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**Depositary practice in relation to reservations: Report by the Secretary General submitted in  
accordance with General Assembly resolution 1452 B (XIV)**

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## DOCUMENT A/5687

**Depositary practice in relation to reservations  
Report of the Secretary-General**

[Submitted in accordance with General Assembly resolution 1452B (XIV)]

[Original texts: English/French/Spanish]

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### Introduction

1. The General Assembly at its fourteenth session considered agenda item 65 entitled "Reservations to Multilateral Conventions: the Convention on the Inter-Governmental Maritime Consultative Organization". On the recommendation of the Sixth Committee it adopted resolution 1452 B (XIV) on 7 December 1959. By paragraph 2 of that resolution, the General Assembly requested the Secretary-General "to obtain information from all depositary States and international organizations with respect to depositary practice in relation to reservations, and to prepare a summary of such practices, including his own, for use by the International Law Commission in preparing its reports on the law of treaties and by the General Assembly in considering these reports".

2. Pursuant to this request of the General Assembly, the Secretary-General, by circular letter of 25 July 1962, invited all States and international organizations which are serving as depositaries of multilateral conventions to provide him with information regarding their depositary practice in relation to reservations. A detailed questionnaire, a copy of which is reproduced as annex I of this document, was enclosed in the Secretary-General's circular letter to assist the States and the international organizations concerned in preparing the requested information. This questionnaire was organized under the following six headings: Rules Governing Reservations; Reservation v Declaration; Reservations Upon Signature; Reservations Upon Ratification or Accession; Objections to Reservations; and Entry into Force.

3. Replies of substance were received from thirty-four States and sixteen inter-governmental organizations.

4. The following nineteen States and five inter-governmental organizations have informed the Secretary-General that they do not at present serve as depositaries of any multilateral conventions:

Afghanistan	Iraq
Congo (Brazzaville)	Israel
Cyprus	Japan
Czechoslovakia <sup>1</sup>	Laos
Dominican Republic	New Zealand
Gabon	Pakistan
Ghana	Peru
Guatemala	Tanganyika
Haiti	Thailand
Honduras	

International Development Association  
International Finance Corporation  
International Monetary Fund  
World Meteorological Organization  
Universal Postal Union

<sup>1</sup> The letter from Czechoslovakia states:

"The position of the Czechoslovak Socialist Republic as a Contracting Party to a great number of multilateral conventions concerning the question of depositary functions in connexion with the reservations to multilateral conventions was explained by the Czechoslovak Delegation during the fourteenth session of the United Nations General Assembly. See *Official Records of the General Assembly, Fourteenth Session, Sixth Committee*, pp. 156-157."

5. The following sixteen States and eleven inter-governmental organizations have informed the Secretary-General that they are the depositaries of the number of agreements stated after the name of each:

Australia (4)
Austria (2)
Bulgaria (1)
Canada (13)
Denmark (16, concluded since 1900)
Federal Republic of Germany (9)
Finland (several)
Luxembourg (3)
Netherlands (53)
Philippines (2)
Poland (several)
Romania (1)
Sweden (several regional conventions)
Union of Soviet Socialist Republics (12)
United Kingdom of Great Britain and Northern Ireland (15, concluded since 1945)
United States of America (62)
Council for Mutual Economic Assistance (several)
Council of Europe (40)
Food and Agriculture Organization of the United Nations (8)
General Agreement on Tariffs and Trade (52)
Inter-Governmental Maritime Consultative Organization (3)
International Atomic Energy Agency (1)
International Bank for Reconstruction and Development (2)
International Labour Organisation (121)
Organization of American States (over 100)
United Nations Educational, Scientific and Cultural Organization (16)
World Health Organization (3)

6. Of the foregoing, the following States and organizations have informed the Secretary-General that no reservations have ever been presented to any of the conventions of which they are depositaries and that consequently they have no depositary practice on reservations:

Australia	Poland
Austria	Romania
Bulgaria <sup>2</sup>	Sweden
Federal Republic of Germany	Union of Soviet Socialist Republics
Finland	
Philippines <sup>3</sup>	

Council for Mutual Economic Assistance  
International Bank for Reconstruction and Development<sup>4</sup>  
International Labour Organisation<sup>5</sup>

<sup>2</sup> The depositaries have stated that the conventions and agreements contain no provisions on reservations.

<sup>3</sup> The letter from the International Labour Office states:

"In no case has a reservation to an International Labour Convention been registered.

"The Practice followed by the International Labour Office in the matter, and the grounds on which it is based, are set forth in detail in the Memorandum submitted by the International Labour Organisation to the International Court of Justice—at its request, in connexion with the case concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Written Statements, pages 212-278). The Court did not have occasion to comment on this memorandum, but the International Law Commission subsequently took note of it at its third session (May-July 1951). In its report to the General Assembly on that session, the Commission stated:

"20. Because of its constitutional structure the established practice of the International Labour Organisation, as described in the Written Statement dated 12 January 1951 of the Organisation submitted to the International Court in the case of reservations

7. The replies to the questionnaire are given in part I of this document.

8. Part II of the report describes the depositary practice of the Secretary-General in relation to reservations. This part is also organized under the six headings used in the preceding part and gives a factual summary of the practice currently followed by the Secretary-General.

9. Annex II gives examples of reservation clauses appearing in conventions concluded under the auspices of the United Nations.

## Part I. Depositary practice of States and international organizations in relation to reservations

### A—RULES GOVERNING RESERVATIONS

*Question 1. Do you, or does any organization for which you act as depositary, maintain standard reservations clauses for use in multilateral conventions? If so, please supply them, together with references to any conventions in which they occur.*

*Dominican Republic.* The Dominican Republic does not act as depositary for any conventions. It does not maintain standard reservations clauses for use in multilateral conventions.

*Luxembourg.* As the Government of Luxembourg is the depositary only for a very small number of agreements, there has been no opportunity for a particular practice to evolve in Luxembourg with regard to reservations to multilateral conventions. In the agreements deposited with the Government of Luxembourg the procedure for reservations is dealt with in the actual texts, so that the role of the depositary State is clearly defined.

Thus, article 29 of the Statute of the European School, signed at Luxembourg on 12 April 1957, provides that:

“On signing this Statute, the Luxembourg Government may enter such reservations as may seem appropriate by reason of its status as Government of the host country and of its own school legislation.”<sup>4</sup>

Article 8 of the Protocol concerning the establishment of European schools, signed at Luxembourg on 13 April 1962, contains a corresponding clause providing that:

“The Government of any country in which a school is situated... shall be entitled to enter reservations as provided in article 29 of the Statute of the European School.”

*Netherlands.* No.

to the Convention on Genocide, excludes the possibility of reservations to international labour conventions. However, the texts of these conventions frequently take account of the special conditions prevailing in particular countries by making such exceptional provisions for them as will admit of their proceeding to ratification; indeed, this course is enjoined on the General Conference by article 19 (3) and other articles of the Constitution of the Organisation. [Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858), para. 20.]

The letter concludes by stating that the Director-General of the International Labour Office also acts as depositary for three regional conventions, and that no question of reservations has arisen with respect to any of these instruments.

<sup>4</sup> United Nations, *Treaty Series*, vol. 443, p. 232.

*Poland.* No reservations clauses are contained in multilateral conventions in respect of which the Polish Government performs depositary functions, with the exception of the Protocol of 28 September 1955<sup>5</sup> modifying the Convention for the Unification of Certain Rules relating to international Carriage by Air, signed at Warsaw on 12 October 1929,<sup>6</sup> which states in article XXVI that no reservations to this Protocol are allowed.

*United Kingdom of Great Britain and Northern Ireland.* No.

*United States of America.* The United States Government does not maintain standard reservations clauses for use in multilateral conventions. So far as it is aware, no organization established by a convention or other agreement for which the United States Government is depositary maintains any such standard reservations clauses.

*Council of Europe.* Yes as a rule. See articles (e) and (d), respectively, of annexes I and II of the Model Final Clauses approved by the Ministers' Deputies at their 113th meeting (annex I contains the model final clauses of an agreement that can be signed without reservation as to ratification or acceptance; annex II contains the model final clauses of a convention requiring ratification or acceptance). Article (e) [(d)] reads as follows:

“1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in the Annex to this Agreement [Convention].

“2. Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary-General of the Council of Europe, which shall become effective as from the date of its receipt.

“3. A Contracting Party which has made a reservation in respect of any provision of this Agreement [Convention] may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.”

*Food and Agriculture Organization of the United Nations.* The Food and Agriculture Organization of the United Nations (FAO) had no standard reservation clause and until 1953 no provision concerning reservations was included in any of the conventions and agreements concluded under the auspices of FAO. In 1957 the ninth session of the FAO Conference adopted a series of “Principles and Procedures” which were designed to govern *inter alia* conventions and agreements concluded under the auspices of FAO and, in particular, under articles XIV and XV of the FAO Constitution.<sup>7</sup> These principles supplement the aforementioned constitutional

<sup>5</sup> *Ibid.*, vol. 478, p. 373.

<sup>6</sup> League of Nations, *Treaty Series*, vol. CXXXVII, p. 11.

<sup>7</sup> Food and Agriculture Organization of the United Nations: *Report of the ninth session of the FAO Conference, 1958*, paras. 503-509 and appendix D.

provisions and rule XXI ("Conventions and Agreements") of the General Rules of the organization. In pursuance of resolution 598 (VI) of the General Assembly the FAO Conference incorporated in these principles a paragraph regarding reservations. This provision, which deals with a number of problems raised in the questionnaire, reads as follows:

"10. In conformity with Resolution 598 (VI) of the United Nations General Assembly, a clause on the admissibility of reservations shall be inserted in all conventions and agreements. This clause shall state that a reservation may become operative only upon unanimous acceptance by the parties to the convention or agreement. Failing such acceptance the nation concerned does not become a party to the convention or agreement. With respect to reservations made prior to the coming into force of the convention or agreement such reservation must be accepted by all the nations that at the time of the coming into force are parties thereto. For calculating the number of acceptances of the convention or agreement necessary to bring it into force nations having made reservations shall not be included in this number. Reservations made after the coming into force of a convention or agreement must be accepted by all parties to the convention or agreement. The Director-General of the Organization shall notify all signatory, acceding and accepting governments of all reservations. Governments not having replied within three months from the date of notification shall be considered as having accepted tacitly the reservation and the notification referred to above shall draw attention to this rule."<sup>8</sup>

While deciding that a reservation clause should, in future, be incorporated in any convention or agreement to be concluded under article XIV of the FAO Constitution, the Conference also decided to adopt what might be considered the simplest method, i.e., the unanimity rule.

In order to give effect to the principles adopted by the FAO Conference, including the aforementioned provision relating to reservations, the Conference in its resolution No. 46/57 not only resolved, *inter alia*, that these principles should apply to the drafting of the constituent rules of bodies to be established in future under article XIV of the Constitution but also urged the parties to existing conventions and agreements "... to apply, as far as possible, the rules contained in the present statement of principles..." and invited these parties "to amend the texts of these conventions and agreements when feasible in order to bring them into line with said principles..."<sup>9</sup> In compliance with the wish expressed by the Conference, several conventions and agreements have been amended and now contain a reservations clause in conformity with paragraph 10 of the aforementioned principles. The international instruments which have so been amended are the Constitution of the International Rice Commission, the Agreement for the establishment of the Indo-Pacific

Fisheries Council and the Constitution of the European Commission for the Control of Foot and Mouth Disease; the Agreement establishing the General Fisheries Council of the Mediterranean is in the process of being amended.

*General Agreement on Tariffs and Trade.* Since 1955, when the Executive Secretary began to perform depositary functions, the Contracting Parties have only very rarely encountered the problem of reservations to instruments deposited with the Executive Secretary. It appears that the intensive negotiating and consultation procedures during the pre-drafting and drafting stages in the preparation of GATT instruments have generally eliminated those situations which might have given rise to the submission of reservations. As a result, the Contracting Parties have not had occasion to devise standard reservations clauses for use in such instruments.

*Inter-Governmental Maritime Consultative Organization (IMCO).* The reply is in the negative. The conventions of which IMCO is depositary contain no clauses relating to reservations.

*International Atomic Energy Agency.* The only multilateral treaty for which the Agency acts as depositary is its Agreement on Privileges and Immunities.<sup>10</sup> Section 38 of that Agreement contains the provision:

"It shall be permissible for a Member to make reservations to this Agreement. Reservations may be made only at the time of the deposit of the Member's instrument of acceptance, and shall immediately be communicated by the Director-General to all Members of the Agency."

In view of the limited scope of the Agency's depositary functions and the sparseness of its practice, the Agency does not have any rules governing reservations as contemplated in section A of the questionnaire.

*Organization of American States.* No.

*United Nations Educational, Scientific and Cultural Organization.* The United Nations Educational, Scientific and Cultural Organization (UNESCO) does not maintain standard reservation clauses for use in multilateral conventions.

However a clause stating that "Reservations to this Convention shall not be permitted" occurs in the Universal Copyright Convention (1952) (article XX)<sup>11</sup> and in the Convention against Discrimination in Education (1960) (article 9).<sup>12</sup>

*Universal Postal Union.* The Acts of the Universal Postal Union (UPU) contain no express general provision governing the admission and treatment of reservations, apart from the case cited in the reply to question 11 below. Nor is there any resolution by a Congress or other organ on the subject. The Acts of UPU, however, frequently give rise to reservations, of extremely varied nature.

*World Health Organization.* No.

<sup>8</sup> Food and Agriculture Organization of the United Nations: *Basic Texts*, 1961, vol. II, p. 38.

<sup>9</sup> Food and Agriculture Organization of the United Nations: *Report of the ninth session of the FAO Conference*, 1958, p. 182.

<sup>10</sup> United Nations, *Treaty Series*, vol. 374, p. 147.

<sup>11</sup> *Ibid.*, vol. 216, p. 132.

<sup>12</sup> *Ibid.*, vol. 429, p. 93.

*Question 2. In the alternative, is there a resolution or other set of rules for the regulation or guidance of the depositary in dealing with reservations? If so, a copy of the latest text would be appreciated.*

*Dominican Republic.* There are some resolutions available to the depositary for guidance in dealing with reservations to multilateral treaties. These include the rules recommended in resolution XV of the third meeting of the Inter-American Council of Jurists, held at Mexico City;<sup>13</sup> a number of articles (2-6) adopted at the Sixth Inter-American Conference; the comments of the Secretary of State for Foreign Affairs of the Dominican Republic included in the Collected Treaties and Conventions<sup>14</sup> of the Dominican Republic; and, leaving aside other sources, the rules of procedure and "provisional understanding" of the Governing Board of the Pan American Union, 1932.

*Netherlands.* No.

*United Kingdom of Great Britain and Northern Ireland.* No.

*United States of America.* The United States Government has not adopted a resolution or other set of rules for its regulation or guidance in performing the depositary functions in regard to reservations.

*Council of Europe.* Not relevant.

*Food and Agriculture Organization of the United Nations.* Question 2 is indirectly covered by the reply to question 1.

*Inter-Governmental Maritime Consultative Organization.* The reply is in the negative. The Secretary-General of IMCO is guided by the practice followed by the United Nations.

IMCO is the depositary of three Conventions, the International Convention for the Safety of Life at Sea (1948),<sup>15</sup> the International Convention for the Prevention of Pollution of the Sea by Oil (1954),<sup>16</sup> and the International Convention for the Safety of Life at Sea (1960).<sup>17</sup> Until the creation of IMCO, the duties of depositary for the first two conventions were carried out by the Government of the United Kingdom until 13 July and 15 June 1959 respectively, on which dates they were officially transferred to IMCO.

Consequently the practice of the IMCO secretariat is limited both as to time and scope. It has therefore endeavoured in carrying out its duties as depositary to follow as closely as possible the rules contained in United Nations document ST/LEG/7 of 7 August 1959 entitled "Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements".

<sup>13</sup> *Final Act of the Third Meeting of the Inter-American Council of Jurists*: Washington, D.C., Pan American Union, 1956.

<sup>14</sup> Secretaría de Estado de Relaciones exteriores, *Compilaciones de Tratados y Convenciones de la República Dominicana*, 1958, vol. VI, pp. X-XIX.

<sup>15</sup> United Nations, *Treaty Series*, vol. 164, p. 113.

<sup>16</sup> *Ibid.*, vol. 327, p. 3.

<sup>17</sup> Cmnd. 2812, No. 65 (1965), H. M. Stationery Office, London, 1965.

The IMCO secretariat has thus far had to register reservations or declarations, formulated after the transfer of the functions of depositary from the United Kingdom Government to the Organization, to the two latter Conventions named above. Thus the reservations relate to agreements concluded after resolution 598 (VI) of the United Nations General Assembly, dated 12 January 1952. The agreements in question do not contain any clause providing for reservations. The procedure indicated in paragraph 80 of document ST/LEG/7 has accordingly been followed by the IMCO secretariat.

*Organization of American States.* In general the procedure followed in respect to the deposit of ratifications accompanied by reservations has been governed by a desire to facilitate ratification of the particular treaty or convention by as large a number of States as possible, while taking account of the fact that individual States have fixed national policies in certain matters which they are not ready to abandon even for the sake of the adoption of a treaty which they might otherwise recognize as promoting the development of international law or furthering their common political and economic interests. To adopt a rigid rule prohibiting all reservations except those unanimously agreed to might defeat the adoption of the convention. To admit reservations without any limitation might make the convention of little practical value.

The procedure adopted by the Pan American Union has sought to follow a middle course between the two extremes, solving the problem by practical considerations based upon experience.

It is true that this experience has shown that existing rules do not cover all situations, and therefore need to be amended; but on the whole it may be said that the so-called Pan American practice or rule has given good results.

This subject has been studied in America for many years, as stated by the Inter-American Juridical Committee in its report, the culmination of these efforts being the Convention on Treaties,<sup>18</sup> signed at the Sixth International Conference of American States, Havana, 1928.

All but two of the treaties and conventions signed at that Conference made the Pan American Union the depositary of the instruments of ratification, and this depositary function was specifically conferred upon the Union in the Convention on the Pan American Union,<sup>19</sup> also signed at that Conference. Although this Convention never entered into force, since it required the ratification of all countries, sixteen of them deposited their instruments of ratification. Article VII of the Convention on the Pan American Union, on the deposit and exchange of ratifications, reads as follows:

"The instruments of ratification of the treaties, conventions, protocols and other diplomatic documents signed at the International Conferences of American States shall be deposited at the Pan American Union by the respective representative on the Governing Board, acting in the name of his Government, without

<sup>18</sup> *Sixth International Conference of American States, Final Act*, Havana, 1928; text also in *International Legislation*, edited by Manley O. Hudson, Washington, D.C., 1931, vol. IV.

