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Summary record of the 102nd meeting

Topic:
Law of Treaties

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the paragraph as it stood, and did not understand how some of his colleagues could have gained that false impression.

111. Mr. YEPES asked whether it was the intention of the report to discard the Pan-American system entirely.

112. Mr. HUDSON said that the report did not discard it. It left room for its application, as was shown by the alternative proposals in Part 4 of the annex to the draft report.

113. The CHAIRMAN observed that Mr. Yepes wished the Commission to recommend the application of the Pan American Union's practice in all cases where the parties had not expressed in the text of the treaty their wishes in regard to reservations.

114. Mr. YEPES said that it was one of the systems that could be applied in such cases.

115. The CHAIRMAN replied that, where the treaty made no reference to the matter, only one system could be recommended.

116. Mr. CORDOVA felt that, if the so-called Pan-American practice was a good one, it could be applied universally, but that if it were bad, it could not be good for America. An explanation should be provided as to why a juridical solution, valid for one quarter of the world, should have to be changed when applied to States in other continents.

117. The CHAIRMAN considered that the Pan-American Union system was applied in America because the States of that continent considered it to be suitable for their purposes.

118. Mr. HUDSON felt that it was desirable to state the fundamental problem, which was, on the one hand, the relative importance to be attached to universality and, on the other, the integrity of the text and its uniform application. In some cases the integrity of the text and its uniform application outweighed the desire for universality, and in others universality was of greater importance than uniform application.

119. It was not for the Commission to render an appreciation of the practice followed by the Pan-American Union. It had simply to say whether it wished that system to be applied generally.

120. The Rapporteur was right in saying that no one rule was applicable in all cases. (A/CN.4/L.18, Annex), and that the integrity of the instrument must be preserved.

121. The CHAIRMAN considered that the Commission had to decide whether to recommend that, where a Treaty contained no special provisions in the matter, the Pan-American rule should be applicable.

122. Mr. CORDOVA proposed that the vote be postponed until the following day.

It was so decided.

The meeting rose at 1 p.m.

102nd MEETING

Wednesday, 13 June 1951, at 9.45 a.m.

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Chairman: Mr. James L. BRIERLY

Rapporteur: Mr. Roberto CORDOVA

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. Ivan KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Law of Treaties: General Assembly resolution 478 (V) of 16 November 1950: Reservations to multilateral conventions (item 4 (*b*) of the agenda) (A/CN.4/L.18) *(continued)*

DISCUSSION OF MR. BRIERLY'S DRAFT REPORT (A/CN.4/L.18)[1]

PARAGRAPH 12 (*paragraph 22 of the "Report"*) (continued)

1. The CHAIRMAN observed that the Commission had before it a proposal by Mr. Yepes that if the parties to a treaty had not inserted in the text of the treaty provisions covering possible reservations, the procedure to be followed should be that of the Pan-American Union.[2]

2. Mr. YEPES explained that the reason why he had proposed the adoption of that procedure was that, after examining the matter closely, he had come to the conclusion that the procedure recommended in the report was not acceptable.

3. His proposal was to be regarded as a basis for discussion. If good reasons were put forward for rejecting the Pan-American Union practice and adopting the course recommended, he would be quite willing to accept them. The drawbacks to the former procedure and the advantages of the latter ought to be clearly established before any decision were taken. The Commission should not commit itself in advance or yield to argument just because the weight of authority was behind it. Not a single

[1] See summary record of the 101st meeting, footnote 1.

[2] *Ibid.*, para. 97.

example had been given to justify rejecting the Pan-American Union practice, whereas he himself had mentioned that, in one particular instance, the United Nations had followed that practice.

4. He was willing to withdraw his proposal if sound arguments against it were forthcoming.

5. The CHAIRMAN and Mr. HUDSON pointed out that the alternative suggestion was the outcome of a prolonged study of the question.

6. At Mr. ALFARO's request, Mr. LIANG (Secretary to the Commission) read out the following text, proposed by Mr. Yepes at the preceding meeting to replace the text of the latter part of paragraph 12 of the draft report:

> " The Commission believes also that the Pan-American system may be successfully applied to multilateral conventions in general and to those drawn up under the auspices of the United Nations in particular. In fact, the Pan-American system has been applied by the United Nations."

7. Mr. CORDOVA said that, as he had already argued, the text of paragraph 12 did not give sufficiently convincing arguments. The reasons which justified rejection of the Pan-American practice should be included. Mr. Yepes might be willing to support the text if it were rounded off in that way.

8. The CHAIRMAN suggested that, pending distribution of a revised draft he himself had worked out to replace paragraph 12,[3] the Commission pass on to the examination of paragraph 13.

It was so decided.

PARAGRAPH 13 (*paragraph 24 of the " Report "*)

9. The CHAIRMAN said that paragraph 13 explained why the method recommended by the International Court of Justice in its advisory opinion of 28 May 1951[4] was not suitable for wholesale application to multilateral conventions.

