Document:-
A/CN.4/SR.2400

Summary record of the 2400th meeting

Topic:
Law and practice relating to reservations to treaties

Extract from the Yearbook of the International Law Commission:-
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nisms for monitoring the application of standards once they had been adopted and incorporated in their laws.

26. At another general level, the old quarrel which saw the developed countries favouring a "liberal" liability regime, while the developing countries wanted a stricter one, seemed to him outdated. Concern with environmental protection was today common to all countries, whatever the differences between them or stages of their economic growth.

27. The question was, rather, one of knowing what to do and what not to do in the case of a particular activity and what types of rules could be established and then to bring the message home, providing assistance to countries, if necessary, so as to give them the material means of implementing the principles adopted. Once certain standards and parameters had been defined, it would be possible to consider ways and means of promoting their adoption by all States. The Commission was well placed to help in formulating such principles and eventually connecting them up to a liability system, even if it might not be in a position to do so very quickly given the time available to it and the level of consensus reached so far.

28. The Special Rapporteur could play an extremely useful role in that regard by summing up what had been achieved over the past two years and specifying what principles could already be identified and what problems would have to be reviewed or what imponderables must still be reckoned with. For such imponderables did exist: in order to be convinced of that, it was enough to read draft articles 13 and 14 provisionally adopted by the Commission at the forty-sixth session. What, for example, was the scope of the obligation of "due diligence" imposed on the State? And when the Commission stated that "pending authorization [which would or would not be granted to the operator in respect of an activity involving a risk of significant transboundary harm], the State may permit the continuation of the activity in question "at its own risk", what was the real scope of that provision?. Those were concepts that needed to be carefully analysed and weighed further before further progress could be made.

29. Mr. BARBOZA (Special Rapporteur) said that, at the conclusion of the preliminary debate on his tenth and eleventh reports, he would simply sketch out a few replies to comments by previous speakers.

30. To Mr. Yankov and Mr. Robinson, who had by implication reproached him with having, as it were, overlooked the human dimension in his analysis of the topic, he would recall that, when introducing his eleventh report (2397th meeting), he had spoken out against any tendency to dissociate the human being from the environment. He had also duly made it clear in the report it-provision?. Those were concepts that needed to be carefully analysed and weighed further before further progress could be made.

31. The human environment and the human being were nevertheless two different subjects. Since the human being was already in itself protected by law, the protection of the environment was the heart of the matter in the present context and that was why he had developed that aspect in particular.

32. He had also listened with interest to the comments made by Mr. Kabatsi and Mr. Sreenivas Rao, but the former had given a complicated example that he would need to have in front of him in order to make valid comments on it.

33. In conclusion, he said that the draft which he was proposing and which, at the present stage, dealt essentially with matters of prevention and liability was a modest one that did not in any way set out to remedy all of mankind's ills.

The meeting rose at 11.15 a.m.

2400th MEETING

Wednesday, 14 June 1995, at 10.15 a.m.

Chairman: Mr. Pemmaraju Sreenivas Rao

Present: Mr. Al-Khasawneh, Mr. Barboza, Mr. Bowett, Mr. de Saram, Mr. Fomba, Mr. He, Mr. Idris, Mr. Kabatsi, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Robinson, Mr. Rosenstock, Mr. Tomuschat, Mr. Villagrán Kramer.


[Agenda item 6]

First report of the Special Rapporteur

1. The CHAIRMAN invited Mr. Pellet, the Special Rapporteur, to introduce his first report on the topic of the law and practice relating to reservations to treaties (A/CN.4/470).

2. Mr. PELLET (Special Rapporteur) said that the question of reservations to treaties was not terra incognita for the Commission, which had already studied it on four occasions, first at its third session in 1951 in connection with the topic of the law of treaties and, later, within the framework of the work which had led to the adoption of the Vienna Convention on the Law of Treaties (hereinafter referred to as the "1969 Vienna Con-
human rights of a bold new stand on the special prob-

4. More recently, controversy had been revived by the adoption by international human rights bodies, in particular the Human Rights Committee, the European Commission of Human Rights, the European Court of Human Rights and the Inter-American Commission of Human Rights of a bold new stand on the special problems of reservations to human rights treaties. Those developments, which had been welcomed by some States but had met with strong criticism on the part of others, added to the complexity of the topic to such a point that the question arose whether a uniform legal regime governing reservations to treaties was necessary or possible.

