United Nations

GENERAL ASSEMBLY

FIFTH SESSION

Official Records

SIXTH COMMITTEE 224th

MEETING

Wednesday, 18 October 1950, at 3 p.m.

Lake Success, New York

CONTENTS

Page

Reservations to multilateral conventions (A/1372) (*continued*) 77

Chairman: Mr. V. OUTRATA (Czechoslovakia).

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

[Item 56]*

1. The CHAIRMAN drew attention to the new draft resolution sponsored by thirteen delegations (A/C.6/L.125) and noted that it replaced all the draft resolutions and amendments submitted previously.

2. Mr. TATE (United States of America) recalled that there had recently been additional ratifications of the Convention on Genocide, permitting it to be brought into force. The whole problem of reservations to multilateral conventions was therefore much less urgent than it had appeared at the beginning of the Committee's discussion. His delegation had originally been of the opinion that the subject, in view of its broad character, should be referred to the International Law Commission rather than to the International Court of Justice. Nevertheless, since the situation with regard to the Convention on Genocide had become clearer, it was now possible to formulate a precise and concrete request for an advisory opinion from the Court. It had therefore been possible to reconcile the divergent views by the proposal to refer the concrete questions with regard to the Convention on Genocide to the Court for an advisory opinion, and the general question of reservations to multilateral conventions to the International Law Commission.

3. Furthermore, his delegation had agreed to the general view expressed in the Committee that no provisional instructions should be given to the Secretary-General, who would therefore continue to follow the same practice as before and not take any action implying an interpretation of the legal effects of any reservations made to multilateral conventions of which he was depositary, pending the adoption of a final solution.

4. Finally, he drew attention to the concluding paragraph of the draft resolution in which the International Law Commission was asked to pay special attention to the views expressed in the Sixth Committee on the subject of reservations. The joint draft resolution represented a remarkable achievement in co-operation and he hoped it would prove acceptable to all the members of the Committee.

5. Mr. ABDOH (Iran) also hoped that the joint draft resolution would gain the Committee's approval. He was very glad that the other sponsors of the joint draft had agreed to his suggestion that concrete questions relating to the Convention on Genocide should be referred to the International Court of Justice, while the more general aspects were referred to the International Law Commission.

6. The draft resolution contained no temporary instructions for the Secretary-General and thus did not in any way prejudge the final solution of the problem. It should therefore prove satisfactory to all delegations, regardless of their views on the substance of the matter.

7. Mr. SULTAN (Egypt) endorsed the remarks made by the previous speakers and emphasized that the draft resolution was a compromise combining all the varied points of view expressed in the Committee. He added that the sponsors of the joint draft had taken great care not to prejudge the issue in any way. The first paragraph of the draft resolution read: "*Having examined* the report of the Secretary-General . . ." and did not imply approval or disapproval of the contents of that report.

8. Mr. JIMENEZ DE ARECHAGA (Uruguay) emphasized that none of the sponsors of the joint draft resolution had deviated from his original views on the substance of the question. It had simply been agreed to postpone a decision on the very complex question of reservations until the next session of the General Assembly, and to refer it to a technical organ for study. His delegation therefore withdrew its original draft resolution (A/C.6/L.116), reserving the right to resubmit it when the question came up for discussion once more at the sixth session of the Assembly. He was convinced that the International Law Commission, in the exercise of its functions not only for the codification but also for the progressive development of international law, would give the Pan-American system its due. In his opinion, that system was the most suitable, if not for all multilateral conventions, at least for the majority of them. He did not think that the discussion of the Sixth Committee on the subject had been held in vain, since the International Law Commission was specifically instructed in the joint draft resolution to pay particular attention to that discussion.

* Indicates the item number on the General Assembly agenda.