10. Mr. YEPES thought that, after hearing the paragraph read out, the Commission could vote on it as a whole.

11. Following an observation by Mr. AMADO, Mr. YEPES said he would not press his proposal.

12. The CHAIRMAN asked the Commission to examine the sentences of the paragraph in question one by one.

First sentence

13. Mr. EL KHOURY asked whether the sentence meant that the Commission believed that the criterion adopted by the International Court of Justice was justified in respect of the implementation of the Convention on Genocide.

14. The CHAIRMAN replied that the sentence meant that the Commission did not commit itself to stating whether the Court's procedure was appropriate to that convention or not.

15. Mr. EL KHOURY suggested that paragraph 13 be deleted entirely, since it implied criticism of the Court's opinion.

16. The CHAIRMAN did not see how it was possible to avoid criticizing that opinion.

17. Mr. SPIROPOULOS thought that if the Commission made no mention of the Court's opinion, its very silence would be tantamount to criticism.

18. Mr. YEPES suggested deleting the two words " in general " at the end of the sentence. They implied that the Court's method of procedure might be suitable for certain types of convention.

19. The CHAIRMAN, supported by Mr. SANDSTRÖM, said that his intention had been to leave the question open. He had made an assertion in respect of the majority of conventions only, and had wished to remind the reader that the Court's opinion referred only to the Convention on Genocide.

20. Mr. SPIROPOULOS suggested adding the words " or otherwise " after the word " compatibility ".

21. Mr. HUDSON and the CHAIRMAN thought the addition would not in any way alter the sense of the text.

22. Mr. HUDSON, supported by the CHAIRMAN, suggested replacing the words " is suitable " by " is the most appropriate ".

23. Mr. SCELLE, supported by Mr. AMADO, Mr. EL KHOURY and Mr. YEPES, was in favour of keeping the words " is suitable ", and the equivalent wording in French, namely, " *puisse être retenu* ". The expression needed to be strengthened rather than weakened. The Court's procedure was not in any way " appropriate ".

It was decided to keep the expression " is suitable ".

24. Mr. HUDSON, referring to the English text, suggested inserting a comma after the word " convention " in the second line, and deleting the word " as "; and inserting a comma after the word " Genocide " in the third line.

It was so decided.

25. Mr. EL KHOURY found fault with the text under discussion for not stating precisely why the Commission did not believe that the Court's criterion was applicable generally. The Commission appeared to be making an arbitrary decision. It should be made clear what difference there was between the Convention on Genocide and other multilateral conventions, so that the Commission's opinion would be backed by sound arguments.

26. Actually, the matter raised so many difficulties that he would prefer to delete the whole passage.

27. The CHAIRMAN said that the reasons for the Commission's opinion were given further on. On the whole, the members of the Commission wanted the Commission's report to include an examination of the Court's opinion.

28. Mr. HUDSON suggested referring in the paragraph to a passage from the Court's opinion, which, incidentally, following a decision at the previous meeting, was to appear in paragraph 6 of the report,[5] by adding the

[3] See paras. 103–104 below and summary record of the 103rd meeting, paras. 1–118.

[4] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, I.C.J. Reports 1951*, p. 15.

[5] Summary record of the 101st meeting, para. 43.

words " because of its special characteristics " after the words " Convention on Genocide ". The Commission would thus avoid the necessity for discussing the soundness of the Court's opinion.

29. Mr. SANDSTRÖM thought the question was more than a matter of the wording of a mere sentence. At the previous meeting, Mr. Spiropoulos had put a question which had not received the attention it deserved.[6] He had suggested that the Commission base its opinion primarily on current international law. That notion was all the more justified in that the Court likewise based its opinion on international legal precedent; on page 21 of its opinion, for example, it stated:

> " It is well established that in its treaty relations a State cannot be bound without its consent, and that consequently no reservation can be effective against any State without its agreement thereto."

Then, on the basis of that notion, which the opinion described as " of undisputed value as a principle " the Court had considered that in the case of the Convention on Genocide a series of circumstances must be taken into account which would lead to a more flexible application of that principle. The Commission in its conclusions should refer to that argument.[7]

30. Mr. SPIROPOULOS said that the essence of Mr. Sandström's remarks was that the Court had recognized the general principle that reservations should be approved by all the contracting parties. On that point, except for Judge Alvarez, both the majority and the minority groups had been in agreement. By virtue of that principle, the Court had tried to discover the will of the parties, their contractual intent. The attempt had led a majority of the members to the conclusion that, in the specific instance of the Convention on Genocide, the general principle did not apply.

31. Mr. Sandström's point was a very sound one. It was a most interesting interpretation of the opinion.

32. Mr. SANDSTRÖM pointed out that, if the Commission wished to take that interpretation into account, the wording of paragraph 13 would be still further complicated.

33. Mr. HUDSON felt that the way in which the opinion went on weakened Mr. Sandström's argument somewhat. The Court spoke of " a more flexible application " of the general principle. The exceptions recognized were themselves very general, and were not confined to the Convention on Genocide.[8]

34. Mr. SPIROPOULOS pointed out that, by making very general exceptions to the general principle, the Court seemed at first sight to be rather contradicting itself.

