

The fifth session of the Assembly had requested the International Court to give an advisory opinion on the effect of reservations to the Genocide Convention<sup>3</sup> made under certain conditions. The Court showed, in its opinion of May 28, 1951, that it was sharply divided on the questions before it. It held, by a narrow majority of 7 to 5, that a state which had made and maintained a reservation which had been objected to by one or more of the parties to the Genocide Convention, but not by others, could be regarded as being a party to the Convention if the reservation was compatible with the object and purpose of the Convention; otherwise, that state could not be regarded as being a party to the Convention. This was a new departure in international law from the established practice of the League of Nations. Five of the members of the International Court dissented. They considered that this new rule of compatibility had no legal basis and that in the case of the Genocide Convention "the conclusion is irresistible that it is necessary to apply . . . with even greater exactitude than ever the existing rule which requires the consent of all parties to any reservation to a multilateral convention".

The Court's majority opinion went on to say that if a party to the Convention objected to a reservation which it considered to be incompatible with the object and purpose of the Convention it could consider that the reserving state was not in fact a party to the Convention. On the other hand, if a party accepted the reservation as being compatible with the object and purpose of the Genocide Convention it could consider that the reserving state was a party to it. The majority of the Court held that an objection to a reservation made by a signatory state which had not yet ratified the Convention could have no legal effect until the objecting state ratified. Until then it merely served as a notice to the other states of the eventual attitude of the signatory state. Further, an objection to a reservation made by a state which had neither signed nor acceded to the Genocide Convention was without legal effect. Thus, in the opinion of the Court, it is left to each state objecting to a reservation to decide, upon the basis of its individual appraisal of the compatibility of the reservation with the object and purpose of the Convention, whether it considers the reserving state to be a party to the Convention.

The International Law Commission had been given a broader mandate by the fifth session of the General Assembly. It was invited to examine 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, especially as regards multilateral conventions of which the Secretary-General was the depositary. The International Court had already handed down its opinion before the Law Commission studied the question. The Commission, therefore, was in a position to consider the Court's opinion when formulating its own views on the broader question referred to it. In its report, the Commission pointed out that its task differed from that of the Court and that, therefore, it felt at liberty to suggest a practice which states might adopt for the future.

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<sup>3</sup>The Genocide Convention does not contain any article providing for reservations.