FRANCE

General Comments - Government Responses

CCPR A/51/40 (1996)

Annex VI

Observations of States parties under article 40, paragraph 5, of the Covenant

(Observations transmitted by letter dated 8 September 1995)

1. On 2 November 1994, the Human Rights Committee adopted general comment No. 24 (52),b/ on issues relating to reservations made upon ratification of or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant.

2. That general comment has been the subject of observations and comments by the United Kingdom of Great Britain and Northern Ireland and the United States of America.c / France shares the concern expressed about some of the opinions contained in general comment No. 24 (52), which in its view do not correspond to generally recognized rules of international law. It would like to make some specific observations on a number of points.

Paragraph 8

3. Paragraph 8 of general comment No. 24 (52) is drafted in such a way as to link the two distinct legal concepts of "peremptory norms" and rules of "customary international law", to the point of confusing them.

4. It states that: "Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant ... Accordingly, provisions in the Covenant that represent customary international law (and a fortiori when they have the character of peremptory norms) may not be the subject of reservations ..."

5. In order to dispel any risk of confusion, France would like to make the following points:

International custom is proof that a general practice has been accepted as law. It must be acknowledged that it is difficult - however regrettable that may be - to identify practices in the human rights area that fit this definition exactly. It would be premature, to say the least, to claim that all the examples cited in the report fit the definition of international custom cited above.

---

a/ Observations transmitted by letter dated 8 September 1995.

b/ See Official Records of the General Assembly, Fiftieth Session, Supplement No. 40 (A/50/40), annex V.

c/ Ibid., annex IV.

Although it may be accepted that certain human rights treaties formalize customary principles, this

does not mean that the State's duty to observe a general customary principle should be confused with its agreement to be bound by the expression of that principle in a treaty, especially with the developments and clarifications that such formalization involves.

Finally, it goes without saying that the customary rule concept can in no way be equated with a peremptory norm of international law. The position of France, which is not a party to the 1969 Vienna Convention on the Law of Treaties, as regards "jus cogens", is well known. The uncertainties associated with this concept, which France indicated from the outset, should not compound those surrounding the role of custom in human rights matters.

Paragraph 10

6. France believes that it is necessary to point out that certain reservations are a sine qua non for ensuring compatibility between treaty norms and constitutional norms. Generally speaking, as regards the general rules of the law of treaties, the validity of reservations can be evaluated only with respect to the purpose and object of the treaties, there being no need to refer to more subjective considerations.

Paragraph 13

7. France would like to point out that the first Protocol is, on the one hand, of an optional nature, and on the other, separate from the Covenant. That being the case, nothing in international law appears necessarily to prohibit a State from qualifying or restricting its acceptance of the Protocol.

8. Any maximalist interpretations would result in discouraging new States from acceding to the Optional Protocol.

Paragraph 16

9. The last two sentences of the paragraph do not correspond exactly to the provisions of article 21 of the 1969 Vienna Convention on the Law of Treaties, which reads as follows:

"Article 21. Legal effects of reservations and of objections to reservations

"1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

"(a) Modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

"(b) Modifies those provisions to the same extent for that other party in its relations with the reserving State.

"2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.

"3. When a State objecting to a reservation has not opposed the entry into force of the treaty

between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation."d/

Paragraph 17

10. France is unable to endorse the opinion in the general comment to the effect that "[the] provisions [of the 1969 Vienna Convention] on the role of State objections in relation to reservations are inappropriate to address the problem of reservations to human rights treaties".

11. That opinion is based on the idea, not confirmed by any generally accepted rule of international law, that rules different from those of the conventional law of treaties apply or should apply to human rights treaties. It is also based on the unjustified assumption that States parties would not use their right to object to reservations with the appropriate discernment or care.

Paragraph 18

12. France rejects this entire analysis and considers the last sentence ("such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation") to be incompatible with the law of treaties.

13. France believes it should be noted that agreements, whatever their nature, are governed by the law of treaties, that they are based on States' consent and that reservations are conditions which States attach to that consent; it necessarily follows that if these reservations are deemed incompatible with the purpose and object of the treaty, the only course open is to declare that this consent is not valid and decide that these States cannot be considered parties to the instrument in question.

14. As for the opinion that the Committee is particularly well placed to take decisions on the compatibility of a reservation with the object and purpose of the Covenant, France points out that the Committee, like any other treaty body or similar body established by agreement, owes its existence exclusively to the treaty and has no powers other than those conferred on it by the States parties; it is therefore for the latter, and for them alone, unless the treaty states otherwise, to decide whether a reservation is incompatible with the object and purpose of the treaty.

Paragraph 20

15. France considers reservations, as governed by the 1969 Vienna Convention, to represent a normal and legitimate means of formulating a State's consent to be bound by a treaty, if exercised under the conditions provided for in the treaty itself.

---

d/ United Nations, Treaty Series, vol. 1155, No. 18232.

16. A State that has conditioned its consent on reservations in conformity with international law therefore has no reason to submit to conditions, constraints or procedures other than those deriving

from the law of treaties or the instrument in question. Not all reservations are unjustified and not all should necessarily be lifted. Reservations to human rights instruments are not by definition contrary to the object and purpose of the treaty. By making compatibility between constitutional norms and treaty norms possible and by allowing the adaptation of treaty norms and certain domestic legislation to reflect the special characteristics of each State, they foster wide acceptance by the international community of a number of treaties that would never have obtained sufficient accessions otherwise.