UNITED NATIONS

ECONOMIC
AND
SOCIAL COUNCIL

Distr.
GENERAL

E/CN.4/SR.446
19 April 1954

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Tenth Session

SUMMARY RECORD OF THE FOUR HUNDRED AND FORTY-SIXTH MEETING

Held at Headquarters, New York,
on Wednesday, 24 March 1954, at 11 a.m.

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54-09253
(11 p.)

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Chairman:	Mr. AZMI	(Egypt)
Rapporteur:	Mr. INGLES	Philippines
Members:	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. ORTEGA	Chile
	Mr. CHENG PAONAN	China
	Mr. GHORBAL	Egypt
	Mr. JUVIGNY	France
	Mr. CARAYANNIS	Greece
	Mr. DAYAL	India
	Mr. RIZK	Lebanon
	Mr. TYABJI	Pakistan
	Mr. BIRECKI	Poland
	Mr. ASIROGLU	Turkey
	Mr. SAPOZHNIKOV	Ukrainian Soviet Socialist Republic
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
	Mrs. LORD	United States of America
	Mr. MONTERO BUSTAMANTE	Uruguay

Representatives of specialized agencies:

Mr. MANNING	International Labour Organisation
Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

Category B:

Mr. JOFTES	Co-ordinating Board of Jewish Organizations
Mr. JACOBY	World Jewish Congress
Mrs. POLSTEIN) Mr. RONALDS)	World Union for Progressive Judaism
Mr. PENCE	World's Alliance of Young Men's Christian Associations

PRESENT: (cont'd)

Secretariat:	Mr. HUMPHREY	Director of the Division of Human Rights
	Mr. SCHWELB	Deputy Director of the Division of Human Rights
	Mrs. BRUCE) Mr. DAS)	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION: CLAUSES RELATING TO THE ADMISSIBILITY AND NON-ADMISSIBILITY OF RESERVATIONS (E/2447, E/CN.4/677 and 696, E/CN.4/L.345, 348-351) (continued)

Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that no one could deny that under international law the sovereign right to make reservations to treaties was precisely as great as the sovereign right to conclude treaties. There had also been general recognition of the desirability of admitting reservations to the covenants in order to obtain as many ratifications as possible by enabling States which objected to some of the articles to accede with reservations. Some delegations had, however, interpreted the legal consequences of reservations in a manner inconsistent with the principle of national sovereignty. Paragraph 1 of the United Kingdom draft article (E/CN.4/L.345) recognized that any State might make reservations but went on to restrict them to part III of the covenant while paragraph 4 added the proviso that two-thirds of the States parties must accept them. The Soviet Union and Polish representatives had already shown the unsoundness of such a concept; it need only be added that the United Kingdom proposal would deprive States of their sovereign right to make what reservations they deemed fit.

The process of drafting the covenants in the Commission on Human Rights and in the General Assembly had shown the need for reservations. The articles had been adopted by majority vote, the only way in which the minority, which still objected to certain articles, could accede to the covenants was by the use of reservations.

Obviously, the country making such reservations could hardly anticipate that the majority, whether a simple or a two-thirds majority, would subsequently agree to accept them. Thus, if the United Kingdom proposal were adopted, States in the dissenting minority would be faced with the following alternative: either to withdraw their reservations and accede to the covenant despite their disagreement, or not to accede to the covenant at all.

The Philippine delegation's approach was somewhat different from that of the United Kingdom delegation. It felt that the article should be based on the

principles stated in the International Court of Justice's Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (28 May 1951). That approach was as contradictory as the Opinion itself. The Court had based its Opinion on the consideration that as many States as possible should participate in a humanitarian convention and that the contracting parties had the right to make reservations even if no specific reservations clause existed, but it had also decided that the same majority which had rejected the minority's original proposals should be permitted to determine whether a reservation was incompatible with the object and purpose of the convention. The Court had held that a State might be excluded from a convention because it had been compelled to make such a reservation, but it had suggested no criteria to determine incompatibility. The contradiction was insoluble, because only a sovereign State itself could decide the conditions on which it would accede to a convention. The proposal to place on the International Court of Justice the responsibility of determining what reservations were admissible must be rejected, for neither the Court nor any other international organ could be asked to decide on a matter which was the prerogative of a sovereign State. He agreed with the Soviet Union delegation's view that if reservations were made, a convention should, in relations between the States which had made the reservation and all other States parties, be deemed to be in force in respect of all its provisions except those in regard to which the reservations had been made.

Mr. INGLES (Philippines) said that the Ukrainian representative's objection to the Philippine position was based mainly on the alleged contradictory nature of the Advisory Opinion. That Opinion summed up all the arguments that had been advanced for the admissibility or non-admissibility of reservations to the Genocide Convention, which were similar to those adduced with respect to the covenants. The Opinion then sought to find a compromise between two extreme views, namely, that reservations could not be admitted if the integrity of the convention was to be maintained and that reservations must be admitted if the sovereign right of the States parties to accede with whatever reservations they deemed fit were to be conceded in order to obtain as many ratifications as possible. The Court's rejoinder to the type of argument advanced by the Ukrainian representative was given succinctly on page 24 of the Advisory Opinion (I.C.J. Reports 1951). In particular, the Court held that "it is obvious that so extreme an application of the idea of State sovereignty could lead to a complete disregard of the object and purpose of the Convention".