<sup>19</sup> *Ibid.*

need of special credentials for the deposit of the ratification. A record of the deposit of the ratification shall be made in a document signed by the representative on the Board of the ratifying country, by the Director General of the Pan American Union, and by the Secretary of the Governing Board.

"The Pan American Union shall communicate to all the States members of the Union, through their representatives on the Board, the deposit of the ratification."

In order to establish a procedure for carrying out the functions assigned to the Pan American Union by the foregoing article, which was general in nature, the then Governing Board of the Pan American Union entrusted the study of the subject to a special committee.

The report of that committee was approved by the Governing Board at its meeting of 4 May 1932. That report sets forth what have been called the Rules of Procedure of the Governing Board of 1932. The complete text is reproduced below:

"The undersigned, members of the Committee appointed by the Board to study the procedure to be followed by the Pan American Union in the deposit of instruments of ratification of treaties and conventions, have the honour to submit for the consideration of the Board the following report:

"The procedure to be followed by the Pan American Union with respect to the deposit of ratifications, pursuant to article 7 of the Convention on the Pan American Union, signed at the Sixth International Conference of American States, shall be the following, unless provisions of a particular treaty provide otherwise:

"1. To assume the custody of the original instrument.

"2. To furnish copies thereof to all the signatory Governments.

"3. To receive the instruments of ratification of the signatory States including the reservations.

"4. To communicate the deposit of ratifications to the other signatory States, and in the case of reservation, to inform them thereof.

"5. To receive the replies of the other signatory States as to whether or not they accept the reservations.

"6. To inform all the States, signatory of the treaty, if the reservations have or have not been accepted.

"With respect to the legal status of treaties to which reservations are made but not accepted, the Governing Board of the Union understands that:

"1. The treaty shall be in force, in the form in which it was signed, as between those countries which ratify it without reservations, in the terms in which it was originally drafted and signed.

"2. It shall be in force as between the Governments which ratify it with reservations and the signatory States which accept the reservations in the form in which the treaty may be modified by said reservation.

"3. It shall not be in force between a Government which may have ratified with reservations and an other

which may have already ratified, and which does not accept such reservations.

"The procedure suggested by the Committee is purely provisional, inasmuch as, strictly speaking, the function of depository of the instruments of ratification to be performed by the Pan American Union for the first time by virtue of the treaties signed at Havana is also provisional, as long as those treaties have not been unanimously ratified.

"In other respects the points involved in this procedure are very complex, and touch on a problem of international law still much debated, which the Committee believes should be solved in a final manner by the VII International Conference of American States and not by a simple interpretative provision of the Governing Board of the Pan American Union.

"The Committee consequently considers it advisable, without prejudice to these provisional rules, that this matter be submitted to the VII International Conference of American States and also brought to the attention of the American Institute of International Law."

It will be noted that the first group of six rules merely provides for a series of administrative steps, while the second group of three rules represents the understanding of the Governing Board with respect to the effect of reservations that any particular State may decide to make at the time of depositing its instruments of ratification.

As stated in the report approved by the Governing Board in 1932, the procedure therein proposed was provisional, until the matter should be definitively settled at a subsequent International Conference of American States.

The Seventh International Conference of American States, held at Montevideo in 1933, considered the question of ratification of treaties in a general way, but rather from the point of view of how to stimulate ratifications; and consequently the resolutions adopted at that Conference made no reference to questions of procedure.

After considering the resolutions of the Seventh Conference on this subject, the Governing Board approved the following resolution at its meeting of 2 May 1934:

"The following measures would be conducive to giving practical effect to the desire repeatedly expressed by the International Conference of American States, as set forth in the above-mentioned resolutions:

"1. Once treaties or conventions have been signed, the Government of the country in which the conference is held should remit to each of the signatory States as soon as possible after the adjournment of the conference, a certified copy of each of the treaties and conventions signed at the conference.

"2. The signatory Governments should be urged, in so far as constitutional provisions may permit, to submit the treaties and conventions to their respective Congresses at the first opportunity following the receipt of the certified copies mentioned in the preceding paragraph.

"3. The Pan American Union shall transmit, every six months, through the members of the Governing Board, a chart showing the status of the ratifications, reservations, adherences, accessions and denunciations of treaties and conventions signed at conferences held by countries members of the Union.

"4. The Pan American Union shall address a communication to each of the American Governments requesting that, in accordance with resolution LVII of 23 December 1933, of the Seventh International Conference of American States, and with the sole purpose of studying the possibility of finding a formula acceptable to the majority of the countries members of the Union, the respective Government is requested to make known the objections which it may have to the conventions open to its signature or awaiting ratification by its National Congress.

"The communication, while recognizing the right of each State to decide in accordance with its interests the question of ratification of treaties and conventions signed at the International Conferences of American States, shall furthermore request each Government to communicate to the Pan American Union the modifications which in its judgement will make ratification possible.

"5. The communication addressed to the American Government in accordance with the preceding paragraphs, shall be sent once a year, an endeavour being made to send it at the time of the regular session of the respective Congress."

The Eighth International Conference of American States, held at Lima in 1938, also dealt with the question of treaties.

On the agenda of that Conference appeared the following topic: "Uniformity and perfection of the methods of drafting multilateral treaties, including the form of the instruments, adherence, accession, deposit of ratifications, etc., and means to facilitate ratifications."

In relation to that topic the Conference approved resolution XXIX, entitled "Methods of Preparation of Multilateral Treaties",<sup>20</sup> the text of which is transcribed below:

"The Eighth International Conference of American States  
"Resolves:

"1. With the purpose of unifying and perfecting the methods of preparation of multilateral treaties, the form of the instruments, and the adherence, accession and deposit of ratifications thereof, to approve the six rules of procedure adopted by the Governing Board of the Pan American Union in its resolution of 4 May 1932, relative to the deposit of ratifications, the five rules on the ratification of treaties or conventions approved on 2 May 1934, and the two recommendations of 5 February 1936, on the ratification of multilateral treaties.

"2. In the event of adherence or ratification with reservations, the adhering or ratifying State shall transmit to the Pan American Union, prior to the deposit of the respective instrument, the text of the reservation which it proposes to formulate, so that the Pan American Union may inform the signatory States thereof and ascertain whether they accept it or not. The State which proposes to adhere to or ratify the treaty, may do it or not, taking into account the observations which may be made with regard to its reservations by the signatory States.

"3. To adopt the system of depositing treaties in the Pan American Union, as provided in the project presented by the delegation of Chile, published on page 245 of the *Diario* of the Conference.

"4. To refer for study to the Permanent Committee of Rio de Janeiro the project presented by the delegation of Venezuela and published on page 610 of the *Diario* of the Conference."

By the above resolution, the Lima Conference approved the six Rules of Procedure adopted by the Governing

Board on 4 May 1932, but it took no position on the three rules of the same date representing the understanding of the Governing Board with respect to the legal status of treaties ratified with reservations which were not accepted. The Lima resolution maintains the requirement of consultation by the Pan American Union when reservations are made at the time of adherence or ratification, but it does not provide any rule to govern the situation between a State that makes a reservation and another State that does not accept it. Nevertheless, although the Lima Conference made no reference to the three rules of the Governing Board and took no decision whatever regarding the status of treaties ratified with reservations, these rules have been accepted by the Governments in practice, at least tacitly, and the Pan American Union has therefore applied them in exercising its function of depository.

Resolution XXIX of the Lima Conference also approved the two recommendations on the ratification of treaties and conventions that had been made by the Governing Board on 5 February 1936.

The first of these recommendations requests the Pan American Union to continue the publication of the charts on the status of Inter-American Treaties and Conventions, and authorizes the Director General when sending this record to the Governments to inquire regarding the status of the agreements and the progress that is being made toward their ratification.

The second of these recommendations refers to resolution LVI of the Seventh International Conference of American States, which proposes the designation in each country of a representative *ad honorem* of the Pan American Union whose duty would be to expedite the study, approval and ratification of Inter-American Treaties and Conventions.

Returning to the three rules of 1932, it will be noted that the first and second confirm the traditional practice that, as between States that ratify without reservations, the treaty shall be in force in the form in which it was originally signed, and that it shall be in force as between States that ratify it with reservations and contracting States that accept them, in the form in which the treaty has been modified by the reservations. The third rule refers to the more difficult question of the status of a treaty accompanied by a reservation that is not accepted by one or more of the other signatory States. In this case the treaty simply has no effect between the State making the reservation and the State that does not accept it. This results in a quite unsatisfactory situation, for the treaty will be in force between the ratifying State and those that accept its reservation, but will not be in force between the ratifying State and those that do not accept it. There is no remedy for this situation, however, as long as the ratifying State insists on maintaining its reservation and the other States are not disposed to accept it.

Under the procedure indicated there is no limitation whatever on the right of a State to ratify treaties with whatever reservation or reservations it wishes. Article 7 of the Havana Convention on Treaties recognizes that the refusal to ratify or the formulation of a reservation are acts inherent in national sovereignty and as such

<sup>20</sup> *Eighth International Conference of American States, Final Act, Lima, 1938, p. 48.*

constitute the exercise of a right which violates no international stipulation or good form. Although this Havana Treaty has been ratified by only a few States, the principle established in the article cited is a part of traditional American law.

But if a particular State has the right inherent in its sovereignty to ratify a treaty with whatever reservations it believes to be in its interest, the other parties to the treaty have an equal right to refuse to be bound by the treaty if they believe that the reservation in question is contrary to their own national interests. They are privileged to decide that the reservation defeats the purposes of the treaty as originally signed, and therefore that it would be more to their interest not to be bound by the treaty in respect to the State making the reservation rather than to accept it in the form resulting from the reservation. In such cases each of the signatory States would decide for itself as to the effect of the proposed reservation upon the obligations set forth in the treaty when it was signed.

In accordance with the practice of the American States a State is not absolutely precluded from ratifying a treaty with reservations simply because one or more of the signatory States is unwilling to accept the reservations. In such case, as has been said, the treaty enters into effect with the States which accept the reservations and does not enter into effect with the State or States which do not accept them.

What justification is there for the rule that treaties do not enter into force between a State which ratifies with reservations and another which has already ratified and which does not accept the reservations? Why should the treaty not come into effect in all other respects except those that relate to the modification introduced by the reservations? Some jurists have argued that this should be the effect of reservations, namely, that they should exclude only the application of the clause in question in the relations of the other Contracting States with the State making the reservation. The provisions of the Havana Convention on Treaties, although they tend to support this position, are not clear, and it is impossible to draw a definite conclusion from them.

The great majority of jurists, however, assert that it is impossible, as a practical matter, to segregate the particular articles to which the reservation appears to apply. The articles of a treaty, they argue, must be taken as a whole; and a qualification or limitation or restriction of any one of them indirectly affects the others and therefore justifies the States which do not accept the reservation in refusing to consider the other parts of the treaty as binding even though they may not appear to come within the reservation. The rules drafted in 1932 by the Governing Board of the Pan American Union follow this point of view.

The procedure adopted by the Governing Board of the Pan American Union in its rules of 1932 involves of necessity some degree of consultation with the signatories to a multilateral treaty. In the case of a bilateral treaty, reservations of the kind in question would be negotiated by the two parties directly, and it would be for one party

to decide whether the reservation proposed by the other party could be accepted without undoing or injuring the beneficial effects of the treaty. But in the case of Inter-American multilateral treaties the American States have found it desirable to entrust to the Pan American Union the task not only of informing the signatory parties of any new reservations made at the time of ratification but of inquiring as to the attitude of the other signatories with respect to such a reservation. The purpose of the latter provision is to avoid as far as possible the defeat of a treaty by having reservations attached to it which are not acceptable to a large number of the signatories. According to the second paragraph of the Lima resolution the State ratifying with a reservation still has the right to proceed to ratify with the reservation in spite of the fact that its ratification may not bring the treaty into effect between a large number of States. But it is believed that if the observations of a number of the signatory States should indicate that they are not willing to accept the reservation, in such event the State which proposed to ratify with the reservation will reconsider its reservation, and before proceeding to deposit its ratification of the treaty it will try to modify its reservation so as to make it generally acceptable, or possibly eliminate it altogether.

The procedure thus followed by the American States seems to be the one best calculated to promote the ratification of treaties in a form which will bring them into force among as many signatory States as possible. The procedure does not absolutely deny the right of a State to make reservations; but it does seek to discourage them in order that the treaty may not be so far weakened by reservations as to be unable to accomplish the purposes for which it was originally intended. In carrying out the communications which it must make with the other signatory States to find out whether they are willing to accept a particular reservation, the Pan American Union is merely carrying out the function assigned to it of facilitating the ratification of a treaty by obtaining beforehand the observations of the other signatory States upon the proposed reservation, so that if these observations should be favourable the State proposing to ratify shall proceed forthwith to do so, and if the observations are unfavourable the State may reconsider its reservation and see if it is not possible for it to modify or withdraw it so as to enable the State to participate in the treaty.

This was illustrated in the case of the Guatemalan reservations to the Rio Treaty and to the Charter of the Organization of American States. When it was seen that a number of States did not accept them, and that the result of this would be that these important agreements would not be in effect between Guatemala and the non-accepting States, the Government of Guatemala clarified the scope of its reservations by means of a declaration. The Pan American Union then consulted the Governments a second time, and the reservations were unanimously accepted in the light of the declaration, accompanied by understandings in some cases, with the result that Guatemala was able to become a party to the Rio Treaty and the Charter, and thus became a full partner with the other members of the Organization of American States.

Although the Pan American rule is not perfect, it has worked well in practice because it has been adequate to the needs of the American States. As a matter of fact, down to the present time there has only been one case in which the non-acceptance of a reservation has rendered a treaty ineffective between two States. This took place with the deposit by the Dominican Republic of its instrument of ratification of the Convention on Consular Agents, signed at Havana on 20 February 1928.<sup>21</sup> The instrument contained several reservations that had not been made during the course of the deliberations at the Havana Conference, and when certified copies were communicated, the Government of the United States informed the Pan American Union that it could not accept them because they would deprive the Convention of a great part of its value, and consequently that it did not consider the Convention to be in force between the United States and the Dominican Republic.

As previously observed, although the existing rules have given good results, they do not cover all situations. At the time they were adopted, multilateral treaties represented obligations that were bilateral in character rather than collective. There were no such pacts, for example, as the Rio de Janeiro Treaty of 1947<sup>22</sup> or the Bogotá Charter of 1948,<sup>23</sup> which require that two thirds of the signatories ratify before they enter into force, and which, moreover, particularly the Rio Treaty, require two thirds of the parties for their practical application. These two treaties contain commitments of a collective character, and it is logical and desirable that in such treaties the contracting parties undertake identical rights and obligations.

Neither did the practice exist at that time of opening treaties for signature; it was customary to sign them at conferences only.

Since 1930 thirteen treaties or agreements have been opened for signature at the Pan American Union. Some Governments signed them on the date on which they were opened for signature, others later. Some of these Governments signed with reservations, even though many other States had already ratified. The existing procedure does not cover this situation. It seems that in such cases the Pan American Union should consult the countries that have already ratified as well as those that have signed, and on the basis of the replies received the interested Government may determine, when it ratifies the treaty, whether to maintain the reservations made at the time it signed.

When the reservation is made at the conference that drafts the treaty, it is considered accepted, and in that case the country making it may proceed to deposit its ratification, with the same reservation, without the necessity of any consultation.

With respect to treaties adopted at the Inter-American Conference, the regulations of that Conference provide,

<sup>21</sup> League of Nations, *Treaty Series*, vol. CLV, p. 291.

<sup>22</sup> Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro on 2 September 1947: United Nations, *Treaty Series*, vol. 21, p. 93.

<sup>23</sup> Charter of the Organization of American States, signed at Bogotá on 30 April 1948: United Nations, *Treaty Series*, vol. 119, p. 48.

in article 67, for the purpose of avoiding reservations at the very moment of signing, that "Such reservations and statements shall be presented to the competent committee, or, at the latest, to the special session referred to in article 64. In the latter case, the text of the reservation or statement shall in due course be transmitted in writing to the Secretary-General and distributed by him to the other delegations for their information." Article 64 of the regulations provides that "Treaties and conventions and the final act shall be submitted to the Conference for approval at a meeting especially called for this purpose on the day preceding the closing session. Such documents shall be open for signature by the delegation at the closing session."

As the problems confronting the Pan American Union in the exercise of its depositary functions are sometimes difficult ones, the Union considered that it would be very useful if clear and precise rules could be adopted for its guidance. The secretariat therefore suggested that the Inter-American Council of Jurists should draft such rules and submit them to the Council of the OAS, with the recommendation that they be presented for definitive approval to the Eleventh Inter-American Conference. Although some of these so-called rules of procedure would necessarily have a substantive character, the secretariat did not believe it practical to state them in the form of a treaty subject to ratification, for if some countries did not ratify it the rules would be binding on some and not on others. Moreover, the ratifications would undoubtedly be delayed for many years. The Convention on Treaties of the Sixth Conference held at Havana in 1928 had after twenty-seven years been ratified by only seven countries.

At its fourth meeting in 1959 the Inter-American Council of Jurists adopted the two following resolutions:<sup>24</sup>

#### I

##### *Resolution X*

"The Inter-American Council of Jurists

##### *Resolves:*

"To recommend to the Eleventh Inter-American Conference the consideration of the following rules on reservations to multilateral treaties:

"In the performance of its functions under article 83.e of the Charter of the Organization of American States, the Pan American Union shall be governed by the following rules, subject to contrary stipulations, with respect to reservations to multilateral treaties, including those open for signature for a fixed or indefinite period.

"I. In the case of ratification or adherence with reservations, the ratifying or adhering State shall send to the Pan American Union, before depositing the instrument of ratification or adherence, the text of the reservations it proposes to make so that the Pan American Union may transmit them to the other signatory States for the purpose of ascertaining whether they accept them or not.

"The Secretary-General shall inform the State that made the reservations of the observations made by the other States. The State in question may or may not proceed to deposit the instrument of ratification or adherence with the reservations, taking into account

<sup>24</sup> *Final Act of the Fourth Meeting of the Inter-American Council of Jurists*; Washington, D.C., Pan American Union, 1959.

the nature of the observations made thereon by the other signatory States.

