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**Reservations to Multilateral Conventions - Annex to draft of report to the General Assembly,
prepared by Mr. J. L. Brierly, Special Rapporteur**

Topic:
Reservations to multilateral conventions

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utilisable, attendu qu'il dépend de l'opinion subjective de chaque État intéressé, comme le montre bien le paragraphe *a* de la réponse à la question 2.

24. En outre, l'avis détruit toute l'unité ou l'intégrité de l'instrument conventionnel, ce qui est cependant essentiel à la valeur sociale de tout instrument de nature législative. C'est un point sur lequel nous n'avons pas insisté parce qu'il nous paraît aller de soi que tout instrument d'ordre législatif au sein d'un ordre juridique quelconque doit être *un* (exception faite des cas particuliers qu'il peut viser), sous peine de n'être plus général et d'engendrer l'anarchie. L'avis de la Cour aboutirait, en principe, à reproduire tous les inconvénients de la méthode exceptionnelle et très dangereuse adoptée par l'Union panaméricaine. Enfin, nous nous séparons de l'avis de la Cour parce que nous mettons sur la même ligne les *Parties* (États ayant ratifié ou adhéré sans réserves) et les Parties éventuelles (signataires originaires).

25. Finalement, nous pourrions présenter nos conclusions originaires dans l'ordre suivant:

1.— Aucune réserve à la ratification ou à l'adhésion ne peut avoir d'effet juridique que si la totalité des signataires originaires ou des Parties (États ayant ratifié ou adhéré sans réserves) l'accepte unanimement.

2.— Le problème des réserves ne se pose que si la convention ou le traité sont muets sur la question, ou si le régime n'en a pas déjà été réglé par une convention institutionnelle antérieure.

3.— Le droit d'objection ou de refus n'appartient pas aux États simplement invités à signer ou à adhérer.

4.— Le dépositaire de l'instrument conventionnel est fondé à demander aux gouvernements des États parties ou signataires originaires, de se prononcer explicitement sur les réserves formulées, dans un délai déterminé, délai à l'expiration duquel il devra considérer le silence de l'État intéressé comme valant acceptation de la réserve.

En cas d'instance judiciaire relative à la validité de la réserve, le dépositaire devra en attendre l'issue avant de prendre une décision sur l'enregistrement de la ratification ou de l'adhésion.

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Draft of Report to the General Assembly by J. L. Brierly, Special Rapporteur

[Original text: English]

[11 June 1951]

ANNEX*

Draft articles on reservations

EXPLANATORY NOTE

The scheme of the following articles is to provide a flexible series of options adaptable to varying situations. They have also been drafted in compliance with the instruction of the Resolution of the Assembly that particular account should be taken of the views expressed in the Sixth Committee.

Part I contains clauses of various types on the admissibility of reservations any of which could be selected by a Drafting Commission as the most appropriate for the particular Convention they are dealing with. Part II sets out various options representing practices now current. Part III deals with the procedure to be followed by the depositary but is drafted in such a way as to be adaptable to any of the options set out in Part II. Part IV deals with the procedure for objections and is linked up with the drafting of Part III.

Par I

ADMISSIBILITY OF RESERVATIONS

A

No reservations shall be permitted to this Convention whether formulated before or after it has entered into force.

* Doc. A/CN.4/L.18 was incorporated in the *Report of the International Law Commission covering the work of its third session*, paras. 12-34 (see present volume). Where the original text differed from that reproduced in the "Report", the drafting changes were indicated in footnotes to the summary records of the 101st to 106th meetings (see vol. I of this *Yearbook*).

B

1. Each High Contracting Party may, at the time of signature, ratification, or accession notify the depositary that it desires to make a reservation to the Convention.

2. Such a reservation must be chosen from among those set forth in Annex hereto.

C

1. Each High Contracting Party may, at the time of signature, ratification, or accession notify the depositary that it desires to make a reservation to the Convention.

2. If such a reservation is formulated by a State which has signed but not ratified the Convention it must be chosen from those set forth in Annex .. hereto. If it is formulated by a State which has not signed the Convention but desires to become a party thereto it must be chosen from those set forth in Annex .. hereto.¹

D

1. Each High Contracting Party may, at the time of signature, ratification, or accession notify the depositary that it desires to make a reservation to the Convention.

¹ The case contemplated here is where a Convention is signed by ten States each of whom are willing to allow particular reservations as between themselves but are not willing to admit the same reservations by other States who may subsequently become parties.