5. Those introductory remarks were intended to show how honoured and, at the same time, how daunted he felt by the task assigned to him, especially in view of the moral undertaking given by the Commission to the General Assembly to complete the task within not more than five years.

6. In embarking upon the task with all due humility he had found it necessary to devote a good deal of time and effort to the study of previous writings and discussions on the topic. As a result, the preparation of the first report had taken longer than expected and he asked the members of the Commission to excuse the delay. In that connection, he particularly thanked the Secretary of the Commission and her staff for their most efficient cooperation and also thanked the translators who had moved heaven and earth to produce an English version in time.

7. Coming to the topic, as he did, in a state of almost virgin ignorance, he was entirely free from any preconceived opinion and any desire to impose his own point of view. If the tone of the first report was found to be somewhat tentative—indeed, making such a choice at all might eventually prove unnecessary. He had thought it would be premature to attempt to choose between them at the present stage; indeed, making such a choice at all might eventually prove unnecessary. He had none the less considered it essential, in the light of the directives given by the General Assembly in resolution 48/31, to include in his first report—the preliminary nature of which he wished again to emphasize—a recapitulation of the different positions held.

8. The report comprised three chapters: chapter I dealing with the Commission’s previous work on reservations, chapter II containing a brief inventory of the problems of the topic, and chapter III discussing the possible scope and form of the Commission’s future work on the topic. Chapter I was designed to refresh the memory of members about the essential stages in the topic’s long history, starting in 1950 with the report by the Special Rapporteur, Mr. James L. Brierly, and ending with the adoption of the 1986 Vienna Convention. The most important stages in that process had been the advisory opinion of ICJ on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide; the

5 I.C.J. Reports 1951, p. 15.
10. In his report, he had tried to indicate the lessons he had drawn from those milestone events. First, the work had been difficult and a balance had had to be struck between widely differing doctrinal and political opinions. Secondly, solutions had been arrived at, in many cases, only at the cost of deliberate ambiguities. Thirdly, there had been a clear development in favour of an increasingly strong assertion of the right of States to formulate reservations to the detriment of the right of other contracting States to oppose such reservations, even if the right of other contracting States to oppose, on an individual basis, the entry into force of the treaty between themselves and the reserving State was maintained. Fourthly, the 1978 Vienna Convention, by express referral to it, and the 1986 Vienna Convention, virtually by reproducing it, had had the effect of strengthening the system established by the 1969 Vienna Convention, one which, given its many ambiguities and gaps, after all, was hardly "systematic".

11. Chapter II of the report had been more difficult to prepare. In drafting it, he had proceeded, on the one hand, on the basis of such information as he had concerning the relevant practice and, on the other hand, on the mass of doctrinal material to which he had already referred. An empirical method of that kind was undoubtedly far from ideal, and he hoped that the debate on the topic would be rich in useful criticism, and advice. Without presuming in any way to dictate any course of action to the Commission, he hoped that members would assist him in that manner rather than embark directly upon discussing the substance of the problem. The clarifications or guidelines he was seeking related to three areas.