"If a period of one year has elapsed from the date of consultation made to a signatory State without receiving a reply, it shall be understood that that State has no objection to make to the reservations.

"If, notwithstanding the observations that have been made, the State maintains its reservations, the juridical consequences of such ratification or adherence shall be the following:

"a. As between States that have ratified without reservations the treaty shall be in force in the form in which the original text was drafted and signed.

"b. As between the States that have ratified with reservations and those that have ratified and accepted such reservations, the treaty shall be in force in the form in which it was modified by the said reservations.

"c. As between the States that have ratified with reservations and those that have ratified but have not accepted the reservations, the treaty shall not be in force. In any event the State that rejects the reservations and the one that has made them may expressly agree that the treaty shall be in force between them with the exception of the provisions affected by the reservations.

"d. In no case shall reservations accepted by the majority of the States have any effect with respect to a State that has rejected them.

"II. Reservations made to a treaty at the time of signature shall have no effect if they are not reiterated before depositing the instrument of ratification.

"In the event the reservations are affirmed, consultations will be made in accordance with rule I.

"III. Any State may withdraw its reservations at any time, either before or after they have been accepted by the other States. A State that has rejected a reservation may later accept it.

...

"...The making of reservations to a treaty at the time of signature by the plenipotentiaries, of ratification, or of adherence is an act inherent in national sovereignty.

"Acceptance or rejection of reservations made by other States or abstention from doing so is also an act inherent in national sovereignty. It is recommended that reservations made to multilateral treaties, at the time of signing, ratification, or adherence to them shall be precise and shall indicate exactly the clause or rule to which the reservation is made."

(Approved at the third plenary meeting, 8 September 1959)

*"Reservation of Brazil:*

"The Delegation of Brazil abstains from voting on rule I, paragraphs b, c, and d, with respect to reservations to multilateral treaties, in view of the opinion maintained by the Government of Brazil regarding the principle of the compatibility of reservations with the objective or purpose of the treaties to which they refer.

*"Statement of the United States of America:*

"The United States delegation makes the following statement with respect to two of the provisions in the draft resolution on the Juridical Effects of Reservations to Multilateral Pacts:

"a. The provision in paragraph I of the resolution that the failure of a party to the Convention to reply within a year to a notice of a reservation filed by a ratifying or adhering party shall be construed as acceptance of the reservation is undesirable.

"b. The requirement of paragraph II of the resolution under which reservations filed at the time of signature must also be reiterated prior to the deposit of the ratification is unacceptable to the United States delegation in the form in which it has been drafted.

"The United States delegation therefore reserves its position on both these provisions.

*"Reservation of Bolivia:*

"The delegation of Bolivia abstains from voting on the draft resolution dealing with Reservations to Multilateral Treaties, because it regards as inappropriate any statement "in the abstract" on the acceptance or rejection of reservations on multilateral treaties, without a prior definition of the subject matter of these reservations and the significance thereof.

*"Statement of Chile:*

"The delegation of Chile makes a reservation with respect to the third paragraph of rule I of the draft resolution on Reservations to Multilateral Treaties, the justification of which, within the machinery of consultation on reservations, it recognizes only to the extent that it could be in disagreement, in certain cases, with provisions of Chilean constitutional law."

II

*Resolution XI*

"The Inter-American Council of Jurists

*"Resolves:*

"To transmit the proposal of the delegation of Paraguay on Reservation of Theoretical Adherence, to the Inter-American Juridical Committee that it may study the possibilities of its application."

(Approved at the third plenary session, 8 September 1959)

The observations of the delegation of Paraguay concerning reservations to multilateral treaties were the following:

*"Statement*

"The diversity in legislation, a result of the individual sovereignty of the States, motivates the States to assemble their representatives in conferences and congresses, for the purpose of attaining uniformity in law, and if this is not possible, then for the purpose of fitting certain standards for the selection of the applicable rules.

"It frequently happens that representatives or plenipotentiaries of the different countries, who agree on the advisability of adopting a rule or standard representing the general aspiration of the nations, cannot, however, subscribe to it without reservations, inasmuch as it is contradictory to the domestic legislation of their respective countries.

"The rule or clause in question, when examined after it has been made, presents an appearance totally different from what it is in reality, because instead of being the formula or solution desired, and recommended by the jurists who prepared it, it appears, on the contrary, to be a rule rejected by the majority and invalidated by numerous reservations.

"The result is that nothing has been accomplished in the way of formulating law. The States have assembled their plenipotentiaries in order to resolve the differences in legislation. They have found useful standards but have not been able to subscribe to them without reservations, due precisely to the diversification of domestic legislation. Consequently, the treaties then appear with clauses 'rejected' by all or by a majority, and no State amends its domestic law permitting the acceptance, without reservations, of the recommended standard.

*"Object and Effects*

"The object and effects of the reservation of theoretical adherence, or reservation of moral adherence, would be the following:

"The State making the reservation finds the disputed clause or rule useful, but due to reasons pertaining to its domestic legislation, it is not in a position to put it into force in a short period of time.

"The State referred to agrees to undertake legislative negotiations as soon as possible looking to the modification of domestic conditions which would make possible the ratification and coming into force of the rule in question.

*"Name of the Reservation"*

"Here is a type of reservation to multilateral treaties whose content would be perfectly understood and accepted by all nations, and which therefore would not require, in each instance, a definition of the scope of the reservation.

"Without prejudice to finding a more appropriate name for this purpose, the plenipotentiary who signs or the State that ratifies a treaty or convention under the conditions suggested above, would only have to invoke, for example, the reservation of theoretical or moral adherence.

"The use of the reservation of theoretical adherence would result in:

"Determining whether a clause disputed by several States has been rejected because it was undesirable or, on the contrary, whether it has been formulated with the goodwill and adherence of all the States.

"Permitting the Organization of American States to promote, or negotiate in the different States for, the changes required for the easy, and simple ratification of the disputed clauses, making use of the reservation of theoretical adherence.

"Facilitating progress in every State towards unity and harmony in law, in agreement with the other States."

*United Nations Educational, Scientific and Cultural Organization.* The United Nations Educational, Scientific and Cultural Organization has not adopted any resolution or enacted any other set of rules for the regulation or guidance of the depositary in dealing with reservations. However, the Director-General of UNESCO has been guided in this respect by the resolutions of the General Assembly as well as by the Advisory Opinion of the International Court of Justice concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>25</sup>

*Universal Postal Union.* No (see reply to question 1).

*World Health Organization.* No.

*Question 3. Have you a practice to follow in case of the submission of a reservation which is clearly excluded by the terms of a reservations article contained in the convention?*

*Dominican Republic.* The Dominican Republic has nothing which could properly be called an established practice in such cases. However, the fact that a reservation is excluded by the terms of a reservations article contained in the convention does not completely rule out the possibility of the convention's entering into force in the State which submitted the reservations explicitly excluded by the agreement. The Dominican Republic takes the view that the State which submits the reservations and the signatory States which object to them may expressly agree that the convention shall become effective between them in regard to all matters not affected by the reservations in question.

*Netherlands.* No.

*United Kingdom of Great Britain and Northern Ireland.* The policy followed by the Government of the United Kingdom in the case of reservations excluded by the terms of the convention concerned is outlined in a letter dated 10 August 1960 addressed to the Secretary-General of the United Nations by the Acting Permanent Representative of the United Kingdom. The statement of the United Kingdom was circulated by the Secretary-General in a letter (C.N. 126. 1960. TREATIES—5) of 12 September 1960. The statement reads as follows:

"Even in the absence of a right to *make* reservations to a convention it is of course always possible for a party or intending party to *propose* a reservation, but in that case the reservation only has validity if it is accepted by the other parties, or at any rate is not objected to. If any party objects to the reservation, the latter can have no validity, at any rate against the party making the objection."

*United States of America.* If an instrument of ratification, acceptance, adherence, or accession submitted for deposit contains a reservation which is clearly excluded by the terms of a reservations article contained in the convention, the United States Government as depositary would consider that it could not accept such an instrument for deposit.

*Council of Europe.* No.

*Food and Agriculture Organization of the United Nations.* This question would arise only if a reservation were submitted in respect of one of the two conventions of which FAO is the depositary which contain a clause to the effect that no reservation may be made. So far no State ratifying or acceding to one of these conventions has attempted to make a reservation; therefore no practice has been evolved by FAO in this respect.

*Inter-Governmental Maritime Consultative Organization.* The Conventions of which IMCO is depositary are silent concerning the problem of reservations. The reply is therefore in the negative.

*Organization of American States.* No.

*United Nations Educational, Scientific and Cultural Organization.* UNESCO has no established practice to follow in such a case.

*World Health Organization.* Yes. In the case of the International Sanitary Regulations, if the World Health Assembly finds that a reservation "substantially detracts from the character and purpose of these Regulations", they do not enter into force with respect to that State until the reservation has been withdrawn.

## B—RESERVATION *v* DECLARATION

*Question 4. Do you make a distinction in your practice between a reservation and a declaration?*

*Denmark.* In regard to the European Broadcasting Convention<sup>26</sup> signed at Copenhagen on 15 September 1948, declarations concerning certain technical questions were

<sup>25</sup> *I.C.J. Reports*, 1951, pp. 15 *et seq.*

<sup>26</sup> Cmd. 7946, No. 30 (1950), H. M. Stationery Office, London, 1950.

made under the provisions of the text by: Belgium, Bulgaria, Byelorussian SSR, Czechoslovakia, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Morocco and Tunisia (jointly), Netherlands, Norway, Poland, Romania, Ukrainian SSR, USSR, United Kingdom and Yugoslavia. Portugal made a declaration in the form of a final protocol to the Convention. In addition, declarations were made by Austria, Egypt and Syria (jointly), Iceland, Sweden and Turkey; and by France, the United Kingdom, the United States and the USSR in their capacity of occupying Powers of Germany. These declarations were communicated in the form of certified true copies to the other signatories and to the other States which participated in the conference at which the Convention was signed. The Byelorussian SSR, the Ukrainian SSR and the USSR reproduced the texts of their declarations in their instruments of ratification.

In regard to the European Regional Convention for the Maritime Mobile Radio Service, signed at Copenhagen on 17 September 1948,<sup>27</sup> declarations concerning certain technical questions were made under the provisions of the text by the United Kingdom and by the USSR. These declarations were communicated in the form of certified true copies to the other signatories and to the other States which participated in the conference at which the Convention was signed.

None of the signatures or instruments of ratification or accession relating to any of the conventions of which Denmark is the depositary were accompanied by reservations clearly excluded by the terms of the conventions.

*Dominican Republic.* While the effect of a reservation is to reject, wholly or in part, one or more articles of a convention, a declaration clarifies the sense of one or more clauses, or gives reasons for not signing the convention.

*Netherlands.* Yes, in so far as a *declaration* which would not be of a nature "to exclude or vary the legal effect of some provisions of the treaty in its application to that State" (according to article 1, paragraph 1 (f), of the "Draft Articles on the Law of Treaties" published in the report of the International Law Commission covering the work of its fourteenth session)<sup>28</sup> would not be regarded as a *reservation*.

*Poland.* In separate international acts, namely in the supplementary Protocol to the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929,<sup>29</sup> and in the Protocol of 28 September 1955<sup>30</sup> modifying this Convention (article XXVI), the submitting of declarations, which limit the application of certain provisions, is allowed. Such cases are strictly defined and until now no misgivings as to the real character of submitted declarations have been met in practice.

*United Kingdom of Great Britain and Northern Ireland.* Yes, where the terms of a convention for which the

Government of the United Kingdom act as depositary require the distinction to be drawn.

*United States of America.* The United States Government as depositary makes a distinction between a reservation, strictly speaking, and a declaration.

*Council of Europe.* Yes.

*Food and Agriculture Organization of the United Nations.* In view of the fact that, with one exception (see answer to question 6), no reservations or declarations limiting the scope or field of application of a convention or agreement have been made either at the time of signing or ratification or accession, no practice has been evolved by FAO of regarding the distinction to be made between reservations and declarations. Should the case arise in practice, the Director-General feels that any statement which would have the effect of diminishing either the obligations of the ratifying or acceding State or the rights of States parties to the convention or agreement would have to be considered as a reservation; statements which do not have this effect would be treated as declarations.

*Inter-Governmental Maritime Consultative Organization.* Up to now, no distinction has been made.

*International Atomic Energy Agency.* No practice.

*Organization of American States.* Yes.

*United Nations Educational, Scientific and Cultural Organization.* A distinction is made in UNESCO practice between a reservation and a declaration.

*World Health Organization.* No.

*Question 5.* If a different procedure is followed according to whether a statement is deemed to constitute a reservation or merely a declaration:

- (a) Do you accept the characterization of the State submitting the statement or do you make the necessary determination, for the purposes of depositary procedures, according to the content or effect of the statement, whether it constitutes a reservation?
- (b) If the latter,
  - (i) Do you first consult the State submitting the statement as to its reasons for considering it a declaration rather than a reservation (or vice versa)?
  - (ii) What criteria do you apply in testing whether a statement is a reservation or merely a declaration?

*Dominican Republic.* A declaration does not necessarily constitute a reservation, but a reservation may be explicitly set out in a declaration.

(a) The fact that a State submits a declaration on a particular point does not imply acceptance of the views it expresses; as a unilateral act, such a declaration is subject to any appropriate comments which may be made by the other States.

(b) (i) The submitting State is consulted only where there is some doubt as to the declaratory character of a statement.

<sup>27</sup> United Nations, *Treaty Series*, vol. 97, p. 31.

<sup>28</sup> *Yearbook of the International Law Commission*, 1962, vol. II, p. 161.

<sup>29</sup> League of Nations, *Treaty Series*, vol. CXXXVII, p. 39.

<sup>30</sup> United Nations, *Treaty Series*, vol. 478, p. 373.

(ii) The criterion applied is that a statement simply declares the position of a State regarding a clause or convention which it may or may not intend to accept, while a reservation explicitly expresses the non-acceptance of a clause or provision of a convention which the State in question intends to sign or ratify.

*Netherlands.* (a) The Netherlands Government accepts the "characterization of the State submitting the statement", unless this statement evidently would be contrary to one of the two conceptions meant in the answer to question 4.

(b) (i) No (in the few cases that this situation presented itself).

(ii) See answer to question 4.

*United Kingdom of Great Britain and Northern Ireland.* In so far as multilateral conventions for which the Government of the United Kingdom of Great Britain and Northern Ireland act as depositary are concerned, the sole occasion since 1945 on which a dispute of this kind has arisen was in connexion with the International Sugar Agreement of 1958.<sup>81</sup> The matter was referred to the International Sugar Council for a decision on whether the statement constituted a reservation or a declaration for the purposes of article 45 (3) of the Agreement.

*United States of America.* (a) The content or effect of the statement is considered to be of prime importance. If, despite the designation as a "statement" or "declaration", it appears that it has the actual character and effect of a reservation, the United States Government as depositary would feel obliged to treat it as a reservation, at least tentatively, and to act accordingly.

(b) (i) Ordinarily, the United States Government would first consult with the State submitting the statement in order to clarify the situation and to obtain an explanation from such State.

(ii) It is understood by the United States Government that the term "reservation" means, according to general international usage, a formal declaration by a State, when signing, ratifying, or adhering to a treaty, which modifies or limits the substantive effect of one or more of the treaty provisions as between the reserving State and each of the other States parties to the treaty. A true reservation is a statement asserting specific conditions of a character which (if the reserving State becomes a party to the treaty) effectively qualify or modify the application of the treaty in the relations between the reserving States and other States parties to the treaty. If the statement does not effectually change in some way, either by expanding or diminishing the treaty provisions, the application of the treaty between the reserving States and other States parties thereto, then it is questionable whether it is a true reservation even though it may be designated a "reservation". The terms "understanding", "declaration", or "statement" may be used to designate a statement which may or may not be a true reservation. More properly, "understanding" is used to designate a statement when it is not intended to modify or limit any of the provisions of the treaty in its international opera-

tion, but is intended merely to clarify or explain or to deal with some matter incidental to the operation of the treaty in a manner other than a substantive reservation. Sometimes an understanding is no more than a statement of policies or principles or perhaps an indication of internal procedures for carrying out provisions of the treaty. The terms "declaration" and "statement" when used as the descriptive terms are used most often when it is considered essential or desirable to give notice of certain matters of policy or principle, but without any intention of derogating in any way from the substantive rights or obligations as stipulated in the treaty. As a general rule, it is considered necessary, in the case of any instrument of ratification, adherence or acceptance embodying any of the above-mentioned types of statement, that the other State or States concerned be notified thereof and be given an opportunity to comment. If the statement is designated a "reservation" but is not a true reservation, the notification to the other State or States may be accompanied by an explanatory statement designed to emphasize the fact that no actual modification or limitation of the treaty provisions is intended.

*Council of Europe.* (a) Yes, concerning the second part of the question.

(b) (i) No (in the practice of the Council of Europe the question has never been raised because the statements concerned have always been sufficiently clear).

(ii) The contents.

*Food and Agriculture Organization of the United Nations.* The determination by the Director-General would be necessary in all cases where the "standard" reservation clause required under paragraph 10 of the Principles mentioned in the answer to question 1 has been incorporated into a convention or agreement because the further procedure prescribed in these cases depends on this determination. In making a determination the Director-General would not necessarily consider himself bound by the characterization given to the statement by the State which submitted it.

*General Agreement on Tariffs and Trade.* In those very few instances where a signature was accompanied by a reservation, the statement of the signatory State as to its precise characterization was accepted.

*Inter-Governmental Maritime Consultative Organization.* Inapplicable.

*Organization of American States.* (a) The Pan American Union makes the determination, in consultation with State submitting the statement.

(b) (i) Yes.

(ii) If the text of the statement would modify the obligations of the parties, it is a reservation; if not, it is a declaration.

*United Nations Educational, Scientific and Cultural Organization.* This situation arose in only two instances, which are described below. In both cases the determination was an obvious one. The first instance involved declarations made at the time of signature and are described under question 6 below. The second instance, involving a reservation made at the time of ratification, is described under

<sup>81</sup> United Nations, *Treaty Series*, vol. 385, p. 138.

question 11 below. In the second case, the words "*sous réserve que...*" appeared in the text of the instrument of ratification and the contents of the instrument clearly implied a restriction in the application of the agreement concerned. The Government having tendered the instrument of ratification for deposit was accordingly informed by the Director-General that the said instrument was considered as containing a reservation the text of which the Director-General proposed to communicate to all interested States.