35. The CHAIRMAN said that that was the kind of reflection which had led him to the conviction that the opinion was not clear.

36. Mr. CORDOVA said that, in the eyes of the Court, the flexible application of the general rule was justified by its anxiety to have the Convention on Genocide adopted universally; that meant making certain concessions over the integrity of its text.

37. Mr. HUDSON said that the Court indicated that quite clearly on page 23 of the opinion, where it stated " the Genocide Convention was therefore intended . . . to be definitely universal in scope ".

38. Mr. SPIROPOULOS thought the Court had apparently been anxious that the Convention on Genocide should enter into force even in respect of States which had made reservations. That was a very natural concern. To that end, it had sought to find in the intention of the parties demands which would enable it to recommend a practice making for universal application of the Convention. It was not the only occasion on which the Court had kept practical considerations very much in the foreground.

39. However, the majority and minority opinions in the Court, with the exception of a single judge, had considered the general principle that in its treaty relations a State could not be bound without its consent, as being inviolable. That principle was touched upon in the opinion, and was an important point.

40. Mr. SANDSTRÖM, in support of his interpretation of the opinion, quoted the following sentence from it:

> " The Court recognizes that an understanding was reached within the General Assembly on the faculty to make reservations to the Genocide Convention and that it is permitted to conclude therefrom that States becoming parties to the Convention gave their assent thereto ".[9]

41. Mr. SPIROPOULOS thought that, at the point where the Court's decision was mentioned in paragraph 13, some expression like " failing any intention to the contrary by the parties " should be inserted. The intention of the parties might of course be tacit. Caution must be exercised in expounding the rule.

42. The CHAIRMAN considered that the arguments just put forward should be urged again when the Commission came to discuss the passage in the draft report in which it expounded the rule it was recommending.

43. Mr. SPIROPOULOS pointed out that precautions of that kind would help to smoothe over the differences between the Commission and the Court.

Second Sentence

44. Mr. FRANÇOIS considered that the sentence was not altogether correct. It might perhaps be true if reservations invariably involved the rejection of an entire article. But sometimes their purpose was merely to modify an article, to give it a particular interpretation, or to replace it by the provisions of some domestic law. In many instances reservations, without depreciating the importance of the articles to which they referred, simply formulated a somewhat different procedure. In the case of mere modification, there could no longer be any question of a classification of provisions into two categories.

45. The distinction to be established was between reservations themselves and not between the provisions

[6] *Ibid.*, para. 104.

[7] See summary record of the 106th meeting, paras. 74–75.

[8] See Advisory Opinion, *I.C.J. Reports 1951*, pp. 21–22.

[9] *Ibid.*, pp. 22–23.

to which the reservations referred. That was the only conclusion to be drawn from the opinion, which, in its replies to questions I and II, definitely spoke of the reservations compatible (or incompatible) with the object and purpose of the Convention.

46. Mr. SPIROPOULOS felt on second thoughts that it would be better, as Mr. el Khoury had proposed, to make no reference to the practice recommended in the Court's opinion. The Commission might simply state that it had considered the opinion.

47. The CHAIRMAN, supported by Mr. François, considered that to remain silent in that way would show the greatest lack of respect for the Court's opinion.

48. Mr. AMADO was anxious that the Commission should not follow the path of absolute perfection, otherwise it might lose its way. No text could stand up to microscopic examination. It was beyond question that the Court had considered that a convention could contain two categories of provisions. In the text under consideration, all the Commission was doing was to point out with the utmost precision the distinction established by the Court between normative rules and contractual rules. With all due respect to the subtle arguments put forward in the Commission, he thought that too great a concern for perfection would lead nowhere.

49. The CHAIRMAN pointed out that the second sentence was taken from the actual commentary given in the joint dissenting opinion.[10]

50. Mr. FRANÇOIS thought that on that point the opinion was incorrect, and the argument used was fallacious. A distinction was necessary between reservations, but not between the provisions of the convention.

51. Mr. SCELLE pointed out that there were three categories of provisions rather than two, namely provisions referring directly to the object and purpose of the convention, provisions referring indirectly to such object and purpose, and provisions for rendering the convention operative (procedural provisions pure and simple).

52. He approved the entire paragraph. The account it gave of the Court's opinion was first-rate. The paragraph must not be scrutinized too minutely. The Commission might remember that when Byzantium was taken by the Turks in 1453 the local theologians in the Basilica of S. Sophia were arguing about the sex of angels! The Commission must beware of following their example.

53. To him the meaning of the opinion was not altogether clear. In certain cases the Court appeared to advocate the old notion that conventions were contractual in character; in other passages it seemed to favour universality. The opinion might be said to furnish anything you looked for. He was particularly in favour of the passage in the middle of paragraph 13 which stated that the distinction made by the Court could not be other than subjective.