12. First, it was quite possible that his brief inventory of the problems identified had not been set out correctly in every detail and he would be happy to receive any suggestions in that respect. Secondly, and more importantly, it was very likely that some points which might be important had escaped him altogether, because information available to him about State practice was incomplete and was difficult to obtain. The practice of the Secretary-General of the United Nations as depository was relatively easy to ascertain, although the most recent systematic study dated back to 1964, and perhaps the Secretariat might be able to update it. It would certainly be extremely useful. Information, some full and some incomplete, had been supplied by seven international organizations of the United Nations system as well as by the Council of Europe and OAS. It was his intention to conduct a more systematic survey of the practice of international organizations both as depositaries and possibly as parties to treaties. The situation was less satisfactory so far as State practice was concerned, where he had been obliged to rely on doctrinal studies as well as on a small number of inter-State documents, the most interesting being without doubt the report of the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe, meeting in Strasbourg on 21 and 22 March 1995, mentioned in the report. In the light of the forthcoming debate, he would, before the end of the present session, prepare a questionnaire on the topic to be sent out to States. In addition to any replies to the questionnaire, it would be very helpful if members of the Committee, and especially those from the countries whose practice was not well known, would communicate to him any information available to them about the practices in their own or in other countries relating to the topic under consideration. In that way, it would be possible to avoid speaking exclusively about the practice—readily accessible—of the few countries that "broadcast" their practice. Lastly, he hoped that the debate would help him to bring some order into the set of problems concerning the ambiguities and of the gaps in existing conventions which he had tried to pinpoint and which were set out in the report. The report contained a long list of questions which seemed to pose problems, and to make progress it would be necessary to establish a hierarchy among those questions according to their degrees of importance and the order in which they were to be taken up. He looked forward to any suggestions in that respect.

13. His only personal preference would be for a debate focusing on the practical rather than the theoretical aspects of the topic, although, of course, the two were not mutually exclusive. For example, in the quarrel between the schools of permisibility and of opposability, the adherents of permisibility considered that a reservation contrary to the object and purpose of the treaty was in itself void, irrespective of the reactions of the co-contracting States. Conversely, the adherents of the opposability school, more marked by relativism, thought that the only test consisted of the objections of the other States. The importance of the practical consequences of those conflicting positions was self-evident; one need only refer to the Channel Islands case. For example, if the "permisibilists" were right, the nullity of a reservation incompatible with the object and purpose of the treaty could be invoked before an international or even a national tribunal even if the State claiming the nullity of the reservation had not itself made any objection to it, whereas, if the "opposabilists" were right, a State could not avail itself of a reservation contrary to the object and purpose of the treaty even if the other contracting parties had accepted it.

14. Among other questions of a particularly thorny nature that came to mind, the first was the effect of an impermissible reservation. Did it entail nullity of the expression of consent of the reserving State to be bound, or only nullity concerning the reservation itself? There again the case-law of international human rights protection bodies showed that the answers to those questions

had considerable practical effects. In that connection, he referred to the *Belllos* case,8 which had posed a number of practical problems for the Swiss Government.

15. Another difficult question was that of objections to reservations. In formulating an objection, should a State be guided by the principle of the reservation's compatibility with the object and purpose of the treaty, or could it exercise discretion in the matter? There too, one encountered the conflict between permissibility and oppo-

sibility. Above all, what were the effects of an objection to a reservation if, as article 21, paragraph 3, of the 1969 and 1986 Vienna Conventions permitted, the State objecting to the reservation had not opposed the entry into force of the treaty between itself and the reserving State?

16. Another group of difficult questions concerned interpretative declarations. How could such declarations be distinguished from reservations in the strict sense of the term and in the case of genuine interpretative declarations what were their legal effects? The effect of reservations and objections on the entry into force of the treaty was not always clear. The 1978 Vienna Convention was silent as to the fate of objections to reservations in the event of State succession. Did the successor State “inherit” objections formulated by the predecessor State? Could it formulate new objections itself? The replies provided by practice were, it seemed, always uncertain, even though, as a matter of simple logic, it should be possible to arrive fairly easily at a satisfactory system.

17. An absolutely fundamental point was whether there were areas in which the existing regime of reservations and objections to reservations was not satisfactory. He had in mind in particular the human rights treaties where the main consensual element that permeated the whole regime lay down under articles 19 to 23 of the 1969 Vienna Convention, was challenged not only by certain writers but also by international bodies concerned with the protection of human rights. That dispute had been reopened with some force in 1994 with general comment No. 24 of the Human Rights Committee.9 If the system provided for under the 1969 Vienna Convention was not satisfactory, in what way should it be modified or should it be abandoned in the case of human rights treaties? But regardless of the question of the constituent instruments of international organizations or provisions codifying customary rules there were perhaps other areas—for instance, disarmament treaties—which had to be recognized as special cases.