*World Health Organization.* Not relevant.

#### C—RESERVATIONS UPON SIGNATURE<sup>32</sup>

*Question 6. When a State indicates a desire to sign a convention subject to a reservation which is not expressly permitted by the text of the Convention or otherwise already accepted,*

- (a) *Do you receive the signature, or*
- (b) *Before doing so, do you consult the interested States, and if so which ones?*

*Canada.* At the time of the signature of the Acts of the XIVth Congress of the Universal Postal Union (1957),<sup>33</sup> one State signed with a reservation, and another State signed with a declaration that it did not accept the reservation.

*Dominican Republic.* (a) The signature is not received.

(b) Before it is received, the interested States, i.e. the States which drafted the convention, are consulted.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* In so far as multilateral conventions for which the Government of the United Kingdom act as depositary are concerned, there has been no occasion since 1945 on which a State has indicated a desire to sign a convention subject to a reservation not expressly permitted by the text of the convention or not otherwise already accepted.

*United States of America.* Unless a reservation is clearly excluded by the terms of the convention, the United States Government as depositary considers that it would have no competence to deny a State the right to sign the convention subject to such reservation as that State may deem necessary for its purposes.

(b) Ordinarily it would be considered unnecessary and undesirable for the depositary to consult any of the interested States regarding a contemplated reservation. If, in any case, it were considered desirable to consult with them, the United States Government as depositary would be inclined to consult all of them, including not only those (if any) which had previously deposited instruments but also all those which had participated in formulating the convention. This might, for example, be done in a case where there is a question whether a prospective reservation

is or is not actually excluded by the terms of the convention.

*Council of Europe.* (a) The question has never been raised in the practice of the Council of Europe.

(b) The question has never been raised in the practice of the Council of Europe.

*Food and Agriculture Organization of the United Nations.* The problem raised in this question is unlikely to arise in future in view of the fact that reservations may be accepted only subject to the conditions and in accordance with the procedures set forth in the FAO Principles referred to in the answer to question 1. There has, however, been one instance in the past where a reservation was made upon signature. When signing the International Plant Protection Convention, 1951,<sup>34</sup> the representative of the Government of Egypt inserted the following before his signature, without giving any advance notice of the intention of doing so: "On account of the fact that the Royal Egyptian Government does not acknowledge and has not up till now acknowledged the existence of Israel, my signature to this Convention does not bind my Government by any means to Israel and has been allowed with all rights reserved in this connection". Bearing in mind, on the one hand, that this statement might be regarded as a reservation in relation to another contracting party (Israel) and, on the other, that the Convention did not contain any provision with respect to reservations, FAO immediately communicated the statement to the Government of Israel and received from that Government the following declaration: "The Government of Israel has noted the political character of the statement made by the Egyptian Government on the occasion of the signing of the International Plant Protection Convention. In the view of the Government of Israel this Convention, which is of a purely technical character, is not the proper place for the making of such political pronouncements. The Government of Israel will, in so far as concerns the operation of the Convention, adopt towards the Government of Egypt an attitude of complete reciprocity." The statement by the Egyptian Government was reproduced in the certified photostatic copies of the Convention which were circulated to all signatory Governments together with a copy of the declaration by the Government of Israel.

*General Agreement on Tariffs and Trade.* When a GATT instrument has been signed with a reservation, in most cases the terms of the reservation have subsequently been communicated to all contracting parties to the General Agreement irrespective of whether they had accepted or not accepted the instrument concerned, thereby giving them adequate opportunity to take any appropriate action with respect thereto.

*Inter-Governmental Maritime Consultative Organization.*

(a) The signature has been received by the Secretary-General (three cases have arisen).

(b) No.

*Organization of American States.* (a) Yes. (b) No.

*United Nations Educational, Scientific and Cultural Organization.* There has been no instance of a State indicating

<sup>32</sup> A list of the States and organizations which informed the Secretary-General that no reservations have ever been submitted to any of the Conventions of which they are the depositaries is given in paragraph 6 of the Introduction.

<sup>33</sup> United Nations, *Treaty Series*, vol. 364, p. 3.

<sup>34</sup> *Ibid.*, vol. 150, p. 67.

a desire to sign a convention subject to a reservation. However, at the time of the signature of the Convention for the Protection of Cultural Property in the Event of Armed Conflict<sup>35</sup> and of the Final Act of the Conference at which the signature took place, the Byelorussian SSR, the Ukrainian SSR and the USSR made declarations which were reproduced in the minutes of the Conference. The signature of the representatives of these three States under the Final Act and the Convention are preceded by the mention "With attached declaration". These declarations were transmitted to the Secretary-General of the United Nations and were registered with the Secretariat. The texts of these declarations are reproduced in the United Nations, *Treaty Series*, vol. 249, pp. 231 and 356.

*Universal Postal Union.* The UPU Congress of London, 1929, included in the records of its meetings a statement to the effect that reservations constituting derogations from the stipulations of the Convention should take effect only if they had been accepted and incorporated in the Final Protocol [Documents of the London Congress, volume II, page 155 (French text)].<sup>36</sup> This statement concerns reservations made at the time of signature of the Acts and constituting derogations from the stipulations of the Convention. In practice, most of the reservations to the UPU Acts are made in this form. Since they are of a purely technical nature, they give rise to no difficulty and hence call for no special comment. It rarely happens that signature of the Acts is accompanied by reservations, which in that case are merely political statements. Two such cases may be quoted—one at the Ottawa Congress, 1957, and the other at the Brussels Congress, 1952 [see Documents of the Ottawa Congress, volume III, page 40 (French text), and Documents of the Brussels Congress, volume III, page 50 (French text)].<sup>37</sup>

*World Health Organization.* The question is not relevant, because the texts prepared by WHO (The Regulations regarding Nomenclature with respect to Diseases and Causes of Death<sup>38</sup> and the Additional Regulations,<sup>39</sup> and the International Sanitary Regulations<sup>40</sup>) make formal provision for the possibility of reservations.

*Question 7. When a signature is accompanied by a reservation, have you a fixed procedure for establishing the terms of the reservation:*

- (a) *By inscription on the face of the convention at the place of signature;*
- (b) *By inclusion in a formal procès-verbal or in the final act of a conference;*
- (c) *By accompanying letter from the signatory State, the terms of which are then notified to interested States?*

<sup>35</sup> *Ibid.*, vol. 249, p. 215.

<sup>36</sup> Bureau international de l'Union Postale Universelle, Berne, 1929.

<sup>37</sup> Bureau international de l'Union Postale Universelle, Berne, 1958 and 1952 respectively.

<sup>38</sup> See *Manual of the International Statistical Classification of Diseases, Injuries and Causes of Death* (World Health Organization, Geneva, 1948), vol. 1.

<sup>39</sup> See *Official Records of the World Health Organization*, No. 71, Geneva, 1956, p. 424.

<sup>40</sup> World Health Organization, Geneva, 1961.

*Canada.* In both the case of the XIVth Congress of the Universal Postal Union (1957)<sup>41</sup> and the North American Regional Broadcasting Agreement (1950),<sup>42</sup> the signatories executed final protocols incorporating what would presumably have otherwise been entered as reservations to the signature of the primary instruments. The final protocol of the NARBA states:

"At the time of signing the North American Regional Broadcasting Agreement, Washington, D.C. (1950) the undersigned Plenipotentiaries take note of the following reservations...".

The fact that these final protocols were signed by the States signing the primary instruments would seem to constitute acceptance by them of the reservations.

*Dominican Republic.* The terms of the reservations are inscribed on the inscription sheet at the place of signature.

*Luxembourg.* Thus far, only the Government of Luxembourg has taken advantage of the provisions of article 29 of the Statute of the European School [see reply of Luxembourg to question 1]. Its reservation is set forth in a protocol of signature of which the other parties took note at the time of signature.

*Netherlands.* The procedures (a), (b) or (c) depend on the desire of the State wishing to make a reservation:

- (a) Yes, if technically possible;
- (b) Yes, if a *procès-verbal* of signature is provided for in the treaty concerned, is desired by the State making the reservation, or is customary with the depositary;
- (c) Yes, if this is actually the case.

*United Kingdom of Great Britain and Northern Ireland.* The Government of the United Kingdom of Great Britain and Northern Ireland has no fixed procedure. Where a choice has to be made between methods (a) and (c), method (a) is preferred for reservations expressly permitted by the text of the convention or otherwise already accepted.

*United States of America.* This depends, in general, on the terms of the convention. No fixed procedure could be valid as against any clear provision of the convention to the contrary. Generally, however, where there is nothing to the contrary in the convention to govern the matter:

(a) Inscription on the face of the convention at the place for signature is considered appropriate. This is the simplest and perhaps the best procedure in the case of a convention which has been left open for signature during a period after the adjournment of the conference at which the convention was drawn up. This would be permitted unless a different procedure has been agreed upon by those States concerned, in such a way that the intent of those States in this respect is known to the depositary.

(b) The United States Government as depositary does not favour the formal *procès-verbal* procedure for this purpose unless it is clearly provided for by the convention. So far as the final act of a conference is concerned, it is difficult to perceive the relevance of this in regard to the performance of functions by the United States Govern-

<sup>41</sup> United Nations, *Treaty Series*, vol. 364, p. 3.

<sup>42</sup> *Treaties and other International Acts Series 4460*, Washington, D.C., Department of State, 1950.

ment as depositary after the close of the conference and in regard to signatures affixed thereafter. In general, it is considered that the designation "Final Act" is most appropriately used for a document which has essentially the character of minutes of a meeting, indicating when and where the conference was held, which States were represented, who represented them, and a summation or outline of the actions taken. Texts of conventions or other agreements formulated at the conference should be annexed to such "Final Act". Sometimes the conventions or other agreements formulated at the conference are referred to as final acts of the conference. In a broad sense, this is correct. If, however, a convention is drawn up as a separate document for signature at the conference or thereafter, it is more precise to refer to it as the "Convention" and not as the "Final Act". If such a convention is to be signed during, or at the closing session of the conference, a procedure often followed for setting forth or establishing the terms of reservations is to give the texts thereof in a "Protocol of Signature". It would appear that the conference itself would determine the "procedure for establishing the terms of the reservation" in such a situation. This would not be left for determination by the depositary. If, on the other hand, the depositary is given the responsibility for receiving signatures after the close of the conference, then the United States Government, so far as its depositary procedures are concerned, would not itself draw up a "Final Act" for reservations.

(c) The United States Government as depositary does not, as a rule, consider it appropriate for reservations to be set forth merely in a letter or note accompanying an instrument of ratification, acceptance, adherence, or accession. If the instrument is to be qualified by a reservation, it is considered that the reservation should be embodied in the instrument itself. A declaration, understanding, or other statement not constituting an actual reservation may, of course, be set forth in an accompanying letter or note, the text thereof then being notified to interested States at the same time they are notified regarding the deposit of the formal instrument.

*Council of Europe.* If the reservation is communicated beforehand, by inscription above the signature; if the reservation is made on receiving the signature, by a written statement signed by the representative of the State concerned.

*Food and Agriculture Organization of the United Nations.* No fixed procedure as envisaged in this question has been so far adopted by FAO.

*General Agreement on Tariffs and Trade.* In the very few instances where a signature was accompanied by a reservation, the terms of the reservation were established by inscription on the face of the instrument at the place of signature.

*Inter-Governmental Maritime Consultative Organization.*  
(a) The reservation accompanies the signature.

*Organization of American States.* No.

*United Nations Educational, Scientific and Cultural Organization.* No practice.

*Universal Postal Union.* Reservations made at the time of signature of the Acts of UPU Congresses are incorporated in the Final Protocols of the Congresses (see reply to question 6).

*World Health Organization.* As a general rule, States put forward their reservations in their letters informing WHO of their acceptance of the Regulations.

*Question 8.* At what point of time do you notify interested States of the terms of the reservation:

(a) Before receiving the signature (as under 6 (b) above);

(b) On receiving the signature;

(c) Only on circulating a certified true copy of the convention;

(d) Only when the reservation is confirmed by or upon ratification?

*Canada.* After one State signed the Acts of the XIVth Congress of the Universal Postal Union with a reservation, and another State signed with a declaration that it did not accept the reservation, certified copies of the Acts of the Congress, including the reservation and the declaration, were circulated to all States and territories attending the Congress.

*Dominican Republic.* Before receiving the signature.

*Netherlands.* (a) No;

(b) Yes, in case of treaties which are open for signature for an indefinite period of time;

(c) Yes, in case of treaties which have only one specific date for signature;

(d) No.

*United Kingdom of Great Britain and Northern Ireland.* The Government of the United Kingdom of Great Britain and Northern Ireland notify interested States of the terms of a reservation expressly permitted by the text of the convention concerned, or otherwise already accepted, as soon as the signature and reservation have been received. As regards reservations not expressly permitted by the text of the convention or not otherwise already accepted, see answer to question 6.

*United States of America.* Probably the only fixed rule with respect to the timing of notifications to interested States, so far as the exercise of depositary functions by the United States Government is concerned, is that notifications will be sent as soon as practicable after the actions to which they relate have been taken. More specifically:

(a) In the absence of extraordinary circumstances, the United States Government as depositary would consider that it had no responsibility or obligation to send official notifications to the interested States concerning the terms of a reservation before that reservation is actually made. If the reservation is to be inscribed at the place of signature or is otherwise to accompany signature of the convention, the United States Government as depositary would ordinarily await the affixing of the signature and the concurrent making of the reservation before undertaking to notify interested States thereof. It is conceivable, however, that in its capacity as depositary the United States Government might, at the request of a State which plans to sign

the convention subject to a reservation, communicate the text of the proposed reservation to interested States in order to obtain their views as a guide to the would-be reserving State in determining its course of action.

(b) As indicated above, the United States Government as depositary ordinarily would notify interested States of the terms of a reservation which accompanies a signature after such signature, subject to reservation, has been affixed. The timing of such notification will vary according to the circumstances; the situation in the case of a convention or other agreement which remains open for signature indefinitely will be different from that in the case of a convention or other agreement which remains open for signature during a specified limited period. For example, notifications regarding additional signatures are sent as soon as practicable after the respective signatures have been affixed. If any signature were accompanied by a reservation or other statement, the terms of the reservation or other statement would be set forth in the notification regarding signature. If, however, the United States Government were charged with the responsibility as depositary for a convention which is to be open for signature during a specified period, it would be considered, as a general rule, that the depositary will have fulfilled its responsibility if it awaits the closing date for signature of the convention and, as soon as practicable thereafter, transmits to the interested States certified true copies of the convention showing all signatures together with such reservations or other statements as may have been inscribed thereon.

(c) As indicated above, the transmission of certified true copies of a convention which has been open for signature during a specified period, such copies showing all signatures which were affixed and all reservations or other statements accompanying the signatures, will be considered, as a rule, as having fulfilled the depositary responsibility in this respect. If the convention remains open for other States to become parties, by adherence or accession, the United States Government as depositary will, of course, notify interested States of each instrument of adherence or accession deposited (including information regarding any reservation or other statement contained in or accompanying such instrument). Any such adhering or acceding State, if it has not already received a certified true copy of the convention, will be furnished such a copy together with an up-to-date status list showing all signatories and dates of their respective signatures, and showing dates of definitive actions taken by signatories and other States to become parties to the convention, together with information regarding reservations or other statements accompanying signature or the deposited instrument.

(d) As indicated above, it is considered that the interested States should, as a rule, be informed of the terms of a reservation which accompanies the signature of a convention as soon as practicable after such signature has been affixed. A long period may elapse between the date of such signature and the deposit of an instrument of ratification by the reserving State. When the reservation is confirmed by or upon ratification, that fact should be communicated to the interested States as soon as practicable after the receipt of the instrument of ratification

containing the reservation, together with information as to whether or not the instrument has been accepted for deposit.

*Council of Europe.* Only on circulating a certified true copy of the convention.

*Food and Agriculture Organization of the United Nations.* There has been only one case of a reservation made at the time of signature; the procedure followed on that occasion is described in the answer to question 6. Should any similar cases arise in future it will be the policy of FAO to communicate the reservation immediately to all signatory Governments and thereafter to any Governments which may subsequently sign or adhere to the convention or agreement.

*General Agreement on Tariffs and Trade.* See reply to question 6.

*Inter-Governmental Maritime Consultative Organization.* (c) By circularizing the true certified copy of the Convention (and of the Final Act of the Conference which adopted it).

*Organization of American States.* States are notified when reservation is made, but consulted only if included in ratification.

*United Nations Educational, Scientific and Cultural Organization.* No practice.

*World Health Organization.* In the case of the Regulations regarding Nomenclature, upon receipt of the text of the reservation at Headquarters, by means of a letter to all member States informing them of its terms. In the case of the International Sanitary Regulations, upon the entry into force of the Regulations with respect to the State concerned, by means of a notice inserted in the *Weekly Epidemiological Record*.

*Question 9.* Is a distinction made under 8 above according to whether all interested States had effective notice of the terms of all reservations at the time of the adoption of the convention or, on the other hand, if further signatures are authorized and received subsequent to the closing of the conference adopting the convention?

*Dominican Republic.* Failing any provision to the contrary in the convention, further signatures may be authorized and received after the closing of the conference adopting the convention, in accordance with the latter's terms.

*Netherlands.* Yes: see answer to question 8 (b) and (c).

*United Kingdom of Great Britain and Northern Ireland.* No.

*United States of America.* If the signatures to a convention are affixed at the conference at which the convention was adopted, it can be assumed that the States participating in the conference have had effective notice of the terms of reservations accompanying the signatures. It is taken for granted that, after the closing of the conference, the depositary will prepare and transmit to the interested States certified true copies of the convention showing all signatures and accompanying reservations. It would seem to be unnecessary, in such a case, for the depositary to

send any special notification in regard to the terms of reservations. If further signatures are authorized and received subsequent to the closing of the conference at which the convention was adopted and originally signed, it is incumbent upon the depositary to notify the interested States with respect to each additional signature and with respect to any reservation accompanying such signature.

*Council of Europe.* No distinction is made.

*Food and Agriculture Organization of the United Nations.* Those conventions and agreements concluded under the auspices of FAO which are subject to signature, remain open for signature not only during the session of the conference which adopted it but also for a period (specified in the international instrument) after the closing of the session. The procedure of communicating reservations made by one signatory to the other signatories is described in the answer to question 8.

