

Document:-
A/CN.4/124

**Cooperation with Other Bodies - Report by Mr. Yuen-li Liang, Secretary of the Commission
on the proceedings of the Fourth Meeting of the Inter-American Council of Jurists**

Topic:
Cooperation with other bodies

Extract from the Yearbook of the International Law Commission:-
1960 , vol. II

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CO-OPERATION WITH OTHER BODIES

[Agenda item 8]

DOCUMENT A/CN.4/124

Report by Mr. Yuen-li Liang, Secretary of the Commission, on the proceedings of the Fourth Meeting of the Inter-American Council of Jurists

[Original text: Spanish]
[5 February 1960]

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Introduction

1. The statutory basis for co-operation between the International Law Commission of the United Nations and the Inter-American Council of Jurists is to be found in the provisions of article 26, paragraph 4, of the Statute of the International Law Commission,¹ in article 61 of the Charter of the Organization of American States² and in article 4 of the Statutes of the Inter-American Council of Jurists.³

2. Originally, the Inter-American Council of Jurists discussed the question of collaboration with the international Law Commission of the United Nations at its first Meeting in 1950, when it adopted a resolution designed to establish a basis for co-operation between the Council and the International Law Commission.⁴

3. The International Law Commission adopted an initial resolution on co-operation with inter-American bodies in 1954,⁵ and in 1955 it requested the Secretary-

General of the United Nations to authorize its Secretary to attend, in the capacity of an observer, the Third Meeting of the Inter-American Council of Jurists, and expressed the hope that the latter would also send its Secretary to attend the meetings of the Commission.⁶

4. This authorization having been granted, the Secretary of the International Law Commission attended the Third Meeting of the Inter-American Council of Jurists, held at Mexico City in 1956, at which he made a statement.⁷

5. Co-operation between the two bodies was also one of the topics discussed by the Inter-American Council of Jurists at its Third Meeting, at which a resolution was approved expressing the opinion that it would be desirable for the Organization of American States to study the possibility of having its juridical agencies represented as observers in the International Law Commission.⁸

6. The Secretary General of the Organization of American States sent as observer to the eight session of the International Law Commission, held in 1956, Mr. M. Canyes, Deputy Director of the Department of Legal Affairs of the Pan American Union.

7. At the same session, the Secretary of the International Law Commission submitted to the Commission his "Report on the proceedings of the Third Meeting of the Inter-American Council of Jurists"⁹ and the Commission requested the Secretary-General of the United Nations again to authorize the Secretary of the Commission to attend the Fourth Meeting of the Inter-American Council of Jurists at Santiago, Chile.¹⁰ The Commission made a similar request in 1958.¹¹

¹ "The advisability of consultation by the Commission with inter-governmental organizations whose task is the codification of international law, such as those of the Pan American Union, is recognized."

² "The organs of the Council of the Organization shall, in agreement with the Council, establish co-operative relations with the corresponding organs of the United Nations and with the national or international agencies that function within their respective spheres of action."

³ "The Inter-American Council of Jurists shall, directly or through its Permanent Committee, seek the co-operation of national committees for the codification of international law, of institutes of international and comparative law, and of other specialized agencies."

"When this co-operation implies the establishment of permanent relations with the corresponding organs of the United Nations and with the national and international agencies that function within its sphere of action, the Council of Jurists may act only in agreement with the Council of the Organization."

⁴ *Yearbook of the International Law Commission, 1956*, vol. II (United Nations publication, Sales No.: 56.V.3, Vol. II), document A/CN.4/102, "Co-operation with Inter-American Bodies", paras. 87 and 88.

⁵ *Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693)*, para. 77.

⁶ *Ibid.*, Tenth Session, Supplement No. 9 (A/2934), para. 36.

⁷ *Yearbook of the International Law Commission, 1956*, vol. II (United Nations publication, Sales No.: 56.V.3, Vol. II), document A/CN.4/102, paras. 2, 3, 4 and 91-94.

⁸ *Ibid.*, document A/CN.4/102, paras. 95-98.

⁹ *Ibid.*, pp. 236-252.

¹⁰ *Official Records of the General Assembly, Eleventh Session, Supplement No. 9 (A/3159)*, paras. 46 and 47.

¹¹ *Ibid.*, Thirteenth Session, Supplement No. 9 (A/3859), para. 72.

8. The Fourth Meeting of the Inter-American Council of Jurists, planned for 1958, had to be postponed until 1959 owing to the need for further preparatory work by the Council's permanent committee, the Juridical Committee.¹²

9. At the eleventh session of the International Law Commission, held from April to June 1959, the Secretary of the Commission stated that the Fourth Meeting of the Inter-American Council of Jurists would be held in August and September 1959 at Santiago, Chile, that an invitation had been received from the Government of Chile and that the Secretary-General of the United Nations had authorized him to attend the Meeting in accordance with the request of the Commission.¹³

10. The Secretary of the International Law Commission of the United Nations attended the Fourth Meeting of the Inter-American Council of Jurists in the capacity of observer¹⁴ and made a statement which is summarized briefly in chapter III of this document.

11. The present document constitutes the "Report on the proceedings of the Fourth Meeting of the Inter-American Council of Jurists" submitted to the International Law Commission by its Secretary in fulfilment of the task assigned to him and in the terms requested by the Commission.

12. The report comprises three chapters, in addition to this introduction. Chapter I deals with the "Organization and agenda of the Fourth Meeting of the Inter-American Council of Jurists". Chapter II, which forms the main subject of the report, deals with "Matters discussed at the Fourth Meeting of the Inter-American Council of Jurists which are on the agenda of the International Law Commission". These are "Reservations to multilateral treaties" (section 1) and "The principles of international law that govern the responsibility of the State" (section 2). Finally, chapter III deals with "Relations between the Inter-American Council of Jurists and the International Law Commission at the Fourth Meeting of the Inter-American Council of Jurists".

Chapter I. Organization and agenda of the Fourth Meeting of the Inter-American Council of Jurists

1. Place and date of the Meeting

13. The Fourth Meeting¹⁵ of the Inter-American Council of Jurists was held at Santiago, Chile, from 24 August to 9 September 1959 by virtue of the con-

¹² *Ibid.*, *Twelfth Session*, (A/3623), para. 22.

¹³ *Ibid.*, *Fourteenth Session, Supplement No. 9* (A/4169), para. 45.

¹⁴ See *Final Act of the Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August-9 September 1959 (CIJ-43), Pan American Union, Washington, D.C., p. 5.

¹⁵ The First Meeting of the Inter-American Council of Jurists was held at Rio de Janeiro, from 22 May to 15 June 1950; the Second Meeting at Buenos Aires, from 20 April to 9 May 1953; and the Third Meeting at Mexico City, from 17 January to 4 February 1956. *Yearbook of the International Law Commission, 1956*, vol. II (United Nations publication, Sales No.: 56.V.3, Vol. II), document A/CN.4/102, para. 12.

vocation issued by the Council of the Organization of American States.¹⁶

2. States represented

14. Twenty of the twenty-one Member States of the Organization of American States were represented at the Meeting. These States were, in the order of precedence determined by lot at the first plenary session on 25 August 1959, in accordance with article 7 of the Regulations of the Council: Brazil, Costa Rica, Argentina, United States of America, Venezuela, Ecuador, Bolivia, Dominican Republic, Nicaragua, Cuba, Peru, Mexico, Paraguay, Haiti, Colombia, Guatemala, El Salvador, Uruguay, Panama and Chile.¹⁷ Honduras was not represented at the meeting.

3. Election of presiding officers and establishment of Committees

15. The Fourth Meeting of the Inter-American Council of Jurists elected, by acclamation, Mr. Luis David Cruz Ocampo (Chile) and Mr. Eduardo Zuleta Angel (Colombia) as Chairman and Vice-Chairman, respectively, of the Council. The Chilean Minister of Foreign Affairs, Mr. Germán Vergara Donoso, and the Chilean Minister of Justice, Mr. Julio Philippi Izquierdo, were elected honorary chairmen at the same session.¹⁸

16. Four working Committees were formed: a Special Committee, Committee I, Committee II and Committee III, whose respective Chairmen were Mr. Carlos García Bauer (Guatemala), Mr. Miguel Rafael Urquía (El Salvador), Mr. Eduardo Arroyo Lameda (Venezuela) and Mr. Antonio Gómez Robledo (Mexico).¹⁹

4. Secretariat²⁰

17. The Deputy Director of the Department of Legal Affairs of the Pan American Union, Mr. Manuel Canyes, served as acting Executive Secretary of the Council.

18. The Government of Chile appointed Mr. Fernando Donoso Silva as Secretary General of the meeting. Mr. Luis Reque, Chief of the Codification Division of the Department of Legal Affairs of the Pan American Union, served as Assistant Secretary General.

5. Representation of the Inter-American Juridical Committee

19. In accordance with the decision taken by the Inter-American Juridical Committee at its 1958 session, Mr. José Jaquín Caicedo Castilla attended the Meeting as representative of the Committee.²¹

6. Agenda and allocation of topics to Committees

20. In accordance with the Statutes of the Inter-

¹⁶ *Final Act of the Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August-9 September 1959 (CIJ-43), Pan American Union, Washington, D.C., p. I.

¹⁷ *Ibid.*, pp. 1-4.

¹⁸ *Ibid.*, p. 6.

¹⁹ *Ibid.*, pp. 7-9.

²⁰ *Ibid.*, p. 5.

²¹ *Ibid.*

American Council of Jurists, the agenda of the Fourth Meeting was prepared initially by the Council's permanent committee, the Inter-American Juridical Committee, and was approved by the Council of the Organization of American States on 28 January 1959.²²

21. However, the Inter-American Council of Jurists modified this agenda at its first plenary session, on 25 August 1959. The Council decided to add the two topics recommended by the Fifth Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States, viz. "Study on the juridical relationship between respect for human rights and the effective exercise of representative democracy" and "Human rights", as well as the topics "Draft standards for inter-American specialized conferences", requested by the Council of the Organization, and "Territorial asylum" (proposal submitted by the delegation of Cuba at the second plenary session).²³

22. The final agenda was allocated to the working committees as follows:²⁴

Special Committee

Topic I (g) Study on the juridical relationship between respect for human rights and the effective exercise of representative democracy.

Topic I (h) Human rights.

Committee I

Topic I (a) Extradition.

Topic I (d) Diplomatic asylum.

Topic I (i) Territorial asylum.

Committee II

Topic I (b) Juridical effects of reservations made to multilateral treaties.

Topic I (c) Contribution of the American Continent to the development and codification of the principles of international law that govern the responsibility of the State.

Topic I (e) Possibility of revising the Bustamante Code.

Topic I (f) Rules concerning the immunity of State ships.

Committee III

Topic II (a) Amendments to resolution VII of the First Meeting of the Inter-American Council of Jurists.

Topic II (b) Amendments to the Regulations of the Juridical Committee.

Topic II (c) Collaboration with the International Law Commission of the United Nations.

Topic II (d) Determination of the matters that should be studied by the Permanent Committee during its next period of meetings.

Topic II (e) Draft standards for Inter-American specialized conferences.

²² *Ibid.*, p. 6.

²³ *Ibid.*, pp. 6-7.

²⁴ *Ibid.*, pp. 7-9.

7. Resolutions adopted

23. The Council adopted, at its Fourth Meeting, twenty-six resolutions,²⁵ twenty-one of which contain substantive or procedural decisions.²⁶ Chapter II examines in detail the resolutions relating to topics dealt with by the International Law Commission, and chapter III deals with the resolution on relations between the Council and the International Law Commission.

24. Of the remaining resolutions adopted by the Council at its Fourth Meeting, the following are of interest from the legal point of view: resolution I, which contains a draft additional protocol to the conventions on diplomatic asylum; resolution IV, which contains a draft convention on extradition; resolution XIII, which proposes a series of amendments to the Regulations of the Inter-American Juridical Committee; resolution XIV, which amends the resolution adopted at the First Meeting on the plan to be adopted by the Council in order to promote the development and codification of international law; resolution XIX, which contains a draft supplementary protocol to the Convention on Territorial Asylum of 1954; and, particularly, resolution XX, which contains a complete draft convention on human rights, consisting of eighty-eight articles, that is being sent to the Council of the Organization of American States for submission to the Eleventh Inter-American Conference.