9. Turning to the other aspects of the joint draft resolution, he stated that in view of the recent ratifications of the Convention on Genocide, which would bring it into force, part of the problem had been solved, but there remained the very concrete problem of the legal effect of reservations which it was only logical to refer to the International Court of Justice. Since the Court's advice had been requested only on that one specific Convention, its opinion would not in any way eliminate the possibility of adopting the Pan-American system for other types of conventions.

10. It was significant that the draft resolution did not express any approval of the Secretary-General's report, either explicitly or implicitly. The resolution simply stated that the report had been examined. It was also significant that no attempt was made in the draft resolution to give any provisional instructions to the Secretary-General. That had, in fact, been proved unnecessary in view of the recent ratifications of the Convention on Genocide. Thus, until the final solution was adopted, the Secretary-General would continue to exercise his functions as the depositary of instruments of ratification in the same manner as he had done in the past and he would not be called upon to settle any legal questions with regard to the effect of reservations.

11. Mr. DE LACHARRIERE (France) stated that the joint draft resolution was a compromise and in that respect somewhat resembled a mutilateral convention. Representatives might therefore be permitted to make reservations, while endorsing the draft resolution in principle. He observed that the French translation of the original English text required revision.

12. He regretted that the sponsors of the joint draft resolution had not accepted the idea put forward by the representative of Iran (A/C.6/L.119) and incorporated in his own delegation's original amendment (A/C.6/L.118), namely, that when drafting a convention, Member States should lay down the procedure for reservations in the text of the convention, whenever they deemed it advisable to provide for the possibility of reservations. The advisory opinion of the International Court of Justice and the report of the International Law Commission would both deal with cases in which there was no provision regarding reservations in the text of the convention. The International Law Commission would attempt to lay down general rules to govern reservations, but such general rules would probably not be suitable for every type of convention. With regard to some types of conventions, reservations might not be permissible at all; other types could permit reservations, but conceivably not in respect of all of the articles. His delegation was therefore still convinced that it would be useful to recommend to Member States that they include provisions on reservations in the actual texts of future conventions.

13. Mr. MOROZOV (Union of Soviet Socialist Republics) formally proposed the deletion from the joint draft resolution of the paragraph requesting an advisory opinion from the International Court of Justice and submitted an amendment to that effect (A/C.6/L.127), consisting of the deletion of the first part beginning with the words "*Requests* the International Court of Justice . . ." to the words ". . . but which has not yet done so".

14. His delegation had already given its reasons during the general debate for objecting to the proposal that the International Court of Justice should be asked to give an advisory opinion. Such a request, regardless of the way in which it was drafted, would in reality oblige the Court to insert new clauses in an already existing convention. That was not the function of the Court when it rendered advisory opinions. In consequence of such an opinion, States which had submitted reservations to conventions such as that on Genocide might suddenly find their whole legal position altered arbitrarily when they had not even been consulted in the matter. Therefore, to refer the question to the International Court of Justice would constitute a violation of Article 96 of the Charter and would put the Court in the embarrassing position where it would have to declare itself not competent. Furthermore, complications might arise in the future. The case might be taken as a precedent and questions which were not within its competence might again be referred to the International Court of Justice.

15. If the resolution had been drafted in conformity with Article 96 of the Charter, his delegation would have been glad to try to agree on a compromise solution, but in its existing form the draft resolution was quite unacceptable.

16. So far there had been no formal dispute bearing on the text of the Convention on Genocide. If such a dispute should arise in the future, the rules relating to the judicial function of the Court should apply.

17. Moreover, in the event that the Court should be requested to give an advisory opinion, there was the danger that it might be in contradiction to the conclusion of the International Law Commission.

18. Mr. CORTINA (Cuba) recognized that, from the practical point of view, it was quite logical for the sponsors of the joint draft resolution to have sought to reconcile the divergent opinions by proposing that the question should be referred both to the International Court of Justice and to the International Law Commission. Legally speaking, however, such a solution was obviously highly dangerous. It would indeed be impossible for the International Court of Justice to give an advisory opinion on the concrete question referred to it without at the same time studying the problem as a whole in all its aspects. Thus there was the danger that the two bodies might submit entirely contradictory opinions on the subject to the General Assembly.