54. Mr. YEPES said that it was with a view to sparing the Commission the difficulties it was now encountering that he had proposed a vote on the paragraph as a whole. While he had very reluctantly had to criticize certain parts of the draft report, he approved paragraph 13 in its entirety as being drafted with great discretion and great respect for the Court. He therefore proposed that paragraph 13 be accepted in its entirety.

55. Mr. SPIROPOULOS said he was more and more convinced that the Court's opinion should not be scrutinized. The Commission would come up against serious obstacles, as it might have to admit that there were a number of contradictions. The Commission should avoid criticizing the Court's opinion. It had every reason to try to enhance the prestige of that body.

56. In any case, the Commission was not asked for any such criticism. It was asked to make concrete proposals. It should state simply what its proposals were, basing its statement on the current law, and there was no reason to depart from that since both the majority and minority views in the Court had quoted the rules of the current law.

57. The CHAIRMAN put to the vote Mr. Spiropoulos' proposal that the Commission should not state the reasons why it did not extend to multilateral conventions generally the procedure advocated by the Court in the case of the Convention on Genocide.

The proposal was rejected by 10 votes to 2.

58. Mr. YEPES asked the Commission to take up his proposal for a vote on paragraph 13 as a whole.

59. Mr. HUDSON thought that the wording of each sentence was important.

60. The CHAIRMAN said that, to meet both points of view, he would first of all read the complete text, and then put each sentence in turn before the Commission for approval. He read out the whole paragraph.

61. Mr. AMADO considered that the text was entirely satisfactory.

62. Mr. EL KHOURY agreed that it was extremely accurate in substance, but thought that it could be improved in form, and he proposed the following wording: " As to the opinion of the International Court of Justice on the procedure to be applied in the case of reservations to the Convention on Genocide, the Commission noted that the opinion of the Court is restricted to one special case having special characteristics and not intended by the Court to be applicable to all other cases of reservations to multilateral conventions in general, which is the task that the Commission is asked by the General Assembly to accomplish ".

63. The wording, he thought, explained clearly the limited scope of the Court's opinion.

64. The CHAIRMAN pointed out that the same idea was already expressed in paragraph 6 of his draft report. He asked the Commission to get back to the second sentence of the paragraph.

65. Mr. FRANÇOIS thought that one part of the paragraph might be deleted, namely, from " It involves a classification . . ." to ". . . intrinsically possible to draw ", so that the text would then read as follows: ". . . to multilateral conventions in general. The Commission does not see how . . .". Unlike Mr. Scelle, he thought the Commission should put everything under the microsope. It was not accepting the opinion of the

[10] *Ibid.*, p. 42.

Court; consequently every statement it made would be gone through with a fine-tooth comb, and it would be adversely criticized if it produced a text which was not juridically flawless.

66. The CHAIRMAN said he would be sorry to see the passage omitted, as it would weaken the Commission's argument.

67. Mr. SCELLE suggested the following wording: " The adoption of the Court's criterion involves a classification of the provisions of conventions into several categories, a special distinction being made between those provisions forming part of the object and purpose of the convention and all other provisions ". A sentence on those lines might perhaps meet the particular objection raised by Mr. François, while allowing one of the Commission's essential arguments to stand, namely, the argument that once the Court left it to each State to assess whether such and such a provision of a convention formed part of its object and purpose, it was making its criterion subjective, and a subjective criterion was no criterion at all.

68. The CHAIRMAN pointed out that a change on those lines did not meet Mr. François' objection.

69. He put to the vote Mr. François' suggestion for the deletion of the passage in paragraph 13.

70. *It was decided by 8 votes to 2 to retain the passage in substance.*

71. Mr. HUDSON proposed that the end of the second sentence be recast as follows: ". . . which they did not regard as contributing to effect its objects and purposes ".[11]

72. He also suggested that the Commission was not paying sufficient attention to protocol provisions to which a State was at liberty to make reservations. Since, however, it did not seem likely that other States would object to such reservations, he would not press the point.

The second sentence was adopted as thus amended.

Third sentence

73. Mr. HUDSON suggested substituting the wording " It seems reasonable " for " It is reasonable" and " may be deemed to " for " must ".

74. The CHAIRMAN saw no objection to the changes.

The third sentence was adopted as thus amended.

Fourth sentence

75. Following an exchange of views with the CHAIRMAN, Mr. HUDSON suggested recasting the end of the sentence to read: " the Commission does not see how the distinction can be drawn otherwise than subjectively ".[12]

The fourth sentence was adopted as thus amended

Fifth sentence

76. Mr. HUDSON proposed that the words " purports to make " be replaced by the word " offers ".

77. Mr. KERNO (Assistant Secretary-General) said that what the Commission had in mind was a dispute between, say, State A (making a reservation) and State B (objecting to the reservation). According to the Court, a dispute might equally arise between State B (objecting to a reservation) and State C (accepting the reservation). When the Court stated that a dispute could be brought on to the jurisdictional plane, it had in mind not only the dispute between States A and B, but also that between States B and C.