8. Place of the Fifth Meeting

25. At the second plenary session, on 7 September 1959, the Council decided to accept the offer of the Government of El Salvador and designated San Salvador as the place of the Fifth Meeting of the Inter-American Council of Jurists.²⁷

²⁵ *Resolutions*: (I) Diplomatic asylum; (II) New articles on diplomatic asylum; (III) Study on political offences; (IV) Draft convention on extradition; (V) Extradition; (VI) Seat of the Fifth Meeting; (VII) Tribute to Dr. Raul Fernandes; (VIII) Possibility of revision of the Bustamante Code; (IX) Immunity of State-owned vessels; (X) Reservations to multilateral treaties; (XI) Reservations to multilateral treaties - Reservation of theoretical adherence; (XII) Contribution of the American continent to the principles that govern the responsibility of the State; (XIII) Amendments to the Regulations of the Inter-American Juridical Committee; (XIV) Amendments to resolution VII of the First Meeting of the Inter-American Council of Jurists; (XV) Draft standards for inter-American specialized conferences; (XVI) Relations with the International Law Commission of the United Nations; (XVII) Matters that should be assigned to the Permanent Committee for study at its next period of meetings; (XVIII) Special session of the Inter-American Juridical Committee; (XIX) Territorial asylum; (XX) Human rights; (XXI) Study on the juridical relationship between respect for human rights and the exercise of democracy; (XXII) Programme designed to fight illiteracy in the American continent; (XXIII) Tribute to the memory of Don Andrés Bello; (XXIV) Vote of thanks to the Inter-American Juridical Committee; (XXV) Tribute to Dr. Charles G. Fenwick; (XXVI) Vote of thanks. *Final Act of the Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August-9 September 1959 (CIJ-43), Pan American Union, Washington, D.C., pp. 10-81.

²⁶ Resolutions VII, XXIII, XXIV, XXV and XXVI are merely tributes or votes of thanks.

²⁷ Resolution VI, *Final Act of the Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August-9 September 1959 (CIJ-43), Pan American Union, Washington, D. C. p. 24.

Chapter II. Matters discussed at the Fourth Meeting of the Inter-American Council of Jurists which are on the agenda of the International Law Commission

SECTION ONE. RESERVATIONS TO MULTILATERAL TREATIES

I. PAST TREATMENT OF THE TOPIC IN THE ORGANIZATION OF AMERICAN STATES (OAS)²⁸

A. PROPOSAL OF THE TOPIC (1950)

26. The study by the Inter-American Juridical Committee of the question of reservations to multilateral treaties was originally proposed by the Inter-American Economic and Social Council in 1950 when it was considering the reservations to the Economic Agreement of Bogotá. The Inter-American Economic and Social Council requested the Council of the Organization of American States to submit the question of the juridical scope of reservations to multilateral treaties to the Inter-American Juridical Committee, in accordance with article 70 of the Charter of the OAS.²⁹

27. Responding to this request, the Council of the OAS, on 17 May 1950, recommended to the Juridical Committee that it undertake a study of the question and submit the results to the Council.³⁰ By a later resolution, the Council of the OAS decided to request that the Juridical Committee, in its study, review the rules of procedure established at the Eighth International Conference of American States (Lima, 1938).³¹

28. In conformity with this request by the Council of the OAS, the Juridical Committee prepared a first *Report on the Juridical Effect of Reservations to Multilateral Treaties* and sent it to the Council of the OAS on 27 December 1954.³² This report contained a brief analysis of the historical background of the subject and concluded with some observations which served as a basis for the later discussions of the Inter-American Council of Jurists.

29. The Committee's report was submitted to the Third Meeting of the Inter-American Council of

Jurists, held at Mexico City in 1956, as a working document, and served as a basis for its deliberations.³³

30. The Inter-American Council of Jurists, taking into account the report of the Committee as well as the dissenting opinions contained therein and the drafts presented by different delegations, drew up a draft of rules to serve as a basis for future studies, and at the same time adopted a resolution requesting:

(a) that the Council of the OAS forward that draft to the member Governments for observations; (b) that the Juridical Committee prepare a second draft text of rules on the basis of the first draft and the observations of Governments, and submit it to the Fourth Meeting of the Inter-American Council of Jurists.³⁴

31. The draft text on rules applicable to reservations to multilateral treaties, submitted by the Inter-American Council of Jurists, reads as follows:

A. RESERVATIONS MADE AT THE TIME OF SIGNING

1. A State that desires to make reservations to a multilateral treaty at the time of collective signature shall transmit the text thereof to all States that have taken part in the negotiations, at least forty-eight hours in advance, unless some other period has been agreed upon in the course of the deliberations.

2. The States to which the aforementioned communication has been made shall notify the other States and the State that is making the reservations, before the collective signing, as to whether they accept the said reservations or not.

3. Reservations that have been expressly rejected, even though in part, by the majority of the States present at the signing, shall not be admitted.

B. RESERVATIONS MADE AT THE TIME OF RATIFICATION OR ADHERENCE

1. At the time of ratification or adherence, reservations may be made in the manner and under the conditions stipulated in the treaty itself or agreed to by the signatories.

2. In the absence of any stipulation in the treaty itself or of agreement between the signatories with respect to the making of reservations at the time of ratification or adherence, such reservations may be made if within six months after the official notification thereof none of the signatory States objects to them as being incompatible with the purpose or object of the treaty. The reservations shall be considered accepted by a signatory State that does not object to them on any other ground within the six-month period.

3. If there is an allegation of incompatibility, the General Secretariat of the Organization of American States shall, on its own initiative and in accordance with its prevailing rules of procedure, consult the signatory States, and the reservations shall not be admitted if within six months they are deemed to be incompatible by at least one third of such States.

4. In the case of treaties opened for signature for a fixed or an indefinite time, the applicable rules shall be those governing reservations made at the time of ratification or adherence.

²⁸ For precedents prior to the establishment of the Organization of American States, see: *Handbook, Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August 1959 (CIJ-41), Pan American Union, Washington, D. C., pp. 13-27; and *Yearbook of the International Law Commission, 1956*, vol. II (United Nations publication, Sales No.: 56.V.3, Vol.II), document A/CN.4/102, paras. 66 and 67.

²⁹ See: *Handbook, Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August 1959 (CIJ-41), Pan American Union, Washington, D. C., p. 11 and *Yearbook of the International Law Commission, 1956*, vol. II, document A/CN.4/102, para. 68.

³⁰ *Yearbook of the International Law Commission, 1956*, vol. II, document A/CN.4/102, para. 69.

³¹ *Handbook, Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August 1959 (CIJ-41), Pan American Union, Washington, D. C. p. 11.

³² Inter-American Juridical Committee, document CIJ-23, Pan American Union, Washington, D. C.

³³ For a detailed examination of the deliberations of the Third Meeting of the Inter-American Council of Jurists on the subject of reservations see "Report by the Secretary of the International Law Commission on the proceedings of the Third Meeting of the Inter-American Council of Jurists," *Yearbook of the International Law Commission, 1956*, vol. II, document A/CN.4/102, paras. 71-84.

³⁴ Resolution XV of the Third Meeting of the Inter-American Council of Jurists, adopted at the fourth plenary session on 3 February 1956 (*Ibid.*, document A/CN.4/102, annex IV).

5. A reservation that is not repeated in the instrument of ratification shall be deemed to have been abandoned.

C. GENERAL RULES

1. It is advisable to include in multilateral treaties precise stipulations regarding the admissibility or inadmissibility of reservations, as well as the legal effects attributable to them, should they be accepted.

2. The legal effects of reservations are in general the following:

(a) As between countries that have ratified without reservations, the treaty shall be in force in the form in which the original text was drafted and signed.

(b) As between the States that have ratified with reservations and those that have ratified and accepted such reservations, the treaty shall be in force in the form in which it was modified by the said reservations.

(c) As between a State that has ratified with reservations and another State that has ratified and not accepted such reservations, the treaty shall not be in force.

(d) In no case shall reservations accepted by the majority of the States have any effect with respect to a State that has rejected them.

3. Any State may withdraw its reservations at any time, either before or after they have been accepted by the other States.

4. The prevailing rules of procedure referred to in paragraph B-3 are the six rules approved in resolution XXIX of the Eighth International Conference of American States and those rules that may be approved by the competent organ in the future.

32. On 22 August 1956 the Juridical Committee approved a second work entitled *Study to Serve as the Basis for the Preparation of a Second Draft Text of Rules on Reservations to Multilateral Treaties*,³⁵ which the Pan American Union forwarded to Governments on 15 November 1956. Only four countries submitted observations. In 1958 the Juridical Committee agreed that these observations did not make necessary a revision of the study and decided to submit it without changes, as a working document, to the Fourth Meeting of the Inter-American Council of Jurists. The study contained a second draft text of rules applicable to reservations to multilateral treaties, as well as the explanation of vote of the delegate of the Dominican Republic and the dissenting opinions of the delegates of Colombia and Brazil.³⁶

33. The draft text of rules, presented in the form of a draft convention, reads as follows:³⁷

Article 1. The making of reservations to a treaty at the time of signature, ratification, or adherence, is, like the exercise of the power of concluding treaties an act inherent in national sovereignty, and as such constitutes the exercise of rights that violate no international stipulation or good form.

Article 2. The acceptance or rejection of reservations made by other States or abstaining from doing so is also an act inherent in national sovereignty.

³⁵ Inter-American Juridical Committee, document CIJ-33, Pan American Union, Washington, D. C.

³⁶ *Handbook, Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August 1959 (CIJ-41), Pan American Union, Washington, D. C., p. 12.

³⁷ Inter-American Juridical Committee, *Study to serve as the Basis for the Preparation of a Second Draft Text of Rules on Reservations to Multilateral Treaties* (CIJ-33), Pan American Union, Washington, D. C., pp. 29-31.

Article 3. Reservations made by a State in the instrument of ratification of a treaty shall never be held not to have been made; they shall always be regarded as a genuine expression of the will of the State making them and as a valid statement, in advance, that the treaty, as it enters into force with respect to that State, shall not be binding upon it with greater or different scope than is represented by the clauses and reservations as a whole.

Article 4. Reservations made by the plenipotentiaries during the negotiation of a treaty shall always be inserted in the instrument subject to ratification.

Article 5. Express stipulations agreed upon by the plenipotentiaries with respect to the admissibility or inadmissibility of reservations, as well as to the juridical effects attributable thereto, have the same force as the other clauses and, like them, may be the subject of reservations.

Article 6. If at the time of ratification of a treaty containing stipulations with respect to the admissibility of reservations as well as to the juridical effects thereof, a State, without making any reservation to these stipulations, ratifies with reservations incompatible therewith, it shall be understood that the State does not accept them insofar as they are in opposition to the reservations it is making.

Article 7. The acceptance of a reservation should be express. Consequently, the acceptance by a State of the reservations made by another may never be inferred simply because it has kept silent during a specific period, although they have been reported to it.

Article 8. In multilateral treaties and conventions that are concluded between American States, the Pan American Union shall have the following functions:

1. To assume the custody of the original instrument.
2. To furnish copies thereof to all the signatory governments.
3. To receive the instruments of ratification of the signatory States, including the reservations.
4. To communicate the deposit of ratifications to the other signatory States and, in the case of reservation, to inform them thereof.
5. To receive the replies of the other signatory States as to whether or not they accept the reservations.
6. To inform all the States signatory to the treaty whether the reservations have or have not been accepted.

Article 9. The foregoing rules of procedure, those agreed upon in the future, and the practices followed among the American States with respect to the registration and notification of multilateral treaties, their ratification and reservations thereto, and the acceptance or rejection of the latter, may in no wise affect the validity and juridical effect that ensue under law from such instruments and acts among the parties, the task of deducing the juridical consequences from the respective notifications being left to each State.

Article 10. Since the making of reservations and their acceptance or rejection by the ratifying signatory States are integral parts of treaty making, the legal effect that these acts might have may in no wise differ from that resulting from the terms of what was agreed upon in accordance with the intent of the parties. If this intent is not explicitly recorded in the treaty itself, in the instruments of ratification, or in the documents stating whether or not a reservation is accepted, the juridical effect of the aforesaid reservation will depend on what can reasonably be presumed to have been the intent of the parties with respect to the matter, in view of the nature of the obligations stipulated in the treaty, the purpose of the treaty, and the way in which the parties have already conducted themselves with respect to the treaty in question.