18. Lastly—though the list was not restrictive—it would be appropriate at some stage in the work on the topic to raise the question of “rival” techniques of reservations, whereby States parties to the same treaty could modify their respective obligations by means of additional protocols, bilateral arrangements, or optional declarations concerning the application of a particular provision.

19. He had not attempted to provide answers to the longer list of such questions in his first report and did not think that that should be a concern during the coming debate. The main thing was to identify all the problems properly. That was his sole ambition for the present session.

20. At the present stage, it was important not to put the cart before the horse. His idea for a preliminary study had been prompted by a desire to get the feel of the subject before dealing with it in depth. The need for such a study also seemed to be dictated by General Assembly resolution 48/31, paragraph 7 of which stipulated that the “‘final form to be given to the work on’ the topic ‘shall be decided after a preliminary study is presented to the General Assembly’”. The same clause also applied to the topic of State succession and its impact on the nationality of natural and legal persons, but the Special Rapporteur for that topic, Mr. Mikulka, had not interpreted it in exactly the same way as he had. Mr. Mikulka considered that a working group was necessary to carry out the study. While he himself saw no drawback in appointing a working group on the law and practice relating to reservations to treaties—though it was perhaps a little late in the session to do so—he certainly did not regard it as indispensable. In keeping with the practice of the Commission, the preliminary study could be the outcome simply of his current report and the positions taken by the Commission.

21. He had not expressed any personal opinions, at least for the time being, on the content of chapters I and II, which were objective and simply intended to provide the Commission with certain information. Chapter III, on the other hand, dealt with the law and practice relating to reservations to treaties—though it was perhaps a little late in the session to do so—he certainly did not regard it as indispensable. In keeping with the practice of the Commission, the preliminary study could be the outcome simply of his current report and the positions taken by the Commission.

22. Again while he had no particular views on the form of the future work, in the matter of its scope, he could not fail to repeat that, in the case of the topic of the law and practice relating to reservations to treaties, the Commission was not a pioneer. It was not travelling through an unexplored jungle or sailing over uncharted seas. Admittedly, there were obstacles along the way, but the path was clearly marked out. Much had been written not only by scholars but by the Commission itself. Three conventions had been adopted and despite—or perhaps because of—their ambiguities, they had proved their worth. A second look at those conventions should perhaps therefore be taken before calling into question the work of the Commission's predecessors, to which States were, on the whole, attached. That was apparent from the statements made by most of the speakers in the Sixth Committee on the inclusion of the topic in the Commission's agenda and, more recently, at the Committee of Legal Advisers on Public International Law of the Council of Europe as also at the meetings of OAS. The Commission must not lose its bearings. It would be regrettable if, in reflecting once again on the question of reservations, it should cause doubt to be cast on the soundness of the existing rules without having

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9 General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, adopted by the Human Rights Committee on 2 November 1994 (CCPR/C/21/Rev.1/Add.6).
something better to propose. He was not certain, for his own part, that it did, at any rate for the time being.

23. His firm conviction was that what had been achieved must be preserved, regardless of any ambiguities or gaps. After all, the rules on reservations set forth in the above-mentioned Vienna Conventions operated fairly well. The potential abuses had not occurred and, even if States did not always respect the rules, they at least regarded them as a useful guide, so much so that it seemed, in principle at least, that they had now acquired customary force. The Commission's task was to codify and progressively develop the existing law, not to destroy it. He, for one, would be most concerned to be the architect of anything that would result in a weakening of the positive law in that area. It was therefore his fervent hope that the Commission would not start to question what had been achieved but that it would instead seek to determine such new rules as might be necessary to complement the rules in the 1969, 1978 and 1986 Vienna Conventions, without throwing out the old ones, which, in his view, were certainly not obsolete.

