59. He then explained why he felt that the Committee should not adopt the procedure recommended by the United States. Under the terms of the United States proposal, the entry into force of a convention would be subject to a ratification which might later be found to be wholly invalid, because it was subject to reservations which none of the other countries might be willing to accept but which the reserving country was not willing

to withdraw. Such a ratification was undoubtedly invalid, because, firstly, the convention to which it related could not come into force with the reservations which had been rejected by the other parties; and, secondly, the reserving country could not be forced to apply the convention without those reservations.

60. A ratification which was liable to be declared invalid, or which lapsed, could not be taken into account for the purpose of determining whether a convention had become operative. That was no mere procedural proposal; it was an important question of substance. The United States representative had said that his proposal was not intended to prejudice the legal effects of reservations as between Parties. He did not think that that was the point, and, to illustrate his position, he gave as an example a convention which was to enter into force after the deposit of twenty instruments of ratification. Under the United States proposal, the convention might enter into force after nineteen valid ratifications had been deposited together with a twentieth ratification which might subsequently be found to be not valid, or which might be withdrawn. In such circumstances, there could be no certainty as to the entry into force of a convention.

61. He proceeded to discuss the position taken at the 220th meeting of the Committee by Mr. Lachs, the representative of Poland. He emphasized the fact that, in accordance with the theory developed by Mr. Lachs, a State which, in the course of negotiations had declared that it objected to certain parts of a convention, might by that simple statement become Party to that convention only in respect of the part of which it approved. In a word, it would accept all the benefits of the convention while rejecting the obligations. As the Chilean representative had pointed out, such an anarchical conception of sovereign rights was not compatible with the spirit of the United Nations. He could not agree with the representatives of Poland and of the Soviet Union when they spoke of a majority imposing its will upon a minority. It might well be that a convention prepared by the majority was not approved by the minority. But the majority could not force the minority to sign that convention, and so the rights of the minority would be fully respected.

62. But if the countries belonging to the minority decided of their own free will to become Parties to a convention, they should accept that convention as a whole without any change; they could not choose what they liked and reject the rest, nor re-introduce, by means of reservations, what had been rejected during the negotiations. That process would end by imposing the will of the minority upon the majority. The examples given by the representatives of Poland and of the Soviet Union referred to reservations which had met with the express or implicit consent of other countries. One of the examples given by the representative of the Soviet Union, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, referred to reservations made during a conference and incorporated in the final act. In such cases, reservations were necessary and admissible, always provided that they were publicly introduced and universally accepted. It was quite another matter in the case of reservations made unilaterally, generally at the last moment, and not accepted by the other Parties, or even in some cases expressly rejected. If that kind of procedure were accepted, it would mean an end to all finality in negotiation or in texts.

63. He went on to defend the Secretary-General's report, which had been attacked by the representative of the Soviet Union. The underlying principle of that report was that it was impossible, except in special cases, to make reservations to a text which had been established in the course of an international conference. That was an essential principle of international law and he had never heard it called in doubt until that day. The principle had also been accepted by eminent Soviet jurists, whose point of view was quoted in paragraph 20 of the Secretary-General's report. That point of view was put forward in 1947. If the statement of the representative of the Soviet Union before the Sixth Committee were official, that proved that there had been a recent change of attitude, the purpose of which was perhaps to allow the Soviet Union to make reservations to the Convention on Genocide.

64. He then read a statement which he considered one of the best made on the subject, an extract from the article by the eminent Argentine jurist, Mr. Podestá Costa, which came out in 1938, in the *Revue française de droit international.*

65. In conclusion, he reminded the Committee of the reasons why he thought the question should be laid before the International Court of Justice rather than the International Law Commission. It was not a question of procedure but of a point of law, as could be proved by the discussions which had been held in the Committee and the examples which he had just given. It was not only a matter of determining the procedure to be followed by the Secretary-General as the depositary of multilateral conventions. In a more general way, it was a question of the right to make reservations, of the legal consequences of reservations, of the conditions under which reservations might legally be formulated, of the right to reject reservations and the countries which might exercise that right, etc. Those were legal questions and it was for the Court to settle them. That position appeared in the draft resolution submitted to the Committee jointly by Egypt, France, Greece, Iran and the United Kingdom.

66. Certain speakers, recognizing that it was a question of law, had declared that it was within the competence of the International Law Commission, whose task was to ensure the progressive development of international law. That was indeed one of the functions of that Commission, as Sir Hartley Shawcross had clearly pointed out. Another function of the International Law Commission was the codification of existing laws, not a legislative function. As regards treaties, the Commission had been entrusted with the task of codifying treaty law and not with encouraging its progressive development. In its work of codification, the International Law Commission should refer only to existing law and should not create law. It was difficult, if not impossible, to codify a matter upon which there were divergent opinions. The International Court of Justice, by contrast, was responsible for stating, in the face of divergent opinions and practices, what was the correct legal position.

67. He hoped that the Sixth Committee would refer the question to the International Court of Justice for

study, because the Court was better qualified to give an opinion and could do it in a short period; besides, different opinions could be laid before it as they could not be before the International Law Commission. He asked the Sixth Committee, in the meantime, to authorize the Secretary-General to follow the practice suggested in his report, which, in the view of the United Kingdom Government, was a compromise, since, as Mr. Fitzmaurice had said before, it was in favour of a different system.

68. Mr. MOROZOV (Union of Soviet Socialist Republics), speaking on a point of order, pointed out two mistakes which had been made in the interpretation of his speech. First, he had referred not to the Hague Convention, but to the Havana Convention signed on 20 February 1928, of which he had quoted article 7 and part of article 6. He had then referred to Article 37 of the Statute of the International Court of Justice and not to Article 33.

69. The CHAIRMAN said Mr. Morozov's remarks would be noted in the summary record.

The meeting rose at 1.10 p.m.

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