Article 11. Should any difference of opinion arise in the future regarding the juridical effect referred to in the preceding article, the States between which it arises shall endeavour to come to an agreement through negotiations between themselves, and should this not be possible, they shall resort to the procedures prescribed for the solution of disputes.

Article 12. None of the provisions of this convention, nor the principles of international law applicable to the subject, shall be

interpreted or applied in such a way as to limit or restrict in any way, directly or indirectly, the freedom of the States to bind themselves in the manner that they deem desirable, so that the treaty, once it is completed, will represent their freely-expressed will.

B. DRAFT TEXT OF RULES APPROVED BY THE COUNCIL AT ITS THIRD MEETING AND DRAFT TEXT CONTAINED IN THE JURIDICAL COMMITTEE'S SECOND STUDY

34. Before turning to the examination of the Juridical Committee's second study made by the Fourth Meeting of the Inter-American Council of Jurists, it may be useful briefly to compare the contents of that study with those of the draft text of rules approved by the Council itself at its Third Meeting at Mexico City in 1956.

35. For these purposes of study and comparison only, we have rearranged the contents of the Council's draft text of rules and the draft text of the Committee's second study and will deal with them under the following headings:

- (1) General arrangement of the two draft texts.
- (2) Nature and grounds of reservations.
- (3) Time at which reservations are made.
 - (a) Admissibility of reservations made at the time of signing.
 - (b) Renewal of reservations made at the time of signing.
 - (c) Admissibility of reservations made at the time of ratification.
- (4) Juridical effects of reservations.
- (5) Functions of the Pan American Union as depository.

1. *General arrangement of the two draft texts*

36. The Council's draft text is divided into three chapters or sections entitled: A. Reservations made at the time of signing; B. Reservations made at the time of ratification or adherence; C. General rules.

37. The Committee's draft text is divided not into chapters or sections but into articles. The draft text is preceded by a report or study on the Council's draft text, in which the latter's contents and terminology are analysed and criticized.³⁸ On the basis of the contents of the rules in the Council's draft text, the Committee's report amends the chapter or section headings, to read as follows: A. Rules Applicable to Reservations Made by Delegates or Plenipotentiaries during Negotiation of a Treaty; B. Rules Applicable to Reservations Made by a State in the Instrument of Ratification; C. Juridical Effect of Reservations.³⁹

2. *Nature and grounds of reservations*

38. The Council's draft text contains no provisions concerning the grounds of reservations, but, in stating that any State may withdraw its reservations at any time, either before or after they have been accepted

by the other States,⁴⁰ it recognizes their character as unilateral declarations which may be made at the discretion of States.

39. The Committee's draft text views the making of reservations and their acceptance or rejection as an act inherent in national sovereignty, like the exercise of the power of concluding treaties.⁴¹ The freedom of the States to bind themselves in the manner that they deem desirable may not be restricted in any way, directly or indirectly.⁴² Thus, pushing this affirmation to its ultimate conclusions, the Committee's draft text provides that stipulations agreed upon by the plenipotentiaries with respect to the admissibility of reservations may in their turn be the subject of reservations.⁴³

3. *Time at which reservations are made*

40. The Council's draft text distinguishes between reservations made "at the time of signing" and those made "at the time of ratification or adherence".⁴⁴ The Committee's draft text speaks of reservations made "by the plenipotentiaries during the negotiation of a treaty" and "by a State in the instrument of ratification".⁴⁵

(a) *Admissibility of reservations made at the time of signing*

41. The Council's draft text seeks to limit the admissibility of reservations made at the time of signing. To that end, it establishes a series of rules and time-limits. The text of the reservations must be transmitted to all States that have taken part in the negotiations at least forty-eight hours in advance, unless some other period has been agreed upon in the course of the deliberations.⁴⁶ Each State must notify the other States and the State that is making the reservation, before the collective signing, as to whether it accepts the said reservation or not.⁴⁷ Reservations that have been expressly rejected, even though in part, by the majority of States present at the signing, are not to be admitted.⁴⁸

(b) *Renewal of reservations made at the time of signing*

42. In both draft texts the reservations made "at the time of signing" or "during the negotiation of a treaty" must be renewed in the act or instrument of ratification. However, while the Committee's draft text confines itself to stating that "reservations . . . shall always be inserted in the instrument subject to ratification",⁴⁹ the Council's draft text makes a categorical statement regarding the consequences of the non-repetition of the reservation in the act of ratification: it "shall be deemed to have been abandoned".⁵⁰

⁴⁰ Council's draft text: (C-3).

⁴¹ Committee's draft text: (articles 1 and 2).

⁴² *Ibid.*: (article 12).

⁴³ *Ibid.*: (article 5).

⁴⁴ Council's draft text: (A and B).

⁴⁵ Committee's draft text: (article 4 and article 3).

⁴⁶ Council's draft text: (A-1).

⁴⁷ *Ibid.*: (A-2).

⁴⁸ *Ibid.*: (A-3).

⁴⁹ Committee's draft text: (article 4).

⁵⁰ Council's draft text: (B-5).

³⁸ *Ibid.*, pp. 6-29.

³⁹ *Ibid.*, p. 8.

(c) *Admissibility of reservations made at the time of ratification*

43. The restrictive criterion adopted in the Council's draft text for the admissibility of reservations is even more clearly visible in the provisions concerning reservations made at the time of ratification. In this respect, it differs completely from the Committee's draft text. For the latter, the reservations made by a State in the instrument of ratification of a treaty are never held not to have been made, and if a State, without making any reservation to these stipulations of a treaty with respect to the admissibility of reservations, ratifies with reservations incompatible therewith, it is to be understood that the State does not accept them in so far as they are in opposition to the reservations it is making.⁵¹

44. The Council's draft text admits reservations made in the manner and under the conditions stipulated in the treaty itself or agreed to by the signatories.⁵² In the absence of any stipulation in the treaty itself or of agreement between the signatories, reservations may be made if within six months after the official notification thereof none of the signatory States objects to them as being "incompatible with the purpose or object of the treaty". The reservations are to be considered accepted by a signatory State that does not object to them on any other ground within the six-month period.⁵³ According to the Committee's draft text, the acceptance of a reservation should be express and may never be inferred merely from silence during a specific period.⁵⁴

45. In the Council's draft text, if there is an allegation of incompatibility, the General Secretariat of the Organization of American States must, on its own initiative, consult the signatory States, and the reservations may not be admitted if within six months they are deemed to be incompatible by at least one third of such States.⁵⁵ These provisions also apply in the case of treaties opened for signature.⁵⁶

4. *Juridical effects of reservations*

46. The Council's draft text states that it is advisable to include in multilateral treaties stipulations regarding the legal effects attributable to reservations, but at the same time enumerates the legal effects of reservations "in general".⁵⁷ These effects are the three rules approved by the Governing Board of the Pan American Union in 1932 and a fourth based on its provisions concerning the admissibility of reservations. Under the last rule, reservations accepted by the majority of the States shall in no case have any effect with respect to a State that has rejected them.

47. The Committee's draft text takes the position

that the legal effect of the making of reservations, and of their acceptance or rejection, may in no way differ from that sought in the intent of the parties, and that if this intent is not explicitly recorded the juridical effect will depend on "what can reasonably be presumed to have been the intent of the parties with respect to the matter, and the way in which the parties have already conducted themselves".⁵⁸ If differences of opinion arise, the States should endeavour to come to an agreement through negotiations, and, should this not be possible, should resort to the procedures prescribed for the peaceful solution of disputes.⁵⁹

5. *Functions of the Pan American Union as depositary*

48. Both draft texts incorporate the stipulations of resolution XXIX of the Eighth International Conference of American States, which are merely procedural in nature.⁶⁰

49. The Committee's draft text is careful to specify that these rules may in no way affect the validity and juridical effect of the instruments and acts in question, leaving to each State the task of deducing "the juridical consequences from the respective notifications".⁶¹

II. FOURTH MEETING OF THE INTER-AMERICAN COUNCIL OF JURISTS

50. As we have said, the topic "Juridical effects of reservations to multilateral treaties" was placed on the agenda of the Fourth Meeting of the Inter-American Council of Jurists, to which the second study undertaken by the Juridical Committee was submitted for consideration. The topic was allocated to Committee II for consideration.

A. CONSIDERATION OF THE TOPIC IN COMMITTEE II ⁶²

51. Committee II examined the topic at its fourth and fifth sessions, on 31 August and 2 September respectively.

1. *Draft resolutions and amendments*

52. (i) Draft resolution presented by the delegation of Panama.⁶³ The text of the draft resolution was as follows:

Article 1

The making of reservations to a treaty at the time of signature, ratification or adherence by the plenipotentiaries, is an act inherent in national sovereignty and as such constitutes the exercise of rights that violate no international stipulation or good form.

Article 2

Express acceptance or rejection of reservations made by other States or abstaining from doing so is also an act inherent in national sovereignty.

⁵¹ Committee's draft text: (article 3 and article 6).

⁵² Council's draft text: (B-1).

⁵³ *Ibid.*: (B-2).

⁵⁴ Committee's draft text: (article 7).

⁵⁵ Council's draft text: (B-3).

⁵⁶ *Ibid.*: (B-4).

⁵⁷ *Ibid.*: (C-1 and C-2).

⁵⁸ Committee's draft text: (article 10).

⁵⁹ *Ibid.*: (article II).

⁶⁰ Council's draft text: (C-4); and Committee's draft text (article 8).

⁶¹ Committee's draft text: (article 9).

⁶² The numbers and pages of the documents quoted in this part of chapter II, section I, correspond to those of the official Spanish documents of the Fourth Meeting of the Inter-American Council of Jurists, held at Santiago, Chile, August-September 1959.

⁶³ Document 34, 26 August 1959.

Article 3

Reservations made by the plenipotentiaries during the negotiation of a treaty shall always be inserted in the instrument subject to ratification; and if not withdrawn or modified prior to the modification or at the time of ratification, it shall be understood that they persist.

Article 4

Express stipulations agreed upon by the plenipotentiaries with respect to the admissibility or inadmissibility of reservations, as well as to the juridical effects attributable thereto, have the same force as the other clauses and like them, may be the subject of reservations.

Article 5

In multilateral treaties and conventions that are concluded between American States, the Pan American Union shall have the following functions:

1. To assume the custody of the original document.
2. To furnish copies thereof to all the signatory Governments.
3. To receive the instruments of ratification or adhesion of the Parties, including the reservations.
4. To communicate the deposit of ratifications and adhesions to the other signatory States and, in the case of reservations, to inform them thereof.
5. To receive the replies of the other signatory States as to whether or not they accept the reservations.
6. To inform all the signatory States to the treaty as to whether the reservations have or have not been accepted, with the reasons that might be cited by the States for not accepting them.

Article 6

The following rules shall be applied with respect to the juridical effects of reservations:

1. As between States that have ratified without reservations the treaty shall be in force.
2. As between the States that have ratified with reservations and those that have ratified and accepted such reservations, the treaty shall be in force in the form in which it was modified by the said reservations.
3. As between a State that has ratified with reservations and another State that has ratified and not accepted such reservations, the treaty shall not be in force. However, the State that rejects the reservations may agree with the State making the reservations that the treaty enter into force between both States with respect to all of its provisions not affected by the reservations.
4. In no case shall reservations accepted by the majority of the States have any effect with respect to a State that has rejected them.

Article 7

In the event a State, that within a period of six months counting from the date it received the communication referred to in article 5 (4), does not expressly indicate its disagreement with the reservations made to the treaty, it shall be understood that it has no objection with respect to the reservations.

Article 8

Any State may withdraw its reservations at any time, either before or after they have been accepted by the other States.

Article 9

Any State that may have rejected the reservations made by another may, at any time, change its position and agree to accept them.

In this case, as well as that referred to in article 8, the States that withdraw their reservations, and those that agree to accept reservations previously rejected, shall transmit their decision to the Pan American Union for communication to the other States."