19. The representatives who had held the view that the question should be referred to the International Court of Justice had stressed the urgent need for a solution, and had used that as one of their main arguments. Since the question was now no longer so urgent as it had originally appeared, that argument was no longer of any significance.

20. While appreciating the efforts of the sponsors of the joint draft resolution, he strongly urged the Committee to decide by a vote whether it wished to refer the problem of reservations to the International Court of Justice or to the International Law Commission, for no useful purpose would be served by referring it to both bodies at the same time.

21. Finally, he pointed out that, as long as no instructions were given to the Secretary-General, the problem of the effect of reservations would continue to cause some confusion.

22. Mr. MAURTUA (Peru) considered that the International Law Commission should be the body to prepare a final solution for the problem of reservations. An advisory opinion from the International Court of Justice could not constitute a final decision, until the governments concerned had agreed to accept that opinion.

23. In principle, he was not opposed to the joint draft resolution, as it contained no definitive solution of the matter, but he agreed with the representative of Cuba that some confusion would result if the matter were referred simultaneously to two different bodies, even if the International Law Commission need not follow the advisory opinion of the Court.

24. Mr. BARTOS (Yugoslavia) regarded the joint draft resolution as evidence of a real desire for international collaboration. It provided a practical solution of an extremely important problem. He was glad that the sponsors of that draft had followed the course he had himself recommended during the general debate, and had decided to request an advisory opinion from the Court on the concrete, practical question and to refer the more general problem to the International Law Commission.

25. He was prepared to support the joint draft resolution, but he regretted that it did not include a recommendation to Member States to include special provisions on reservations in future conventions. Nevertheless, since that suggestion had been made by several delegations during the discussion, it would probably be taken into account in the future, even if it was not actually included in the resolution. He also regretted that the draft resolution did not include some temporary instructions for the Secretary-General, but he agreed that since the recent ratifications of the Convention on Genocide, that question was no longer so urgent.

26. Mr. ROBINSON (Israel) thought that the question now put to the International Court of Justice on a concrete case was a distinct improvement. It was not in contradiction with Article 96 of the Charter, Article 37 of the Statute of the Court or article IX of the Convention on Genocide. Article 37 of the Statute referred to a dispute between Parties, whereas the matter in hand concerned a gap in the Convention and a definition of the powers of the Secretary-General in his capacity as depositary.

27. There was a precedent for referring analogous matters to the International Court of Justice. With regard to the Peace Treaties with Bulgaria, Hungary and Romania, there had been some doubt whether the Secretary-General could proceed to appoint the third members of the Treaty Commissions referred to in articles 36, 40 and 38 respectively. The Court had not considered the matter outside the provisions of Article 96 of the Charter, and had rendered an opinion. He felt the current request to the Court was a request within the meaning of that Article, as it was a question of the interpretation of a treaty and of the powers of the depositary.

28. However, with regard to the wording of the joint draft resolution he recalled that the Court had by implication been critical of the drafting of four out of the six requests for an advisory opinion it had received from the General Assembly. In the circumstances, it might be better not to vote on the draft resolution until certain minor defects in the draft had been eliminated. Mr. Robinson thought that the questions themselves were well drafted, but the relationship between the preamble and the operative part could be clarified. As it stood, the matters referred to the International Court of Justice and to the International Law Commission were confused. Moreover, the reference to the Convention on Genocide in the preamble was not properly linked with the reference in the operative part. It might, therefore, be better to break up the resolution after the first recital of the preamble into two parts, A and B, Section A referring to the International Court of Justice, and B to the International Law Commission. He suggested that the preamble might then read:

"The General Assembly,

"Having examined the report of the Secretary-General regarding reservations to multilateral conventions,

"A

"Considering that the Convention for the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly on December 9, 1949 (thereafter called Convention on Genocide) contains no provisions on reservations,

"Considering, furthermore, that the Secretary-General has been given under article XVII of this Convention certain functions,

"Considering that in the exercise of his functions the Secretary-General was faced with conflicting views on reservations and their effects,

"Desirous to have an authoritative opinion on the operations of reservations to the Convention on Genocide".

