COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

RÉSERVES A LA CONVENTION POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

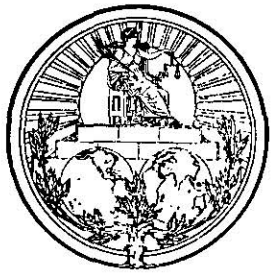
AVIS CONSULTATIF DU 28 MAI 1951

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

RESERVATIONS TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

ADVISORY OPINION OF MAY 28th, 1951



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1. WRITTEN STATEMENT OF THE ORGANIZATION OF AMERICAN STATES

REPORT SUBMITTED BY THE DEPARTMENT OF INTERNATIONAL LAW AND ORGANIZATION OF THE PAN-AMERICAN UNION

The problem of reservations to multilateral treaties has long been a matter of concern to the 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 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 may 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 draw a line between the two extremes, solving the problem by practical considerations based upon the experience of the ratification of a hundred or more multilateral treaties.

At the Sixth International Conference of American States, held at Havana in 1928, a Convention on Treaties was adopted, Article 6, paragraph 3, of which provided that :

> "In international treaties celebrated between different States, a reservation made by one of them in the act of ratification affects only the application of the clause in question in the relation of the other contracting States with the State making the reservation."

The adoption of this rule, now abandoned, was in line with the practice recognized as applicable to the conventions adopted at the Hague Conferences. The ratifications of conventions were deposited at The Hague with such reservations as the particular State chose to enter, and the State in question became thereupon a party to the convention except in respect to the obligations covered by the reservation. Whether the reservation of a particular article or articles of the convention might not have the effect of making other obligations of the convention less binding, or indeed might not have the effect of invalidating the convention altogether, was left to each of the ratifying States to decide.

It would appear from a study of the historical background of the paragraph above cited that the Havana Conference had in mind reservations to individual articles of a convention which could be segregated from the other articles of the convention so as to permit the reserving State to become a party to the convention forthwith without the necessity of making inquiry of the other parties to the convention whether they were prepared to accept the reservation or not. But such segregation is not always possible. More often the articles of a multilateral treaty are closely integrated, so that the elimination of one article may affect the consideration which led to the acceptance of other articles. Nor does Article 6, paragraph 3, take into account the case where a reservation, instead of limiting the obligation of the convention, might seek to extend it, creating obligations for the other parties which they had no intention of assuming when they signed the original treaty.

In an effort to meet the problems presented to the Pan-American Union in the exercise of its functions as depository of diplomatic documents, the Governing Board of the Union, on May 4, 1932, approved a resolution setting forth six rules dealing with the procedure to be followed with respect to the deposit of ratifications of multilateral treaties and three rules relating to the juridical status of treaties ratified with reservations. The six rules of procedure read as follows:

"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 to the treaty, if the reservations have or have not been accepted."

It will be observed that the fourth rule makes no distinction between States which have already deposited their ratifications and other signatory States which have not yet ratified. Nor does the fifth rule make any distinction between the signatory States which have already ratified and those which have not ratified in respect to their acceptance of the reservations. In like manner information as to the acceptance or rejection of the reservations is sent to all of the signatory States irrespective of any action that they may previously have taken.

Supplementing these rules, which are concerned solely with the procedure of depositing ratifications, are three additional rules representing the understanding of the Governing Board with

respect to the juridical effect of the reservations which a particular State might add at the time it deposits its ratification of the treaty. These rules read as follows:

> "With respect to the juridical status of treaties ratified with reservations, which have not been accepted, the Governing Board of the Pan-American 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 reservations.
> 3. It shall not be in force between a government which may have ratified with reservations and another which may have already ratified, and which does not accept such reservations."

The first and second of these rules confirm the traditional practice that, as between the States which ratify a treaty without reservations, it shall be in force in the form in which it was originally signed, and that it shall be in force between the State ratifying it with reservations and the other signatory States accepting the reservations in the form in which the treaty may be modified by the reservations. The third rule marks the abandonment of the provision of Article 6, paragraph 3, of the Havana Convention of 1928 which contemplated that reservations to multilateral treaties should do no more than affect the application of the particular clause in question, permitting the reserving State to become a party to the treaty without inquiry in advance as to the attitude of the other contracting States. The rule, however, fails to indicate whether the original agreement should be regarded as valid between the parties ratifying it without reservations, in case the number of those ratifying it with reservations should destroy the multilateral character of the agreement by reducing it in practical effect to a series of bilateral agreements.

At the Seventh International Conference of American States, held at Montevideo in 1933, a Resolution (LVII) was adopted calling upon the Pan-American Union to communicate with the American Governments in an effort to have them explain the objections they might have to ratifying certain conventions, and, in the light of the replies received, to study the possible modifications that might be introduced into the convention in order to obtain the ratification of a considerable majority. Acting upon this Resolution the Governing Board of the Pan-American Union approved the report of a special committee in which it was recommended that special representatives of the Pan-American Union be appointed in each country "to expedite the study, approval and ratification" of inter-American treaties and conventions. The

question of reservations was, however, not included in the report of the committee.

At the Eighth International Conference of American States, held at Lima, Peru, in 1938, a Resolution (XXIX) was adopted on "methods of preparation of multilateral treaties", in accordance with which the Conference approved the six rules of procedure adopted by the Governing Board of the Pan-American Union in its Resolution of May 4, 1932, together with other rules adopted in 1934 and 1936 dealing with measures to be taken to promote the ratification of treaties. Paragraph 2 of the resolution introduces a new procedure of delaying the ratification of a treaty with reservations until inquiry can be made as to the attitude of the other signatories with respect to the proposed reservation. Paragraph 2 reads as follows:

> "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."