53. (ii) Draft resolution presented by the delegation of Colombia.⁶⁴ The text of the draft resolution was as follows:

"RESOLVES:

"To recommend to the Eleventh Inter-American Conference the approval of the following rules governing the reservations to multilateral treaties:

"In the performance of its functions under article 83 (e) of the Charter of the Organization of American States, the Pan American Union shall be governed by the following rules, unless the respective treaty contains special provisions on the subject:

"1. It shall receive the instruments of ratification of the treaties, conventions and other diplomatic instruments of which the Pan American Union is made the depositary.

"2. It shall prepare a *procès-verbal* of deposit of the respective instrument of ratification, which shall be signed by the representative on the Council of the Organization of American States of the country making the deposit or such other representative as that country may designate, by the Secretary General of the Organization of American States, and by the Secretary of the Council of the Organization of American States.

"3. It shall notify the deposit to all signatory Governments, through their representatives on the Council of the Organization of American States.

"4. When a State ratifies a treaty with reservations not made at the time of signature at the conference at which it was negotiated, or subsequently adheres thereto with reservations, such State shall send to the Pan American Union, before depositing the instrument of ratification or adherence, the text of the said reservations, so that the Pan American Union may send them to the other signatory States for the purpose of ascertaining whether they accept them or not. The State in question may or may not proceed to deposit the instrument of ratification or adherence with the reservations, taking into account the nature of the observations made thereon by the other signatory States.

"5. When a State makes reservations at the time of signing a treaty that is open for signature, the Pan American Union, upon communicating the text of such reservations to the other States Members of the Organization of American States, shall inquire whether they consider them acceptable or not. The answers received shall be transmitted to the State that has made the reservations, so that, on the basis thereof, it may determine whether it is advisable or not to maintain such reservations at the time of ratifying the treaty.

"6. If notwithstanding the observations that have been made, the State maintains its reservations, the juridical consequences of such ratification or adherence shall be the following:

⁶⁴ Document 35, 26 August 1959.

“(a) The treaty shall be in force, as between the States that have ratified it without reservations, in the terms in which it was originally drafted and signed.

“(b) As between the States that have ratified it with reservations and the contracting States that have accepted them, the treaty shall be in force in the form in which it is modified by such reservations.

“(c) When a State ratifies with reservations and another State does not accept them, the latter, taking into account the character thereof, shall determine the effect of its non-acceptance, that is, whether the entire treaty shall be of no effect between the two parties or whether only the part affected by the reservations shall be of no effect. In the latter case the ratifying State shall indicate explicitly or implicitly whether such limitation is acceptable.

“7. When a State does not reply within a reasonable period, which in no case shall be more than one year, to the notes sent to it by the Pan American Union to ascertain its opinion with respect to reservations that are the subject of consultation, it shall be understood that that State has no objection to make thereto.”

54. (iii) Oral amendment by the delegation of Uruguay⁶⁵ to the draft resolution submitted by the delegation of Panama (document 34), proposing the deletion of the last two lines of article 1 of that draft resolution.

55. (iv) Amendment by the delegation of Paraguay,⁶⁶ to the effect that the following recommendation should be incorporated into the Pan American rules on reservations to multilateral treaties:

“Reservations made to multilateral treaties, at the time of signing, ratification or adherence to them, shall be precise and shall indicate exactly the clause or rule to which the reservation is made.”

56. (v) Draft resolution submitted by the Working Group (Argentina, Brazil, Chile, Colombia, Dominican Republic, Panama, United States and Uruguay).⁶⁷ The text of the draft was as follows:

“RESOLVES:

“To recommend to the Eleventh Inter-American Conference that it consider the following rules on reservations to multilateral treaties:

“In the performance of its functions under article 83 (e) of the Charter of the Organization of American States, the Pan American Union shall be governed by the following rules, subject to contrary stipulations, with respect to reservations on multilateral treaties, including those open for signature for a fixed or indefinite period of time.

“I. In the case of ratification or adherence with reservations, the ratifying or adhering State shall send to the Pan American Union, before depositing the instrument of ratification or adherence, the text of the said reservations, so that the Pan American Union may send them to the other signatory States

for the purpose of ascertaining whether they accept them or not.

“The Secretary General shall advise the State that made the reservations of the observations made by the other States. The State in question may or may not proceed to deposit the instrument of ratification or adherence with the reservations, taking into account the nature of the observations made thereon by the other signatory States.

“If a period of one year has elapsed from the date of consultation made to a signatory State without receiving a reply, it shall be understood that that State has no objection to make to the reservations.

“If notwithstanding the observations that have been made, the State maintains its reservations, the juridical consequences of such ratification or adherence shall be the following:

“(a) As between States that have ratified without reservations, the treaty shall be in force in the form in which the original text was drafted and signed.

“(b) As between the States that have ratified with reservations and those that have ratified and accepted such reservations, the treaty shall be in force in the form in which it was modified by the said reservations.

“(c) As between a State that has ratified with reservations and another State that has ratified and not accepted such reservations, the treaty shall not be in force.

“(d) In no case shall reservations accepted by the majority of the States have any effect with respect to a State that has rejected them.

“II. Reservations made to a treaty at the time of signature shall have no effect if they are not affirmed before depositing the ratification instrument.

“In the event the reservations are affirmed, consultations will be made in accordance with rule I.

“III. Any State may withdraw its reservations at any time, either before or after they have been accepted by the other States.

“The making of reservations to a treaty at the time of signature, ratification or adherence by the plenipotentiaries, is an act inherent in national sovereignty.

“Acceptance or rejection of reservations made by other States or abstention from doing so is also an act inherent in national sovereignty. It is recommended that reservations made to multilateral treaties, at the time of signing, ratification or adherence to them, shall be precise and shall indicate exactly the clause or rule to which the reservation is made.”

2. Discussion⁶⁸

57. There were two stages in the debate on the topic of reservations to multilateral treaties: before

⁶⁵ Document 71, 31 August 1959, p. 4, lines 1 and 2.

⁶⁶ Document 70, 31 August 1959.

⁶⁷ Document 84, 4 September 1959.

⁶⁸ Summary records of the fourth and fifth sessions of Committee II. Document 71, 31 August 1959, and document 94, 3 September 1959, respectively.

and after the establishment of the Working Group. Those stages correspond to the fourth and fifth sessions respectively.

58. The general debate began with a statement by the representative of Colombia in support of the draft resolution submitted by his delegation.⁶⁹ He pointed out that the Colombian draft resolution was based on the rules established by the Governing Board of the Pan American Union, on resolution XXIX of the Eighth International Conference of American States and on the regular practice of the Pan American Union in recent years. Its aim was to give breadth and flexibility to the formulae relating to reservations, in order to facilitate the ratification of conventions by as large a number of States as possible, and at the same time to indicate the juridical effect of reservations. While respecting the principle of national sovereignty and freedom to contract treaties, the draft resolution would eliminate where possible the adverse effects of reservations when they were not accepted by some signatory States and would establish the principle of tacit acquiescence as practised hitherto by the American States.

59. The representative of Uruguay said that he was in agreement with the views of the representative of Colombia and with many points of the draft resolution submitted by the delegation of Panama.⁷⁰ The important thing was to reaffirm the two fundamental principles which in his opinion constituted the basis of Pan American policy in the matter: namely, the recognition of the inherent right of reservation in all its aspects, and the principle that in no circumstances should solutions adopted by the majority of States compromise directly or indirectly the State formulating the reservation. He concluded by stating that article 1 and article 6, paragraph 4, of the draft resolution of Panama reflected the position of his own Government and he proposed the deletion of the last two lines of article 1 of that draft resolution.⁷¹

60. The representative of Chile said that he, on the other hand, saw no need for the inclusion of article 1 in the draft resolution, since it would only be a repetition of a basic principle already embodied in an Inter-American convention, in article 6 of the Convention on Treaties, signed at Havana in 1928.

61. The representative of Brazil directed the attention of the Committee to the study prepared by the Juridical Committee⁷² and the resolution on reservations which the Council itself had adopted at its Third Meeting⁷³ and expressed the view that the Committee should bear them in mind in considering the topic.

62. The representative of Paraguay said that the fundamental purpose of the codification of international law was to provide certainty regarding the rule to be

applied. The draft resolution submitted by his delegation⁷⁴ proposed the incorporation into the Pan American rules on reservations to multilateral treaties of the recommendation that all reservations should be precise and that the clause or rule in question should be specifically indicated.

63. The representative of Panama outlined the treatment the subject had been given in the Organization of American States and explained to the Committee the purpose and scope of the draft resolution submitted by his delegation.⁷⁵ The draft resolution was designed to solve the problem of reservations by reconciling the different points of view expressed in the report of the Juridical Committee and in the dissenting opinions, while at the same preserving the "Pan American rules". It was based on the assumption that the formulation of reserves and their acceptance or rejection was an act inherent in national sovereignty. It also defined the functions of the Pan American Union as a depositary and stated the principle, established also by the United Nations International Law Commission, that if, within a period of six months counting from the date it received from the Pan American Union information of a reservation formulated to a treaty, a State did not expressly indicate its disagreement it would be understood that it had no objection with respect to that reservation. He pointed out, in conclusion, that the draft resolution of his delegation stipulated that a State could withdraw reservations it had formulated or change its position with regard to reservations previously rejected.

64. Having heard these statements, the Committee agreed to set up a Working Group to examine the topic and submit its conclusions to the Committee. The Working Group consisted of the representatives of Argentina, Brazil, Chile, Colombia, the Dominican Republic, Panama, the United States of America and Uruguay.

65. In the second part of the debate the Committee examined the draft resolution submitted by the Working Group.⁷⁶

66. After a general statement on the question from the representative of Chile tracing the evolution of treaties from the multilateral contractual to the law-making or "normative" form, and expressing the hope that the American States would establish some sort of classification which would facilitate the regulation of the process of making reservations and of their juridical effects, the Rapporteur of the Working Group, the representative of Uruguay, read out the draft resolution of the Working Group part by part.

67. There followed an exchange of views on part I between the representatives of Brazil, Uruguay, Chile, the Dominican Republic, Panama, Mexico, Colombia, Guatemala and the Acting Executive Secretary of the Inter-American Council of Jurists, from which it be-

⁶⁹ Colombian draft resolution, document 35. See *supra*, para. 53.

⁷⁰ Draft resolution of Panama, document 34. See *supra*, para 52.

⁷¹ Oral amendment by Uruguay, document 71, p. 4, lines 1 and 2. See *supra*, para. 54.

⁷² See *supra*, paras. 32 and 33.

⁷³ See *supra*, paras. 30 and 31.

⁷⁴ Paraguayan draft resolution, document 70. See *supra*, para. 55.

⁷⁵ Panamanian draft resolution, document 34. See *supra*, para.52.

⁷⁶ Document 84. See *supra*, para. 56.

came clear that the draft resolution of the Working Group was based on resolution XXIX of the Eighth International Conference of American States.

3. Voting

68. The draft resolutions submitted by Panama⁷⁷ and Colombia⁷⁸ and the amendments submitted by the representatives of Uruguay⁷⁹ and Paraguay⁸⁰ were not put to the vote.

69. Committee II voted only on the draft resolution submitted by the Working Group,⁸¹ which was unanimously adopted with certain reservations. The Committee took separate votes on part I, part II and part III and finally on the draft resolution as a whole. The representative of Chile made his vote on part I of the draft resolution subject to a reservation with regard to the third paragraph, which might in certain cases conflict with tenets of Chilean constitutional law, but at the same time he recognized that the provision was warranted as part of the consultation machinery for reservations. The representative of the United States reserved his position for the time being with regard to part II of the draft resolution and the time limit imposed in the third paragraph of part I.

B. CONSIDERATION OF THE TOPIC IN PLENARY SESSION OF THE COUNCIL, AND ADOPTION OF THE DRAFT RESOLUTION SUBMITTED BY COMMITTEE II

70. The records of the Committee's debates on the legal effects of reservations to multilateral treaties and the draft resolution that the Committee had approved on that item of the agenda were submitted to the plenary session of the Council by Mr. Julio Escudero Guzmán (Chile), Rapporteur of Committee II, after revision by the Drafting Committee.⁸²

1. Draft resolutions and amendments

71. (i) Oral amendment by the representative of Cuba⁸³ proposing that the antepenultimate and penultimate paragraphs of the draft resolution approved by Committee II (document 84) should be deleted.