29. The operative part of his draft would take up the text of the original joint draft resolution beginning with the words *"Requests* the International Court of Justice" and ending with the words "(*b*) a State entitled to sign or accede but which has not yet done so". In his draft, however, the words "In so far as concerns the Genocide Convention" would be deleted and a second paragraph would be added to the operative part reading as follows:

"Requests the Secretary-General to make available to the International Court of Justice the exchange of correspondence between himself and Member States of the United Nations, concerning the reservations made to the Convention on the Prevention and Punishment of the Crime of Genocide and the records of the General Assembly proceedings on this question."

30. Section B of the resolution would read as follows:

"The General Assembly,

"Having examined the report of the Secretary-General regarding reservations to multilateral conventions,

"Considering that the International Law Commission is studying the whole subject of the law of treaties including the question of reservations,

"Considering that different views regarding reservations were expressed in the fifth session of the General Assembly, and particularly in the Sixth Committee,".

31. This text would close with the final paragraph of the joint draft resolution (A/C.6/L.125) which began with the words: *"Invites* the International Law Commission:".

32. In this form the draft would result in a clear presentation of the whole issue to the Court and the International Law Commission, and might save the Committee future embarrassment.

33. Mr. LACHS (Poland) thought the joint draft resolution (A/C.6/L.125) recommended a doubtful procedure. The first section of the operative part requested an advisory opinion on a specific question from the International Court of Justice. In the second section, the International Law Commission was asked to do what was essentially the same job. He agreed with the representative of Cuba that there was a clear contradiction in the two sections of the operative part of the draft resolution.

34. There was also a point of substance to be considered. Many members felt that the right to make reservations to multilateral treaties was exclusively within the competence of the sovereign States. That was a recognized substantive rule of law. The formulation of the draft resolution seemed on the one hand to recognize that rule, and on the other hand, a question was put to the Court, which might result in the limiting of those rights.

35. Some States had submitted reservations when depositing their instruments of ratification of the Convention on Genocide. They claimed it was their right to sign and ratify that instrument with reservations. Against their will, however, the Sixth Committee was consulting the Court on a matter which might limit the sovereign rights of those same States. The Court could not do that, since such action was in contradiction with the basic principles upon which the Court was founded. The General Assembly could not consult a judicial body for an opinion which might imply a limitation of the sovereign rights of a State without the consent of that State. That view had often been maintained by the Court itself, as for instance in the case of Eastern Karelia.[1]

36. He had been surprised by the remarks of the representative of the United States, as in an earlier intervention that representative had recognized the sovereign right of States to determine the effect of reservations to multilateral treaties as a substantive rule of law which should be left untouched, pending further study.

37. The United States representative had also stated earlier that the matter could not properly be referred to the International Court of Justice and that the original United States draft resolution (A/C.6/L.114) would enable the Organization of American States to continue to follow the Pan-American system with regard to reservations. The Court might, however, hand down an opinion unfavourable to that system. The representative of Uruguay apparently had also departed from his original point of view.

38. The representative of Cuba had shown clearly that there was a conflict between the first and second sections of the operative part of the resolution.

39. If the Court decided that unanimous consent to reservations was necessary, the International Law Commission would surely hesitate before taking a decision. If, after its study, it concluded that unanimous consent was not necessary, it would be in an embarrassing position, for it could not say that the Court was mistaken. It seemed clear, therefore, that the advisory opinion of the Court might prejudge the case. If the International Court of Justice gave an opinion which the International Law Commission decided to disregard, the Committee would find itself in a paradoxical situation where the Convention on Genocide was governed by one law whereas a different law was applicable to other international conventions. Moreover, the damage to the Convention on Genocide resulting from such a situation could not be repaired by declaring that any system recommended by the International Law Commission would be retroactive.