*Inter-Governmental Maritime Consultative Organization.* In this specific case, the Convention was open to signature by States for a period of one month from the date of its adoption. It was during this period that the reservations (or declarations) were formulated with the signature. The circularizing of the true copies took place after the expiry of this period, and they therefore contain the text of these reservations or declarations.

*Organization of American States.* No.

*United Nations Educational, Scientific and Cultural Organization.* No practice.

*World Health Organization.* In the case of the International Sanitary Regulations, States members of WHO had nine months from the date of notification in which to formulate reservations; these were brought to the notice of States by the procedure described in the second part of the answer to question 8. States which have become members of WHO since the adoption of the Regulations have three months in which to formulate reservations, which are notified as indicated above. In the case of the Regulations regarding Nomenclature, States members of WHO had twelve months (nine months for the Supplementary Regulations) in which to formulate reservations, and at the end of this period a circular letter giving the positions of the different States and the nature of the reservations was sent to each of them. States which have become members of the Organization since the adoption of the Regulations have also had twelve and nine months respectively in which to formulate reservations, and at the end of the appropriate period the other States have been notified by letter in accordance with the procedure described in the first part of the answer to question 8.

*Question 10.* Have you a practice or understanding as to the force and effect of a reservation made on signature but not reiterated in the instrument of ratification—i.e., whether it is deemed to have been abandoned or continuous in effect even though not expressly confirmed on ratification?

*Dominican Republic.* A reservation which is not reiterated in the instrument of ratification is regarded as not having been made.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* No.

*United States of America.* It would seem to be advisable to suggest an absolute rule to be applied with respect to the force and effect of a reservation made on signature but not reiterated in the instrument of ratification. As a matter of practice, of course, there are certain general principles that can be applied. In general, it is desirable, in the case of a reservation accompanying signature, for that reservation to be confirmed by and reiterated in the instrument of ratification if it is the intention of the reserving State that such reservation continue in effect. Depending upon the content of that reservation and the circumstances in the particular case, it may be inferred that failure to reiterate the reservation in the instrument of ratification evidences an intent to withdraw the reservation and not have it continue in effect. Considering that the deposit of the instrument of ratification is the definitive act by which the State becomes a party to the convention, any reservation which it intends to make should be embodied in that instrument. If the convention is subject to ratification, the signature is not definitive and ordinarily means nothing except as an indication of the State's interest in the convention and an intention to give it appropriate consideration with a view to becoming a party. If the reservation is set forth in a "Protocol of Signature" or other like document accompanying the signature of the convention, and if the State making the reservation deposits an instrument of ratification covering both the convention and the "Protocol of Signature" without specific reference in the instrument to the reservation, it is to be inferred that this has the effect of reiterating the reservation. It may occur that after signature the reserving State decides that the reservation which it made upon signature should be revised or modified, in which case the reservation in its revised or modified terms should be embodied in the instrument of ratification, thus replacing the reservation made at the time of signature.

*Council of Europe.* According to the Council of Europe practice, even if not expressly confirmed on ratification, the reservation is considered to have a continuous effect.

*Food and Agriculture Organization of the United Nations.* The Director-General considers it to be normal practice that a State which made a reservation on signing an international instrument should repeat or refer to such reservation in its instrument of ratification. He would be inclined to construe a ratification not accompanied by any reference to a reservation made at the time of signing as constituting an implicit withdrawal of such reservation, in accordance with a conclusion adopted by the International Law Commission in the report covering the work of its third session.<sup>43</sup>

*Inter-Governmental Maritime Consultative Organization.* The Secretary-General has not yet had to adopt a definite position regarding this question, though the case may arise.

<sup>43</sup> See *Yearbook of the International Law Commission, 1951*, vol. II, document A/1858, para. 34 (5).

In any event, would the adoption of a position not be in conflict with General Assembly resolution 598 (VI) of 12 January 1952, which in paragraph 3 (b) (i) provides that the depositary shall not pass judgement on the legal effects of reservations or declarations?

*Organization of American States.* The instrument of ratification normally reiterates or abandons a reservation made at the time of signing. If the ratification is silent, the secretariat consults the depositing Government to ascertain its intention.

*United Nations Educational, Scientific and Cultural Organization.* No practice.

*World Health Organization.* Not relevant.

#### D—RESERVATIONS UPON RATIFICATION OR ACCESSION<sup>44</sup>

*Question 11.* When an instrument of ratification, accession or acceptance is accompanied by a reservation which is not expressly permitted or prohibited by the text of the convention and not otherwise already accepted:

(a) Do you receive the instrument for definitive deposit; or

(b) Do you treat the instrument as having been tendered for deposit pending consultation with the interested States regarding the reservation?

*Dominican Republic.* The Dominican Republic treats the instrument as having been tendered for deposit pending consultation with the interested States regarding the reservation.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* In so far as multilateral conventions for which the Government of the United Kingdom of Great Britain and Northern Ireland act as depositary are concerned, the sole occasion since 1945 on which an instrument of ratification, accession or acceptance was accompanied by a reservation not expressly permitted or prohibited by the text of the convention concerned and not otherwise already accepted, was the occasion of the deposit of an instrument of accession to the International Sugar Agreement of 1958.<sup>45</sup> The instrument of accession contained a reservation which could have been said to have fallen within the provisions of either paragraph (2) or paragraph (3) of article 45 of the Agreement. The instrument of accession was received for deposit, but the accession was regarded to have only provisional effect, pending further consideration of the reservation by the International Sugar Council.

*United States of America.* When the United States Government serves as depositary for an international convention, it undertakes to follow rules and procedures most generally applied internationally. In some cases those rules and procedures clearly apply in the particular circumstances. In some cases, their application is not so clear. With reference to the questions pertaining to an

instrument of ratification, accession, or acceptance accompanied by a reservation which is not expressly permitted or prohibited by the text of the convention and not otherwise already accepted (bearing in mind that we are here dealing only with what is strictly a reservation):

(a) The United States Government as depositary ordinarily considers that it cannot immediately accept the instrument for definitive deposit. It may, of course, receive the document, deferring a determination with respect to definitive deposit until appropriate steps have been taken to resolve any question concerning the acceptability of the reservation.

(b) In general, the instrument in such a case is treated as having been tendered for deposit pending consultation with the interested States regarding the reservation.

*Council of Europe.* The question has never been raised in the practice of the Council of Europe.

*Food and Agriculture Organization of the United Nations.* An instrument of ratification, accession or acceptance which is accompanied by a reservation is treated as having been tendered for deposit pending consultation with the interested States in accordance with paragraph 10 of the FAO Principles mentioned in the answer to question 1.

*Inter-Governmental Maritime Consultative Organization.* Instruments of acceptance were received in such a case (accompanied by both declarations and reservations). In accordance with General Assembly resolution 598 (VI) the Secretary-General circularized the acceptance to the States concerned, leaving it to each State to draw legal consequences from such communications.

*Organization of American States.* The answer is (b).

*United Nations Educational, Scientific and Cultural Organization.* Only one instance of a reservation accompanying an instrument of ratification, accession or acceptance can be found in the experience of UNESCO. The instrument of ratification by Norway of the Convention and of the Protocol for the Protection of Cultural Property in the Event of Armed Conflict<sup>46</sup> contained a reservation concerning the Protocol. The Director-General acknowledged receipt of the instrument as having been tendered for deposit. He also informed the Government that he intended to communicate the reservation of Norway to the interested States "*à qui il appartient de faire connaître l'attitude qu'ils entendent adopter à l'égard de celle-ci*".

*Universa Postal Union.* The decision taken by the London Congress in 1929 (see reply to question 6) has never been interpreted as prohibiting reservations at the time of ratification. For that reason the ratification of the UPU Acts is equally often accompanied by reservations or political statements.

*World Health Organization.* In the case of the Regulations regarding Nomenclature, a State is considered to be definitively bound from the date on which its declaration is received at Headquarters. In the case of the Sanitary Regulations, it is necessary to await the World Health Assembly's decision.

<sup>44</sup> A list of the States and organizations which informed the Secretary-General that no reservations have ever been submitted to any of the Conventions of which they are the depositaries is given in paragraph 6 of the introduction.

<sup>45</sup> United Nations, *Treaty Series*, vol. 385, p. 138.

<sup>46</sup> *Ibid.*, vol. 249, p. 216.

*Question 12. In notifying the interested States of the receipt of the instrument:*

(a) *Do you merely communicate the text of the reservation; or*

(b) *Do you request the interested States to inform you of their attitude towards the reservation; or*

(c) *Do you merely communicate to some States, and ask the attitudes of others?*

*Canada.* In respect of the Acts of the XIVth Congress of the Universal Postal Union (1957) three States entered reservations at the time of ratification which had not been entered at the time of signature. These were circulated without comment by the depositary, in the *procès-verbal* of deposit of the instrument of ratification.

At the time of signature of the North American Regional Broadcasting Agreement (1950),<sup>47</sup> no reservations were made on signature, but at the time of ratification one State entered a reservation. No comments were received by the depositary concerning this reservation which was circulated as a part of the instrument of ratification.

*Dominican Republic.* The interested States are requested to inform of their attitude towards the reservation.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* The Government of the United Kingdom of Great Britain and Northern Ireland merely notify interested States of the terms of a reservation expressly permitted by the text of the convention concerned or otherwise already accepted. As regards reservations not expressly permitted by the terms of the convention or not otherwise already accepted, see answer to question 11.

*United States of America.* The customary procedure of the United States Government, acting as depositary, is to notify the interested States of the fact that the instrument containing the reservation has been tendered for deposit, communicating to them the text of the reservation, and usually requesting a statement from each of the interested States as to its attitude with respect to the reservation.

*Council of Europe.* The Council of Europe only communicates the text (the question of conformity has never been raised in the Council of Europe practice).

*Food and Agriculture Organization of the United Nations.* The Director-General is required to notify all signatory acceding and accepting Governments of all reservations. However, only certain Governments will be requested to indicate their attitude (see answer to question 13 (a)).

*Inter-Governmental Maritime Consultative Organization.* (a) Yes.

*Organization of American States.* The answer is (b).

*United Nations Educational, Scientific and Cultural Organization.* In notifying the interested States of the receipt of the instrument mentioned in the answer to question 11, the Director-General communicated the full text, in the original language, of the instrument of ratification containing the reservation. The Director-General states that

he had informed the Government concerned that he intended to communicate the reservation to the interested States "à qui il appartient de faire connaître les conséquences juridiques qu'ils entendent en tirer", and that he would duly transmit to the Government concerned and to all the other interested States any observations which might be made in the matter.

*Universal Postal Union.* As a general rule, the depositary of the UPU Acts communicates reservations or statements made upon ratification, together with any objections on the part of Governments of member-Countries of the Union, by diplomatic note. The International Bureau of UPU reproduces these communications for the benefit of the Administrations of member-Countries in its circulars, as far as is necessary for the application of the provisions of the Union's Acts. Consequently, the Bureau refrains from publishing notes of a purely political nature not in conformity with the communications of an administrative nature for which the International Bureau is responsible.

As regards reservations made at the time of accession to the Agreements, it should be noted that provision is made for a special procedure when a member-Country expresses, outside Congress, a desire to accede to the Agreement concerning postal parcels and asks to be allowed to collect exceptional outward and inward rates on a higher scale than that authorized by article 15 of the Agreement (see article 45, paragraph 2, of the Ottawa Agreement, 1957).<sup>48</sup> The International Bureau submits such a request to all the member-Countries signatory to the Agreement. If, within a period of six months, more than one-third of these member-Countries do not pronounce against the request, it is considered to be admitted. Reservations of this nature are thus subject to an administrative procedure, whereas accession to the Agreement to which such reservation applies is notified by the diplomatic channel.

As to the other reservations that accompany the instruments of accession to Agreements, they are derogations from the technical provisions already applying to many other countries and contained in the Final Protocol to the Union's Agreements. It is mainly the new member-Countries which, on accession, maintain the application of reservations that were already in force in their territories before they became independent.

*World Health Organization.* The text of the reservation is merely communicated.

*Question 13. If 12 (b) or 12 (c) above is answered in the affirmative:*

(a) *To which States do you address such a request:*

(i) *All States eligible to become parties to the convention;*

(ii) *Signatory States; or*

(iii) *States which have deposited their instruments of ratification, accession or acceptance?*

(b) *What time-limit, if any, do you set in the notification within which the States should inform you of their attitude, and how is any such time-limit determined?*

<sup>47</sup> *Treaties and other International Acts Series 4460*, Washington, D.C., Department of State, 1950.

<sup>48</sup> United Nations, *Treaty Series*, vol. 365, p. 130.

- (c) *Do you consider a State which has not replied within the prescribed time-limit as having consented to the reservation?*
- (d) *If no objections are received within the prescribed time-limit, do you receive the instrument for definitive deposit and inform the interested States accordingly?*

*Dominican Republic.* (a) Such a request is addressed to the signatory States.

(b) One year is regarded as the time-limit within which States should indicate their attitude towards the reservation made by another State. This period is counted from the time of notification. If on the expiration of one year after having been notified of a reservation the consulted State has not commented on the reservation, it is regarded as not having objected.

(c) Yes.

(d) Yes.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* The Government of the United Kingdom of Great Britain and Northern Ireland have not yet experienced such a problem in carrying out the functions of depositary for a multilateral convention.

*United States of America.* Having in mind that question 12 (b) has been answered in the affirmative, from the standpoint of customary procedure:

(a) In the case of a convention which has been signed and is no longer open for signature, the United States Government as depositary addresses its notification to all signatory States and to States which have deposited instruments of adherence or accession pursuant to the terms of the convention. If a particular State is not a signatory and has not deposited an instrument of adherence or accession, but is specifically designated in the convention as being a State eligible to become a party (as, for example, where it is named in an annex to the convention), the notification will be sent also to such State. If the convention is merely left open, in general terms, for adherence or accession by non-signatories, so that theoretically all States may be eligible to become parties, the United States Government as depositary does not consider that it is obliged to notify *all* States simply because of such eligibility. It may address the notification to all States which participated in the conference at which the convention was adopted, whether or not they became signatories or deposited an instrument.

(b) The United States Government as depositary does not consider, unless it finds authority therefor in the terms of the convention, that it has the authority to fix a time-limit within which the States must inform it of their attitude toward the reservation. If, for extraordinary reasons, it appears to be necessary to expedite the responses, the notification may point out the necessity for receiving prompt responses and urge the States to take prompt action in this respect.

(c) If a time-limit were made necessary by the terms of the convention, it would be considered that a State which had not replied within the prescribed time-limit had impliedly consented to the reservation. Ordinarily, how-

ever, there is no prescribed time-limit. It may be necessary, in a case where there has elapsed a long period of time, to consider that a State which has not replied had impliedly consented to the reservation; for example, if, in accordance with the terms of a convention, a reserving State has become a party by virtue of acceptance of its reservation by a prescribed number or percentage of States parties, and one or more of the States parties have not replied during a long period, the convention meanwhile being given effect between such State or States and the reserving State, it may be assumed that the State or States which had not replied had impliedly consented to the reservation. It is difficult to lay down any absolute rules in regard to this matter.

(d) If a time-limit were made necessary by the terms of the convention, it would be considered that, if no objections are received within the prescribed time-limit, the instrument containing the reservation should be treated as having been definitively deposited and the interested States would be informed accordingly. In general, however, a time-limit is not made necessary by the terms of the convention, and it may be impossible for the depositary to know whether the instrument containing the reservation can be treated as having been definitively deposited until replies are received from all of the interested States. If the character of the convention is such that the unanimity rule must be applied (as, for example, in the case of an organizational convention which necessarily requires concurrence by all States), the depositary may not have to await replies from all States, since it would be necessary to consider the instrument containing the reservation as not being acceptable for deposit if any of the States whose concurrence is necessary expressly objects to the reservation.

*Council of Europe.* Not relevant.

*Food and Agriculture Organization of the United Nations.*

(a) Upon the coming into force of the convention or agreement the Director-General will address his request to all States that are parties at the time of the coming into force. Accordingly no such request will be addressed to a State which has signed the convention or agreement *ad referendum* but not ratified it by such date. *After the coming into force* of a convention or agreement the Director-General addresses such request to all States which had become a party to the convention or agreement at the time the reservation was received.

(b) The time limit for government replies is three months from the date of notification.

(c) Governments not having replies within three months are considered as having tacitly accepted the reservation.

(d) Yes.

*Inter-Governmental Maritime Consultative Organization.* Inapplicable.

*Organization of American States.* (a) The answer is (i).

(b) No time limit.

(c) No.

(d) Under present practice the instrument of ratification is not received for definitive deposit until all parties have replied. The reserving State decides whether to deposit or

not in the light of the replies, since an objection would mean that the treaty would not be in effect between the reserving State and the objecting State.

*United Nations Educational, Scientific and Cultural Organization.* The communication mentioned in the answer to question 12 was addressed to all States eligible to become parties to the Convention. The Director-General fixed a time-limit of six months after which States which had not made their attitude known would be deemed to have approved the contents of the instrument of ratification.

*Universal Postal Union.* See reply to question 12.

*World Health Organization.* Not relevant.

#### E—OBJECTIONS TO RESERVATIONS<sup>49</sup>

*Question 14. In the event of your receiving an objection from an interested State to a reservation, what, if any, legal effect does your practice attribute to the objection?*

- (a) *Do you consider the objection without force, on the grounds of an absolute sovereign right of States to make reservations?*
- (b) *Does your practice make no assumption as to any given legal effect but merely give notice to interested States of the terms of the objection?*
- (c) *Do you inform the reserving State that it has the alternative of withdrawing the reservation or failing to become a party to the convention?*
- (d) *Do you treat the objection as affecting only the relations between the reserving and objecting States under the convention? If so, is the effect of the objection to prevent the creation of any rights and obligations between the reserving and objecting States*
  - (i) *under the whole of the convention (i.e., to treat them as not being parties to the convention in respect of each other), or*
  - (ii) *only under the article or articles reserved?*

*Canada.* At the time of the signature of the Acts of the XIVth Congress of the Universal Postal Union (1957), one State signed with a reservation, and another State signed with a declaration that it did not accept the reservation. Certified copies of the Acts of the Congress, including the reservation and declaration, were circulated to all States and territories attending the Congress. The State which made the reservation has not yet ratified the Acts of the Congress. Three States entered reservations at the time of ratification which had not been entered at the time of signature. These were circulated without comment by the depositary in the *procès-verbal* of deposit of the instrument of ratification. A number of protests to these reservations were received and were circulated if requested by the protesting State without comment by the depositary.