24. There was another, and decisive, reason for taking that approach. If the Commission were to adopt norms that were incompatible with articles 19 to 23 of the 1969 and 1986 Vienna Conventions or even with article 20 of the 1978 Vienna Convention, States which had ratified, or would in the future ratify, those Conventions would be placed in an extremely delicate position: some of them would have accepted the existing rules and would be bound by them; others would be bound by the new rules that would be incompatible with the rules already adopted; and yet others could even be bound by both, depending on their partners. If recourse were had to a legal fiction, of course, it would be possible to circumvent that kind of situation, as was exemplified, almost caricatured, by the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.¹⁰ In the case of reservations, where there was no need for such an upheaval in the law, the Commission would be on the wrong track if it set out along such a path. Also, it would not be acting in accordance with its mission.

25. In short, he would suggest that the existing articles of the 1969, 1978 and 1986 Vienna Conventions should be treated, in principle, as sacrosanct unless, during the course of the work on the topic, they proved to be wholly impracticable, which he did not think would be the case. The one point, therefore which he would make very firmly was that the Commission should not call into question something that already existed and did not, after all, work too badly. That did not mean of course that there was nothing left to do. Where possible and desirable, ambiguities should be removed, but not necessarily altogether, for complete clarity was not always a virtue in international law. An attempt must also be made to fill any gaps, if only to avoid any anarchical developments. Those were the only two objectives that the Commission should set for itself—and hence for its Special Rapporteur.

26. That led to the question of the form to be given to the results of the Commission's work. Once again, his position was fairly neutral though he very much hoped that the Commission would provide him with firm guidelines, if possible at the present session. If the objectives he had outlined were accepted, numerous possibilities were open to the Commission, including the treaty approach, which could itself take two different forms. One possibility would be to draft a convention on reservations that would reproduce in their entirety the relevant provisions of the 1969, 1978 and 1986 Vienna Conventions subject only to clarification and completion where necessary. The mere fact of repeating the existing rules would preclude any likelihood of incompatibility, and it would not prevent the Commission from following the tried and tested method of submitting draft articles together with commentaries. The other possibility would be to adopt one or three draft protocols that would supplement, but not conflict with, the existing 1969, 1978 and 1986 Conventions. Again, in accordance with the Commission's usual practice, draft articles could be presented by the Special Rapporteur for review and then for improvement in the Drafting Committee.

27. There were also other possibilities, apart from treaties, which had great advantages; they would, however, require the Commission to change its usual methods of work. In that connection, he had endeavoured to show, in his report, that the Commission had great freedom in that respect. Indeed, General Assembly resolution 48/31 actually seemed to encourage the Commission to adopt an original approach to some extent. It would certainly be doing so if it decided, as he had proposed in his 1993 outline,¹¹ to draw up a guide to the practice of States and international organizations in the matter of reservations. Such a guide could take the form of an article-by-article commentary to the provisions on reservations in the three Vienna Conventions, prepared in the light of developments since 1969 and designed to preserve what had been achieved, along with necessary clarifications and additions.

28. It would also be useful, irrespective of the main solution decided on, if the Commission could propose model clauses into which negotiators could delve for the purposes of a particular treaty. It would make for flexibility and would be of great use to the Commission's "clients", namely, States. It should not be forgotten that the treaty rules on reservations were and would remain merely residual. In the treaties they concluded, States could always derogate from those rules. It would be particularly useful to show that numerous possibilities were available and that, depending on the type of treaty and the subject-matter, some were more suitable than others.

29. Model clauses had two advantages. First, the Commission must take care, when clarifying and completing the legal regime of reservations, not to freeze that regime. By proposing a variety of clauses of derogation, it would counterbalance the general trend towards more precision by providing for more flexibility. Secondly, there were at the present time fairly strong centrifugal

¹⁰ General Assembly resolution 48/263, annex.
¹¹ "Outlines prepared by members of the Commission on selected topics of international law", Yearbook ... 1993, vol. II (Part One), document A/CN.4/454.
tensions which were reflected in the challenge to existing rules in certain areas. That was particularly true of human rights. There was no certainty that the problems which arose concerning the human rights conventions could be resolved simply by interpreting the existing rules. Model clauses for human rights treaties would therefore probably provide a viable solution for the future. It was important in particular to base the work on treaty practice. While it would be difficult, if not impossible, to draw up an exhaustive list of all the clauses relating to reservations set forth in the existing multilateral conventions, a catalogue of such clauses could perhaps be made on the basis of a sufficiently representative sample of the various areas covered by treaties such as those on human rights, disarmament, international trade and so on. The drafting of model clauses would thus be a useful complement to the Commission's basic task.