40. It was a sound precept that the conclusions of a study of *lex generalis* could not be anticipated by a study of *lex specialis*; that particular question had been covered by the Permanent Court of International Justice in the case of the Mavrommatis Concessions.[2] Hence, both questions should be studied by the same body.

41. The paradoxical situation in which the same matter was referred to two bodies might be harmful to international law. It would raise the question of the relative importance of the International Court and the International Law Commission, and it might put the latter in a very embarrassing situation.

42. The first section of the operative part of the draft resolution was therefore unacceptable because it was contrary to the principles of law and because it put to the Court a question which implied a limitation on the rights of States. Secondly, it might raise a conflict between *lex generalis* and *lex specialis*. Thirdly, it might lead to a conflict between the opinions of the International Court of Justice and the International Law Commission.

43. Mr. HERRERA BAEZ (Dominican Republic) thought the joint draft resolution had the advantage of not prejudging the question of reservations in general and of limiting the advisory opinion of the Court to the Convention on Genocide.

44. For those reasons his delegation would support it. It still favoured the use of the Pan-American system, however, where the text of a convention contained no specific provision for dealing with reservations.

45. Mr. KURAL (Turkey) said that his delegation would vote in favour of the proposal to refer the general question of reservations to the International Law Com-

[1] Publications of the Permanent Court of International Justice, Series B., No. 5, 23 July 1923, *Collection of Advisory Opinions*, p. 27.

[2] Publications of the Permanent Court of International Justice, Series A., No. 2, 30 August 1924, *Collection of Judgments*, the Mavrommatis Palestine Concessions.

mission for study. It still entertained misgivings as to whether the International Court of Justice should be asked to give an advisory opinion on the question and it would therefore abstain on that part of the joint draft resolution.

46. He felt that there was a certain contradiction in the first and second sections of the operative part of the joint draft resolution. The question of reservations should be settled by a specific article in each instrument and he regretted that no specific recommendation to that effect was included in the joint draft resolution. That solution, however, was the only possible one for the Committee to recommend if it wished to have a simple and clear procedure for dealing with reservations in the future.

47. Mr. CABANA (Venezuela) also had felt on first reading that there was an apparent contradiction in the joint draft resolution; but he had decided that it was chiefly a question of drafting. The first paragraph of the operative part of the resolution was worded in such a way that the phrase "in so far as concerns the Genocide Convention" seemed to govern all the succeeding sub-paragraphs, but that should be brought out more clearly by repeating the reference to that Convention in the latter. A clear distinction should be made between the special case of the Genocide Convention and the general question. Then there could be no possible contradiction.

48. Certain representatives had alluded to the difficulties which might arise if the advisory opinion of the Court did not coincide with the views arrived at by the International Law Commission. An instance had already arisen, however, where the advisory opinion of the Court had not been followed by the Commission, namely, the case of the Peace Treaties with Bulgaria, Hungary and Romania, and no serious consequences had resulted.

49. He thought the Israel proposal that two draft resolutions should be prepared had one disadvantage in that it would prevent one body from taking into account the functions which the Sixth Committee had entrusted to the other. A single resolution defining the competence of each body would be preferable. The objections which the Israel representative had raised, however, could be met if the phrase "in so far as concerns the Genocide Convention" were inserted in the first three sub-paragraphs of the first paragraph of the operative part.

50. Mr. FOURNIER ACUÑA (Costa Rica) had felt originally that the International Court of Justice was not competent to deal with the question and that the matter should be referred to the International Law Commission. The joint draft resolution resolved some of his doubts on the Court's competence inasmuch as the request for an advisory opinion was related to the specific case of the Convention on Genocide.

