International Court of Justice. He proposes to send a similar questionnaire to international organizations which are depositaries of multilateral treaties.

The second section of the Report was addressed,to the'Future work of the Commission on the topic of Reservation to Treaties'. This was divided into three parts viz. (i) Area covered by the study; (ii) Form of study; and (iii) General outline of the study.

As regards the Area covered by the Study the Special Rapporteur identified five topics which required a careful study. The issues identified included:

(a) The question of the definition of reservation;
(b) The legal regime governing interpretative reservations;
(c) The effect of reservations which clash with the purpose and object of the treaty;.
(d) Objections to reservations; and
(c) The rules applicable, if need be, to reservations certain categories of treaties and, in particular, to human rights treaties.

This list of questions does not limit the Commission's scope of enquiry regarding reservations to treaties. One would agree with the Special Rapporteur's assertion that while developing attention to questions of importance and,recalling the applicable rules as codified by existing conventions or resulting from practical application it seems "logical to take account of the broader picture in considering questions relating to reservations which are imperfectly addressed or not addressed at all by existing conventions". Moreover this list of questions would need to be supplemented by other questions relating to the existence of such rival institutions of reservations as additional protocols, selective acceptance of certain provisions end the like which while modifying participation in treaties put to risk the universality of the international instrument in question. The point was made that there is no denying that "considered in themselves, such approaches are not part ofthe field of study in that they are reservations. however, to the extent that they have similar aims and comparable consequences, it would seem useful to take

account of them, if only, to draw the attention of States to the options which they offer in certain cases.

The rival techniques can, in the opinion of the Special Rapporteur, prove to be useful alternatives to the employment of reservations when recourse to the latter meets objections of a legal or political nature.

Form of the Study

Addressing the issue of the form of the study, the Special Rapporteur recalled that the ILC at its 47th Session had decided in principle to draw up a "Guide to practice in respect of reservations" and taken the view that there were insufficient grounds for amending the relevant provisions of the existing international instruments. The Commission had also decided that the guide to practice in respect of reservations would, if necessary, be accompanied by model clauses. The Special Rapporteur, Mr. Alain Pellet, in his Second Report addressed the following issues, viz. (a) Preserving what has been achieved; (b) Draft articles accompanied by commentaries and (c) Model Clauses; and (d) Final form of the Guide to practice.

(a) Preserving what has been achieved

The Special Rapporteur pointed out that the starting point i.e. the preservation of what has been achieved by the Vienna Conventions of 1969, 1976 and 1986 was a constraint in that the Commission must ensure that the draft articles eventually adopted, by it, conform, to in every respect, to the provisions with regard to which it should simply clarify any ambiguities and fill in any gaps. He therefore deemed it advisable to quote the actual text of the existing provisions at the beginning of each chapter ofthe draft guide to practice in respect of reservations.

(b) Draft articles accompanied by commentaries

The articles shall be followed by a statement of additional or clarificatory regulations which would comprise the actual body of

the Commission's work on the subject and would be presented "in the form of draft articles whose provisions would be accompanied by commentaries".

(c) Model Clauses

The Special Rapporteur proposed that the draft articles be followed by model clauses worded\phrased in such a way as to "minimize disputes in the future". Emphasizing that the function of these model clauses needed to be clearly understood the Special Rapporteur pointed out that the "guide to practice" which the Commission intends to draw up would consist of general rules designed to be applied to all treaties, regardless of their scope, in cases where the treaty provisions are silent. Like the actual rules of the Vienna Convention and the customary norms which they enshrine, the rules relating to reservations would be purely remedial where the parties concerned have no stated position. These rules cannot be considered binding and the States Parties will always be free to disregard them. The negotiators need only to incorporate the specific clauses relating to the reservations into the treaty.

The Special Rapporteur pointed out that in its Advisory Opinion regarding Reservation the Convention on the Prevention and Punishment of Crimes of Genocide"[10] the ICJ had, inter alia, noted the disadvantages that could result from the profound divergence of views of States regarding the effects of reservations and objections and asserted that "an article concerning the making of reservations could have obviated such disadvantages". Attention was also drawn to the recommendation of the General Assembly that the organ of the United Nations, specialized agencies and States should, in the course of preparing multilateral co inventions, consider the insertion of provisions relating to the inadmissibility of reservations and the effect to be attributed to them.[11]

The sole aim and functions of the model clauses would be to encourage States to incorporate in certain specific treaties clauses concerning reservations which degrade from the general law and are better adopted to

[10] ICJ Reports (1 95 1) p.26.