30. As to that basic work, he had no marked preference between the various possibilities although he would welcome the Commission's clear instructions on how to proceed, as a matter of urgency. In particular he would ask it not to defer a decision in the matter. It would be difficult for him to submit a report at the forty-eighth session of the Commission if he did not know whether he had to prepare draft articles, a guide to practice, model clauses, extended commentaries, a draft protocol or protocols, or a combination of all of them.

31. One last problem, not of vital importance but none the less bothersome, concerned the title of the topic. "The law and practice relating to reservations to treaties" was not very satisfactory and had a rather academic ring to it. In particular, it gave the impression that the law and the practice were distinct and could be detached from each other. Nothing could be further from the truth. He therefore proposed a more neutral, and probably more accurate, title such as "Reservations to treaties".

32. His report was long and fairly technical. For the benefit of any members who might have found it particularly heavy going, he would draw attention in particular to chapter I, which gave the historical background to the topic, and to chapter II, which endeavoured to explain why so many problems continued to arise despite the conventions already adopted. He awaited with interest the reactions of members of the Commission.

33. On the other hand, the essence of what should be discussed at the present session was contained in chapter III. He sought urgent assistance and orientation from the Commission on the following questions: (a) Did the Commission agree to change the title of the topic to "Reservations to treaties"? (b) Did it agree not to challenge the rules contained in article 2, paragraph 1 (d) and articles 19 to 23 of the 1969 and 1986 Vienna Conventions and article 20 of the 1978 Vienna Convention and to consider them sacrosanct and to clarify and complete them only as necessary? (c) Should the result of the Commission's work take the form of a draft convention, a draft protocol(s), a guide to practice, a systematic commentary or something else? There again he was open-minded, but hoped that the Commission would arrive at a joint decision on that matter; and (d) Was the Commission in favour of drafting model clauses that could be proposed to States for incorporation in future multilateral conventions in keeping with the field in which those conventions would be concluded?

34. He would also be grateful for comments or criticism from the members of the Commission on the problem area discussed in chapter II. But there would be time to pursue that further at a later date, whereas the replies to his four questions, or in any case the latter three, were absolutely indispensable for the continuation of the work on the topic. He hoped that the debate would help him identify the replies to those questions, which would be the substance of the preliminary study that would constitute the chapter of the Commission's report on the topic.

35. The CHAIRMAN said that the question of the form the articles should take was usually asked towards the end of the work. A discussion at the present time might prejudice many of the issues involved. Perhaps it would be appropriate for the Commission to restrict itself to a preliminary view. Moreover, he was not sure that members alone could decide; States might need to respond as well.

36. Mr. BOWETT said that he had always supported the inclusion of the topic on the agenda, for there was a great deal of uncertainty in State practice, and the Commission might therefore be helpful in that area.

37. As to the form, he was sceptical about the desirability of a new convention and agreed with the Special Rapporteur that the Commission should work on the basis of the system under the 1969, 1978 and 1986 Vienna Conventions and not attempt to discard it. Whether the Commission produced a protocol was an open question. His initial preference was for a guide, as the Special Rapporteur had suggested. But a decision now on the form would probably not prejudice the outcome, because if work proceeded even on the basis that it was a guide, by formulating rules or articles and commentary to explain why such rules or articles had been adopted, it was a simple matter to convert the guide into a draft protocol or draft convention. That would be a form entirely appropriate to such work.

38. He liked the idea of including model clauses—they would be extremely helpful and not at all inconsistent with a comprehensive guide to the practice of reservations. He had considerable doubts, however, as to the utility of consulting State practice. Few States, if any, and he included his own country, really understood the way in which the system under the Vienna Conventions worked. There was no point in being guided by State practice, which itself needed guidance. It was like having the blind lead the blind. Hence, he would not be too impressed by discrepancies in State practice. He was more inclined to take the system under the Vienna Conventions and see what it should logically dictate. He had no objection at all to the change of title proposed by the Special Rapporteur.