It will be observed that the above provision still leaves it possible for a State to proceed with the deposit of its ratification with the accompanying reservation in spite of the fact that its ratification may not bring the treaty into effect with the States which are unwilling to accept the reservation. But it is believed that if the signatory States in sufficient numbers should indicate that they are not willing to accept the reservation, in such event the State which proposes 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 Pan-American Union is believed to be the one best adapted to secure the ratification of multilateral treaties by as many States as possible. It makes it unnecessary at the time a treaty is drafted to eliminate from the text all those elements likely to give rise to reservations. It recognizes also that reservations may at times be no more than the expression of a national complex which the particular State may have in respect to possible effects of the treaty not contemplated by the other parties. It proceeds upon the assumption that reservations may frequently be technical qualifications of a treaty rather than substantial limitations of its obligations.

The Pan-American Union has never attempted to suggest how many objections on the part of signatory States to the reservation proposed by a particular State should be sufficient to bar the

deposit of ratification. It is clear that if a large number of States were to object to the reservation the ratification of the particular State would be of little or no value ; and at a given point it might be said that the ratifying State was for practical purposes not a party to the multilateral treaty but merely a party to a number of bilateral treaties with the States accepting its reservation. Experience is lacking from which conclusions might be drawn.

As a matter of fact, down to the present time there has only been one case in which a State already a party to a treaty has objected to a reservation made by a State subsequently ratifying the treaty. In 1932, prior to the adoption of the Lima Resolution calling for previous consultation in respect to proposed reservations, the Dominican Republic deposited its ratification of the Havana Convention on Consular Agents accompanied by several reservations which had not been discussed or agreed to at the time the conventions were formulated. Upon receiving notice of the reservations the Department of State of the United States informed the Director-General of the Pan-American Union that it considered the reservations as in the nature of amendments which would deprive the Convention of a large part of its value and that they were therefore unacceptable, and that the United States did not regard the Convention, thus ratified, to be in effect between the United States and the Dominican Republic. None of the other signatory States made objection to the Dominican reservations, so that the Convention came into effect between them and the Dominican Republic in the more limited form determined by the reservations.

The practice of the Pan-American Union in the matter of the deposit of ratifications to which a reservation is attached differs from that of the United Nations Secretariat in one significant matter. The Pan-American Union procedure permits a State to proceed with its ratification in spite of the fact that one or more of the signatory States may object to the reservation, whereas the procedure followed by the Secretary-General of the United Nations has the effect of preventing the particular State from becoming a party to the convention if any single State among those which have already ratified voices its disapproval of the proposed reservation. In a memorandum submitted by the Uruguayan delegation to the Sixth Committee of the General Assembly, the practice of the United Nations in thus permitting any single ratifying State to exclude the particular State proposing a reservation from participation in the convention is described as "extending the veto" into the system of multilateral treaties by giving to individual States the right to reject reservations which the great majority of the other parties to the convention might be willing to accept. On the other hand, the Secretary-General of the United Nations, in recognition of the desirability of keeping to a minimum the number of States required to give unanimous

consent to a reservation, has modified the earlier practice of the League of Nations by confining the power to reject the reservations to those States which have established their immediate concern in the treaty by themselves becoming parties.

The Pan-American Union procedure is believed to be best adapted, within the limited inter-American regional system, to increasing the number of ratifications and widening the use of treaties both for purposes of a contractual character and for the development of general principles of international law. Thus far it has not had the effect, to which it might logically give rise, of creating confusion in respect to the obligations of the various treaties which have been entered into. Whether the procedure is as well adapted to the larger organization of the United Nations, in which law-making treaties may be expected to play a larger part than in the inter-American regional system, is a question apart from the scope of the present memorandum.

December 14, 1950.

2. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE L'UNION DES RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES

L'AMBASSADEUR DE L'UNION DES RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES AUX PAYS-BAS AU GREFFIER DE LA COUR

Monsieur le Greffier,

En réponse à l'adresse de la Cour internationale de Justice, datée du 1er décembre 1950, en ce qui concerne la question des réserves à la Convention du génocide, le Gouvernement soviétique juge nécessaire d'indiquer que son point de vue sur la question des réserves aux traités multilatéraux a déjà été exprimé par ses représentants à la Vme session de l'Assemblée générale. Le Gouvernement soviétique estime que chaque État, se basant sur les principes de souveraineté, a le droit incontestable de faire une réserve à n'importe quel traité. Une conséquence juridique de cette réserve est que le traité est en vigueur entre un État qui a fait une réserve et tous les autres participants du traité, excepté la partie du traité que la réserve concerne.

La Haye, le 13 janvier 1951.

(Signé) ZAITSEW.

3. WRITTEN STATEMENT OF THE GOVERNMENT OF THE HASHEMITE KINGDOM OF THE JORDAN

THE MINISTER FOR FOREIGN AFFAIRS OF THE HASHEMITE KINGDOM OF THE JORDAN TO THE REGISTRAR OF THE COURT

9th January, 1951.

Sir,

With reference to your note 12209 dated December 1, 1950, I have the honour to inform you that the Government of the Hashemite Kingdom of the Jordan accepts without any reservation the complete text of the Convention on the Prevention and Punishment of the Crime of Genocide.

Please, etc.