78. In the case of the Bulgarian reservation to the Convention on Genocide, against which Australia had raised an objection, the Court could not take cognizance of a dispute between Bulgaria (State A) and Australia (State B), because Bulgaria's reservation referred to article IX of the Convention, under which disputes as to the interpretation or application of the Convention were to be submitted to the Court. On the other hand, a dispute between Australia (State B) and a State which had accepted the Bulgarian reservation (State C) would come within the jurisdiction of the Court.

79. One had to be very alert to follow all the twists and turns of the various situations. He read out the following message from the Court's opinion:

> " It may be . . . that certain Parties who consider that the assent given by other Parties to a reservation is incompatible with the purpose of the Convention will decide to adopt a position on the jurisdictional plane in respect of this divergence and to settle the dispute which thus arises, either by special agreement or by the procedure laid down in article IX of the Convention." [13]

80. According to his interpretation, the Court in that sentence meant to cover disputes between States which raised objections to reservations — and thus considered that the State formulating them was not a party to the Convention — and States accepting such reservations, and thus considering the State which had formulated them as party to the Convention.

81. The CHAIRMAN suggested inserting, after the word " incompatible ", the words " but State C regards as compatible ".

82. Mr. CORDOVA, having listened to Mr. Kerno's explanation, was in favour of adopting the CHAIRMAN's proposal as strengthening the Commission's argument.

The fifth sentence was adopted with the above amendments.

Sixth sentence

83. Mr. HUDSON compared the last part of the sentence (" . . . it cannot be known whether it has or has not become a party to the convention ") with the substance of the opinion's reply to question II [14] and suggested substituting the following: ". . . it cannot be known for certain how far it has or has not become a party to the convention ".

84. The CHAIRMAN thought the end of the sentence might be deleted.

85. Mr. YEPES, Mr. CORDOVA and Mr. ALFARO were in favour of allowing it to stand, with the amendment proposed by Mr. HUDSON.

[11] The original sentence read " which they do not regard as forming part of, or at the least contributing to make effective, its object and purpose."

[12] Instead of " can be other than subjective."

[13] *I.C.J. Reports 1951*, p. 27.

[14] *Ibid.*, p. 29.

86. Mr. HUDSON said that, after a certain time had elapsed, it was possible to ascertain the position of a State which had made reservations. It was clear once all the States had indicated their attitude. From that time onwards, nothing could change the position of a State which had made reservations.

87. The CHAIRMAN and Mr. SPIROPOULOS did not agree. The Court might decide that certain States or even all the States had been in the wrong.

88. Mr. AMADO urged the Commission to take a vote on the paragraph. So far, no vital modification had been made to it. Its great virtue was that it said more than it appeared to say. The part of the sentence under discussion was excellent.

89. The CHAIRMAN put to the vote the question whether the latter part of the sentence as amended by Mr. Hudson should be kept.

The amended phrase was adopted by 6 votes.

The sixth sentence was adopted.

Seventh sentence[15]

90. Mr. HUDSON asked what were the circumstances in which the termination of a convention would depend on the number of States parties.

91. Mr. KERNO (Assistant Secretary-General) cited the case of the Convention on Genocide, article XV of which provided that: " If, as a result of denunciations, the number of Parties to the present Convention should become less than 16, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective ". In the same way, article XVII provided that " the Secretary-General of the United Nations shall notify all Members of the United Nations, and the non-member States contemplated in article XI, of the following: ". . . (*e*) the abrogation of the Convention in accordance with article XV ". Thus, if out of the 16 States there was one which made reservations and was regarded as a contracting party, the convention would remain in force. If it were not regarded as a contracting party, the convention would no longer apply.

92. Mr. HUDSON still felt that the text was not sufficiently explicit. He would prefer to say " States ratifying and not denouncing the convention ".

93. The CHAIRMAN pointed out that ratification might not be the only way of bringing a convention into force; accession or acceptance might be other methods. He considered the passage sufficiently clear.

94. Mr. HUDSON replied it was only after Mr. KERNO had given the explanation in regard to denunciation that he had understood the sense of the passage.

95. Mr. LIANG (Secretary to the Commission) wondered whether the words or both " after " or the termination " were appropriate.

It was agreed that the words be deleted.

96. The CHAIRMAN observed that Mr. HUDSON suggested adding the following sentence at the end of paragraph 13:

". . . and where a convention confers jurisdiction on the International Court of Justice over disputes concerning the interpretation or application of its provisions, and such jurisdiction is invoked by a party, difficulty might arise in determining which are the parties to the convention entitled to intervene under article 63 of the Court's statute ".

97. Mr. HUDSON said that the sentence cleared up one particular point which was of the utmost importance in the case of conventions where some article referred the issue to the International Court of Justice. It might happen that State A had made reservations which were not accepted by State B but were accepted by States C and D. If State B brought an action before the Court against State C, and State A expressed its intention to intervene, State B might reply that, as it was not a party to the convention it was not entitled to intervene. Hence it was for the Court to decide whether Article 63 of its statute was applicable or not. That raised a difficulty in regard to the exercise of the Court's jurisdiction.