39. Mr. LUKASHUK, confining himself to preliminary remarks, said he congratulated the Special Rapporteur on his excellent report, which was a good foundation for further work. He had only one point to make at the present time: the report contained an excellent analysis of the facts, but was silent as to the reasons behind...
the various events and decisions discussed. For example, why had such renowned legal experts as Brierly, Lauterpacht and Fitzmaurice suffered defeat with their positions, whereas Waldock had immediately prevailed? Any answer to that question must be sought beyond the boundaries of law. The Special Rapporteur had rightly pointed out in his oral presentation that the problem of reservations often contained a political element. That required a further explanation, one which had not been forthcoming in the report. What was needed was an analysis of the position of States in the context of the overall world situation.

40. The problems of international law could not be resolved without bearing in mind what was happening in the world. In the discussion on international liability for injurious consequences arising out of acts not prohibited by international law, it had been stressed how important it was for the Commission to bear in mind the current and future requirements of the international community. Having personally participated in the preparatory work of the Vienna Conventions, he had been struck by the important role played by the Soviet Union in introducing changes in the texts of reservations. In the cold war context of the time, the Soviet Union had been concerned that an agreement might be imposed upon it. Today, the situation had changed, and that needed to be taken into consideration.

41. It was indeed a good idea to compile literature on the practice in relation to reservations, but there was no need to hurry to produce the bibliography promised by the Special Rapporteur. He agreed with the Chairman that it was difficult to imagine at the present time the form that the results of the Commission's work would take.

42. In his opinion, the Commission should discuss the problem of soft law, an area that had taken on growing importance. Perhaps the focus could be on soft law, thereby making it another of the Commission's fields of endeavour in regard to international law and international practice.

43. It seemed to be agreed that there was no need to contest the Vienna Conventions. In any event, he was convinced that the report of the Special Rapporteur was a firm foundation for further study of the problem of reservations in the international community today.

44. Mr. PAMBOU-TCHIVOUNDA, confining himself to preliminary comments, thanked the Special Rapporteur for his exhaustive and interesting report, one in which a great deal of time had obviously been invested. It was also particularly gratifying to see that, for the first time, a Special Rapporteur had taken the trouble to translate into French those passages of his report that he had cited in the original English.

45. The Special Rapporteur was right to refer to the political difficulties associated with the topic. In his view, it was important to bear in mind considerations of political expediency. Telephone calls exchanged between Heads of State or Ministers had an enormous impact on the final decisions regarding the form of reservations. A second consideration was the time factor. The Special Rapporteur had referred to the ambiguity between "interpretable declarations" and reservations which under positive law were nothing more than declarations. The three Vienna Conventions were silent about the time at which an interpretative declaration could be made, and it might be useful to attempt to draw a clearer distinction between those two categories. He agreed with the Special Rapporteur that the Commission must remain within the spirit of the Vienna Conventions.

46. He questioned whether the General Assembly, whose delegates were not necessarily experts, would understand the preliminary study in its present form. The Special Rapporteur should revise his position on the results to be sent to the General Assembly, so that they could be rendered in a more accessible form.

47. He experienced some hesitation about simplifying the title of the topic. It might then be argued that there was, for instance, also a need for a treaty on signatures or a treaty on ratification, both of them areas which likewise posed problems.

The meeting rose at 11.50 a.m.

2401st MEETING

Friday, 16 June 1995, at 10.10 a.m.

Chairman: Mr. Pemmaraju Sreenivasa RAO

Present: Mr. Bowett, Mr. de Saram, Mr. Elaraby, Mr. Fomba, Mr. He, Mr. Kabatsi, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivouna, Mr. Pellet, Mr. Razafindralambo, Mr. Robinson, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer.


FIRST REPORT OF THE SPECIAL RAPPORTEUR (continued)

1. Mr. ROSENSTOCK said that the Special Rapporteur's excellent work was precisely tuned to what was needed at the current stage of the consideration of the topic. The first report (A/CN.4/470) provided the background to the question, gave a review of the problems posed and made a number of suggestions as to how the