[11] See General Assembly Resolution 598 (vi):

the special nature of the treaties or the circumstances in which they are considered. This approach would have the advantage of adapting the legal regime concerning reservations to the special requirements of these treaties or circumstances and thus preserve its flexibility without calling in question the unity of the law applicable to reservation to treaties.

(d) Final Form of the guide to practice

In the opinion of the Special Rapporteur the guide to practice in respect of reservations which the Commission intends to prepare could be divided into six Chapters. The chapters could, in his opinion, take the following form :(i) a review of the relevant provisions of the Vienna Conventions of 1969,1978 or 1986; (ii) Commentary on those provisions, bringing out their meaning, their scope and the ambiguities and gaps therein;(iii) draft articles aimed at filling the gaps. or clarifying the ambiguities;(iv)commentary to the draft articles; (v) model clauses which could be incorporated in specific treaties and derogating from the draft articles , and (vi) commentary to the model clauses.

The Provisional plan of the study of the Special Rapporteur is set out below:

Unity or diversity of the legal regime for reservations to treaties is one of the general question of determining whether the legal regime for reservations, as established under the Convention on the Law of Treaties, 1969 is applicable to all treaties regardless of their object. The Special Rapporteur has enumerated three reasons for conducting a separate preliminary study, viz.:

(i) the terms of the problem are, partially the same, regardless of the provisions in question

(ii) its consideration may be an opportunity for inquiring into some basic general aspects of the regime for reservations, which is preferably done in limine and

(iii) this question is related to reservations to human rights treaties, which justifies placing the emphasis on the consideration of the specific problems that concern them.

It also involves one of the main difficulties which were stressed by both the members of the Commission at its forty-seventh session as well as the representatives of States in the Sixth Committee at the fiftieth session of the General Assembly.

II. Definition of Reservations:

The question of the definition of reservations is linked to the difference between reservations and interpretative dèclarations and to the legal regime for the latter. It seems useful to kink the consideration of this question to that of other procedures, which, while not constituting reservations, are, like them, designed to and do enable States to modify obligations under treaties to which they are parties, is a question of alternatives to reservations, and recourse to such procedures may likely make it possible, in specific cases, to overcome some problems linked to reservations.

The Special Rapporteur proposes to deal with reservations to bilateral treaties in connection with the definition of reservations. The initial question posed by reservations to bilateral treaties is whether they are genuine reservations, the precise definition of which is therefore a necessary condition for its consideration. Although consideration of the question relating to the unity or diversity of the legal regime for reservations could have been envisaged, it appears at first glance that the question relates to a different problem.

III. Formulation and withdrawal of reservations, acceptances and objections

The Special Rapporteur has emphasized that save for some issues relating to the application of paragraphs 2 and 3 of article 20 of the 1969 and 1986 Vienna Conventions, this part does not appear, to involve questions giving rise to serious difficulties. it is nevertheless necessary to include it in the study as it is a matter of practical questions which arises constantly, and one could hardly conceive of a "guide to practice" which did not include developments in this regard.

IV. Effects of Reservations, Acceptances and Objections

Effects of reservations, acceptances and objections is, without any doubt, the most difficult aspect of the topic. This is also the aspect with regard to which apparently irreconcilable doctrinal trends have been expounded while none denies that some reservations are prohibited, as is, clearly stipulated in article 19 of the 1969 and 1986 Vienna Conventions. Disagreement arises with regard to the effects of reservations, their acceptance and objections that are made to them. as well as the circumstances in which acceptances or objections are either permissible (or impermissible), or necessary (or superfluous). This is at the heart of the opposition between the schools of "admissibility" or "permissibility" on the one hand, and "opposability" on the other. In the opinion of the Special Rapporteur, it would be premature to take a position at this stage.

The general outline does not take any position, even implicitly, on the theoretical questions that divide doctrine. Assuming that there are, without any doubt, permissible and impermissible reservations, the Special Rapporteur felt that the most "neutral" ànd objective method would be to deal separately with the reservation is permissible on the one hand and when it is non-permissible on the other (IV.C), since it is necessary to consider separately two specific problems which, prima facie. are defined in the same terms as a reservation, whether permissible or not, and which concern the effect of a reservation on the relations of the other parties among themselves.