72. (ii) Oral proposal by the representative of Cuba⁸⁴ that the Council should consider whether there was any justification for including in the draft resolution approved by Committee II (document 84) the subject referred to in the antepenultimate and penultimate paragraphs of the resolution.

73. (iii) Oral amendments by the representative of Cuba to the antepenultimate paragraph of the draft

resolution approved by Committee II (document 84). As first amended the paragraph would have read as follows:⁸⁵

"The making of reservations to a treaty at the time of its signature by the plenipotentiaries, of its ratification or of adherence, is an act inherent in national sovereignty, *but reservations cannot be made to an instrument when this is expressly prohibited by the said instrument or when such reservations would be incompatible with the nature and purpose of the instrument in question.*"

74. In a revised version of the amendment⁸⁶ the representative of Cuba withdrew the last phrase: "or when such reservations would be incompatible with the nature and purpose of the instrument in question".

2. Discussion⁸⁷

75. The draft resolution adopted by Committee II on reservations to multilateral treaties gave rise to a new discussion at the third plenary session of the Council.

76. The representative of Peru said that he would not support Committee II's draft resolution,⁸⁸ on the grounds that in the absence of a prior definition of the term "reservation" it was not possible to discuss the legal consequences or effects of reservations. Furthermore, he added, the rules of procedure to be followed by the Secretary General of the Organization of American States in registering treaties had already been established and there was no difficulty in applying them.

77. With the exception of that view on Committee II's draft resolution as a whole, the discussion was concentrated on the questions raised by the representative of Cuba in relation to his proposals and amendments to the antepenultimate and penultimate paragraphs of the draft resolution.⁸⁹ The discussion on that point consisted, on the one hand, of a general debate on the legal principles on which the concept of reservations in international law was based and on the advisability of including one or more of those principles in the draft resolution under consideration, and, on the other hand, of a debate on the amendment to the antepenultimate paragraph of the draft resolution. The former debate concerned whether the whole of the text of Committee II's draft resolution should be maintained, or whether the antepenultimate and penultimate paragraphs should be deleted; the latter debate centred on the amendment of the antepenultimate paragraph of the draft resolution by the addition of a restrictive phrase at the end.

78. The representative of Cuba opened the general debate by criticizing the principle affirmed in Committee II's draft resolution⁹⁰ that the making, acceptance

⁷⁷ Document 34. See *supra*, para. 52.

⁷⁸ Document 35. See *supra*, para. 53.

⁷⁹ Document 71, p. 4, lines 1 and 2. See *supra*, para. 54.

⁸⁰ Document 70. See *supra*, para. 55.

⁸¹ Document 84. See *supra*, para. 56.

⁸² Document 117, 5 September 1959. Report by the Rapporteur of Committee II.

⁸³ Document 151, 9 September 1959, p. 5, para. 1.

⁸⁴ *Ibid.*, p. 14, para. 3.

⁸⁵ *Ibid.*, p. 14, last paragraph.

⁸⁶ *Ibid.*, p. 16, last paragraph.

⁸⁷ Record of the third plenary session, document 151, 9 September 1959, pp. 2-19.

⁸⁸ Document 84. See *supra*, paras. 56 and 69.

⁸⁹ Document 151, p. 5, first paragraph; p. 14, third and last paragraphs, and p. 16, last paragraph. See *supra*, paras. 71-74.

⁹⁰ Document 84. See *supra*, paras. 56 and 69.

or rejection of reservations was an act inherent in national sovereignty. The Cuban representative considered that that concept of reservations was incompatible with the present state of positive international law with respect to reservations, which was in turn the result of the increasing tendency for international agreements to give way to international legislation. Such a concept of reservations was also contrary to the progressive development of international law. There was no need for the Latin American countries, in order to defend their legitimate interests, to cling to a concept of national sovereignty that had already fulfilled its purpose and no longer had a useful function at the present stage of development of international relations. Nowadays, when the principle of national sovereignty could no longer constitute a real safeguard of national interests, it must be replaced by the new principle of international organization. The idea of national sovereignty was a two-edged sword which could often be turned against the small countries that defended it. Reservations must now be compatible with the purposes of the treaty.

79. In addition to those criticisms of substance, the Cuban representative opposed the inclusion of such principles in the draft resolution on the grounds that there was no justification for doing so. According to its own agenda the Council was concerned solely with regulating the effects of the acceptance or non-acceptance by one State of the reservations made by another. It was a mere matter of logic to delete the restatement of a principle from a text where it was out of place; to do so in no way implied a judgement regarding the substance of the said principle.

80. The representative of the United States endorsed the views expressed by the Cuban representative regarding the inappropriateness of the paragraphs concerned in the text of the resolution under discussion.

81. The representative of Chile also agreed that the matter was one of formulating a minor provision on reservations; he did not think that it would be appropriate at the present stage to include a restatement of general principles.

82. The majority of the representatives, however, opposed the views expressed by the representative of Cuba.

83. The representative of Colombia gave an account of the drafting of Committee II's draft resolution and expressed the view that for a State to legislate on international questions was an act of sovereignty at the international level. The doctrine of the incompatibility of reservations was gaining ground but it had not yet developed sufficiently to be regarded as an established rule of international law of general application.

84. The representative of Mexico expressed the same view on the doctrine of incompatibility; he considered that, quite apart from whether or not the making of reservations was a necessary attribute of sovereignty, it was an act inherent in sovereignty and as such was established in international law on the American Continent.

85. The representative of Venezuela agreed with those who supported the full text of the Committee's draft resolution, but said that he understood national sovereignty in the modern sense of that concept, namely as a principle that must be viewed not in isolation, but in relation to other principles of international law.

86. The representatives of Uruguay, Panama and the Dominican Republic also favoured the maintenance of the full text of Committee II's draft resolution.

87. In the subsequent debate on the amendment of the antepenultimate paragraph of Committee II's draft resolution,⁹¹ the views of the representative of Cuba received greater, though qualified, support.

88. None of the representatives supported the last part of the amendment, to the effect that reservations could not be made when they would be incompatible with the nature and purpose of the treaty. The representatives of Colombia, Mexico and Brazil, however, were favourably disposed to the first part of the amendment, which provided that reservations could not be made to a treaty when they were expressly prohibited by the treaty.

89. In view of the opinions that had been expressed, the representative of Cuba revised his amendment by deleting the reference to reservations incompatible with the nature and purpose of the treaty; as will be seen below, however, the Council rejected also the second version of the amendment.

3. Voting

90. At its third plenary session, on 8 September 1959, the Inter-American Council of Jurists approved the draft resolution submitted by Committee II, which became resolution X of the Fourth Meeting.

91. The Council voted first on the procedural proposal by the representative of Cuba, which was rejected by 11 votes to 3, with 6 abstentions.⁹²

92. The first version of the amendment by the representative of Cuba⁹³ to the antepenultimate paragraph of Committee II's draft resolution was not put to the vote. The Council voted on the second version of the Cuban amendment,⁹⁴ which was rejected, not having obtained the required majority of 11 votes. There were 10 votes in favour of the amendment, and 5 against it, with 5 abstentions.⁹⁵

93. The Council voted next on the draft resolution submitted by Committee II.⁹⁶ It voted first, by roll-call, on the antepenultimate and penultimate paragraphs, whose deletion had been requested by the representative of Cuba.⁹⁷ The two paragraphs were approved by 14 votes to 2, with 4 abstentions. Cuba and El Salvador voted

⁹¹ Document 151, p. 5, first paragraph; p. 14, third and last paragraphs, and p. 16, last paragraph. See *supra*, paras. 71, 73 and 74.

⁹² *Ibid.*, p. 14, third paragraph. See *supra*, para. 72.

⁹³ *Ibid.*, p. 14, last paragraph. See *supra*, para. 73.

⁹⁴ *Ibid.*, p. 16, last paragraph. See *supra*, para. 74.

⁹⁵ *Ibid.*, p. 17, first paragraph.

⁹⁶ Document 84. See above, paras. 56 and 69.

⁹⁷ Document 151, p. 5, first paragraph. See *supra*, para. 71.

against the two paragraphs, and Chile, Nicaragua, Peru and the United States abstained.⁹⁸ Lastly, the Council approved, by 15 votes to 1, with 3 abstentions,⁹⁹ Committee II's draft resolution as a whole, which became resolution X of the Fourth Meeting.

94. By virtue of that resolution :

"The Inter-American Council of Jurists

"RESOLVES :

"To recommend to the Eleventh Inter-American Conference the consideration of the following rules on reservations to multilateral treaties :

"In the performance of its functions under article 83 (e) of the Charter of the Organization of American States, the Pan American Union shall be governed by the following rules, subject to contrary stipulations, with respect to reservations to multilateral treaties, including those open for signature for a fixed or indefinite period.

"I. In the case of ratification or adherence with reservations, the ratifying or adhering State shall send to the Pan American Union, before depositing the instrument of ratification or adherence, the text of the reservations it proposes to make, so that the Pan American Union may transmit them to the other signatory States for the purpose of ascertaining whether they accept them or not.

"The Secretary General shall inform the State that made the reservations of the observations made by the other States. The State in question may or may not proceed to deposit the instrument of ratification or adherence with the reservations, taking into account the nature of the observations made thereon by the other signatory States.

"If a period of one year has elapsed from the date of consultation made to a signatory State without receiving a reply, it shall be understood that that State has no objection to make to the reservations.

"If, notwithstanding the observations that have been made, the State maintains its reservations, the juridical consequences of such ratification or adherence shall be the following :

"(a) As between States that have ratified without reservations, the treaty shall be in force in the form in which the original text was drafted and signed.

"(b) As between the States that have ratified with reservations and those that have ratified and accepted such reservations, the treaty shall be in force in the form in which it was modified by the said reservations.

"(c) As between the States that have ratified with reservations and those that have ratified but have not accepted the reservations, the treaty shall not be in force. In any event the State that rejects the reservations and the one that has made them may expressly

agree that the treaty shall be in force between them with the exception of the provisions affected by the reservations.

"(d) In no case shall reservations accepted by the majority of the States have any effect with respect to a State that has rejected them.

"II. Reservations made to a treaty at the time of signature shall have no effect if they are not reiterated before depositing the instrument of ratification.

"In the event the reservations are affirmed, consultations will be made in accordance with rule I.

"III. Any State may withdraw its reservations at any time, either before or after they have been accepted by the other states. A State that has rejected a reservation may later accept it.

"The making of reservations to a treaty at the time of signature by the plenipotentiaries, of ratification, or of adherence is an act inherent in national sovereignty.

"Acceptance or rejection of reservations made by other States or abstention from doing so is also an act inherent in national sovereignty. It is recommended that reservations made to multilateral treaties, at the time of signing, ratification, or adherence to them, shall be precise and shall indicate exactly the clause or rule to which the reservation is made."¹⁰⁰

95. When the vote on resolution X took place at the plenary session of the Council, the following reservations and statements¹⁰¹ were made by the delegations of Bolivia, Brazil, Chile and the United States :

"*Reservation of Brazil :*

"The Delegation of Brazil abstains from voting on rule I, paragraphs (b), (c), and (d), with respect to reservations to multilateral treaties, in view of the opinion maintained by the Government of Brazil regarding the principle of the compatibility of reservations with the objective or purpose of the treaties to which they refer.

"*Statement of the United States of America :*

"The United States Delegation makes the following Statement with respect to two of the provisions in the Draft Resolution on the Juridical Effects of Reservations to Multilateral Pacts :

"(a) The provision in Paragraph I of the Resolution that the failure of a party to the Convention to reply within a year to a notice of a reservation filed by a ratifying or adhering party shall be construed as acceptance of the reservation, is undesirable.

"(b) The requirement of Paragraph II of the Resolution under which reservations filed at the time of signature must also be reiterated prior to the deposit of the ratification, is unacceptable to the

⁹⁸ *Ibid.*, pp. 17 and 18.

⁹⁹ *Ibid.*, p. 18.

¹⁰⁰ *Final Act of the Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August-9 September 1959 (CIJ-43), Pan American Union, Washington, D.C., pp. 29 and 30.

¹⁰¹ *Ibid.*, p. 86.