4. WRITTEN STATEMENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Introductory

The General Assembly of the United Nations, at its fifth session, by Resolution dated November 16, 1950 (U.N. Official Records, General Assembly, 5th session, A/1517, 17 November, 1950), decided to submit to the International Court of Justice, with a request for an advisory opinion, in so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide, certain legal questions relating to the effect of reservations made by a State ratifying or acceding to the Convention, if such reservations are agreed to by some States but are objected to by States parties, States signatories, or States entitled to become parties, to the Convention.

The Resolution of the General Assembly, in so far as it pertains to the submission of certain questions to the International Court of Justice, reads as follows :

"*The General Assembly*,

Having examined the report of the Secretary-General regarding reservations to multilateral conventions,

Considering that certain reservations to the Convention on the Prevention and Punishment of the Crime of Genocide have been objected to by some States,

Considering that the International Law Commission is studying the whole subject of the law of treaties, including the question of reservations,

Considering that different views regarding reservations have been expressed during the fifth session of the General Assembly, and particularly in the Sixth Committee,

1. *Requests* the International Court of Justice to give an advisory opinion on the following questions :

In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification :

I. Can the reserving State be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others ?

II. If the answer to question I is in the affirmative, what is the effect of the reservation as between the reserving State and :

(a) The parties which object to the reservation ?

(b) Those which accept it ?

III. What would be the legal effect as regards the answer to question I if an objection to a reservation is made:

(a) By a signatory which has not yet ratified?

(b) By a State entitled to sign or accede but which has not yet done so?"

The balance of the Resolution is addressed to the International Law Commission and the Secretary-General, and reads:

"2. *Invites* the International Law Commission:

(a) In the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions both from the point of view of codification and from that of the progressive development of international law; to give priority to this study and to report thereon, especially as regards multilateral conventions of which the Secretary-General is the depositary, this report to be considered by the General Assembly at its sixth session;

(b) In connexion with this study, to take account of all the views expressed during the fifth session of the General Assembly, and particularly in the Sixth Committee;

3. *Instructs* the Secretary-General, pending the rendering of the advisory opinion by the International Court of Justice, the receipt of a report from the International Law Commission and further action by the General Assembly, to follow his prior practice with respect to the receipt of reservations to conventions and with respect to the notification and solicitation of approvals thereof, all without prejudice to the legal effect of objections to reservations to conventions as it may be recommended by the General Assembly at its sixth session."

The Government of the United States considers that the questions submitted to the International Court of Justice should be answered in the light of international practices and through the reasoned application of generally accepted principles of international law, for example, the principle of consent as an element of contract and the principle of purpose and intention as essential elements in determinations regarding treaties. As the discussion that follows is intended to bring out in more detail, the Genocide Convention defines the international crime of genocide and obligates States to take measures to prevent and punish genocide within their respective territories. No State, of course, should be permitted to alter the extent or nature of the obligation of another State under the Convention without its consent. Neither should any State be permitted to prevent other parties and the General Assembly itself, by encouraging the accession of the maximum number of States, from securing for themselves and for the international community the widest possible agreement to give effect to the Convention's purpose of preventing genocide, even though in

some cases the agreement may be a qualified one. Since the Genocide Convention relates primarily to prevention and punishment of crime within the borders of each State, the types of problems it creates for a particular country, and the types of reservations that are to be expected will tend to narrow the obligations exclusively of the reserving State because they will for the most part relate to internal adjustments in that country and need not affect the obligations of other parties. From the terms, nature, history and purpose of the Genocide Convention, it follows that States entitled to ratify or accede may do so subject to reservations even if these are objected to by one or more other parties to the Convention. While in the absence of a contrary intention, an objecting State would not be bound by the Convention *vis-à-vis* the reserving State, and a State not objecting would be bound by the Convention as modified by the reservation *vis-à-vis* the reserving State, the intention of the parties and the circumstances of a particular case would necessarily be controlling factors.

From what has been said, it of course follows that neither a signatory State nor a State entitled to accede could by its objection to a reservation prevent the reserving State from becoming a party to the Convention upon acceptance of its reservation by one or more parties. It should be pointed out that even were the Genocide Convention, contrary to the view here expressed, conceived to be of a nature requiring that reservations be accepted by all the parties, only a State itself already a party to the Convention should be permitted, by objecting to the reservation, to prevent the reserving State from becoming a party.

I. *The Genocide Convention*

The Genocide Convention resulted from the inhuman and barbarous practices which prevailed in certain countries prior to and during World War II, when entire religious, racial and national minority groups were threatened with and subjected to deliberate extermination. The practice of genocide has occurred throughout human history. The Roman persecution of the Christians, the Turkish massacres of Armenians, the extermination of millions of Jews and Poles by the Nazis are outstanding examples of the crime of genocide. This was the background when the General Assembly of the United Nations considered the problem of genocide. Not once, but twice, that body declared unanimously that the practice of genocide is criminal under international law and that States ought to take steps to prevent and punish genocide.

In 1946 the First General Assembly declared by Resolution 96 (I) that genocide was a crime under international law and entrusted to the Economic and Social Council the task of drafting a convention on the subject. An *Ad Hoc* Committee on Genocide was constituted by the Economic and Social Council for this purpose.

A Convention drawn up by that Committee and amended by the General Assembly was unanimously approved by the General Assembly in Paris on December 9, 1948. No express provision was made for the handling or effect of reservations.

The Convention provides, in Article XI :

> "The present Convention shall be open until 31 December, 1949, for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly."