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the United Kingdom proposal was inconsistent with the general views expressed by the United Kingdom representative, who, if he were to be logical - a remark which applied also to the Philippine representative - would have to oppose reservations of any kind to the draft covenant on civil and political rights. Yet the lofty principles which the United Kingdom representative considered inviolable were enunciated in that very part of the draft covenant - part III - to which he would permit reservations to be made. As there was no reason of principle to allow reservations to that part alone, the reason must be of a more practical nature: it was no doubt that part that contained provisions unacceptable to the United Kingdom. Moreover, there was no ground to think that reservations to part III would bear on such unimportant points as the United Kingdom representative had indicated. The United Kingdom proposal plainly constituted a method of permitting some States to make the reservations they found necessary and preventing other States from following the same course.

Furthermore, the United Kingdom representative should be opposed to reservations because he took the view that ratification of the draft covenant would mean surrender of a State's sovereignty where human rights were concerned; reservations would then be tantamount to a partial retaining of sovereignty by indirect means.

In his own view, a reservation was an act whereby a State asserted its sovereign right to enter into treaties and to determine the terms of those treaties. That was an accepted principle of classical international law, which no one had denied. In signing any international treaty and voluntarily accepting obligations deriving from it, a State exercised its sovereign will. A State which ratified the draft covenant would, of its own accord, assume the obligation to improve the lot of its people; it would not, contrary to the claims of the United Kingdom representative, surrender one jot of its sovereignty by so doing.

The United Kingdom representative had suggested that under the USSR amendment (E/CN.4/L.349) each State would in effect be writing the terms of its own covenant. That was obviously incorrect for no State would be able to write

any new provisions into the covenant; at most, some States would accept limited obligations with regard to some of the existing provisions. The covenant would neither become a laughing stock nor have a different meaning for each State, as some representatives had claimed. The procedure advocated by the USSR had been followed in the past, without any of the difficulties which some representatives appeared to apprehend, and there was no reason to think that the situation with regard to the draft covenant would be any different.

The provision in the United Kingdom proposal that reservations must be accepted by two-thirds of the States parties to the covenant was unrealistic, since many of the controversial articles of the covenant had been adopted by very small majorities. The result might well be to delay the covenant's entry into force indefinitely, to say nothing of postponing or preventing ratification by all Member States, which was the goal to be sought.

He had not yet had time to study the text of the joint proposal (E/CN.4/L.351) but was prepared to make some preliminary remarks on that text as explained at earlier meetings by the Philippine representative. The authors of the text were aware of the inadequacies of the United Kingdom proposal, but in their endeavour to make the covenant acceptable to a larger number of States they fell back on the decision of the International Court of Justice with regard to the Convention on Genocide. While the Court had quite properly held that States should not be deterred from ratifying that Convention, it had made the admissibility of reservations contingent on a vague criterion - that of compatibility with the purpose and object of the Convention - which it had wisely forborne from defining. Where the draft covenant was concerned, the definition would be even more difficult to establish. Furthermore, the Court had left it to States to decide whether or not a reservation to the Convention on Genocide should be accepted. Under the joint proposal, the Court would be asked to take the decision; whereas in his opinion, the Court was not competent to settle such problems.

Although the joint proposal did not limit reservations to part III of the draft covenant, as did the United Kingdom proposal, it too represented an attempt to impose on States terms which they might not be ready to accept. The joint proposal was therefore not acceptable, no more than was the United Kingdom text.

His delegation therefore maintained its amendment which was based on generally recognized principles of international law and was designed to permit the greatest number of States to ratify the draft covenant.

Mr. WHITLAM (Australia) stated that his delegation yielded to none in its respect for the principles of international law. Nevertheless, it considered that those principles must be interpreted in the context of historical developments and it agreed with the widely held view that international law was but one of several valuable and important instruments of service to the modern world. The Australian delegation did not consider that any violation of the principles of classical international law was involved in making some concessions to the collectivity of the States which might become parties to the covenants.

The debate had shown that the majority of the Commission recognized the admissibility of reservations. Once that idea was admitted, however, the difficulty arose of determining the extent and nature of admissible reservations. As the United Kingdom representative had pointed out, it would hardly be possible to establish a hierarchy of articles and to decide that reservations would be admissible in respect of some and inadmissible in respect of others. In that connexion, the Australian delegation agreed with the United Kingdom representative's concept of a community of treaty-making States bound by common interests and corporate feelings of fellowship. That concept did not entail abrogation of sovereignty, as the USSR representative had implied; on the contrary, by accepting that concept, the parties would mark their recognition of the need to make concessions to the group, of the interdependence of the contemporary international community and of the fact that peace and security could be achieved only by determined efforts to promote the economic and social advancement of all peoples, in accordance with the Charter. Peace was indeed one and indivisible and the responsibility for maintaining peace rested with all nations, individually and collectively. Signatories of the covenants would be States which felt that strong bond of community with others.