*Dominican Republic.* The legal effect is that the convention does not enter into force between the reserving State and the objecting State, unless the two States expressly

agree that the convention shall become effective between them as regards all but the reserved clauses.

(a) Objections to reservations have as much force as the reservations themselves, so far as concerns the obligations assumed by the States submitting them.

(b) The Dominican Republic merely gives notice.

(c) As already indicated, this is not an absolute alternative, since the convention may enter into force between States accepting the reservations and the reserving State, and even between States rejecting the reservations and the reserving State, if they so agree, in respect of all clauses not affected by the reservations.

(d) The convention enters into force among the States which ratify it unreservedly in the terms in which it was drafted and signed. In the case of reserving and objecting States, the convention enters into force as modified by reservations not rejected by the objections. It follows that the purposes of the objection is precisely to prevent the creation of any rights and obligations between the reserving and objecting States.

Between reserving and objecting States the convention fails to come into force only so far as concerns articles to which reservations or objections have been submitted.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* See answer to question 13.

*United States of America.* It is questionable whether absolute rules can be extrapolated to cover all conceivable situations. There are many factors to be considered, including the specific terms of the convention, its inherent character, and the evident intent of the States which concluded the convention. Within this indefinite framework, however, the following replies can be given to the particular questions:

(a) The United States Government considers that the sovereign right of States to make reservations is counter-balanced by the sovereign right of other States to reject such reservations and to consider such reservations as not being valid between themselves and the reserving State. An objection to the reservation will have such force as the circumstances and the terms and character of the convention require.

(b) In general, the United States Government as depositary does not make any assumption as to any given legal effect. Each case must be considered in the light of the particular circumstances of that case. If the circumstances require that an instrument containing a reservation be considered unacceptable for definitive deposit in the event there is any objection to the reservation, then the depositary would find it impossible to accept the instrument for definitive deposit. In a broad sense, the position thus taken might be equated with an assumption as to the legal effect of objection. In general, the legal effect of a reservation and the legal effect of objections to the reservation are matters for determination by the States parties to the convention. It seems inadvisable, however, to attempt to lay down a single rule to be applied in all situations. When an objection is made to a reservation,

<sup>49</sup> The depositaries listed in paragraph 6 of the introduction, which have never received a reservation, have likewise never received any objections to reservations, and have no depositary practice on the matter.

the terms of the objection are notified to the interested States.

(c) If a treaty is of such a type that unanimous acceptance of a reservation is required, and one or more of the States whose consent is necessary object to the reservation, the United States Government as depositary would inform the reserving State of this fact and would leave it to such State to determine for itself whether it should withdraw the reservation or fail to become a party.

(d) In this, as in respect of many other matters pertaining to reservations and objections thereto, it seems inadvisable to attempt to lay down any rule of general applicability, at least so far as existing international law and practice are concerned. There are some general principles to be applied, depending on the circumstances and the terms and character of the convention, but it appears that such matters must be dealt with on a pragmatic basis. If, in a particular case, a State becomes a party to a convention subject to a reservation, despite objection to such reservation by another State, it may be possible to consider that the convention is not in effect at all between the reserving State and the objecting States or it may be possible to consider that the convention is in effect between them except with respect to the provisions to which the reservation relates. In general, it is not for the depositary to determine such matters. The objecting State itself may determine whether it is prepared to consider the convention in force between it and the reserving State except as to the provisions reserved or whether it feels obliged to consider the convention as not in force at all between it and the reserving State. Some conventions are readily susceptible to effective operation in certain parts and not in certain other parts. Some conventions may not be susceptible to effective operation as between two States except in their entirety. Each case requires separate consideration.

*Council of Europe.* No practice, because the question has never been raised within this organization.

*Food and Agriculture Organization of the United Nations.*

(a) and (b) The legal effect of objections is fully described in paragraph 10 of the Principles mentioned in the answer to question 1: if one of the parties to the convention or agreement concerned objects to the reservation, the reserving State does not become a party to the convention or agreement.

(c) The reserving State would, in all cases, be informed that by withdrawing its reservation it could become a party to a convention or agreement.

(d) The objection affects the relations between the reserving State and *all* parties to the convention or agreement.

*General Agreement on Tariffs and Trade.* The Contracting Parties have never received objections to reservations and have therefore had no reason to establish a procedure which would deal with this legal problem.

*Inter-Governmental Maritime Consultative Organization.*

(b) Yes.

(d) A State having lodged the objection itself declared that the objection affected only its relations with the State

which had made the reservations, and this only in respect of the provision that was the subject of the reservation and objections.

*International Atomic Energy Agency.* Five States (Federal Republic of Germany, Republic of Korea, United Kingdom, Thailand and Denmark) of the eleven States now parties to the Agreement on the Agency's Privileges and Immunities<sup>60</sup> have made reservations on acceptance of the Agreement. The reservations were communicated by the Director-General to all member States of the Agency in accordance with section 38 of the Agreement. As no objections have so far been formulated to any of these reservations, the Agency has no practice in the matters referred to in sections E or F (questions 18 to 20).

*Organization of American States.* The answer is (d) (i).

*United Nations Educational, Scientific and Cultural Organization.* The Director-General did not attribute any effect to the objections received from interested States to the reservation mentioned in the answer to question 11. All observations received from interested States, whether containing objections or not, were communicated to the Government which had made the reservation with the indication that the Director-General would postpone the transmission of these observations to the interested States in order to enable the said Government to study the communications received and, eventually, to transmit to the Organization any new communication it might wish to make. No new communication having been received from the Government which had made the reservation, the full text of all communications received were transmitted to the interested States in their original language. The letter transmittal did not contain any appreciation by the Director-General of the legal effect, if any, of the objections contained in the communications received.

*World Health Organization.* In the case of the International Sanitary Regulations, reservations are submitted to the World Health Assembly. It is the Assembly that decides whether or not to accept them, after taking note of the relevant recommendation by the Panel on quarantine. If the Assembly objects to a reservation, a letter is sent to the State in question asking whether it is able to withdraw its reservation or to modify it so as to make it acceptable. If the answer is negative, the Regulations do not enter into force with respect to that State.

In the case of the Regulations regarding Nomenclature of Diseases and Causes of Death, the problem of the entry into force of the Regulations in respect of States which have made reservations was raised at the first session of the Health Assembly.

The Legal Committee, basing its view on article 22 of the Constitution, recommended in its report to the Assembly that the Regulations should come into force for all member States, including those making reservations, and that only those parts on which reservations had been made would not apply. The Assembly adopted this report at its fifteenth plenary meeting. Consequently, for States which have made reservations the date of entry into force of the articles of the Regulations which are not the subject

<sup>60</sup> United Nations, *Treaty Series*, vol. 374, p. 148.

of any reservation is determined in the same manner as it is in respect of States which have not made any reservations.

*Question 15. In any of the cases comprised under 14 (c) or (d) above, does your practice make a distinction in the legal effect of an objection according to whether it was received from a State*

- (a) merely entitled to become a party;
- (b) signatory;
- (c) which has ratified or acceded?

*Dominican Republic.* An objection submitted by a State which is merely entitled to become a party to the convention has no legal effect. If the objection is submitted by a signatory State, it is communicated to the other States for comment. Of course, if the convention is subject to later ratification by the State submitting the objection, the legal effect of the objection extends only to the parties in contention, as from the time of ratification, according to whether or not the objecting State maintains its objection.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* See answer to question 13.

*United States of America.* The situation in regard to this matter is somewhat clearer. Unless the convention provides specifically to the contrary, it is usually considered that an objection made by a State which is merely entitled to become a party or by a State which is a signatory but has not deposited its instrument of ratification is not conclusive until such time as the objecting State has itself taken the definitive measures necessary to become a party. Otherwise, it would be possible theoretically for a State which may never become a party and may even have no intention of becoming a party to prevent a reserving State from becoming a party merely by objecting to the reservation. If an objecting State thereafter becomes a party or if it has already deposited a valid instrument of ratification, acceptance, adherence, or accession, as the case may be, then its objection to the reservations has full legal effect to the extent that, in the circumstances, legal effect can be attributed to it. The situation may, of course, be complicated in some cases by exceptional factors, as where the convention, according to its terms, will not enter into force until all or a specified number or percentage of the negotiating States have deposited their respective instruments. It may be considered that definitive legal effect cannot be given to any objection in such a case, even when the objecting State has deposited its own instrument, until the convention actually enters into force. It may, as in the case of the Genocide Convention, become a serious question whether the instrument containing a reservation to which objection has been made can be counted among those which bring the convention into force. A rational view must be taken in each case, according to the circumstances, and depending on the necessity for applying the "unanimity" (so-called League of Nations) rule or the possibility of applying the "compatibility" rule expounded in the Opinion of the International Court of Justice in regard to the Genocide Convention.<sup>51</sup>

<sup>51</sup> *I.C.J. Reports, 1951*, pp. 15 *et seq.*

*Council of Europe.* No practice, because the question has never been raised within this organization.

*Food and Agriculture Organization of the United Nations.* Objections have legal effect only when formulated by States parties to the convention or agreement concerned at the appropriate time, as indicated in the answer to question 13.

*Inter-Governmental Maritime Consultative Organization.* Inapplicable.

*Organization of American States.* No.

*United Nations Educational, Scientific and Cultural Organization.* In the one instance mentioned in the answer to question 11, the Director-General was not called upon to make such a distinction. However, one of the States signatory to the Protocol to which the text of the reservation had been transmitted indicated in reply that, since it was not a party to the Protocol, it did not consider it necessary to formulate any observation.

*World Health Organization.* Not relevant.

*Question 16. To what extent would the answer to 14 and 15 above differ if the objections were to reservations made on signature rather than ratification or accession?*

*Dominican Republic.* Objections to a reservation made on signature do not necessarily produce permanent effects, since they may induce the reserving State to modify or withdraw its reservation on ratification. However, objections to a reservation made on ratification or accession produce the known legal effects on a permanent basis.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* See answer to question 13.

*United States of America.* Objections to reservations made on signature would appear to be no less valid than those made to reservations at the time of ratification or accession, but such objections may become meaningless if the reserving State thereafter withdraws its reservation or fails thereafter to become a party to the convention.

*Council of Europe.* No practice, because the question has never been raised within this organization.

*Food and Agriculture Organization of the United Nations.* In this context, no distinction would be made between reservations made on signature, on ratification or on accession.

*Inter-Governmental Maritime Consultative Organization.* The same procedure is followed (communication to interested States); see answer to question 4.

*Organization of American States.* None.

*United Nations Educational, Scientific and Cultural Organization.* No practice.

*World Health Organization.* Not relevant.

## F—ENTRY INTO FORCE

*Question 17. What distinction, if any, is made under 13 above—as to which States are consulted about a reserva-*

tion, or as to any time-limit set for their reply—according to whether the convention has yet entered into force at the time the reservation is received?

*Dominican Republic.* All signatory States are consulted. The time-limit indicated in the answer to question 13 applies in all cases.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* See answer to question 13.

*United States of America.* The United States Government as depositary customarily continues, even after a convention has entered into force, to send to all interested States notifications regarding actions taken with respect to the convention, including additional signatures and reservations, if any, accompanying them, the deposit of instruments of ratification, acceptance, adherence, or accession and reservations, if any, contained therein, etc. For this purpose, all States which participated in the conference at which the convention was formulated and adopted, whether signatories or not, and all other States which, being non-signatories, have deposited instruments of adherence or accession are considered to be interested States.

*Council of Europe.* Not applicable.

*Food and Agriculture Organization of the United Nations.* The categories of States to be notified and consulted about reservations—depending on whether such reservation is made before or after the coming into force of the convention or agreement—are defined in paragraph 10 of the Principles mentioned in the answer to question 1. The time-limit set for their reply is three months in all cases.

*Inter-Governmental Maritime Consultative Organization.* Inapplicable.

*Organization of American States.* None.

*United Nations Educational, Scientific and Cultural Organization.* In the one case mentioned in the answer to question 11, the Protocol had entered into force at the time the reservation was received.

*World Health Organization.* Not relevant.

*Question 18.* *Would the reply to 15 above differ according to whether the convention had entered into force by the time of the objection?*

*Dominican Republic.* No.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* See answer to question 13.

*United States of America.* The reply to question 15 is applicable whether the convention has entered into force or not.

*Council of Europe.* Not applicable.

*Food and Agriculture Organization of the United Nations.* See answers to questions 13 and 15.

*Inter-Governmental Maritime Consultative Organization.* Inapplicable.

*Organization of American States.* No.

*United Nations Educational, Scientific and Cultural Organization.* No practice.

*World Health Organization.* Not relevant.

*Question 19.* *If the convention has not yet entered into force by the time of the circulation of the terms of the reservation attached to a ratification or accession, do you at once count the reserving State among the number necessary for bringing it into force—either in the absence of a stated time-limit or prior to its expiry?*

*Dominican Republic.* A State attaching a reservation to a ratification may be counted among the number necessary for bringing the convention into force.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* See answer to question 13.

*United States of America.* As indicated above in the reply to question 15, it is difficult to lay down an absolute rule applicable in all cases. If the convention terms and character are such as to require unanimity, the United States Government as depositary would consider that it had no competence to consider the instrument containing the reservation as being deposited until accepted by all States qualified to accept or reject it or until a prescribed time-limit had expired without any objection having been made to the reservation. If the instrument containing the reservation could not be considered as having been definitively deposited, it would not appear to be possible to count the reserving States among the number necessary for bringing the convention into force.

*Council of Europe.* Yes, the State concerned is immediately counted among the number of countries necessary for bringing the convention into force.

*Food and Agriculture Organization of the United Nations.* Pursuant to paragraph 10 of the Principles mentioned in the answer to question 1, nations having made reservations are not included for the purpose of calculating the number of acceptances required to bring the convention or agreement into force.

*Inter-Governmental Maritime Consultative Organization.* The case has not arisen. It may do so in the near future, unless reservations or declarations made at the time of signing are not included in the instruments of acceptance. Since the date of entry into force of the Convention is determined by the depositary, how could this date be fixed without adopting a position regarding the legal effect of the reservation? The problem is still untouched upon.

*Organization of American States.* No.

*United Nations Educational, Scientific and Cultural Organization.* No practice.

*World Health Organization.* Not relevant.

*Question 20.* *If the convention has not yet entered into force by the time of the receipt of an objection to a reservation, do you notwithstanding the objection count the ratification or accession of the reserving State among those necessary for bringing the convention into force?*

*Dominican Republic.* See answer to question 19.

*Netherlands.* No practice.

*United Kingdom of Great Britain and Northern Ireland.* See answer to question 13.

*United States of America.* The answer to this question seems implicit in the above reply to question 19. If, in particular circumstances, it is possible to consider an instrument containing a reservation as having been definitively deposited notwithstanding an objection to the reservation, it may be possible to count the reserving State among those necessary for bringing the convention into force.

*Council of Europe.* Yes, see answer to question 19.

*Food and Agriculture Organization of the United Nations.* No.

*Inter-Governmental Maritime Consultative Organization.* See answer to question 19.

*Organization of American States.* No. The reserving State is counted only when its instrument of ratification is accepted for deposit.

*United Nations Educational, Scientific and Cultural Organization.* No practice.

*World Health Organization.* Not relevant.

## Part II. Depositary practice of the Secretary-General in relation to reservations

### Introduction

The summary follows as closely as possible the "Questionnaire" annexed to the present document, which was enclosed in the Secretary-General's circular letter of 25 July 1962. The summary also reflects the dual function of the Secretary-General acting, on the one hand, as depositary of multilateral conventions and, on the other, as the registering authority of international agreements under Article 102 of the Charter and the regulations adopted by the General Assembly to give effect to that Article. This duality of function sometimes raises practical difficulties which are outlined briefly in the summary. The problems facing the depositary essentially concern multilateral conventions which contain no provisions in regard to reservations. Therefore, the basic difference regarding the Secretary-General's practice when dealing with agreements containing provisions on reservations and when dealing with those which do not contain such provisions has been underlined. An historical survey of the examination by United Nations organs of the question of reservations has already been published in an earlier document.<sup>53</sup> The two resolutions of the General Assembly governing the practice of the Secretary-General in respect of reservations are reproduced in annex III.

#### A. Rules governing reservations

1. The General Assembly in two resolutions (resolution 598 (VI) of 12 January 1952 and 1452 B (XIV) of 7 December 1959) requested the Secretary-General to

follow certain directives in the performance of his depositary functions in relation to reservations to multilateral conventions concluded under the auspices of the United Nations, "until such time as the General Assembly may give further instructions".<sup>53</sup> The Secretary-General has followed these directives and adapted his depositary practice accordingly. These directives will be subsequently referred to in the present summary as "General Assembly directives".

2. Paragraph 1 of resolution 1452 B (XIV) requests the Secretary-General to apply the procedure laid down by resolution 598 (VI) to all conventions concluded under the auspices of the United Nations "which do not contain provisions to the contrary". The Secretary-General continues therefore to observe such provisions relating to reservations as are contained in the agreements concerned (see paragraphs 20 and 21 below). There are no standard clauses and the General Assembly only recommended in its resolution 598 (VI) that "organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them". Examples of reservation clauses inserted in conventions concluded under the auspices of the United Nations are reproduced in annex II to the present report.

3. The Secretary-General also follows the provisions embodied in the final act of a conference or in a protocol of signature with respect to reservations. The Secretary-General therefore receives for deposit and registers instruments of ratification or accession accompanied by reservations previously recorded in a final act or protocol of signature and accepted by the conference which adopted the convention. The Secretary-General thereafter notifies such reservations to all States concerned, drawing their attention to the fact that the reservations had been accepted in advance at the close of the conference.

#### B. Reservation v. declaration

4. Under the General Assembly directives the Secretary-General does not determine whether a statement transmitted by a State contains a reservation, but is only required to communicate the text of the statement to all interested States—those eligible to become parties to the agreement, unless otherwise provided—and leave it up to those States to determine the legal effect of such a statement.

5. The Secretary-General is, however, called upon to determine—at least tentatively—the character of a statement when the agreement concerned indicates the procedure to be followed in respect of reservations<sup>54</sup> or when it expressly provides that no reservation will be permitted, or when it concerns a convention establishing an international organization. In such instances, the Secretary-General ascertains the character of the statement, what-

<sup>53</sup> See annex III.