V. Fate of reservations, acceptances and objections in the case of succession of states

The Vienna Convention on Succession of States in respect of Treaties 1978 left numerous gaps and questions with regard to the problem on fate of reservations. acceptance and objections in the case of Succession of States. Article 20 of that Convention deals with only as concerns the case of newly independènt States without addressing the question of the fate of the acceptances of the predecessor States's reservations and objections that had been made to them or acceptances

and objections formulated by the predecessor State to reservations made by third States to a treaty to which the successor State establishes its status as a party.

VI. The Settlement of Disputes linked to the regime for reservations

Although the Commission does not provide, the draft articles that it elaborates, with clauses relating to the settlement of disputes, the Special Rapporteur expressed the view that there is no reason a priori to depart from this practice in most cases. In his opinion, the discussion of a regime for the settlement of disputes diverts attention from the topic under consideration and strictly speaking gives rise to useless debates and is detrimental to efforts to complete the work of the Commission within a reasonable period. In his opinion, if States deem it necessary, the Commission would be better advised to draw up draft articles which are general in scope and could be incorporated in the form of an optional protocol, for example, in the body of codification conventions.

As some members of the Commission pointed out during the debate on the subject at the forty-seventh session, although there are, admittedly, mechanisms for the peaceful settlement of disputes, to date they have been scarcely utilized in order to resolve differences of opinions among States with regard to reservations, particularly concerning their compatibility with the object and purpose of a treaty. Moreover, when such mechanisms exist as is frequently the case with regard to human rights treaties, it is particularly important to determine the extent and limits of their powers with respect to reservations.

Under these conditions, it may be useful to consider the establishment of mechanisms for the settlement of disputes in this specific area since, in the view of the Special Rapporteur, these mechanisms could be provided for either in standard clauses that States could insert in future treaties to be concluded by them or in an additional optional protocol that could be added to the 1969 Vienna Convention on the Law of Treaties.

In conclusion the Special Rapporteur said that the proposed outline is provisional and not immutable. It may require to be "adapted, supplemented and revised in the course of further work" which could uncover new difficulties or reveal the artificial nature of some of the problems anticipated. He felt that the task could be carried out within four years. However that may be, as noted in the introductory section of this report the Commission at its 48th session decided to defer the consideration of the Second report of the Special Rapporteur until its next i.e. 49th session.

V. STATE SUCCESSION AND ITS IMPACT ON THE NATIONALITY OF NATURAL AND LEGAL PERSONS

Introduction

At its 45th Session in 1993, the Commission decided to include this item in its agenda and the General Assembly at its 48th Session endorsed the Commission's decision on the understanding that the final form to be given to the work on the topic shall be decided after a preliminary study is presented to it (the General Assembly). Thereafter, at its 46th Session the Commission appointed Mr. Vaclav Mikulka Special Rapporteur for the topic. The Commission considered the Special Rapporteur's first report at its 47th Session.

At its 48th Session the Commission had before it the second Report of Mr. Vaclav Mikulka. Introducing the report he said that its purpose was to enable the Commission to complete its preliminary study of the topic and to thus comply with the request of the General Assembly. The report was designed to facilitate the task of the Working Group on the topic, which the Commission had established at its 47th Session and had decided to reconvene at the 48th Session, in its preliminary consideration of the questions of the nationality of legal persons, the choices open to the Commission in the substantive study of the topic and a possible timetable.

The second Report of the Special Rapporteur comprised an introduction and three substantive sections viz. (1) Nationality of Natural Persons; (ii) Nationality of Legal Persons; and (iii) Recommendations concerning future work, on the topic of State Succession and its impact on the nationality of natural and legal persons. It may be mentioned that while Mr. Mikulka had, in the report, furnished a broad picture of State practice from the XIX century to the recent times, in all regions of the world, regarding different types of territorial changes he had refrained from analysing such practice.