98. Mr. CORDOVA pointed out that it was the Court itself which had created that difficulty.

99. Mr. KERNO (Assistant Secretary-General) wondered therefore whether the sentence should be included.

100. Mr. SANDSTRÖM thought the notion was already expressed in the words at the end of paragraph 13: " the status of the convention itself may be thrown into doubt ".

101. The CHAIRMAN agreed that though it was already expressed, the addition proposed by Mr. HUDSON made it clearer.

It was decided by 8 votes to add the sentence to the end of paragraph 13.[16]

102. Mr. EL KHOURY explained that the reason why he had abstained from voting was that the vote referred to paragraph 13 with which he did not agree.

PARAGRAPH 12 (*resumed from the beginning of the meeting*)

103. The CHAIRMAN said he had redrafted paragraph 12 in order to meet certain criticisms of the text he had proposed in document A/CN.4/L.18 and which he had felt to be justified.

104. Mr. YEPES thanked the Chairman for taking into account various observations he had made. He would be glad to have time to study the text, as it concerned a very important point in American law. He requested the adjournment of the discussion until the following day.

105. The CHAIRMAN saw no reason why that should not be done.

It was so decided.

PARAGRAPH 14 (*paragraph 26 of the " Report "*)

First sentence[17]

106. Mr. HUDSON questioned whether the assertion was really true as a general rule. It was possible for a

[15] Last sentence of paragraph 24 of the " *Report* ".

[16] However, in the final text, that sentence was inserted before the last sentence of paragraph 13.

[17] It read as follows: " It is certainly desirable that multilateral conventions should have the widest possible application."

multilateral convention, e.g. the North Atlantic Pact, to be open for signature by certain States only. He would prefer to see the word " often " added.

107. Mr. YEPES thought that the expression " in general " would meet the objection.

108. The CHAIRMAN was not sure that those words would fully meet the situation. The objection was that certain conventions were not open to all States.

109. Mr. AMADO asked whether there was anything against the expression " certainly desirable ", as used in the text, since the Commission's task was to develop international law.

110. The CHAIRMAN thought that if the first sentence were read in conjunction with the paragraph as a whole, there was no further room for misunderstanding. He read out the rest of the paragraph.

111. After a general exchange of views as to the best way of expressing the idea that it was desirable for all States to become parties to multilateral conventions framed for universal application, or at the very least all those States whose participation would help to bring about the objects of conventions in which universal application was neither possible nor desirable, the Commission left it to the rapporteur to redraft the first sentence.

112. Mr. LIANG (Secretary to the Commission) was doubtful about the word " application ". There were two notions involved: application in the sense of acceptance — and obviously it was desirable for as many States as possible to become parties — and application in the technical sense, which might equally well be the sense in which the word was used in the first sentence.

113. The CHAIRMAN said he was prepared to use the word " acceptance ".

Second and third sentences

114. Mr. HUDSON, referring to the second sentence [18] of the paragraph, pointed out that bilateral treaties too settled matters of international importance. He suggested the term " of wide international concern ". He was not happy about the third sentence. He asked what the word " price " referred to.

115. The CHAIRMAN explained that the " price " was the fragmentation of the convention into bilateral conventions, in other words the destruction of the integrity of the text.

116. Mr. HUDSON suggested the wording: " and it may often be more important to maintain the integrity of the convention than to aim at acceptance of it " — cutting out the words " whatever the price may be " and ending the sentence with ". . . even at the price of possibly limiting the number of States which may become parties ".

117. Mr. ALFARO suggested the following version: " It may be more important to maintain the integrity of a convention than to secure a large number of acceptances ".

118. Actually, the Pan-American practice had the advantage of ensuring a great number of ratifications, though the system recommended in the report allowed the integrity of the text to be maintained. It would be well to specify which system was advocated, otherwise it would not be clear what was meant by " whatever the price may be ".

119. Mr. CORDOVA thought an explanation was necessary, since it was not entirely clear from the text as it stood.

120. Mr. HUDSON thought that if the integrity of the text were maintained, there would be no fragmentation. One might use the expression: ". . . more important to maintain the integrity of a convention, whatever the price may be, than to aim . . .".

121. Mr. YEPES found that, reading the French text, the expression " *à tout prix* " would be better left alone. The French version was beyond reproach.

122. The CHAIRMAN said he would change the English text to " at any price ".

123. Mr. HUDSON suggested " at the price of fragmentation of the convention ".

124. Mr. EL KHOURY considered that everything else must be sacrificed to integrity.

125. Mr. ALFARO quoted the example of the Inter-American Arbitration Treaty which made arbitration compulsory in respect of a large number of issues. The treaty had been ratified by 16 States, 8 of which had made reservations, mostly aimed at limiting considerably the scope of the treaty and making arbitration optional. The question was whether it was preferable to have a treaty ratified by 8 States and introducing the notion of compulsory arbitration or a treaty ratified by 16 States, 8 of which were opposed to compulsory arbitration.