<sup>54</sup> See, for instance, the Customs Convention on the Temporary Importation of Private Road Vehicles, done at New York on 4 June 1954, article 39 (see *infra*, annex II, para. 2) and the Single Convention on Narcotic Drugs, done at New York on 30 March 1961. (United Nations publication, Sales No.: 62.XI.1), articles 49 and 50.

<sup>53</sup> See *Yearbook of the International Law Commission, 1962*, vol. II, pp. 176-178.

ever its title may be, and if, in his opinion, it contains a reservation expanding or diminishing the scope of the convention and/or its application between the reserving State and the other States parties, he applies the procedure laid down by the article on reservations contained in the convention or follows his practice in other relevant cases (see paragraphs 22 and 23 below).

### C. Reservations upon signature

6. Under the General Assembly directives, the plenipotentiaries of Governments, duly authorized, may sign a convention subject to a reservation, provided that the convention contains no provision to the contrary. In this latter case, the Secretary-General would not be in a position to receive such signature. For example, the plenipotentiary of a Government having asked to sign an agreement subject to a reservation which excluded part of the territory of his State from the application of the agreement, the Secretary-General pointed out the relevant clause precluding all and any reservations and the plenipotentiary, after consultations with his Government, signed without reservation.

7. Among the reservations made at the time of signature, it appears from the records that thirty-seven were either repeated in the instrument of ratification or otherwise maintained; three were either maintained or repeated in the letter accompanying the instrument of ratification. In three instances the text of the reservations made at the time of signature differed from those made upon ratification and the Secretary-General notified all interested States accordingly. In five instances, reservations made at the time of signature were not confirmed at the time of ratification. In three of these cases, the convention provided that such reservations could be made at the time of signature *or* ratification.

8. There has been no instance in which a State has informed the Secretary-General of the terms of a reservation before signing in order for him to notify other interested States in advance. However, pursuant to article 50, paragraph 3, of the Single Convention on Narcotic Drugs, a State, when signing the Convention, gave notice of its intention to make reservations to certain articles. The Secretary-General brought this declaration to the attention of the interested States as well as the relevant provisions of article 50 which reads in part as follows: "Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned this reservation has been objected to by one third of the States that have ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation". There has also been one case in which a State requested the Secretary-General to circulate a proposed reservation to the States having already ratified or acceded to the agreement in question (which established an international organization and was not yet then in force) so that their attitude might be ascertained prior to the deposit of the instrument of ratification. The proposed reservation was circu-

lated as requested, no objections were received and the State deposited its instrument of ratification with the reservation as proposed.

9. Under the depositary practice of the Secretary-General, reservations submitted at the time of signature are entered above the signature in the space reserved for that purpose on the original text of the agreement, or are set forth in a separate document which is signed by a duly authorized plenipotentiary and to which the plenipotentiary refers in a statement written above his signature. A *procès-verbal* of signature is drawn up if either provided for by the agreement or requested by the State concerned.

10. In all instances, reservations made at the time of signature are notified to the interested States, that is, to those eligible to become parties to the convention, unless otherwise provided by the relevant article of the convention. Notification of reservations made upon signature is given either by sending States certified true copies of the convention, or by circular letter, depending upon the circumstances. When an agreement remains open for signature without any time-limit, or when the date of closure is distant, the certified true copies are prepared as soon as possible and include all signatures affixed to the agreement up to the date on which the copies are sent for reproduction, together with the text of any reservations. States eligible to become parties are notified by circular letter of the Secretary-General of all subsequent actions.

11. When the agreement provides that it shall be closed for signature at a given date, the Secretary-General awaits this closing date, if it is not too distant, and then proceeds to transmit to the interested States a certified true copy of the convention which reproduces all signatures affixed to the original and all reservations made at the time of signing.

12. When the agreement stipulates that States may become parties by a definitive signature, the Secretary-General notifies such signatures, together with the text of any reservations, to the interested States prior to the dispatch of certified true copies, unless the signatures have been affixed to the agreement at the close of a conference where all States concerned were represented. In the latter case, additional signatures are notified by the Secretary-General to interested States as soon as possible.

13. Certified true copies of all conventions concluded under the auspices of the United Nations are forwarded by the Secretary-General to new Member States, together with an up-to-date list showing all signatories, signature dates, dates of receipt of instruments of ratification, accession or acceptance, and the text of previously recorded reservations, objections, and statements.

14. The English and/or French translation of a reservation is made by the Secretariat, if the reserving State does not supply a translation. Should that State furnish an official translation of its reservation at a later date, this translation is circulated by the Secretary-General in lieu of the Secretariat version. The Secretary-General always mentions the source of the translation circulated.

15. Whenever a State withdraws a reservation made at the time of signature, ratification or accession, the Secre-

tary-General notifies all interested States of such withdrawal.

D. *Reservations upon ratification or accession*

16. In the course of the debates before the Sixth Committee of the General Assembly during its fourteenth session the Legal Counsel was asked to clarify the practice which the depositary would follow upon the adoption of resolution 1452 B (XIV). In his answer, the Legal Counsel stated that he understood that the General Assembly had requested the Secretary-General to continue to act as depositary, in connexion with the deposit of instruments containing reservations, or the receipt of objections thereto, without passing upon the legal effect of such acts. Accordingly, the Secretary-General, when receiving instruments of ratification or acceptance with appended reservations, would consider that his main function was merely to circulate these documents to the interested States, quoting the reservation but without asking their attitude. Similarly the Secretary-General would also circulate, without comment, any objections to those reservations which might subsequently be received. Once the Secretary-General had accepted an instrument of ratification or accession, he would include the country concerned in all the processes of operation of the convention, so far as concerned the Secretary-General's functions in respect of that convention. That would involve, for instance, the circulation to that country of all documents appertaining to the status of the convention. If, in carrying out those functions, the Secretary-General should be confronted with some unexpected legal problem which could not be solved by agreement between the parties, the only possibility open to him would be to ask the General Assembly to request an advisory opinion from the International Court of Justice.<sup>55</sup>

17. In practice, therefore, the Secretary-General follows the General Assembly directives whenever he receives an instrument of ratification, accession or acceptance accompanied by a reservation not expressly permitted or prohibited by the convention. The Secretary-General notifies all States entitled to become parties to the convention (unless otherwise provided) of the date of deposit of the instrument, giving the full text of the reservation. However, no effective date is given concerning the entry into force of the convention in respect of the State concerned nor is such date specified in the Register, as the Secretary-General is not to pass upon the legal effects of such acts.

18. All actions concerning reservations are recorded in the Secretariat publication *Status of Multilateral Conventions* (ST/LEG/3/Rev.1).<sup>56</sup> The latter indicates which States have made reservations or transmitted objections or comments and gives the text thereof. The entry in this publication concerning instruments of ratification or accession refers to the date of receipt of such instruments.

19. Reservations made at the time of ratification or accession are included in the text of the instrument trans-

mitted by the State concerned or in a document accompanying the instrument, and emanate either from the Head of the State or Government, or from the Minister for Foreign Affairs. They are sometimes formulated by the duly accredited Permanent Representative to the United Nations of the State concerned, acting under instructions from his Government.

20. Whenever a convention contains provisions relating to the procedure for the acceptance of reservations, the Secretary-General follows the procedure laid down by the relevant articles. He treats the instruments as having been tendered for deposit pending the outcome of consultations with the States specified in the procedure; in notifying those States of the receipt of the instrument he communicates the text of the reservations and draws their attention to the provisions setting forth the procedure. When a time-limit is specified in the article on reservations, it is considered that a State which has not replied within the stated time has implicitly consented to the reservations concerned—unless otherwise stipulated in the agreement.

21. Should the convention provide that no reservations are permissible, or that only reservations in respect of certain articles are permissible, the Secretary-General is unable to receive an instrument for deposit accompanied by reservations. He informs the Government accordingly and he withholds the notification to other interested States pending clarification with the Government concerned. In one instance the Secretary-General informed the State that he was not in a position to receive its instrument of ratification because the latter was accompanied by reservations not permitted by the agreement concerned. In another instance the Secretary-General questioned the character of the statement accompanying the instrument of ratification and stated *inter alia* in his letter to the Government concerned that it would be his understanding that the statement, which was termed an "observation", was merely intended to note the fact of the relation between articles of the convention and that it should therefore in no way be construed as a reservation. He added: "I am raising this matter bearing in mind the provisions of resolutions 598 (VI) and 1452 B (XIV) on reservations to multilateral conventions, adopted by the General Assembly on 12 January 1952 and 7 December 1959, respectively. In particular, I wish to refer to paragraph 3 (b) of resolution 598 (VI) as amended by resolution 1452 B (XIV), under which the Secretary-General is not permitted to receive for deposit an instrument of ratification subject to a reservation made contrary to the provisions of the convention. In view of the above, I would appreciate it if, before proceeding to notify the interested States of the deposit of the instrument of ratification in question, I could have your confirmation of my understanding, referred to in the third paragraph above, regarding the nature of the statement contained in the same instrument." The receipt of the first of these instruments has not been notified, nor has the instrument been registered, no answer having been received so far from the submitting Government. In the second case, the ratification was formally received in deposit on the date of receipt of the reply confirming the understanding of the Secretary-

<sup>55</sup> See *Official Records of the General Assembly, Fourteenth Session, Sixth Committee*, 628th meeting, para. 1.

<sup>56</sup> United Nations publication, Sales No.: 59.V.6.

General, and all interested Governments were notified accordingly.

22. When a convention embodies a constitution establishing an international organization, the Secretary-General transmits any reservations accompanying an instrument of ratification or accession to that organization for its consideration and informs the State concerned accordingly. The Secretary-General then makes his actions conform, in respect of such instrument, with the decision of the competent organ of the organization concerned. In this connexion it will be noted that the International Law Commission, in its commentary on the provisional draft articles covering the topic of the conclusion of treaties as adopted at its fourteenth session, considered "that in the case of instruments which form the constitutions of international organizations, the integrity of the instrument is a consideration which outweighs other considerations and that it must be for the members of the organization, acting through its competent organ, to determine how far any relaxation of the integrity of the instrument is acceptable".<sup>57</sup>

23. The Convention on the Privileges and Immunities of the Specialized Agencies<sup>58</sup> also requires additional procedural steps on the part of the depositary, since not only States are parties to the Convention but under its terms the specialized agencies themselves must participate in its operation and take various actions under its final articles. In accordance with the established procedures under this Convention the Secretary-General, when he receives an instrument of accession accompanied by a reservation, communicates its text to all States parties and to all other States Members either of the United Nations or of any specialized agency, as well as to the executive heads of the specialized agencies. He so informs the State acceding subject to the reservation. As in the case of other conventions of which he is depositary (see paragraph 17 above), the Secretary-General refrains from stating in his Circular Note the date of entry into force as between the acceding State and the specialized agencies to which it undertakes to apply the Convention.

24. In addition, it is to be noted that the Administrative Committee on Co-ordination (ACC), which is composed of the executive heads of the specialized agencies and presided over by the Secretary-General of the United Nations, at its sixteenth session in May 1953, adopted a policy statement requesting the Secretary-General as depositary to continue to notify all the executive heads of the specialized agencies of the terms of any reservations to the Convention on the Privileges and Immunities of the Specialized Agencies, and simultaneously to place the question of any such reservation on the agenda of the Administrative Committee on Co-ordination. In practice, however, there has always been a specific request from one or more specialized agencies to have each given reservation to the Convention discussed in the Preparatory Committee of the ACC, so that the Secretary-General has not in fact had occasion to act on his own initiative in this matter.

<sup>57</sup> See *Yearbook of the International Law Commission, 1962*, vol. II, p. 181.

<sup>58</sup> United Nations, *Treaty Series*, vol. 33, p. 261.

25. In every instance of a reservation to this Convention the Administrative Committee on Co-ordination has requested the Secretary-General of the United Nations on behalf of the specialized agencies to communicate with the governments which proposed reservations, indicating the respects in which the agencies considered the reservations incompatible with the objects and purposes of the Convention and seeking to reach an understanding acceptable both to the Governments presenting the reservations and to the specialized agencies. Such consultations have resulted in the withdrawal of reservations in three out of the four cases which had arisen in the past; the fourth case has remained in abeyance for some time. Upon withdrawal of the reservations the Secretary-General notifies all interested States of this action and then proceeds with the *ex officio* registration of the accession. In addition to the four previous cases, two instruments recently submitted by Governments were subject to reservations which have encountered objections on the part of specialized agencies. The Secretary-General is now acting on a request transmitted to him by the Preparatory Committee of the ACC that he consults the Governments concerned.

#### E. *Objections to reservations*

26. Objections to reservations are notified to the Secretary-General in writing and emanate either from the Head of Government or Minister for Foreign Affairs or from the duly accredited Permanent Representative to the United Nations, acting under instructions from his Government.

27. According to General Assembly resolution 598 (VI) it is for each State to draw the legal consequences resulting from reservations or objections thereto. The Secretary-General circulates the objections to the same States to which the text of the pertinent reservations was communicated, whether they emanate from a signatory State or from a State having deposited an instrument of ratification or accession. Such objections are recorded in the Secretariat publication *Status of Multilateral Conventions* (ST/LEG/3/Rev.1).

28. The Secretary-General is, however, faced with a problem concerning objections where the convention requires him to announce its entry into force after the deposit of a given number of instruments of ratification or accession (see paragraphs 32 and 33 below).

29. Unless otherwise provided for by the convention, the Secretary-General leaves it to the reserving and objecting States to decide whether the convention shall be in force between them with the exception of the provisions to which the reservation relates, or whether the convention shall not be in effect between them at all. It is not the practice of the Secretary-General to request a clarification in this respect from the reserving and objecting States.

30. When the convention contains a provision stipulating the legal effect which an objection to a reservation will have on the relationship between the States parties, the Secretary-General makes his actions as depositary conform to the relevant provisions of the convention.

### F. *Entry into force*

31. In the absence of contrary provisions in the convention, the Secretary-General includes in his count of the number of instruments of ratification or accession required to bring a convention into force those instruments accompanied by reservations to which no objection has been made after ninety days from the date of circulation. The same practice applies to signature without reservation as to ratification when a convention also provides for that manner of becoming a party.

32. A different situation prevails when objections have been entered to reservations made by one or more States whose instruments would *prima facie* be included within the number requisite to bring a convention into force. The Secretary-General considers that he is not in a position to determine the date of entry into force. This is because, pursuant to resolutions 598 (VI) and 1452 B (XIV), he is not to pass upon the legal effect of documents containing reservations or objections. Naturally, one such legal effect is the power of an instrument containing a reservation to count in bringing a convention into force—or, in the alternative, the power of a document containing an objection to prevent the effectiveness necessary for that purpose of the instrument containing the reservation. Under the resolutions it is for each State to draw legal consequences from the communications in question.

33. In one instance, a convention contained a provision requiring the Secretary-General to announce its entry into force after a specified number of instruments had been deposited. Although the required number of instruments had been received, some of them contained reservations to which certain States, having ratified or acceded to the convention without reservations, objected. The Secretary-General, in a circular letter addressed to all interested States, called their attention to the provision of the convention stipulating the conditions for its entry into force and informed them that he had received the specified number of instruments from States eligible to become parties thereto, reserving and objecting States included. Since the convention provided for only a thirty-day delay for its entry into force—a time not considered sufficient to give an opportunity to the States concerned to draw the legal consequences of the reservations and objections and communicate their conclusions—the Secretary-General waited ninety days from the date of his communication, the traditional time-lapse considered necessary to assume tacit consent. Having received no objection to the entry into force of the convention, he proceeded with the registration at the end of the ninety-day period, specifying the date of entry into force, pursuant to the relevant provisions of the convention, that is to say thirty days after the deposit of the required number of instruments.

### ANNEX I

Questionnaire annexed to the Secretary-General's letter of 25 July 1962 with respect to depositary practice in relation to reservations in accordance with General Assembly resolution 1452 B (XIV)

#### A. *Rules governing reservations*

1. Does the organization, or any organization for which you act as depositary, maintain standard reservations clauses for use in mul-

tilateral conventions? If so, please supply them, together with references to any conventions in which they occur.

2. In the alternative, is there a resolution or other set of rules for the regulation or guidance of the depositary in dealing with reservations? If so, a copy of the latest text would be appreciated.

3. Have you a practice to follow in case of the submission of a reservation which is clearly excluded by the terms of a reservations article contained in the convention?

#### B. *Reservation v. declaration*

4. Do you make a distinction in your practice between a reservation and a declaration?

5. If a different procedure is followed according to whether a statement is deemed to constitute a reservation or merely a declaration:

(a) Do you accept the characterization of the State submitting the statement or do you make the necessary determination, for the purposes of depositary procedures, according to the content or effect of the statement, whether it constitutes a reservation?

(b) If the latter,

(i) Do you first consult the State submitting the statement as to its reasons for considering it a declaration rather than a reservation (or *vice versa*)?

(ii) What criteria do you apply in testing whether a statement is a reservation or merely a declaration?

#### C. *Reservations upon signature*

6. When a State indicates a desire to sign a convention subject to a reservation which is not expressly permitted by the text of the convention or otherwise already accepted,

(a) do you receive the signature, or

(b) before doing so, do you consult the interested States, and if so which ones?

7. When a signature is accompanied by a reservation, have you a fixed procedure for establishing the terms of the reservation:

(a) By inscription on the face of the convention at the place of signature;

(b) By inclusion in a formal *procès-verbal* or in the final act of a conference;

(c) By accompanying letter from the signatory State, the terms of which are then notified to interested States?

8. At what point of time do you notify interested States of the terms of the reservation:

(a) Before receiving the signature (as under 6 (b) above);

(b) On receiving the signature;

(c) Only on circulating a certified true copy of the convention;

(d) Only when the reservation is confirmed by or upon ratification?

9. Is a distinction made under 8 above according to whether all interested States had effective notice of the terms of all reservations at the time of the adoption of the convention or, on the other hand, if further signatures are authorized and received subsequent to the closing of the conference adopting the convention?

10. Have you a practice or understanding as to the force and effect of a reservation made on signature but not reiterated in the instrument of ratification—i.e., whether it is deemed to have been abandoned or continuous in effect even though not expressly confirmed on ratification?