51. He still entertained some misgivings on the text, however, for the entire matter might become much more complicated if the view of the Court on the specific question of reservations to the Convention on Genocide were contrary to the view of the International Law Commission on the general question of reservations.

52. Moreover, he wondered whether the Sixth Committee might not be confronting the Court with a dilemma. On what law was the Court to base its opinion? There were various rules on the question such as the Pan-American system, the system of the League of Nations, and perhaps others. The first question for the Court to decide would be what law was applicable to the problem referred to it and he wondered whether it would be able to choose among those systems. For that reason he was opposed to the procedure suggested in the first section of the operative part of the joint draft resolution.

53. Mr. FITZMAURICE (United Kingdom) thought there would be no conflict if the International Court of Justice and the International Law Commission presented divergent views on the question of reservations. An opinion of the Court was advisory and not binding on States or Governments as such. That fact should reassure the Polish representative, who had said that a question could not be put to the Court which would affect the rights of States without their consent. That issue had been raised with regard to the advisory opinion on the question of human rights in Bulgaria, Hungary and Romania in which the Eastern Karelia case had been cited. The Court had concluded that such objections were unfounded because its opinion was only advisory and because it had not been requested by, or given to, an individual State, but had been asked for by the General Assembly. The Court had therefore concluded that no State could prevent the General Assembly from requesting an advisory opinion.

54. The advisory opinions of the Court had great weight but they were on the same level as decisions of any court. In the case in hand, the effect of the opinion would be that the Court's views would enter into the general *corpus* of legal pronouncements and opinions on the subjects. In doubt, the customary practice was to study all sources of law and then to decide what was the correct position. That was undoubtedly what the International Law Commission would do.

55. He could not agree that the matter was no longer urgent. As the Assistant Secretary-General in charge of the Legal Department had said, it was essential to know whether reservations which had already been made to the Convention on Genocide were valid as against all other Parties signatories to the Convention, or whether they were valid only as against those Parties which had accepted the reservations.

56. He thought the Israel representative's suggested re-drafting of the text before the Committee would undoubtedly improve it, but Mr. Fitzmaurice asked him not to press his proposal. The Committee had already spent much time on the question and it would be unfortunate to have to refer the matter again to a drafting sub-committee. Moreover, the representative of Israel did not object to the wording of the actual questions to be submitted to the Court, but only to the wording of the preamble. In previous cases where the Court had corrected the drafting of resolutions requesting an advisory opinion, it had limited itself to the text of the questions, but had never attempted to change the preamble. Mr. Fitzmaurice therefore did not consider it necessary at that late stage to effect drafting changes which were not vital.

57. He did not agree with the representative of Costa Rica that there were two or three laws applicable in the matter of reservations. There were certain fundamental principles which applied in all systems. The essential question was whether reservations needed consent. Even in the Pan-American system the need for consent was recognized, for there, if a State objected to a reservation, the convention in question did not take effect between the State making the reservation and the State objecting to the reservation. The only argument against the principle of consent had been raised by the representatives of the Soviet Union and of Poland. The matter was touched upon in the first question put to the Court in the joint draft resolution, and that body could certainly express an opinion as to whether or not consent was necessary.

58. The opinion of the Court would refer only to the Convention on Genocide and it might be that the Court would decide that the Pan-American system was not applicable in that case. But that decision would in no way prejudice the procedure to be followed with regard to other conventions on which the International Law Commission would report.

59. Mr. DEJEAN (Haiti) felt that the matter was so complicated that further time was necessary to study the joint draft resolution which had just been circulated (A/C.6/L.125). His country had hastened to ratify the Convention on Genocide which it considered a significant step forward in human progress. Many important questions which vitally affected that instrument had been raised during the meeting. He therefore suggested that the Committee should either postpone the vote on the joint draft resolution, or refer it to a drafting group so that the changes proposed by the representative of Israel could be incorporated.