126. Mr. HUDSON said that the Commission was making its preference clear.

127. Mr. SANDSTRÖM wondered whether the expression " a reasonable degree of uniformity " was satisfactory. He thought a stronger expression should be used, e.g. " it is essential to maintain uniformity ".

128. The CHAIRMAN agreed to delete the words " a reasonable degree of ".

The second and third sentences were adopted as thus amended.

The remaining two sentences of the paragraph were adopted without comment.

PARAGRAPH 15 (*paragraph 25 of the " Report "*) [19]

129. Mr. SANDSTRÖM suggested that the Commission say merely: " it is impressed by the complexity . . .".

[18] The second sentence read as follows: " The very fact that they are multilateral implies that they deal with subjects of international concern, that is to say, with matters which are not only susceptible of international regulation but regarding which it is desirable . . ."

[19] Paragraph 15 read as follows:

" 15. The Commission has been asked to pay special attention to conventions of which the Secretary-General is the depositary. As regards these it is impressed by the immense complexity of the task which the Secretary-General would be required to undertake if reserving States can become parties to a multilateral convention despite the objections of some of the parties to the reservations they have put forward. Not only would he be required to keep account of the manifold bilateral relationships which might result from this freedom, but in the event of a dispute he would have

130. The CHAIRMAN agreed to delete the word " immense ".

131. Mr. HUDSON suggested deleting the words " as the Commission believes it is " at the end of the paragraph.

It was so decided.

132. Mr. HUDSON suggested replacing the final sentence of the paragraph by the following: " The Secretary-General is already the depositary of many multilateral conventions and certainly will become the depositary of many more; hence . . .".

133. Mr. YEPES found the French text very satisfactory.

134. The CHAIRMAN suggested an English text based on the French text.

135. Mr. HUDSON read out the following paragraph from the opinion of the Court: " Such being the situation, the task of the Secretary-General would be simplified and would be confined to receiving reservations and objections and notifying them ".[20] He did not share the Court's optimism.

136. The CHAIRMAN hoped that the Commission would not change the sentence in his draft report to make it tally with the wording used by the Court. The Court did not appear to have realized the burden it was placing on the Secretary-General.

137. Mr. CORDOVA thought the Sixth Committee would consult the Secretary-General.

138. Mr. KERNO (Assistant Secretary-General), with the help of Mr. HUDSON and Mr. ALFARO, explained that the problem of the complexity of the Secretary-General's task was affected not only by its character but by its scope. Obviously, if it were a case of only one convention, as with the Court, the task was less onerous than if it applied to all conventions.

139. The CHAIRMAN asked the Commission to allow him to draft a sentence on those lines, to be placed after the second sentence, or possibly after the first, and stating something to the effect that for a single convention the task was simpler, but that the Secretary-General was already the depositary of a large number of conventions (the actual number to be given) and that it was likely that the number would be considerably greater in the future.

140. Mr. KERNO (Assistant Secretary-General) said that the Secretary-General was already the depositary of more than 100 multilateral conventions, about 60 of them recent and about 40 dating from League of Nations days.

141. Mr. SPIROPOULOS said that, though he had not asked to speak at the beginning of the discussion on the paragraph in question, he was opposed to it in its entirety as having nothing to do with the question put to the Commission. That could be seen by reading General Assembly resolution 478 (V). There was no connexion between duties of the depositary and the system advocated by the Commission.

142. What led the Commission to adopt the system was its anxiety to maintain the integrity of conventions. The facilitating of the depositary's task was an altogether separate question.

143. The CHAIRMAN pointed out that the resolution stated: " especially as regards multilateral conventions of which the Secretary-General is the depositary ".

144. Mr. SPIROPOULOS maintained that the resolution stressed the convention's rather than the Secretary-General's task. The Commission's duty was not to examine whether such and such a principle made the Secretary-General's task heavier; its decisions should be based on concern for maintaining the integrity of conventions.

145. Mr. LIANG (Secretary to the Commission) observed that, if the text of the resolution were examined along with the first sentence of paragraph 15, it could be argued that the Commission was asked to give special attention to the conventions of which the Secretary-General was the depositary; but to confine itself to submitting proposals for the codification and progressive development of the law, which was the crux of the problem. However, paragraph 15 dealt with one particular aspect of the Secretary-General's functions as depositary. He thought it was desirable to indicate the Secretary-General's positive functions as an introduction to the sentences which were to follow. He agreed that there was some truth in what Mr. Spiropoulos had said.

146. Referring to Mr. Hudson's comment, he wondered whether the Commission really wished to state, as would appear from the second sentence, that even if it involved no more than the procedure for one single convention, the Secretary-General's task might already be unduly complex.

147. Mr. HUDSON also felt that it would be well to add something following the first sentence, for example, a redrafted version of the final sentence. With regard to the second point raised by Mr. Liang, all that was needed was to put the word " convention " in the second sentence into the plural. It might be a good idea to ascertain exactly what resolution 478 (V) expected of the Commission.