#### D. *Reservations upon ratification or accession*

11. When an instrument of ratification, accession or acceptance is accompanied by a reservation which is not expressly permitted or

prohibited by the text of the convention and not otherwise already accepted:

- (a) Do you receive the instrument for definitive deposit; or
  - (b) Do you treat the instrument as having been tendered for deposit pending consultation with the interested States regarding the reservation?
12. In notifying the interested States of the receipt of the instrument:
- (a) Do you merely communicate the text of the reservation; or
  - (b) Do you request the interested States to inform you of their attitude towards the reservation; or
  - (c) Do you merely communicate to some States, and ask the attitudes of others?
13. If 12 (b) or 12 (c) above is answered in the affirmative:
- (a) To which States do you address such a request:
    - (i) All States eligible to become parties to the convention;
    - (ii) Signatory States; or
    - (iii) States which have deposited their instruments of ratification, accession or acceptance?
  - (b) What time-limit, if any, do you set in the notification within which the States should inform you of their attitude, and how is any such time-limit determined?
  - (c) Do you consider a State which has not replied within the prescribed time-limit as having consented to the reservation?
  - (d) If no objections are received within the prescribed time-limit, do you receive the instrument for definitive deposit and inform the interested States accordingly?

#### E. *Objections to reservations*

14. In the event of your receiving an objection from an interested State to a reservation, what, if any, legal effect does your practice attribute to the objection?
- (a) Do you consider the objection without force, on the grounds of an absolute sovereign right of States to make reservations?
  - (b) Does your practice make no assumption as to any given legal effect but merely give notice to interested States of the terms of the objection?
  - (c) Do you inform the reserving State that it has the alternative of withdrawing the reservation or failing to become a party to the convention?
  - (d) Do you treat the objection as affecting only the relations between the reserving and objecting States under the convention? If so, is the effect of the objection to prevent the creation of any rights and obligations between the reserving and objecting States
    - (i) under the whole of the convention (i.e., to treat them as not being parties to the convention in respect of each other), or
    - (ii) only under the article or articles reserved?
15. In any of the cases comprised under 14 (c) or (d) above, does your practice make a distinction in the legal effect of an objection according to whether it was received from a State
- (a) merely entitled to become a party;
  - (b) signatory;
  - (c) which has ratified or acceded?
16. To what extent would the answer to 14 and 15 above differ if the objections were to reservations made on signature rather than ratification or accession?

#### F. *Entry into force*

17. What distinction, if any, is made under 13 above—as to which States are consulted about a reservation, or as to any time-limit set for their reply—according to whether the convention has yet entered into force at the time the reservation is received?

18. Would the reply to 15 above differ according to whether the convention had entered into force by the time of the objection?

19. If the convention has not yet entered into force by the time of the circulation of the terms of the reservation attached to a ratification or accession, do you at once count the reserving State among the number necessary for bringing it into force—either in the absence of a stated time-limit or prior to its expiry?

20. If the convention has not yet entered into force by the time of the receipt of an objection to a reservation, do you notwithstanding the objection count the ratification or accession of the reserving State among those necessary for bringing the convention into force?

#### ANNEX II

##### Examples of reservation clauses appearing in conventions concluded under the auspices of the United Nations

1. The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, done at Geneva on 7 November 1952:\*

##### *Article XIV*

1. Any State may at the time of its signature or of the deposit of its instrument of ratification, acceptance or accession declare that it shall not be bound by specified provisions of this Convention.
2. Any State may at the time of making a notification under article XIII that the present Convention shall extend to any of the territories for the international relations of which it is responsible make a separate declaration in accordance with paragraph 1 of this article in respect of all or any of the territories to which the notification applies.
3. If any State submits a reservation to any of the articles of this Convention at the time of signature, ratification, acceptance or accession, or at the time of making a notification under article XIII, the Secretary-General of the United Nations shall communicate the text of such reservation to all States which are or may become parties to this Convention. Any State which has signed, ratified, accepted or acceded before the reservation is made (or, if the Convention has not entered into force, which has signed, ratified, accepted or acceded by the date of its entry into force), shall have the right to object to any reservation. If no objection is received by the Secretary-General of the United Nations from any State entitled to object by the ninetieth day from the date of his communication (or from the date of entry into force of the Convention, whichever is the later), the reservation shall be deemed to be accepted.
4. In the event of an objection being received by the Secretary-General of the United Nations from any State entitled to object, he shall notify the State making the reservation of such objection, and request it to inform him whether it is prepared to withdraw the reservation or whether it prefers to abstain from ratification, acceptance or accession or from extending the Convention to the territory or territories to which the reservation applies, as the case may be.
5. A State which has made a reservation in regard to which an objection has been presented in accordance with paragraph 3 of this article shall not become a party to this Convention unless the objection has been withdrawn or has ceased to have effect as provided in paragraph 6; neither shall a State have the right to claim the benefits of this Convention in respect of any territory for the international relations of which it is responsible and in respect of which it has made a reservation if any objection has been made to the reservation in accordance with paragraph 3 of this article,

\* United Nations, *Treaty Series*, vol. 221, p. 255.

unless the objection has been withdrawn or has ceased to have effect as provided in paragraph 6.

6. An objection by a State which has signed but not ratified the Convention shall cease to have effect if, within a period of twelve months from the date of making its objection, the objecting State has not ratified or accepted the Convention.

2. The Convention concerning Customs Facilities for Touring, done at New York on 4 June 1954;<sup>b</sup> the Additional Protocol to the Convention concerning Customs Facilities for Touring, relating to the Importation of Tourist Publicity Documents and Material, done at New York on 4 June 1954;<sup>b</sup> and the Customs Convention on the Temporary Importation of Private Road Vehicles, done at New York on 4 June 1954<sup>c</sup> contain a similar article on reservations:

1. Reservations to this Convention made before the signing of the Final Act shall be admissible if they have been accepted by a majority of the members of the Conference and recorded in the Final Act.

2. Reservations made after the signing of the Final Act shall not be admitted if objection is expressed by one-third of the Signatory States or of the Contracting States as hereinafter provided.

3. The text of any reservation submitted to the Secretary-General of the United Nations by a State at the time of the signature, the deposit of an instrument of ratification or accession or of any notification under article ... shall be circulated by the Secretary-General to all States which have at that time signed, ratified or acceded to the Convention. If one-third of these States expresses an objection within ninety days from the date of circulation, the reservation shall not be accepted. The Secretary-General shall notify all States referred to in this paragraph of any objection received by him as well as of the acceptance or rejection of the reservation.

4. An objection by a State which has signed but not ratified the Convention shall cease to have effect if, within a period of nine months from the date of making its objection, the objecting State has not ratified the Convention. If, as the result of an objection ceasing to have effect, a reservation is accepted by application of the preceding paragraph, the Secretary-General shall so inform the States referred to in that paragraph. The text of any reservation shall not be circulated to any signatory State under the preceding paragraph if that State has not ratified the Convention within three years following the date of signature on its behalf.

5. The State submitting the reservation may, within a period of twelve months from the date of the notification by the Secretary-General referred to in paragraph ... that a reservation has been rejected in accordance with the procedure provided for in that paragraph, withdraw the reservation, in which case the instrument of ratification or accession or the notification under article ... as the case may be shall take effect with respect to such State as from the date of withdrawal. Pending such withdrawal, the instrument or the notification as the case may be shall not have effect, unless, by application of the provisions of paragraph..., the reservation is subsequently accepted.

6. Reservations accepted in accordance with this article may be withdrawn at any time by notification to the Secretary-General.

7. No Contracting State shall be required to extend to a State making a reservation the benefit of the provisions to which such reservation applies. Any State availing itself of this right shall notify the Secretary-General accordingly and the latter shall communicate this decision to all signatory and Contracting States.

3. The Customs Convention on Containers, done at Geneva on 18 May 1956;<sup>d</sup> the Customs Convention on the Temporary Impor-

tation of Commercial Road Vehicles, done at Geneva on 18 May 1956;<sup>e</sup> and the Customs Convention on the Temporary Importation for Private Use of Aircraft and Pleasure Boats, done at Geneva on 18 May 1956<sup>f</sup> contain a similar article on reservations:

1. Each Contracting Party may, at the time of signing, ratifying, or acceding to, this Convention, declare that it does not consider itself as bound by article... of the Convention. Other Contracting Parties shall not be bound by article... in respect of any Contracting Party which has entered such a reservation.

2. Any Contracting Party having entered a reservation as provided for in paragraph... may at any time withdraw such reservation by notifying the Secretary-General of the United Nations.

3. No other reservation to this Convention shall be permitted.

4. The Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), done at Geneva on 15 January 1959;<sup>g</sup> the European Convention on Customs Treatment of Pallets used in International Transport, done at Geneva on 9 December 1960;<sup>h</sup> the Convention on the Contract for the International Carriage of Goods by Road, done at Geneva on 19 May 1956;<sup>i</sup> the Convention on the Taxation of Road Vehicles Engaged in International Goods Transport, done at Geneva, on 14 December 1956;<sup>j</sup> the Convention on the Taxation of Road Vehicles Engaged in International Passenger Transport, done at Geneva on 14 December 1956;<sup>k</sup> the European Agreement concerning the International Carriage of Dangerous Goods by Road, done at Geneva on 30 September 1957;<sup>l</sup> the European Agreement on Road Markings, done at Geneva on 13 December 1957;<sup>m</sup> the Agreement concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts, done at Geneva on 20 March 1958;<sup>n</sup> and the Agreement on Special Equipment for the Transport of Perishable Foodstuffs and on the Use of such Equipment for the International Transport of some of those Foodstuffs, done at Geneva on 15 January 1962;<sup>o</sup> contain a similar clause on reservations:

1. Any country may, at the time of signing, ratifying or acceding to this Agreement, declare that it does not consider itself bound by paragraphs ... and ... of article ... of the Agreement. The other Contracting Parties shall not be bound by these paragraphs with respect to any Contracting Party which has entered such a reservation.

2. Any Contracting Party which has entered a reservation under paragraph ... of this article may at any time withdraw the reservation by notice addressed to the Secretary-General of the United Nations.

3. With the exception of the reservation provided for in paragraph ... of this article, no reservation to this Agreement shall be permitted.

5. The European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport, done at Geneva on 19 January 1962:<sup>p</sup>

<sup>e</sup> *Ibid.*, vol. 327, p. 123.

<sup>f</sup> *Ibid.*, vol. 319, p. 21.

<sup>g</sup> *Ibid.*, vol. 348, p. 13.

<sup>h</sup> *Ibid.*, vol. 429, p. 211.

<sup>i</sup> *Ibid.*, vol. 399, p. 189.

<sup>j</sup> *Ibid.*, vol. 436, p. 115.

<sup>k</sup> *Ibid.*, vol. 436, p. 131.

<sup>l</sup> E/ECE/322—E/ECE/TRANS/503, 1958.

<sup>m</sup> United Nations, *Treaty Series*, vol. 372, p. 159.

<sup>n</sup> *Ibid.*, vol. 335, p. 211.

<sup>o</sup> E/ECE/456—E/ECE/TRANS/526, 1962.

<sup>p</sup> E/ECE/457—E/ECE/TRANS/527, 1962.

<sup>b</sup> *Ibid.*, vol. 276, p. 266.

<sup>c</sup> *Ibid.*, vol. 282, p. 249.

<sup>d</sup> *Ibid.*, vol. 338, p. 103.

## Article 23

1. Any country may, at the time of signing, ratifying or acceding to the present Agreement, declare that it does not consider itself bound by paragraphs 2 and 3 of article 22 of the Agreement. The other Contracting Parties shall not be bound by these paragraphs with respect to any Contracting Party which has entered such a reservation.

2. If, at the time of depositing its instrument of ratification or accession, a country enters a reservation other than that provided for in paragraph 1 of this article, the Secretary-General of the United Nations shall communicate the reservation to the countries which have previously deposited their instruments of ratification or accession and have not since denounced this Agreement. The reservation shall be deemed to be accepted if, within six months after such communication, none of these countries has expressed its opposition to the acceptance of the reservation. Otherwise, the reservation shall not be admitted, and, if the country which entered the reservation does not withdraw it, the deposit of that country's instrument of ratification or accession shall be without effect. For the purpose of the application of this paragraph, the opposition of countries whose accession or ratification is without effect under this paragraph, by reason of the reservations entered by them, shall be disregarded.

3. Any Contracting Party which has entered a reservation in the Protocol of signature of the present Agreement or has entered a reservation which has been accepted pursuant to paragraphs 1 and 2 of this article may at any time withdraw such reservation by a notification addressed to the Secretary-General.

6. The Convention on the Political Rights of Women, done at New York on 31 March 1953:<sup>a</sup>

## Article VII

In the event that any State submits a reservation to any of the articles of this Convention at the time of signature, ratification or accession, the Secretary-General shall communicate the text of the reservation to all States which are or may become parties to this Convention. Any State which objects to the reservation may, within a period of ninety days from the date of the said communication (or upon the date of its becoming a party to the Convention), notify the Secretary-General that it does not accept it. In such case, the Convention shall not enter into force as between such State and the State making the reservation.

7. Convention on the Nationality of Married Women, done at New York on 20 February 1957:<sup>b</sup>

## Article 8

1. At the time of signature, ratification or accession, any State may make reservations to any article of the present Convention other than articles 1 and 2.

2. If any State makes a reservation in accordance with paragraph 1 of the present article, the Convention, with the exception of those provisions to which the reservation relates, shall have effect as between the reserving State and the other Parties. The Secretary-General of the United Nations shall communicate the text of the reservation to all States which are or may become Parties to the Convention. Any State Party to the Convention or which thereafter becomes a Party may notify the Secretary-General that it does not agree to consider itself bound by the Convention with respect to the State making the reservation. This notification must be made, in the case of a State already a Party, within ninety days from the date of the communication by the Secretary-General; and, in the case of a State subsequently becoming a Party, within ninety

days from the date when the instrument of ratification or accession is deposited. In the event that such a notification is made, the Convention shall not be deemed to be in effect as between the State making the notification and the State making the reservation.

3. Any State making a reservation in accordance with paragraph 1 of the present article may at any time withdraw the reservation, in whole or in part, after it has been accepted, by a notification to this effect addressed to the Secretary-General of the United Nations. Such notification shall take effect on the date on which it is received.

8. The Convention on Fishing and Conservation of the Living Resources of the High Seas, done at Geneva on 29 April 1958:<sup>c</sup>

## Article 19

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 6, 7, 9, 10, 11 and 12.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

9. The Convention relating to the Status of Refugees, done at Geneva on 28 July 1951,<sup>d</sup> and the Convention relating to the Status of Stateless Persons, done at New York on 28 September 1954<sup>e</sup> contain a similar provision on reservations:

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles ... and ....

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

10. The Convention on the Reduction of Statelessness, done at New York on 30 August 1961:<sup>f</sup>

## Article 17

1. At the time of signature, ratification or accession any State may make a reservation in respect of articles 11, 14 or 15.

2. No other reservations to this Convention shall be admissible.

11. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, done at Geneva on 7 September 1956,<sup>g</sup> and the International Coffee Agreement, 1962,<sup>h</sup> provide that no reservations may be made with respect to any of their provisions.

## ANNEX III

## General Assembly resolutions governing the practice of the Secretary-General in respect of reservations

1. *General Assembly resolution 598 (VI) of 12 January 1952*

*The General Assembly,*

*Bearing in mind* the provisions of its resolution 478 (V) of 16 November 1950, which (1) requested the International Court of Justice to give an advisory opinion regarding reservations to the Convention

<sup>a</sup> United Nations Conference on the Law of the Sea, 1958, *Official Records*, vol. II (United Nations publication, Sales No.: 58.V.4, vol. II), p. 139.

<sup>b</sup> United Nations, *Treaty Series*, vol. 189, p. 137.

<sup>c</sup> *Ibid.*, vol. 360, p. 130.

<sup>d</sup> A/CONF.9/15, 1961; text also in Cmnd. 1825 (Misc. No. 27), H.M. Stationery Office, London, 1962.

<sup>e</sup> United Nations, *Treaty Series*, vol. 266, p. 40.

<sup>f</sup> See *United Nations Coffee Conference, 1962*, (United Nations publication, Sales No.: 63.II.D.1), annex III, p. 56.

<sup>a</sup> United Nations, *Treaty Series*, vol. 193, p. 135.

<sup>b</sup> *Ibid.*, vol. 309, p. 65.

on the Prevention and Punishment of the Crime of Genocide and (2) invited the International Law Commission to study the question of reservations to multilateral conventions,

*Noting* the Court's advisory opinion of 28 May 1951 and the Commission's report, both rendered pursuant to the said resolution,

1. *Recommends* that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them;

2. *Recommends* to all States that they be guided in regard to the Convention on the Prevention and Punishment of the Crime of Genocide by the advisory opinion of the International Court of Justice of 28 May 1951;

3. *Requests* the Secretary-General:

(a) In relation to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, to conform his practice to the advisory opinion of the Court of 28 May 1951;

(b) In respect of future conventions concluded under the auspices of the United Nations of which he is the depositary:

(i) To continue to act as depositary in connexion with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and

(ii) To communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each State to draw legal consequences from such communications.

2. *General Assembly resolution 1452 (XIV) of 7 December 1959*

#### A

*The General Assembly,*

*Having considered* the item entitled "Reservations to multilateral conventions: the Convention on the Inter-Governmental Maritime

Consultative Organization", as well as India's instrument of acceptance of the Convention on the Inter-Governmental Maritime Consultative Organization and the report of the Secretary-General,

*Noting* that the Secretary-General of the United Nations acts as the depositary authority in respect of that Convention,

*Noting* the statement made on behalf of India at the 614th meeting of the Sixth Committee on 19 October 1959, explaining that the Indian declaration was a declaration of policy and that it does not constitute a reservation,

1. *Expresses its appreciation* of the information and materials made available to the General Assembly;

2. *Expresses the hope* that, in the light of the above-mentioned statement of India, an appropriate solution may be reached in the Inter-Governmental Maritime Consultative Organization at an early date to regularize the position of India;

3. *Requests* the Secretary-General to transmit to the Inter-Governmental Maritime Consultative Organization the present resolution together with the relevant records and documentation.

#### B

*The General Assembly*

*Recalling* its resolution 98 (VI) of 12 January 1952,

1. *Decides* to amend paragraph 3 (b) of that resolution by requesting the Secretary-General to apply the aforesaid paragraph to his depositary practice, until such time as the General Assembly may give further instructions, in respect of all conventions concluded under the auspices of the United Nations which do not contain provisions to the contrary;

2. *Requests* the Secretary-General to obtain information from all depositary States and international organizations with respect to depositary practice in relation to reservations, and to prepare a summary of such practices, including his own, for use by the International Law Commission in preparing its reports on the law of treaties and by the General Assembly in considering these reports.