While open for signature under Article XI, the Convention was signed on behalf of forty-three States, with reservations in the cases of four of those States (Byelorussian S.S.R., Czechoslovakia, Ukrainian S.S.R., and U.S.S.R.) with respect to substantive provisions of the Convention.

It is also provided in Article XI :

> "After 1 January, 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid."

Article XI provides further that instruments of ratification and instruments of accession shall be deposited with the Secretary-General of the United Nations.

By Resolution 368 (IV) of December 3, 1949, the General Assembly further implemented the intention reflected in the Convention itself that the maximum number of States should be parties to the Convention by extending an invitation to sign and ratify or to accede to the Convention to non-member States that were or might become active Members of one or more of the specialized agencies of the United Nations or parties to the Statute of the International Court of Justice.

According to information supplied by the Secretary-General of the United Nations, instruments of ratification and instruments of accession were received by the Secretary-General, up to and including October 14, 1950, as follows :

Ethiopia, ratification, July 1, 1949,
Australia, ratification, July 8, 1949,
Norway, ratification, July 22, 1949,
Iceland, ratification, August 29, 1949,
Ecuador, ratification, December 21, 1949,
Panama, ratification, January 11, 1950,
Guatemala, ratification, January 13, 1950,
Israel, ratification, March 9, 1950,
Monaco, accession, March 30, 1950,
Hashemite Kingdom of the Jordan, accession, April 3, 1950,
Liberia, ratification, June 9, 1950,
Philippines, ratification, July 6, 1950 (with reservations),
Saudi Arabia, accession, July 13, 1950,

Bulgaria, accession, July 14, 1950 (with reservations),
Turkey, accession, July 31, 1950,
Vietnam, accession, August 11, 1950,
Yugoslavia, ratification, August 29, 1950,
El Salvador, ratification, September 28, 1950,
Ceylon, accession, October 12, 1950,
France, ratification, October 14, 1950,
Haiti, ratification, October 14, 1950,
Cambodia, accession, October 14, 1950,
Costa Rica, accession, October 14, 1950,
Korea, accession, October 14, 1950.

In Article XIII of the Convention it is provided :

> "On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in Article XI.
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> The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.
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> Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession."

On October 14, 1950, five States deposited instruments of ratification or accession, bringing to twenty-four the number of instruments of ratification or accession received by the Secretary-General. Since of the twenty-four, only two (Philippines, Bulgaria) were submitted with reservations, the Secretary-General was able, without determining whether the instrument of ratification or accession of a reserving State should be counted among the first twenty instruments, to draw up a *procès-verbal* in accordance with Article XIII. He was also able to announce that the Convention would come into force on January 12, 1951, the ninetieth day after October 14, 1950.

Prior to October 14, 1950, however, the Secretary-General was confronted with a possible problem under Article XIII in that, to fix the date of deposit of the twentieth instrument of ratification or accession, he might need to know whether and under what conditions to count among the twenty those instruments of ratification or accession that were accompanied by reservations. It was with this possibility before him that the Secretary-General proposed the question of reservations to multilateral conventions for inclusion in the agenda of the fifth session of the General Assembly, and submitted a report on the depositary practices followed by him with respect to reservations to multilateral conventions (A/1372, 20 September, 1950), pointing out in the report the current importance of the problem in connexion with the Genocide Convention.

According to the Report of the Secretary General, it appears to have been his practice *(a)* in the case of a convention which has not entered into force, and with respect to which reservations have been made by a State at the time of signature, ratification, or accession, to deposit the instrument of ratification or accession of that State only when consent to the reservations has been given by all States which have ratified or acceded to the convention up to the date of its entry into force, and *(b)* in the case of a convention which has entered into force, and with respect to which reservations have been made by a State at the time of signature, ratification, or accession, to deposit the instrument of ratification or accession of that State only when consent to the reservations has been given by all States which have theretofore ratified or acceded.

For the better understanding of the procedure followed by the Secretary-General, particularly as it relates to the Genocide Convention, it is worth while to direct attention to certain portions of the above-mentioned Report, *inter alia*, as follows (pp. 3, 4 and 19) :

> "2. While it is universally recognized that the consent of the other governments concerned must be sought before they can be bound by the terms of a reservation, there has not been unanimity either as to the procedure to be followed by a depositary in obtaining the necessary consent or as to the legal effect of a State objecting to a reservation.
>
> 3. The question has acquired a current importance in connexion with the Convention on the Prevention and Punishment of the Crime of Genocide. A number of States have to date made reservations as to specific articles of that Convention at the time of signature, and certain other States have incorporated reservations in their instruments of ratification or accession. Other States having recorded their dissent from some of the terms of these reservations, but without its appearing that all the interested parties necessarily foresee the same legal consequences deriving from these dissents, the Secretary-General has felt it his duty to place clearly before the General Assembly, for its approval and advice, the principles which he has considered necessary to follow in the interests both of an efficient performance of depositary functions and of the maximum usefulness of multilateral conventions in the development of international law.
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> . . . . . .
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> 5. In the absence of stipulations in a particular convention regarding the procedure to be followed in the making and accepting of reservations, the Secretary-General, in his capacity as depositary, has held to the broad principle that a reservation may be definitively accepted only after it has been ascertained that there is no objection on the part of any of the other States directly concerned. If the convention is already in force, the consent, express or implied, is thus required of all States which have become parties up to the date on which the reservation is offered. Should the convention not yet have entered into force, an instrument of ratification or accession offered with a reservation can be accepted in definitive

deposit only with the consent of all States which have ratified or acceded by the date of entry into force.