60. Mr. ORTIZ TIRADO (Mexico), recalling his delegation's statement at the 220th meeting, said that Mexico, together with the other Latin-American countries favoured the Pan-American system regarding reservations, not because it happened to be the one used by the Organization of American States, but because it seemed best suited for application on an international scale. His delegation had supported the proposal to refer the matter to the International Law Commission. After the discussion which had taken place, his delegation had now decided to support the new joint draft resolution (A/C.6/L.125).

61. Taking into consideration the competence of the respective legal bodies, and the nature of the questions involved, the International Law Commission seemed the most appropriate organ to carry out a full study of the question of reservations in general, while the International Court of Justice, which was competent to deal with concrete cases only, should be asked to give an advisory opinion on the procedure to be followed in the specific case of the Genocide Convention. That opinion would not constitute a precedent for all future conventions. Consequently, with due respect to the Cuban representative, he did not feel that the new joint draft resolution might lead to conflicting opinions since the two bodies would not be asked to deal with the same question. On the contrary, the joint draft resolution provided a way out of the present impasse.

62. Mr. MEJIA (Colombia) said that his delegation had originally been in favour of referring the problem to the International Law Commission and opposed the establishment of a temporary procedure for the Secretary-General as depositary of multilateral conventions. After hearing the other views on the question, his delegation had decided that the new joint draft resolution was preferable to earlier texts as it reconciled the divergent views. He still had some doubts, however, with regard to consulting the International Court of Justice on reservations to the Genocide Convention. It had been said that the Court's opinion was not binding upon Member States, and the United Kingdom representative had maintained that it would not even be binding upon the International Law Commission. However, would it be binding upon the Secretary-General? If not, was there any international procedure in existence which the Secretary-General could follow? So far, the only procedure established in the matter was that of the Organization of American States; no definite procedure had been established on an international plane, although, as the Secretary-General's report pointed out, some multilateral conventions contained provisions regarding reservations, and the League of Nations had followed a procedure of its own.

63. On the other hand, if the Secretary-General considered the Court's opinion as binding, would it also be binding on States? And if certain States refused to consider it as such, how would the Secretary-General be able to apply it?

64. Those points should be clarified before the joint draft resolution was adopted.

65. Mr. TARAZI (Syria) thought that the new joint draft resolution required further consideration. As he had pointed out before, the question was not merely one of procedure, but also one of substance, as it involved the sovereign right of States to make reservations which must not be impaired.

66. Two steps were proposed: the first was to consult the International Court of Justice on the procedure to be followed with regard to the Genocide Convention. That was no longer necessary since, as the Assistant Secretary-General in charge of the Legal Department had pointed out, the question of the Genocide Convention had been settled by the receipt of further ratifications. As regards the question of reservations in general, no agreement had been reached on that question which involved the creation of new law, and consequently the International Court of Justice would not be competent either under its Statute or under the Charter to deal with it. It could not create law, but only interpret existing law.

67. The new joint draft resolution was said to represent a compromise. Such a compromise, involving reference to two organs, might give rise to further difficulties. If the Court rendered an opinion which the International Law Commission could not accept, what would the General Assembly do? The Committee was not concerned with the Genocide Convention in particular, but with the problem of reservations as a whole. Only one body should therefore be consulted, and that body, he felt, should be the International Law Commission. When his delegation had objected to the establishment of an International Law Commission at

the second session on the ground that its work could be done by the International Court of Justice, other members had pointed out that the Court was not competent to create law, but only to interpret it. Syria had accepted that view and took its position accordingly on the current question.

68. Hence, he could not agree to the reference of the question to the International Court of Justice, but supported its reference to the International Law Commission. That body would submit its report to the General Assembly, together with a draft convention, which the General Assembly could then study. The whole matter could be reconsidered at the sixth session.

69. Mr. ROBERTS (Union of South Africa) thought that the discussion had been full and exhaustive and that a prolongation of it would not change the views of the delegations.