The Philippine representative rightly observed that the advisory opinion of the International Court of Justice on reservations to the Convention on Genocide, although undeniably limited in scope, touched on all the principal questions with which the Commission was confronted with regard to reservations to the covenants. The majority opinion of the Court represented an attempt to take the middle road between the two extreme points of view. Nevertheless, the question remained how the objects and purposes of such far-reaching and detailed multilateral instruments as the covenants could be defined. The United Kingdom proposal provided a more satisfactory and easier solution of the problem and was further justified by the fact that the Court itself had decided that one matter - the problem of asylum - would be better solved without judicial action but by negotiations between the parties concerned. The example of the problem of asylum showed what could be achieved by patient negotiations between sovereign States acting with determination to reach agreement, in a spirit of understanding.

The single judge of the Court who had submitted a dissenting opinion had taken the position that neither the view that reservations, to be valid, must be accepted by all the contracting States nor the view, accepted by the Court, that reservations were inadmissible if they were not compatible with the aims and objects of the Convention was satisfactory, since the reserving States could argue that their reservations were compatible with those aims and objects and the objecting States might allege the opposite, but he had pointed out that the Court, if it were obliged to settle the disputes, would find itself so overburdened with controversies that its functions would be utterly distorted. That opinion was a further argument in favour of leaving the parties to settle disputes among themselves and resorting to the Court on questions of principle only. On such questions of principle, the approach to the Court might well be through the Economic and Social Council.

Mr. JUVIGNY (France), commenting on the four-Power draft article (E/CN.4/L.351), observed that the provision in paragraph 1 that reservations might be made to any part of the covenant was unacceptable to his delegation, for the reasons he had given in his remarks on the United Kingdom proposal that

reservations should be limited to the provisions of part III of the covenant. Secondly, paragraphs 2 and 3 of the joint draft gave States the discretionary power of objecting to reservations and of referring disputes concerning the compatibility of reservations with the object and purpose of the covenant to the International Court of Justice; the fact that the procedure was optional left a gap in the mechanism. Thirdly, the procedure outlined in paragraph 3 would lead, not to the closely knit community of States envisaged by the United Kingdom representative, but to the formation of a multiplicity of conflicting groups, some of which would accept certain reservations while objecting to others. In practice, the contracting States would be parties to an infinite number of covenants. Such a situation would not be propitious to the stability of obligations under the covenant or to the orderly development of jurisprudence on the basis of the articles of the covenant. Moreover, the practical consequences of such a procedure would militate against the principle of the universality of the covenants, which had been so staunchly defended by some of the sponsors of the draft.

Fourthly, the procedure proposed in paragraph 4 would give rise to considerable confusion. For example, if eighteen States accepted a reservation but two States objected to it, the reserving State and the States accepting the reservation would consider that the reserving State was a party to the covenant; if, however, the objecting States referred the reservation to the International Court and if the Court decided that the reservation was not compatible with the objects and purposes of the covenant, the reserving State and the States which had accepted the reservation would be bound, as self-considered parties to the covenant, to a reservation which had been pronounced incompatible with the object and purpose of that instrument.

Fifthly, the draft article contained the same shortcoming as the United Kingdom proposal: namely, that once a reservation had been pronounced to be compatible with the object and purpose of the covenant, it would not be incumbent on the reserving State to take any further action or to make any effort to remove the cause of the reservation.

Finally, he drew attention to articles 44, 46 and 47 of the draft covenant, which provided for recourse to the International Court of Justice. The question of reservations could not be interpreted as falling within the purview of article 47, but in view of the fact that the provisions of paragraph 3 of the joint draft were discretionary the sponsors might usefully consider how the provisions of that article could be combined with those of paragraph 3 of their proposal.

Mr. NISOT (Belgium) pointed out that the multiplicity to which the French representative had referred was the natural consequence of all reservations and applied equally to the United Kingdom and the four-Power draft articles.

He did not consider that there was any justification for the discretionary provision in the last phrase of paragraph 4 of the joint draft. States accepting reservations must of necessity consider that the reserving State was a party to the covenant.

Mr. JUVIGNY (France) agreed that a certain multiplicity was the natural effect of the admission of reservations. Nevertheless, in view of the vast scope of the covenants, it seemed to be essential to place some restriction on reservations, as was done in the United Kingdom draft by the system of acceptance by two-thirds of the parties.

Mr. HOARE (United Kingdom) said that the confusion rightly deplored by the French representative arose from paragraph 4 of the joint draft article, which divided States parties into separate and unrelated groups. The United Kingdom draft contained no such provision, but furnished a safeguard against the danger of multiplicity.

The meeting rose at 1 p.m.