6. Thus, the Secretary-General, on receipt of a signature or instrument of ratification or accession, subject to a reservation, to a convention not yet in force, has formally notified the reservation to all States which may become parties to the convention. In so doing, he has also asked those States which have ratified or acceded to the convention to inform him of their attitude towards the reservation, at the same time advising them that, unless they notify him of objections thereto prior to a certain date—normally the date of entry into force of the convention—it would be his understanding that they had accepted the reservation. States ratifying or acceding without express objection, subsequent to notice of a reservation, are advised of the Secretary-General's assumption that they have agreed to the reservation. If the convention were already in force when the reservation was received, the procedure would not differ substantially, except that a reasonable time for the receipt of objections would be allowed before tacit consent could properly be assumed.

. . . . . .

46. The rule adhered to by the Secretary-General as depositary may accordingly be stated in the following manner:

A State may make a reservation when signing, ratifying or acceding to a convention, prior to its entry into force, only with the consent of all States which have ratified or acceded thereto up to the date of entry into force; and may do so after the date of entry into force only with the consent of all States which have theretofore ratified or acceded."

II. *Applicable International Law*

The advisory opinion by the International Court of Justice on the questions presented by the General Assembly in the Resolution above mentioned will, of course, have an important bearing on the effectiveness of the Genocide Convention, as well as on the effective performance of depositary functions by the Secretary-General.

It is necessary to consider to some extent the principles and practices which have been followed up to this time in regard to reservations to multilateral treaties generally. So far as possible, however, it is desirable to address ourselves primarily to the questions concerning the procedure which is best adapted to, and should apply in, the case of the Genocide Convention, both as to reservations made heretofore and as to reservations which may be made hereafter.

We need not concern ourselves, at this point, with any question with respect to reservations in the case of a treaty which contains express stipulations regarding the admissibility of reservations. It should be inferred that the comments herein are, as it were, prefaced by a clause reading "unless otherwise provided in the treaty".

In addition, it is important to note that not all declarations accompanying ratifications or accessions constitute reservations. One proposed definition for the term "reservation" is that it is "a formal declaration by which a State when signing, ratifying or acceding to a treaty, specifies as a condition of its willingness to become a party to the treaty certain terms *which will limit the effect of the treaty* in so far as it may apply in the relations of that State with the other State or States which may be parties to the treaty" (Research in International Law, III—Law of Treaties, 29 *American Journal of International Law*, Supp. (1935) 653, 843) (underscoring supplied). In its detailed explanation of this proposed definition, this commentary states, at page 857 :

> "Only if the terms of the stipulation attached by a State to its signature or ratification of, or accession to, a treaty are of such a nature that they will, when in force, limit the effect of the treaty as between that State and the other party or parties to the treaty, is it a reservation under the above definition. The phrase 'limit the effect' implies a diminution or restriction of the consequences which would ordinarily flow from the legal relationship established by the treaty if there were no reservation. Therefore, if a particular stipulation attached by a State to its acceptance of a treaty does not envisage such a diminution or restriction of the consequences which would normally result from the relationship established by the treaty between it and the other party or parties, then it is *not* a reservation as that term is used in this convention.
>
> With this in mind, it becomes evident that certain types of conditions may fall within our definition, while others may not; in other words, although every reservation is a condition, every condition is not necessarily a reservation. It is necessary to examine the terms of the condition in each case in order to determine whether or not it is a reservation."

In many cases, of course, it is not easy to determine whether a declaration accompanying a ratification is a true reservation. It seems clear, however, that a declaration containing terms which, in the view of a competent tribunal, or with reasonable limitations, the depositary, do not "limit the effect of a treaty" is not a reservation even though it may have been designated as such. (*Id.*, p. 862.)

Despite theoretical statements which have at times been made by certain jurists, publicists, research groups, or students on the subject of reservations to multilateral treaties, it is believed that a study of international procedures makes it eminently clear that, apart from a rule that a State has the right to make reservations which it deems desirable and the rule that any other State has a co-equal right to determine for itself whether or not it shall be bound by such reservations, there has not been such a degree of uniformity in practice or universality in acceptance of principles as to justify the conclusion that there are fixed or settled rules respecting the juridical status of reservations to multilateral treaties or respecting the extent of or limitations on the authority

of depositaries in connexion with the receipt and deposit of instruments containing reservations.

For that reason, references to examples of practices which have been followed can be hardly more than guides to the International Court of Justice in reaching a decision concerning the advisory opinion that should be given in respect of the Genocide Convention. The Court may well conclude, after consideration of this matter, that the character and purposes of the Genocide Convention and the exigencies of international relations, including the paramount need for co-operative relations so far as possible between as many States as possible, justify a liberal rule respecting reservations to the Genocide Convention, a rule which will promote maximum acceptance by the greatest possible number of States of the obligations defined by the Convention and will avoid either a general undermining of the standards accepted by many without reservation, or imposing any new obligations without the necessary consent of all upon whom they fall.

Such a rule would be based on the consent, implied or express, of those who become parties, upon their intentions, and upon the intentions of the framers of the document—in this case the General Assembly of the United Nations. It would be appropriate, therefore, to the Genocide Convention, and would not need to have universal applicability. Perhaps it would be better to view the rule as merely a particularization of general legal principles with respect to the Genocide Convention, and to leave to the future the regeneralization of this and similar cases into one or more rules of law which could apply to cases involving similar circumstances. An approach in this light would further the development of international law regarding Genocide, would solve immediate problems facing the Secretary-General, and would encourage the growth of sound rules and practices with respect to reservations, to which ends both the Court and the International Law Commission have been invited to contribute.