United States Delegation in the form in which it has been drafted.

The United States Delegation therefore reserves its position on both these provisions.

“Reservation of Bolivia:

“The Delegation of Bolivia abstains from voting on the draft resolution dealing with Reservations on Multilateral Treaties, because it regards as inappropriate any statement “in the abstract” on the acceptance or rejection of reservations on multilateral treaties, without a prior definition of the subject matter of these reservations and the significance thereof.

“Statement of Chile:

The Delegation of Chile makes a reservation with respect to the third paragraph of rule I of the Draft Resolution on Reservations to Multilateral Treaties, the justification of which, within the machinery of consultation on reservations, it recognizes only to the extent that it could be in disagreement, in certain cases, with provisions of Chilean constitutional law.”

96. Some representatives explained their votes. The representative of the Dominican Republic said that his country did not accept rule c of the draft resolution. The representative of Ecuador said that if there had been separate votes on the various parts of the draft resolution he would have abstained from voting on sub-paragraph c. The representative of Paraguay said that he had voted in favour of the draft resolution as a whole, but that he would have abstained on paragraph 3 of article I.¹⁰²

C. PROPOSAL TO ESTABLISH A NEW CLASS OF RESERVATIONS TO MULTILATERAL TREATIES, TO BE KNOWN AS “RESERVATIONS OF THEORETICAL OR MORAL ADHERENCE”

97. During Committee II’s discussion of the item on reservations to multilateral treaties, the representative of Paraguay submitted a number of observations suggesting that there should be introduced into the practice of reservations to multilateral treaties a class of reservation that he referred to as “reservations of theoretical or moral adherence”.¹⁰³

98. That type of reservation sought to overcome the difficulties caused by internal legislation when the latter was in conflict with a given rule of international treaty law that States found appropriate and acceptable. It was suggested that that problem could be solved by means of the reservation of theoretical or moral adherence, whereby a State could express its agreement with the international rule in question in exchange for an undertaking to promote the amendment of whatever provision or provisions of its internal legislation might be in conflict with the said international rule and thus

make possible the ratification and operation of that rule. Thus the purpose of the “reservation of theoretical adherence” was the abolition of reservations based on the provisions of the internal legislation of States.

99. As the representative of Paraguay pointed out, the “reservation of theoretical adherence” would have the advantage of making it clear whether a clause opposed by a number of States had been rejected because it was unsatisfactory or whether, on the other hand, it had won general approval and consent, of enabling the Organization of American States to promote and encourage in the various States the changes necessary for the smooth and unopposed ratification of clauses to which the reservation of theoretical adherence had been made, and of encouraging every State to work towards bringing its legislation into line with that of the other States.

100. Committee II took up this question at its fifth and seventh sessions, on 2 and 4 September respectively.¹⁰⁴ During the discussion the view was expressed that the observations of the Paraguayan representative should be forwarded to Committee III, which was considering questions for reference to the Juridical Committee at its next session. Committee II concluded by unanimously approving a draft resolution submitted by Uruguay,¹⁰⁵ which was adopted at a plenary session of the Council¹⁰⁶ by 17 votes to none, with no abstentions. Three delegations were absent. That resolution, which was resolution XI of its Fourth Meeting, read as follows:

“The Inter-American Council of Jurists

“RESOLVES:

To transmit the proposal of the Delegation of Paraguay on Reservation of Theoretical Adherence, to the Inter-American Juridical Committee so that it may study the possibilities of its application.”¹⁰⁷

SECTION TWO. THE PRINCIPLES OF INTERNATIONAL LAW THAT GOVERN THE RESPONSIBILITY OF THE STATE

I. PAST TREATMENT OF THE TOPIC IN THE ORGANIZATION OF AMERICAN STATES (OAS)¹⁰⁸

A. PROPOSAL OF THE TOPIC (1954)

101. The Organization of American States first

¹⁰⁴ Summary records of the fifth and seventh sessions of Committee II, document 94, 3 September 1959, and document 109, 4 September 1959, respectively.

¹⁰⁵ Document 108, 4 September 1959.

¹⁰⁶ Record of the third plenary session, document 151, pp. 18 and 19.

¹⁰⁷ *Final Act of the Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August–9 September 1959 (CIJ-43), Pan American Union, Washington, D. C. p. 31.

¹⁰⁸ For precedents prior to the establishment of the Organization of American States, see *Yearbook of the International Law Commission, 1956*, vol. II (United Nations publication, Sales No.: 56.V.3, Vol. II), document A/CN.4/96, “State Responsibility”, report prepared by F. V. García Amador, paras. 24–29 and annexes 4, 5 and 6.

¹⁰² Record of the third plenary session, document 151, pp. 18 and 19.

¹⁰³ Document 69, 31 August 1959.

discussed the "principles of international law governing State responsibility" at the Tenth Inter-American Conference held at Caracas in 1954. Resolution CIV of that conference, after mentioning (a) resolution 799 (VIII) of the United Nations General Assembly, which requested the International Law Commission to undertake the codification of the principles of international law governing State responsibility, (b) the need for encouraging closer co-operation between the International Law Commission and the inter-American organs responsible for the development and codification of international law and (c) the fact that the American Continent had made a notable contribution to the development and codification of the principles of international law that govern the responsibility of the State, recommended to the Inter-American Council of Jurists and its permanent committee, the Inter-American Juridical Committee, "the preparation of a study or report on the contribution the American Continent has made to the development and to the codification of the principles of international law that govern the responsibility of the State".¹⁰⁹

102. While introducing for the first time the question of "the principles of international law governing State responsibility" for study by the organs of the Organization of American States, resolution CIV of the Tenth Inter-American Conference at the same time specified the form, content and purpose of that study. As regards the form, the Inter-American Council of Jurists and the Inter-American Juridical Committee were recommended to prepare a study or report. As regards the content, the study or report was to deal with "the contribution the American Continent has made to the development and to the codification of the principles of international law that govern the responsibility of the State". As the resolution's preamble infers, the purpose was to transmit to the International Law Commission, for its use, material describing the contribution made by the American Continent to that field of international law.

103. At the request of the Government of Cuba, the Council of the Organization of American States included the item concerning the "principles of international law governing the responsibility of the State" in the agenda of the Third Meeting of the Inter-American Council of Jurists, even though the Juridical Committee had not yet prepared the study or report envisaged in the Caracas resolution. It was felt that the Council might usefully discuss the item in order to decide the best procedure for securing the aims of the resolution.¹¹⁰

104. At the Third Meeting of the Inter-American Council of Jurists, held at Mexico City in 1956, the item "Principles of international law governing the responsibility of the State" was dealt with by Committee III.

In its resolution VI, which was purely procedural, the Council requested its permanent committee, the Inter-American Juridical Committee, to complete as soon as possible the study or report recommended by the Caracas Conference so that it might be considered by the Inter-American Council of Jurists at its Fourth Meeting. It also asked the Department of International Law of the Pan American Union to make a preliminary study of the subject for the purpose of facilitating the Committee's work.¹¹¹

B. REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE

105. In 1958, the Inter-American Juridical Committee adopted a report entitled *Contribution of the American Continent to the Principles of International Law that govern the Responsibility of the State*.¹¹² The report began by analysing the terms of reference laid down for the Juridical Committee by the Inter-American Conference and the Inter-American Council of Jurists. After taking the view that the study was to be limited strictly to the past and to the most faithful interpretation of that past, i.e. to the contribution which the American Continent "has made" to the development and codification of the legal principles governing State responsibility, the Committee reviewed the subject-matter involved. Bearing in mind the terms of the resolutions and the fact that the report on the contribution of the American Continent was to be transmitted to the International Law Commission, the Committee felt it necessary to take into account "all" that had been decided or proposed, thought or written, throughout the vast American Continent, on the problems of every kind grouped under the general classification of the international responsibility of the State. The study would include "current law and expired law, the jurisprudence of international and also of national courts, other court records furnished by the parties that are frequently of unusual interest, foreign-office documents and statements by legislatures, and doctrine of writers on the subjects".¹¹³

106. Of course, the task was so gigantic that the Committee could not possibly tackle it all at once. Turning from the statement of the problem to the matter of finding practical solutions, it therefore confined itself to: (1) pointing out some of the measures which the Inter-American Conference and the Inter-American Council of Jurists might take to meet the situation; and (2) enunciating a series of principles which were accepted by the majority of American countries and which, in the Committee's opinion, formed part of Latin American international law as well as, in some aspects, of American international law.

107. With regard to point (1), the Committee felt that, if the Inter-American Conference or the Inter-American Council of Jurists approved in all its scope the task entrusted to the Committee, they should con-

¹⁰⁹ *Handbook, Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August 1959 (CIJ-41), Pan American Union, Washington, D. C., pp. 35 and 36.

¹¹⁰ *Handbook, Third Meeting of the Inter-American Council of Jurists*, Mexico City, 17 January 1956 (CIJ-24), Pan American Union, Washington, D. C., pp. 84 and 85.

¹¹¹ *Handbook, Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August 1959 (CIJ-41), Pan American Union, Washington, D. C., p. 37.

¹¹² Inter-American Juridical Committee, document CIJ-39, Pan American Union, Washington, D. C.

¹¹³ *Ibid.*, p. 3.

sider the time factor. The selection of a certain number of important subjects in the field of State responsibility would obviously expedite matters. The Committee listed certain of those subjects, most of which related to the Law of Claims, because it felt that it was in that very specialized field that the contribution of the American Continent could best be evaluated and its principles best incorporated in a codification instrument. Finally, the Committee considered that the American Governments might wish to give a new impetus to the present system by embodying in a convention or declaration the principles which *should govern* international State responsibility.¹¹⁴

108. With regard to point (2), the Committee enumerated a number of principles which, in its view, as already pointed out, formed part of Latin American international law as well as, in certain aspects, of American international law.¹¹⁵ Those principles were as follows:

"I. Intervention in the internal or external affairs of a state as a sanction of the responsibility of this state is not admissible.

"II. The responsibility of a state for contractual debts claimed by the government of another state as owing to it or to its nationals cannot be enforced through recourse to armed force. This principle is applicable even where the debtor state fails to reply to a proposal of arbitration or to comply with an arbitral award.

"III. The state is not responsible for acts or omissions with respect to aliens except in those cases where it has, under its own laws, the same responsibility toward its nationals.

"IV. The responsibility of the state for a crime committed within its territory is not derived from the deed itself or from the injury resulting from it but from the inexcusable negligence or unwillingness of this state to prevent, prosecute, or punish such crime under its laws and within the jurisdiction of its courts.

"V. The state is not responsible for damages suffered by aliens through acts of God, among which are included acts of insurrection and civil war.

"VI. The responsibility of the state, insofar as judicial protection is concerned, should be considered fulfilled when it places the necessary national courts and resources at the disposal of aliens every time they exercise their rights. A state cannot make diplomatic representations in order to protect its nationals or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before the competent courts of the respective state.

"Therefore:

"(a) There is no denial of justice when aliens have had available the means to place their cases

before the competent domestic courts of the respective state.

"(b) The state has fulfilled its international responsibility when the judicial authority passes down its decision, even though it declares the claim, action, or recourse brought by the alien to be inadmissible.

"(c) The state has no international responsibility with regard to the judicial decision, whatever it may be, even if it is not satisfactory to the claimant.

"(d) The state is responsible for damages suffered by aliens when it is guilty of a denial of justice."

109. The Committee's report also included the following conclusions illustrative of the various measures that could be taken:¹¹⁶

"1. Under the resolutions that have been in effect up to now, the study on the contribution that the American Continent has made to the principles of international law that govern the responsibility of the state is to be regarded as a full and objective report of everything that can be found on this subject in the work of the governments, jurists, and thinking men, that is, in present or historical law, in national or international jurisprudence, in foreign-office policy, and in the doctrine of writers on the subject.

"2. Through a new decision of the American governments that report could, although preserving the same qualities of impartiality and objectivity, be reduced to those topics that are considered, under such conditions, to be of the greatest interest.

"3. With the same prior requisite, that is, a decision of the governments, preparatory studies leading to the codification in an appropriate instrument of the principles whose general approval is considered most necessary in this Hemisphere may be undertaken, with a view to finding the best solution to any problems that may arise with regard to the international responsibility of the state."