2. If such a reservation is formulated before the entry into force of the Convention the depositary shall consult with such governments as are entitled to consultation, as provided in article. . . .²

If it is formulated after the entry into force of the convention the central organ of the organization shall at its next meeting following the presentation of the reservation consider its admissibility and proceed to vote thereon.³

E

The reservations to the application of the present convention set forth in the annex thereto are accepted in regard to the territories named therein.⁴

Part II

STATES ENTITLED TO BE CONSULTED AS TO RESERVATIONS

The following classes of States shall be entitled to be consulted as to any reservations formulated after the signature of this convention (or after this convention has become open to signature or accession):

- (a) States entitled to become parties to the convention,
- (b) States having signed or ratified the convention,
- (c) States having ratified or acceded to the convention.

Should the reservation have been formulated within x years of the date specified in the convention for the determination of the date of the entry into force, States whose signature of the convention has not been followed by ratification shall also be entitled to be consulted.

Note: It will be seen that the classes entitled to be consulted are set out in the gradually decreasing number, the largest class being Class A and the smallest, Class C. It will be for the Drafting Commission to select which class it considers to be appropriate for the convention in question. The above classes therefore represent a series of options which will vary in practice, particularly according as to whether the day specified for determining the date of the entry into force of the convention has or has not arrived. (See Part III, article 3 *b* and 3 *c*.) The last paragraph of Part II has been added as taking into account the views expressed by Mr. Röling in the course of the debates of the Sixth Committee. (See annex A and also annex C, para. 9.) It should further be noted that Class A is included as an option, although opinion is divided as to whether in the absence of express provision this should be, or is, a class entitled to be consulted. All three classes are included in question III of the General Assembly resolution requesting an advisory opinion from the International Court of Justice (A/1517).

Part III

DEPOSITARY'S FUNCTIONS

1. The depositary for the purpose of this convention shall be (insert name of depositary).

2. Where any State deposits, together with its instrument of ratification or accession, or makes at the time of signature any formal declaration which purports to qualify or limit the effect of the convention in so far as it may apply in the relation of that State with the other States which may be or become parties to the treaty, the depositary shall follow the procedure prescribed below.

3. The depositary shall:

(a) whether or not the Convention is in force communicate the text of any reservation to the Governments of all States on whose

behalf the Convention has been signed or who are parties or entitled to become parties to the Convention;

(b) if the day specified in the Convention for the determination of the date on which it shall enter into force has not yet arrived, enquire of all States entitled to be consulted (selected from Part II) whether or not they accept the reservation;

(c) if the day specified in the Convention for the determination of the date on which it shall enter into force has passed, enquire of all States entitled to be consulted (selected from Part II) whether or not they accept the reservation.

Part IV

PROCEDURE FOR OBJECTIONS

1. Where such an enquiry as is specified in article 3 (*b*) of Part III above is made, any of the governments to whom it is addressed may, at any time before the day specified in that article, notify the depositary it does not accept the reservation.

2. Where such an enquiry as is specified in article 3 (*c*) of Part III is made, any of the Governments to whom it is addressed may, at any time within x months of such enquiry, notify the depositary that it does not accept the reservation.

3. In the event of any Government notifying the depositary, pursuant to paragraphs (1) or (2) above, that it does not accept the reservation, the depositary shall so inform the Government desiring to make the reservation, and request it to inform him:

(a) If the notification is made under paragraph (1), within x months, or at any time before the day specified in article 3 (*b*), whichever period is the longer,

(b) If the notification is made under paragraph (2), within x months of the date of the request, whether it is prepared to withdraw the reservation,

And, if, within the appropriate period, as defined in sub-paragraphs (*a*) and (*b*) above, that Government has not replied, it shall be deemed not to be a party (or a signatory) to the Convention.

4. If, in reply to the request by the depositary specified in paragraph (3) the Government desiring to make the reservation states that it desires to withdraw the reservation, it shall be deemed to be a party (or signatory) to the Convention as from the date when its reply is received by the depositary.

5. If, within the appropriate period as prescribed in paragraphs (1) and (2) above no objection to the reservation has been received by the depositary, it shall be treated as accepted by all States entitled to be consulted and the Government making the reservation shall be deemed to be a party to the Convention as from the date when the above-mentioned period has expired.

6. If the Government desiring to make the reservation states, in reply to the enquiry by the depositary specified in paragraph (3), that it maintains its reservation:

(i) It shall not be a party to the Convention; or

(ii) It shall be a party to the Convention but shall not be bound under it in relation to any State:

(a) Which has notified the depositary that it does not accept the reservation,

(b) Which, by reason of the fact that it was not among the States entitled, under this Convention, to be consulted at the time the reservation was formulated, did not receive the enquiry provided for in articles 3 (*a*) and 3 (*b*) of Part III.

Note: The options provided in paragraph (6) represent two different practices now current, but, as pointed out in the report, it may be desirable, for special reasons and in the case of particular Conventions, to depart from whichever practice is usual amongst the High Contracting Parties. See annex C, para. 13.

² See clauses under Part II.

³ This is drafted with a view to the practice described by O. Schachter, annex D, para. 9.

⁴ See annex C, para. 10.