148. Mr. KERNO (Assistant Secretary-General) pointed out that it was not merely a question of the administrative burden placed on the Secretary-General, since after all an administrative task could always be accomplished with adequate staff. It was a question rather of the proper performance of his task by the depositary. That must be referred to. It was in fact because the Secretary-General found it difficult to discharge his functions that he had appealed to the General Assembly.

149. Mr. HUDSON said that there were undoubtedly cases where the depositary had to take a stand. He had to decide whether a reservation had or had not been made, and it was often extremely difficult to arrive at any conclusion on that point, for example, in the case of the United States, where owing to the competence of the Senate in respect of ratification of treaties, it was the

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no means of determining the admissibility of a reservation tendered. For so large a depositary of major multilateral conventions as the Secretary-General may be expected to become, the resulting administrative burden would be very great, even if the task is not one which it would be impossible for him properly to discharge, as the Commission believes it is."

See also summary record of the 104th meeting, para. 27.

[20] *I.C.J. Reports 1951*, p. 27.

custom to use the expression: " It is our understanding that . . .". That point had to be settled before the Secretary-General could set in motion the administrative procedure relating to reservations.

150. Mr. SANDSTRÖM said he had been about to make the same comment as Mr. Kerno. The Commission's problem was to deal with the difficulties likely to confront the Secretary-General, not with the amount of work given him.

151. The CHAIRMAN, supported by Mr. Hudson, observed that the Secretary-General would invariably have to decide whether a reservation had or had not been made, whatever system were adopted.

152. Mr. YEPES remarked that the exchange of views indicated the desirability of adopting his proposal for a definition of reservations. Otherwise the Secretary-General had no formula he could apply. He asked whether Mr. Spiropoulos was proposing the deletion of the whole of paragraph 15.

153. Mr. SPIROPOULOS said that what he was proposing was the deletion of the part referring to the Secretary-General's task.

154. Mr. YEPES supported the proposal. The Commission's task was to examine reservations. The Assembly had asked the Commission " in the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions both from the point of view of codification and from that of the progressive development of international law ".

155. The resolution stipulated that priority was to be given to that study. As the Assistant Secretary-General had stated, it was not for the Commission to examine the Secretary-General's task and decide whether it was easy or difficult; what it had to do was to state whether the system it advocated for reservations was a contribution to the codification and development of international law.

156. Mr. CORDOVA thought it was desirable to discover what the Sixth Committee meant by the expression " especially as regards reservations to multilateral conventions of which the Secretary-General is the depositary ". In his opinion the Commission should also go into the question of the Secretary-General's task.

157. Mr. KERNO (Assistant Secretary-General) thought the answer to the questions was quite simple. The Secretary-General had put before the General Assembly certain difficulties he had experienced, with a request for directives. The Assembly had decided to consult the Court in respect of the Convention on Genocide, and the Commission for an opinion *de lege lata* and *de lege ferenda* before issuing those directives.

158. The General Assembly had considered that, in the case of multilateral conventions negotiated under the auspices of the United Nations, the Secretary-General should be given certain directives, but that the opinion of the International Law Commission was necessary before that was done.

159. Mr. SPIROPOULOS was not altogether sure that Mr. Kerno's view was correct. The difficulty had been to ascertain what method to adopt. If the method were laid down in full detail, the Secretary-General's task became eminently simple. He thought the General Assembly had wished to have the Commission's opinion on the implications of reservations.

160. Mr. HUDSON observed that Mr. Yepes had drawn the Commission's attention to its instructions. He doubted very much whether the General Assembly had known precisely what it did want. Obviously there was no question of codification in the present instance, since the existing law was inadequate. On the other hand, it would be very useful for the progressive development of international law to find a solution. However, the General Assembly had asked for a report to be submitted to it at its sixth session. Since it was clear that the Commission could not complete its task in regard to the development of international law within a matter of months, it did look as if the Assembly had had something more limited in mind.

161. The General Assembly wanted advice from the Commission to enable it to formulate directives for the benefit of the Secretary-General. The Commission should endeavour to comply by envisaging two viewpoints: first of all, administrative difficulties, and secondly, the satisfactory exercise of the Secretary-General's functions as depositary.

162. Mr. AMADO remarked that the Assembly had been so worried by the ambiguity of the text of paragraph (*a*) that it had added paragraph (*b*).

163. The question had arisen out of the differences of opinion which had come to light. There were three systems: the League of Nations system, the Pan-American practice and the Russian system of a majority and a minority of States. The Sixth Committee had decided to remove the issue from the political plane and to give the International Law Commission an opportunity of discussing the problem.

164. Mr. SCELLE considered that the question covered both the codification and the development of the law. It was a task which might possibly have its legislative aspect. Supposing the situation could arise within any particular State, the question would be, say, whether a notary was to follow this or that special procedure. The question of procedure might be extremely important. He did not think the Commission was going beyond its instructions in stating how the registration of reservations was to be performed.

165. Mr. SANDSTRÖM observed that in its conclusions the report referred frequently to the functions of the depositary. He thought the Commission should also assess the difficulties presented by the several systems.

The meeting rose at 1 p.m.