110. The Committee therefore pronounced itself, subject to a decision by Governments, in favour of "the codification in an appropriate instrument" of the principles, governing the international responsibility of the State, whose general approval was considered most necessary in the American Continent.

111. The report of the Inter-American Juridical Committee was accompanied by an annex containing the separate opinion of the United States representative¹¹⁷ on the "principles" which the report considered to have been accepted by a majority of the American States as forming part of Latin American international law and, in certain aspects, of American international law.

112. The United States representative expressed his agreement with the principles incorporated in paragraph I regarding intervention and in paragraph II regarding the use of armed force. Paragraph III would be acceptable with the addition of some such words as:

¹¹⁴ *Ibid.*, pp. 6 and 7.

¹¹⁵ *Ibid.*, p. 8.

¹¹⁶ *Ibid.*, p. 9.

¹¹⁷ *Ibid.*, pp. 11-15.

“... except where the treatment of the alien is in contravention of generally accepted principles of international law”. He rejected paragraph V because it seemed to exclude losses which resulted from the requisitioning of property by the constituted authorities or by successful revolutionary forces and for which the State was regarded as responsible under generally accepted principles of international law. However, the United States representative was mainly opposed to paragraph VI. After recalling the reservation made by the United States to article VII of the Bogotá Pact, he quoted in support of his objection articles 5 and 7 of the Charter of the Organization of American States and article third of the Convention Relative to the Rights of Aliens signed at Mexico City in 1902, and concluded as follows: “While it is stated in sub-paragraph (d) that the State is responsible for damages suffered by aliens when it is guilty of a denial of justice, that statement is, for practical purposes, nullified by the three sub-paragraphs (a), (b) and (c) in so far as they relate to judicial proceedings in which an alien may be a plaintiff or a defendant”.¹¹⁸

II. FOURTH MEETING OF THE INTER-AMERICAN COUNCIL OF JURISTS

113. The topic “Contribution of the American Continent to the development and codification of the principles of international law that govern the responsibility of the State” was included, as already pointed out, in section I of the agenda of the Fourth Meeting of the Inter-American Council of Jurists for whose consideration the report prepared by the Juridical Committee was submitted. The topic was referred to Committee II.

A. CONSIDERATION OF THE TOPIC IN COMMITTEE II¹¹⁹

114. Committee II considered the topic at its sixth and seventh sessions held on 3 and 4 September 1959, respectively.

1. Draft resolutions and amendments

115. (i) Draft resolution submitted by the United States delegation.¹²⁰ The operative part of the draft resolution read as follows:

“RESOLVES:

“To request the Department of Legal Affairs of the Pan American Union to prepare a compilation of the formal texts as gleaned from official records, of the contribution of the Americas to the development and codification of international law on the subject of State Responsibility; and to transmit such compilation to the International Law Commission through the United Nations Secretariat.”

116. (ii) Draft resolution submitted by the dele-

gation of Panama.¹²¹ The operative part read as follows:

“RESOLVES:

“To request that the Inter-American Juridical Committee prepare a draft treaty in which, duly outlined article by article, the principles whose common acceptance is regarded as most needed in the American Continent may be compiled, for a proper solution to the questions that may arise with regard to the international responsibility of the State.”

117. (iii) Draft resolution submitted by the Working Group (United States, Mexico, Panama, Cuba and Chile)¹²² to Committee II. The operative part read as follows:

“RESOLVES:

“1. To request the Inter-American Juridical Committee to proceed with the study or report entrusted to it by Resolution CIV of the Tenth Inter-American Conference, and later by Resolution VI of the Third Meeting of the Inter-American Council of Jurists.

“2. To instruct the Juridical Committee that, in pursuance to the request contained in the preceding paragraph, it continue its tasks on the following basis:

“(a) The Department of Legal Affairs of the Pan American Union shall send additional background material on this topic to the Inter-American Juridical Committee.

“(b) The Juridical Committee shall prepare an objective and documented presentation of all that which may demonstrate the contribution of the American Continent. To this end it will utilize all the appropriate sources.

“(c) The Juridical Committee shall indicate at the same time the differences that may exist between the several American republics on the principles referred to in the present resolution.

“3. To recommend earnestly to the Committee that during its regular period of meetings in 1960, it complete the study or report and submit it for the consideration of the Fifth Meeting of the Inter-American Council of Jurists.”

118. (iv) Oral amendment submitted by the representative of the Dominican Republic¹²³ to replace the words “the contribution of the American Continent” by the words “the contribution of the American countries”, in paragraph 2 (b) of the draft resolution submitted by the Working Group (document 102).

119. (v) Oral amendment submitted by the representative of Mexico¹²⁴ to replace the words “a report” by the words “a document entitled”, in the last preambular paragraph of the draft resolution submitted by the Working Group (document 102).

120. (vi) Oral amendment submitted by the re-

¹¹⁸ *Ibid.*, p. 14

¹¹⁹ The numbers and pages of the documents quoted in this part of chapter II, section II, correspond to those of the official Spanish documents of the Fourth Meeting of the Inter-American Council of Jurists, held at Santiago, Chile, August-September 1959.

¹²⁰ Document 50, 28 August 1959.

¹²¹ Document 79, 1 September 1959.

¹²² Document 102, 3 September 1959.

¹²³ Document 109, 4 September 1959, p. 2, paras. 3 and 4.

¹²⁴ *Ibid.*, p. 2, para. 5.

representative of Uruguay¹²⁵ to replace the words "on the principles" by the words "on the subject" in paragraph 2 (c) of the draft resolution submitted by the Working Group (document 102).

2. Discussion¹²⁶

121. In its report, the Inter-American Juridical Committee had requested the Inter-American Council of Jurists to outline the procedure to be followed in the task of assessing the contribution of the American Continent to the principles of international law governing State responsibility, and at the same time had drawn up a series of principles which, in its opinion, were commonly accepted by the majority of American States and formed part of Latin American international law and, in certain aspects, of American international law.

122. The discussion fell into two well-defined stages, the first preceding and the second following the establishment of the Working Group which drew up the draft resolution finally adopted.

123. During the first stage of the discussion, many differences of opinion emerged regarding the usefulness of the Juridical Committee's report as well as the best procedure to be followed in the future.

124. The United States representative said there was an obvious contradiction between the first and second parts of the Committee's report: after defining the basic concept of its terms of reference, the Committee proceeded to destroy that concept in the remainder of the document. The Committee's report did not constitute a suitably objective basis for constructive action by the Council. The general observations made by the Committee without the support of official documentation could not be transmitted to the International Law Commission of the United Nations. The purpose of the Committee's task was to assemble material on the contribution made by the American Continent to the development and codification of the principles governing State responsibility. Consequently, the Council's best plan, in the United States delegation's opinion,¹²⁷ was to request the Department of Legal Affairs of the Pan American Union to prepare a compilation of official texts approved at inter-American meetings, and to transmit that compilation to the International Law Commission of the United Nations.

125. The representative of Mexico, after stating that, in his delegation's opinion, the six principles listed in the Committee's report and its conclusions did indeed form part of Latin American international law and, in some aspects, of American international law, pointed out that the Committee did not intend that its report, in its present form, should be transmitted to the International Law Commission, but was merely asking the Council for further instructions in order to pursue its task. He opposed the draft submitted by the United

States, for three main reasons: firstly, because he did not agree that the Committee had failed to comply with the terms of the Caracas resolution; secondly, because the United States draft mentioned only "a compilation of the formal texts as gleaned from official records"; and, thirdly, because it was the responsibility of the Juridical Committee, and not of the Department of Legal Affairs of the Pan American Union, to carry out the necessary studies for the purpose of defining the principles which governed State responsibility within the American Continent. Accordingly, the Mexican delegation would support any draft resolution on the lines of that submitted by Panama.¹²⁸

126. The representative of Uruguay agreed with the United States representative that the Juridical Committee had been requested merely to collate material, and was also unable to accept the series of principles enumerated. However, the development of law was not limited to its codification and, for that reason, he intended to submit a proposal seeking to determine the scope of the task entrusted to the Juridical Committee.

127. The representative of Cuba said that the Committee had merely been asked for a study or report, not for a codification or a formulation of principles. The Committee had not yet complied with that request and in its present report had omitted some of the most important of the relevant American principles. He also stressed the need for completing the task within one year.

128. Other representatives also expressed their views on the terms of the Caracas resolution and on the instructions which should be given to the Committee for continuing its study on the international responsibility of the State.

129. On the suggestion of the representative of Colombia, the Chairman of the Committee, and notwithstanding some objections, a Working Group was set up, composed of the United States, Mexico, Panama, Cuba and Chile, to study the question and attempt to reconcile the different views expressed.

130. The Working Group submitted to the Committee a draft resolution which served as a basis for the second part of the debate.¹²⁹ Slight oral amendments to it were introduced, some of which were approved by the Committee. The text drafted by the Working Group, with the amendments approved by the Committee, was acceptable to all representatives.

3. Voting

131. The draft resolutions submitted by the United States and Panama¹³⁰ were not put to the vote.

132. The oral amendment to the Working Group's draft resolution proposed by the Dominican Republic¹³¹ was rejected by the Committee.

133. Committee II unanimously approved the draft

¹²⁵ *Ibid.*, p. 3, paras. 2-5.

¹²⁶ Summary records of the sixth and seventh sessions of Committee II, documents 106 and 109 respectively, both dated 4 September 1959.

¹²⁷ United States draft resolution. See *supra*, para. 115.

¹²⁸ Panamanian draft resolution. See *supra*, para. 116.

¹²⁹ Draft resolution submitted by the Working Group. See *supra*, para. 117.

¹³⁰ Document 50 and document 79. See *supra*, paras. 115 and 116.

¹³¹ Document 109, p. 2, paras. 3 and 4. See *supra*, para. 118.

resolution submitted by the Working Group¹³² as orally amended by Mexico¹³³ and Uruguay.¹³⁴

B. DISCUSSION OF THE TOPIC IN PLENARY SESSION OF THE COUNCIL, AND ADOPTION OF THE DRAFT RESOLUTION SUBMITTED BY COMMITTEE II¹³⁵

134. An account of the Committee's deliberations on the responsibility of the State and its draft resolution on the subject were placed before the Council in plenary session by Mr. Julio Escudero Guzmán (Chile), the Rapporteur of Committee II, after revision by the Drafting Committee.¹³⁶

1. *Draft resolutions and amendments*

135. No new proposals or substantive amendments to the draft resolution approved by Committee II were put before the Council in plenary session. There was only an oral amendment by the representative of the United States to improve the wording of sub-paragraph (b) of operative paragraph 2 of the Committee's draft resolution by replacing the words "... of all that which may demonstrate..." by the word "... demonstrating...".¹³⁷

2. *Discussion*

136. There was no further debate in plenary session on the draft resolution submitted by Committee II.¹³⁸ The only speakers were the representatives of the United States and Mexico, each of whom made an explanatory statement which did not lead to any discussion.

137. The United States representative said that the Juridical Committee should consider sub-paragraphs (b) and (c) of operative paragraph 2 of the draft resolution approved by Committee II as a single unit. The Committee must make an objective study based on authoritative sources, which should not pass over the contribution of any country of the American Continent. The Committee should not disregard the contribution made by the United States to the development and codification of the principles of international law that govern the responsibility of the State.

138. The representative of Mexico said that he would have no objection to the amalgamation of sub-paragraphs (b) and (c) of operative paragraph 2 of the draft resolution approved by Committee II, as proposed by the United States representative. In its report, the Juridical Committee had not intended to disregard the United States contribution; it had merely enumerated the principles relating to State responsibility which appeared to be accepted by the majority of the American countries, and the adjective "Latin American" had

been added in order to make it clear that the United States had not accepted all the principles enunciated. In conclusion, the Mexican representative supported Committee II's draft resolution because it clarified the task entrusted to the Juridical Committee, which was exactly what the latter wished.