III. *Practices and Theories considered*

(a) Practice of the League of Nations

References are often found, as in the Secretary-General's report above mentioned, to the report which the Committee of Experts of the League of Nations on the Progressive Codification of International Law submitted to the Council of the League and in which it is stated (League of Nations *Official Journal*, 1927, p. 881) :

> "In order that any reservation whatever may be validly made in regard to a clause of the treaty, it is essential that this reservation should be accepted by all the contracting parties, as would have been the case if it had been put forward in the course of the negotiations. If not, the reservation, like the signature to which it is attached, is null and void."

Leaving aside for the moment the question whether signatories might qualify under League of Nations practice as "contracting parties" for the purpose of the rule formulated by the experts, it should be stated that the rule seems generally to have been followed by the Secretariat of the League. In this connexion it is relevant to recall that the League of Nations did not achieve the same degree of universality of membership as the United Nations, and that there was probably a little less of a problem in developing conventions under League auspices with respect to the difficulties arising from the cultural, geographic, legal and other differences among the Members. However this may be, League practice is supported on the basis of some theoretical arguments and is described as an application of "the unanimity rule".

It is argued that a multilateral treaty is one whole and single offer, and that a reservation is a counter-offer which, before it can vary any terms of the treaty, must be accepted by all the offerors. This argument presupposes that there is some obligation binding the offerors not independently or bilaterally to vary the contract terms *inter se* or *vis-à-vis* an offeree. Whether or not such a limitation exists depends, of course, on the intention of all the offerors, not the assertions of one, and in deciding the question the same general considerations must play a part as have been outlined heretofore.

Again, it is argued that an essential element of the consideration inducing acceptance is the prospect of unqualified acceptance by *all* other parties, and that anyone offering a less acceptance can be rejected as a party by any other party. Again, however, this is a question of the intention of the parties and again the same general considerations must play a part.

An illustration of clear expression of intention will be found in the draft convention on the law of treaties prepared by the *Harvard Research in International Law*. In explanation of the express provision for the "unanimity rule" which was included in that draft convention, the authors advanced substantially the arguments above referred to :

> "When a State proposes to make a reservation to a multipartite treaty, whether at signature, ratification, or accession, it seeks in effect to write into the treaty at that time 'certain terms which will limit the effect of the treaty in so far as it may apply in the relations of that State with the other State or States' which are or which become parties to the treaty. It proposes, in effect, to insert in the treaty a provision which will operate to exempt it from certain of the consequences which would otherwise devolve upon it from the treaty, while leaving the other States which are or which become parties to the treaty fully subject to those consequences in their relations *inter se* and possibly even in their relations *vis-à-vis* the State making the reservation. It seems clear that a State should be permitted to do this only with the consent of all other States which are parties .... and this because, as has been

said, States are willing in general to assume obligations under a multipartite treaty only 'on the understanding that the other participating Powers are prepared to act in the same way and that general benefit will thus result'.... Consequently, were a State permitted to write a reservation into a multipartite treaty over the objection of any State already a party to the treaty (i.e. a signatory or acceding State actually bound by the treaty), the latter State might regard the consideration which prompted it to become a party as so far impaired by the reservation that it would denounce the treaty and withdraw therefrom .... since a choice must be made, reason and the necessity for preserving multipartite treaties as useful and effective instruments of international co-operation indicate that the preference should be given to the States which find the treaty satisfactory as it stands, and that the inconvenience, if any, of non-participation in the treaty should fall upon the State which seeks to restrict its effectiveness by reservations." (Research in International Law, III—Law of Treaties, 29 *American Journal of International Law*, Supp. (1935) 653, 870-871. References to States not parties have been omitted from the quotation as the "signatory rule" is discussed at a later point in this statement.)

In the case of the Genocide Convention, however, and in obvious contrast to the *Harvard Research* draft convention, or the League Convention for the Prevention and Punishment of Terrorism of 1937, there is no express, or indeed implied, statement of intention or formulation of rules to require that all the parties consent to each reservation. In fact, the records of the *Ad Hoc* Committee on Genocide and of the General Assembly fail to reveal any decision to adopt or reject any rule at any time.

Whereas application of the unanimity rule to the Genocide Convention would be completely inappropriate to the nature and purpose of the Convention, it should be understood that in contrast to the Genocide Convention there are certain kinds of treaties which have a substantive character justifying the recognition of a right of the parties, by objecting to proposed reservations which, in their view, would nullify the purpose and effect of the treaty, to prevent the reserving State from becoming a party. The "organizational" type of treaty might be cited as an example, that is, a treaty which establishes an international organization and sets forth the constitution or charter of the organization in terms so finely balanced and interrelated that a reservation disturbing that situation would seriously affect the powers, functions and procedures of the organization. In the case of such a treaty there would come a point at which a reservation, accepted by some parties and rejected by others, would foster genuine confusion by creating a special new set of rules among the reserving States and those accepting the reservation, and as a practical matter impair if not prevent attainment of the purpose of the treaty—namely, the establishment and functioning of a single efficient organization.

It is perfectly obvious, however, that the Genocide Convention is not an organizational treaty. Its purposes will be advanced, not by restricting the number of States parties to it but by expanding their number, and the consideration that the organization not be destroyed in the process simply has no relevance in the case of the Genocide Convention.