Chapter II of the report dealt with the Nationality of Natural Persons and summarized the result of the work undertaken on that aspect of the topic. It classified the problems and issues relating to the nationality of natural person in two broad categories viz. General Issues and Specific Issues and identified the legal material for analysis at a later stage of the Commission's work. It may be stated that while the protection of human rights and the principle of effective nationality were the two general issues dealt with in the second report, the special Rapporteur emphasized 7 specific issues viz. (i) the obligation to negotiate in order to resolve by agreement problems of nationality resulting from State Succession; (ii) granting of the nationality of the Successor State; (iii) withdrawal or loss of the nationality of the predecessor State; (iv) the right of option, (v) criteria used for determining the relevant categories of persons for the purpose of granting or withdrawing nationality or for recognizing the right of option; (vi) non-discrimination; and (vii) the consequences of non-compliance by States with the principles applicable to the withdrawal or the granting of nationality.

Mr. Mikulka expressed the view that as far as the problem of nationality of natural persons was concerned his first report, the report of the Working Group at the 47th Session, the debates in the Commission as well as the Sixth Committee furnished all the elements necessary to complete a preliminary study of that aspect of that topic.

The Nationality of Legal Persons dealt with in Chapter III of the report was intended to be the main focus of the Working Group at the 48th Session. Accordingly this Chapter outlined the scope and characteristics of the subject and its many complexities, including the various forms that legal persons could take. It was pointed out that apart from State Succession the problem of the nationality of legal persons arose mainly in the areas of conflicts of laws, the law on alien and diplomatic protection and in relation to State Responsibility. At the 47th Session of the ILC he had, advocated focussing on the nationality of natural persons and, for the present time setting aside the issue nationality of legal persons.

In the current report he pointed out that "the Commission has not set itself the task of considering the problem of the nationality of legal persons in its entirety. Its duty is to concentrate on one aspect of the problem, namely the automatic change in the nationality of legal persons

resulting from State Succession. Such succession causes a change in the elements of fact which are used as criteria for determining the nationality of a legal person." He accordingly proposed that the Working Group initially consider the kind of practical problems which State succession raises when applying the normal criteria to different ends and the possible interest that States may have in receiving guidance in this field. The points of consideration raised by the special Rapporteur were :-

(i) Whether the problem of the nationality of legal persons falls entirely within the scope of internal law and treaty law, as the case may be, or whether general international law has also some role to play in this respect;

(ii) Contrary to the situation of natural persons who could through a change of nationality be affected in the exercise of fundamental civil and political rigl-its and economic and social rights' State succession has mainly administrative or economic consequences for legal persons. Why and how can international law intervene in the area of the determination of the nationality of legal person;

(iii) The question of the possible outcome of the Commission's work on this part of the topic. and the form it could take.

In the Recommendations conceming future work on the topic set out in Chapter IV of his second Report the Special Rapporteur proposed dividing the subject into two parts viz. "Succession of States and its impact on natural persons" and "Succession of States and its impact on legal persons". He emphasized that the former be studied first but cautioned that the division did not mean that the Commission should ignore certain links between both parts of the topic.

The Special Rapporteur also recommended leaving the question of the rule of continuity of nationality for further consideration within the framework of the topic "Diplomatic Protection" especially as the Commission was considering proposing that topic as a future agenda item.

Appropos the form which the outcome of the work might take he indicated his favour of elaborating a declaratory instrument made up of articles together with commentaries thereto.

The Commission at its 48th Session decided on the recommendation of the Special Rapporteur to reconvene the Working Group it had established at its previous Session. The Group [12] was to complete its task of identifying issues arising out of the topic, categorizing issues which are closely related thereto, give guidance as to which issues could be most profitably pursued given contemporary concerns, and present the Commission with a calendar of action.

Report of the Working Group

The Working Group recommended to the Commission that the question of nationality of natural persons be separated from that of the nationality of legal persons as they raised issues of very different order. It was pointed out in this regard that the question of nationality of legal persons involved the basic human right to a nationality such that the obligations for States stemmed from the duty to respect that right. On the other hand the second aspect of the topic involved issues that were mainly economic and, what is more, centered around a right to establishment which may be claimed by a corporation operating in the territory of a State involved in succession.

The Working Group felt that the two aspects, mentioned above, did not need to be addressed with the same degree of urgency. It considered that the question ofthe nationality of natural persons should be addressed as a matter of priority.

As to the form that the work on the subject should take the Working Group concluded that the result of the work of the Commission on the topic should be in the form of a non-binding instrument consisting of articles with commentaries. It may be mentioned that the Working Group envisaged that the proposed instrument could be divided into 2 parts:

[12] The Working Group consisted of Mr. Vaclav Mikulka (Special Rapporteur and Chairman).