3. *Voting*

139. At its third plenary session on 8 September 1959, the Inter-American Council of Jurists adopted the draft resolution submitted by Committee II¹³⁹ — which became resolution XII of the Fourth Meeting¹⁴⁰ — after approving, with no objections, the change of wording in operative paragraph 2 (b) proposed by the United States representative.¹⁴¹ The draft resolution submitted by Committee II (document 102) was adopted by 18 votes to none, with no abstentions. Two delegations were absent when the vote was taken.¹⁴²

140. The resolution approved by the Inter-American Council of Jurists reads as follows:

"WHEREAS:

"The Tenth Inter-American Conference, held at Caracas in 1954, in Resolution CIV entrusted to the Inter-American Council of Jurists and to the Inter-American Juridical Committee, the preparation of a study or report on the contribution the American Continent has made to the development and to the codification of the principles of international law that govern the responsibility of the State;

"The aforementioned resolution was adopted in view of the request made by the General Assembly of the United Nations to its International Law Commission to proceed to the codification of the principles of international law that govern the responsibility of the State;

"In accordance with the aforementioned resolution, the Third Meeting of the Inter-American Council of Jurists, held in Mexico City in 1956, requested the Inter-American Juridical Committee (Resolution VI) to complete as soon as possible this study or report, declaring that it was advisable to gather the necessary background material for this purpose;

"The Inter-American Council of Jurists has received from the Inter-American Juridical Committee a document entitled "Contribution of the American Continent to the Principles of International Law that Govern the Responsibility of the State" (CIJ-39), in which additional instructions are requested for the purpose of continuing the study or report referred to in this resolution;

"The Inter-American Council of Jurists

"RESOLVES:

"1. To request the Inter-American Juridical Com-

¹³² Document 102. See *supra*, para. 117.

¹³³ Document 109, p. 2, para. 5. See *supra*, para. 119.

¹³⁴ *Ibid.*, p. 3, paras. 2 to 5. See *supra*, para. 120.

¹³⁵ Document 102. See *supra*, paras. 117 and 133.

¹³⁶ Document 117, 5 September 1959. Report by the Rapporteur of Committee II.

¹³⁷ Document 151, 9 September 1959, p. 19, para. 4.

¹³⁸ Record of the third plenary session, document 151, 9 September 1959, pp. 19-21.

¹³⁹ Draft resolution of Committee II. See *supra*, paras. 117 and 133.

¹⁴⁰ *Final Act of the Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August-9 September 1959 (CIJ-43), Pan American Union, Washington, D. C., pp. 32 and 33.

¹⁴¹ Document 151, p. 19, para. 5. See *supra*, para. 135.

¹⁴² Document 151, p. 21, para. 4.

mittee to proceed with the study or report entrusted to it by Resolution CIV of the Tenth Inter-American Conference, and later by Resolution VI of the Third Meeting of the Inter-American Council of Jurists.

"2. To instruct the Juridical Committee that, in pursuance to the request contained in the preceding paragraph, it continue its tasks on the following basis:

"(a) The Department of Legal Affairs of the Pan American Union shall send additional background material on this topic to the Inter-American Juridical Committee.

"(b) The Juridical Committee shall prepare an objective and documented presentation demonstrating the contribution of the American Continent. To this end it will utilize all the appropriate sources.

"(c) The Juridical Committee shall indicate at the same time the differences that may exist between the several American republics on the subject referred to in the present resolution.

"3. To recommend earnestly to the Committee that during its regular period of meetings in 1960, it complete the study or report and submit it for the consideration of the Fifth Meeting of the Inter-American Council of Jurists."

Chapter III. Relations between the Inter-American Council of Jurists and the International Law Commission at the Fourth Meeting of the Inter-American Council of Jurists

141. This chapter will begin with the statement made by the Secretary of the International Law Commission and will then give an account of the debate at the Fourth Meeting of the Inter-American Council of Jurists on the question of collaboration with the International Law Commission of the United Nations.¹⁴³

I. STATEMENT BY THE SECRETARY OF THE INTERNATIONAL LAW COMMISSION AT THE FOURTH MEETING OF THE INTER-AMERICAN COUNCIL OF JURISTS¹⁴⁴

142. As indicated in the Introduction, the Secretary of the International Law Commission attended the Fourth Meeting of the Inter-American Council of Jurists as an observer and made a statement at the first plenary session, held on 25 August 1959.¹⁴⁵

143. The Secretary of the International Law Commission, after noting that his attendance at the Fourth Meeting of the Inter-American Council of Jurists was in accordance with what, over the past few years, had become the practice of both organizations, outlined to the Council the principal developments with regard

¹⁴³ The numbers and pages of the documents quoted in this chapter correspond to those of the official Spanish documents of the Fourth Meeting of the Inter-American Council of Jurists, held at Santiago, Chile, August-September 1959.

¹⁴⁴ Document 22, 25 August 1959.

¹⁴⁵ Record of the first plenary session, document 31, 26 August 1959, p. 9.

to the International Law Commission and its work since 1956.

144. He noted the long history of codification efforts in America, which had achieved their ultimate expression in the Bogotá Charter and the Statute of the Organization of American States with the establishment of bodies having special responsibility for the task of codification. The value and importance of the work done by those bodies had been recognized by the United Nations General Assembly itself when it had adopted the Statute of the International Law Commission (General Assembly resolution 174 (II)).

145. Speaking of the similarities and dissimilarities between the Inter-American Council of Jurists and the International Law Commission, he pointed out that the difference in the scope of their work, due to the fact that one body was regional and the other world-wide, must not obscure the fact that their objectives were fundamentally the same because they proposed to develop and codify the same branch of law.

146. He then outlined the International Law Commission's debate on reservations and the international responsibility of the State. In conclusion, he said that the collaboration already initiated between the Inter-American Council of Jurists and the International Law Commission must be developed and strengthened so as to achieve the common objective, which was to promote and contribute to the development and codification of international law.

II. THE TOPIC OF COLLABORATION WITH THE INTERNATIONAL LAW COMMISSION OF THE UNITED NATIONS AT THE FOURTH MEETING OF THE INTER-AMERICAN COUNCIL OF JURISTS

147. The topic of "Collaboration with the International Law Commission of the United Nations" was placed on the agenda of the Fourth Meeting of the Inter-American Council of Jurists and was referred to Committee III, as indicated in chapter I.¹⁴⁶

A. CONSIDERATION OF THE TOPIC IN COMMITTEE III

148. Committee III considered this topic at its second, third and fourth sessions, on 31 August and 2 and 4 September respectively.

1. Draft resolutions and amendments

149. (i) Draft resolution submitted to Committee III by the delegations of Argentina and Colombia.¹⁴⁷ The operative part of this draft resolution read as follows:

"RESOLVES:

"To state that, in addition to continuing the existing relations, established through the Department of Legal Affairs of the Organization of American States, it is desirable that the Inter-American Juridical Committee, the permanent committee of the Council,

¹⁴⁶ See para. 22.

¹⁴⁷ Document 42, 27 August 1959.

should designate an observer to attend the sessions of the International Law Commission.”

150. (ii) Draft resolution submitted to Committee III by the Working Group (Argentina, Colombia and the United States).¹⁴⁸ The operative part of the draft resolution read as follows :

“RESOLVES :

“To request the Council of the Organization of American States to study the means by which the juridical agencies of the Organization may be represented through an observer, at the sessions of the International Law Commission where matters of common interest are discussed, and to study the possibility of having the Inter-American Juridical Committee designate an observer from among its members, to attend the sessions, in order to report thereon and in this way facilitate the work of the Committee.”

2. Discussion¹⁴⁹

151. The Committee began by considering the draft resolution submitted by Argentina and Colombia, which stated that, in addition to continuing the existing relations established by the Department of Legal Affairs of the Pan American Union, the Juridical Committee should designate an observer to attend the sessions of the International Law Commission.

152. The representative of the United States said that he was in favour of designating observers only for those meetings which were of common interest to the parties, and that the observer should be an official of the Department of Legal Affairs of the Secretariat of the Organization of American States, who could also represent the Inter-American Juridical Committee.

153. Supporting the draft resolution,¹⁵⁰ the representative of Colombia said that it would be better to send a member of the Juridical Committee to attend the sessions of the International Law Commission as an observer than to follow the present practice, whereby an official of the Department of Legal Affairs of the Pan American Union acted in that capacity. That would make it easier for the Committee to become acquainted with the documents and reports of the International Law Commission in time for them to be really useful. Furthermore, the Committee itself would bear the costs involved. Although direct contact between the Department of Legal Affairs of the Pan American Union and the International Law Commission was certainly useful, direct contact between the Committee and the Commission also had its advantages.

154. On the proposal of the United States representative, the Chairman appointed a Working Group, composed of the representatives of Argentina, Colombia and the United States, which drew up a new draft resolution on which the Committee ultimately voted.

3. Voting

155. The draft resolution submitted by Argentina and Colombia¹⁵¹ was not put to the vote.

156. The Committee approved the Working Group's draft resolution unanimously at its fourth session.¹⁵²

B. CONSIDERATION OF THE DRAFT RESOLUTION SUBMITTED BY COMMITTEE III IN PLENARY SESSION OF THE COUNCIL, AND RESOLUTION ADOPTED¹⁵³

157. The discussion in Committee III on the topic of collaboration with the International Law Commission of the United Nations and the draft resolution approved by the Committee and revised by the Drafting Committee were introduced in the Council in plenary session by Mr. Robert J. Redington (United States), Rapporteur of Committee III.¹⁵⁴

158. At its third plenary session, on 8 September 1959,¹⁵⁵ the Council adopted, without discussion, the draft resolution submitted by Committee III, which became resolution XVI¹⁵⁶ of its Fourth Meeting.

159. The text of the resolution adopted by the Inter-American Council of Jurists was as follows :

“WHEREAS :

“The Charter of the Organization of American States establishes that the organs of the Council of the Organization, in agreement with the Council, shall establish cooperative relations with the corresponding organs of the United Nations ;

“At its First Meeting, the Inter-American Council of Jurists requested its Executive Secretary to establish and maintain cooperative relations with the International Law Commission of the United Nations, in consultation with the Permanent Committee and the Council of the Organization of American States ;

“The Secretary of the International Law Commission attended the Third Meeting of the Council in order to establish a direct channel of information between the two bodies ;

“By a resolution of its Third Meeting, the Council expressed its opinion ‘that it would be desirable for the Organization of American States to study the possibility of having its juridical agencies represented as observers at the sessions of the International Law Commission of the United Nations’ ;

“The Deputy Director of the Department of Legal Affairs of the Pan American Union attended as an observer during part of the Eighth Session of the International Law Commission ;

¹⁵¹ Document 42. See *supra*, para. 149.

¹⁵² Document 98. Summary records of the fourth session of Committee III, document 110, 4 September 1959, p. 2, para. 2. See *supra*, para. 150.

¹⁵³ *Ibid.* See *supra*, paras. 150 and 156.

¹⁵⁴ Document 124, 7 September 1959. Report by the Rapporteur of Committee III.

¹⁵⁵ Record of the third plenary session, document 151, 9 September 1959, p. 23, para. 1.

¹⁵⁶ *Final Act of the Fourth Meeting of the Inter-American Council of Jurists*, Santiago, Chile, 24 August–9 September 1959 (CIJ-43), Pan American Union, Washington, D. C., pp. 42 and 43.

¹⁴⁸ Document 98. 3 September 1959.

¹⁴⁹ Summary records of the second, third and fourth sessions of Committee III, document 73, 31 August 1959; document 92, 2 September 1959; and document 110, 4 September 1959.

¹⁵⁰ Document 42, See *supra*, para. 149.

“The Secretary of the International Law Commission has attended the present Meeting of the Council in the capacity of observer, and his presence, which has been considered useful, has been the source of great satisfaction ;

“At its First Meeting the Council resolved to include the Permanent Committee in all arrangements entered into with the International Law Commission ;

“The International Law Commission of the United Nations studies matters at some of its sessions which at the same time appear in the program of the Inter-American Juridical Committee ;

“The presence of an observer of the Committee at such sessions would be advantageous for the pur-

pose of obtaining direct information on their deliberations.

“The Inter-American Council of Jurists

“RESOLVES :

“To request the Council of the Organization of American States to study the manner in which the juridical agencies of the Organization may be represented by an observer at the meetings of the International Law Commission in which matters of common interest are discussed, including the possibility of the Inter-American Juridical Committee designating an observer from among its members, to attend such meetings, in order to report thereon and in this way facilitate the work of the Committee.”