(b) Liberal Practice

The practice of permitting a reserving State to become a party to a convention, despite rejection of its reservation by one or more parties, has probably received more express sanction in the Organization of American States than the contrary practice received in the League of Nations. Instances of approval and adoption of this practice illustrate its flexibility and importance as a technique designed in many, although necessarily not in all, instances (any more than in the case of the League practice) to achieve the underlying purpose of the convention involved and the intention of the parties.

In general, it is well recognized that, because of constitutional, legal or other obstacles, a State may find it impossible to become a party to a particular treaty unless it can do so subject to a reservation. Its reservation may affect procedural matters or it may affect substantive provisions. The question then arises as to whether, and to what extent, such State may be permitted to become a party to the treaty subject to the proposed reservation. This necessarily involves the broader question, as applied to most treaties, as to whether it is a primary objective that as many States as possible become parties to the fullest possible extent and in relation with the greatest possible number of other States. If such be the primary object in the case of a particular treaty, then it would seem to be desirable, while avoiding any positive inducements to the making of reservations, to follow a procedure that will make it possible for every State to give effect to the treaty even if it must make reservations which are not acceptable to some States although acceptable to other States.

In 1927, at Rio de Janeiro, the International Commission of American Jurists prepared a draft of provisions which included a provision reading as follows :

> "In international conventions celebrated between different States, a reservation made by one of them in the act of ratification affects only the clause in question and the State to which it refers."

In a Convention on Treaties adopted at the Havana Conference in 1928 there was incorporated the following provision (*Report of the Delegates of the United States of America to the Sixth Inter-American Conference of American States, Havana, January 16-February 20, 1928*, p. 198) :

"In international treaties celebrated between different States, a reservation made by one of them in the act of ratification affects only the application of the clause in question in the relation of the other contracting States with the State making the reservation."

The Havana Convention has entered into force with respect to seven of the twenty-one American Republics, not including the United States.

The Governing Board of the Pan-American Union on May 4, 1932, approved a Resolution setting forth rules to govern the procedure of the Pan-American Union in the exercise of its functions as depositary for treaties and diplomatic instruments in relation thereto. Inasmuch as that Resolution deals with the same twofold problem with which we are presently concerned, namely, the facilitating of the exercise of depositary functions and the effect of reservations, it is set forth below (*Eighth International Conference of American States, Special Handbook for the Use of the Delegates*, Pan-American Union (1938), pp. 57-58) :

"The procedure to be followed by the Pan-American Union with respect to the deposit of ratifications, in accordance with Article 7 of the Convention on the Pan-American Union, signed at the Sixth International Conference of American States, provided the treaty does not stipulate otherwise, shall be as follows :

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 to the treaty, if the reservations have or have not been accepted.

With respect to the juridical status of treaties ratified with reservations, which have not been accepted, the Governing Board of the Pan-American 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 reservations.

3. It shall not be in force between a Government which may have ratified with reservations and another which may have already ratified, and which does not accept such reservations."

The rules set forth in the Resolution quoted above were intended to be provisional. It was considered that the matter should be dealt with more conclusively by the Pan-American Conferences.

The general question of the juridical status of treaties ratified with reservations was considered at the Pan-American Conference held at Lima in December 1938, but definitive commitments on the subject were not concluded. Nevertheless, in a Resolution relating to the preparation of multilateral treaties, the Conference declared, *inter alia*, as follows (*Final Act of the Eighth International Conference of American States*, p. 48):

> "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."

It will be observed that, in accordance with the procedure devised at Pan-American Conferences, the door is left open for a State to become a party to a treaty with reservations, at least as between that State and other States which accept the reservations. The procedure has advantages when viewed in the light of the desirability of permitting as many States as possible to become parties. It is well worth considering whether similar principles should be applied to all treaties of a character to which they are readily adaptable.

A familiar example of the manner in which the so-called Pan-American rule has been applied is that of the reservations made by the Dominican Republic in ratifying the Convention on Consular Agents adopted at the Havana Conference on February 20, 1928 (155 *League of Nations Treaty Series* 291). The instrument of ratification of the Dominican Republic with respect to the Convention was transmitted to the Pan-American Union for deposit on April 22, 1932. Up to that time, five States had become parties to the Convention. The Dominican ratification was made subject to certain reservations affecting substantive provisions of the Convention. The Pan-American Union deposited the instrument and transmitted certified copies to the other signatories. On September 27, 1932, the Director-General of the Union was informed by the United States Government (Department of State, *Treaty Information Bulletin*, No. 38 (November 1932), p. 23) that

> ".... The reservations in respect to the excision of Articles 12, 15, 16, 18, 20 and 21, being of the nature of amendments which would deprive the Convention of a large part of its value, are unacceptable to the Executive and will not be laid before the

> Senate of the United States whose advice and consent to their acceptance would in any event be required. Consequently, the Government of the United States of America does not regard the Convention as ratified by the Dominican Republic to be in effect between the United States of America and that Republic."

A copy of the communication from the Department of State of the United States was sent by the Pan-American Union to the other signatories. None of the other signatories objected to the Dominican reservations, and it has been inferred that they assented impliedly to the reservations, so that the Convention, as modified by the Dominican reservations, is deemed to be in effect as between the Dominican Republic and all other parties except the United States.