70. There could be no doubt as to the difference between the questions referred to the International Court of Justice and the International Law Commission, respectively, and consequently no possible conflict.

71. The representatives of the Union of Soviet Socialist Republics and Poland had maintained that the Court would not be competent to deal with the question as it involved the sovereign rights of States. If there were sovereign rights of States on this point, the Court would not fail to recognize them. The question at issue, however, was what, under existing law, were the legal effects of reservations. That being a matter of interpretation of law, it fell within the Court's competence. If the Court was both legally and intellectually competent, it could be trusted to apply the proper rules of law to the question referred to it.

72. The representative of the Soviet Union had further said that the Court would not be competent to deal with the question under Article 96 of the Charter. He could not agree, as the question was legal and thus within the Court's competence.

73. Lastly, while the Israel representative's amendments were an improvement, he agreed with the United Kingdom representative that it was undesirable to make further drafting changes at that late stage.

74. In view of those considerations, and in particular in view of the explanations given by the United Kingdom representative, he would support the joint draft resolution.

75. Mr. BUSTAMANTE (Ecuador) said that his delegation's position on the question of reservations as set out in his Government's letters to the Secretary-General (A/1372, Annex I, Section III) was that, while it disagreed with the content of the reservations made by the Soviet Union and a few other countries, it recognized their sovereign right to accede to multilateral conventions with reservations. In the view of his delegation, therefore, the depositary of multilateral conventions could not refuse to accept ratifications containing reservations.

76. His delegation welcomed the provision in the joint draft resolution, referring the general question to the International Law Commission. He was also glad to note that it contained no reference to the Secretary-General's report which, although very valuable, did not contain a number of considerations which had subsequently been brought out in the debate, and that it omitted the provisions included in some other drafts which would prevent the progressive development of international law. However, the report did recognize the right of States to make reservations.

77. With reference to the question of consulting the International Court of Justice on the Genocide Convention, it was true that there were still a number of legal questions remaining to be solved, such as the validity of ratifications containing reservations to which objection was raised by other States, and the relations of the reserving and the objecting States. On the other hand, the matter was no longer urgent as the number of ratifications required for bringing the Convention into form had now been deposited. Moreover, reference to the Court seemed unnecessary in view of the fact that, as the United Kingdom representative had pointed out, its opinion would not be binding and it would not be applied until the General Assembly had discussed and approved it at its next session.

78. His delegation therefore supported the Israel suggestion to divide the draft resolution into two separate texts, so that it could vote in favour of referring the question to the International Law Commission, and not to the International Court.

79. Mr. LACHS (Poland) said that the South African representative's remark that further drafting alternatives were unlikely to change the votes of representatives confirmed his view that the element of negotiation was lacking in United Nations debates and that consequently the right of States to make reservations must be safeguarded.

80. The case of the alleged violation of fundamental human rights in Bulgaria, Hungary and Romania, which the United Kingdom representative had referred to, had clearly involved a question of interpretation of peace treaties. In the present case, the situation was different, as no documents existed.

81. The United Kingdom representative had maintained that an advisory opinion of the Court was not binding; that was true, yet attempts had frequently been made in the United Nations to represent that opinion as binding, and draft resolutions had been proposed to that effect. The Court itself had tried to make its opinions seem binding; for example, the Permanent Court of International Justice, in rendering an opinion with regard to the International Labour Organisation, had stated that it had performed a judicial function.

82. If, therefore, the Court's opinion were not binding, it was not necessary because it would only be the subject of further discussion at a later Assembly session. If it were considered binding, then it was dangerous, as it would prejudge the question.

83. In the present case, therefore, reference to the Court would complicate rather than solve the problem, particularly as it seemed inevitable that its views would conflict with those of the International Law Commission.

84. Hence, he opposed reference of the problem to the Court.

The meeting rose at 6 p.m.

Printed in U.S.A. S—40035—November 1950—3,400