There has been some general international application of the procedure outlined above. For example, the Government of the Soviet Union notified the Secretariat of the League of Nations on March 28, 1935, of the intention of the Soviet Government, in adhering to the International Convention for Facilitating the International Circulation of Films of an Educational Character, signed at Geneva on October 11, 1933 (155 *League of Nations Treaty Series* 332), to include a reservation. The Secretariat transmitted copies of this notification to all signatories and parties. By the end of 1936, only six of the States to which the notification had been sent had replied, five of them accepting the Soviet reservation and the other (Chile) refusing to give its assent. The Soviet Government then proposed that "the Convention should not bind Chile in relation to the Union of Soviet Socialist Republics", and that the Convention, consequently, should not apply as between Chile and the Soviet Union while applying as between the Soviet Union and the States which had accepted the reservation. The Chilean Government agreed to this proposal and the Soviet Minister for Foreign Affairs informed the Secretary-General of the League, by a communication dated February 16, 1937, as follows (Department of State, *Treaty Information Bulletin*, No. 90 (March 1937), p. 14):

> "In these circumstances, and in view of the considerable interval which has already elapsed since the dispatch of my letter mentioned above, I am of the opinion that if no other State signatory to the Convention declares itself opposed to the reservation in question by March 28th, 1937, the reservation should be deemed to have been accepted by all the signatories except Chile, and that deposit of the declaration concerning the formal accession of the U.S.S.R. to this international agreement should then follow."

Later, however, according to information furnished by the Secretariat of the League, the Swiss Government notified the Secretary-General that it could not accept the Soviet reservation and the Iranian Government gave notice that, inasmuch as the Convention made no provision for reservations (which, incident-

ally, treaties rarely do) and the Convention had already been approved by the Iranian Parliament, Iran was not able to express its views concerning the Soviet reservation and reserved the right to do so later. (*Id.*, No. 91 (April 1937), p. 11.)

Apparently, the Geneva Convention of 1933 was considered as being in effect between the Soviet Union and the States which had assented to the Soviet reservation. As an example of international procedure, this reveals the trend, especially during the past two decades, and even outside the Pan-American region, toward considering that, under certain circumstances, a State ratifying or acceding to a treaty with reservations may become a party to the treaty as between it and other States assenting to the reservations, either expressly or tacitly, while not a party as between it and other States which reject the reservations.

More recent evidence of the trend toward international adoption, with some modifications, of the rule followed among the American Republics is to be found in the provisions of Article 19 of the Convention on the Declaration of Death of Missing Persons, opened for accession at Lake Success on April 6, 1950 (U.N., Official Records, General Assembly, United Nations Conference on Declaration of Death of Missing Persons; A/Conf. 1/9), wherein it is provided:

> "Any State may subject its accession to the present Convention to reservations which may be formulated only at the time of accession.
>
> If a contracting State does not accept the reservations which another State may have thus attached to its accession, the former may, provided it does so within ninety days from the date on which the Secretary-General will have transmitted the reservations to it, notify the Secretary-General that it considers such accession as not having entered into force between the State making the reservation and the State not accepting it. In such case, the Convention shall be considered as not being in force between such two States."

As explained in the report of the Secretary-General hereinbefore mentioned, the above-quoted provisions were incorporated in that Convention as an exceptional measure in view of the special nature of the Convention, and especially since it dealt with matters of private international law. (See U.N., Official Records, General Assembly, United Nations Conference on Declaration of Death of Missing Persons; A/Conf. 1/SR 10, pp. 8, 9, 10.)

It is fair to admit that even the liberal rule must have some reasonable limitations. Limitations may, of course, be incorporated in the treaty itself. If the treaty be of such a character that its provisions are closely interrelated and it is indispensable that, in order to operate effectively, all of its provisions must be obligatory upon all parties thereto, without reservations by any of them, then it may be wise to make that clear in the specific terms of the treaty, and in a given case it would be up to the parties and to the

appropriate international organs to see that the basic purpose of the treaty was not frustrated.

(c) Theoretical Extremes

Overemphasis on the role of consent, and overzealousness to safeguard the possible treaty, the effectiveness of which depends on its acceptance *in toto* and without variation, have sometimes pushed legal theory to an extreme combination of an "unanimity rule" with a so-called "signatory rule". Similarly, overemphasis on the desirability of wide adherence and on the sovereign right of a State to stipulate any condition it sees fit as reservations to its acceptance has tended to produce a so-called "sovereign power rule".

Although the "signatory rule" is susceptible of elaborate formulation and wide variety in the details of its application, its basic idea is simple enough. The idea is that a signatory, who may be presumed to have bargained in a spirit of compromise in the negotiation of a treaty, and whose own ratification may be delayed by the necessity, for example, of completing time-consuming constitutional processes, should not in the meantime be confronted with a *fait accompli* by which the character of the treaty has been so altered as to deprive it for such signatory of its hoped-for value. The fact of the matter is that this danger is wholly irrelevant to the Genocide Convention and even in other types of treaties seems so highly theoretical as to deserve treatment as *de minimis*.

In the case of a treaty as to which, in contrast with the Genocide Convention, the unanimity rule might be appropriate, it is true that the two first parties, let us say, might accept the reservations of the third State to ratify. Under the unanimity rule, it might appear to follow as a logical consequence that the treaty must then be adhered to by all other signatories *as modified* by the third party's reservations or not at all. Since such a result would seem theoretically unfair to a possibly objecting majority of signatories, those who conceive that the unanimity rule has some superiority have tried to rescue it from criticism on this score by adding a safeguard in the interests of signatories. The safeguard is to permit a signatory to object to a reservation before the signatory has itself become a party, with the result, of course, under the unanimity rule, that so long as the objection and reservation are maintained, the reserving State cannot become a party. This refinement, however, is a highly objectionable one, since it must be obvious that such an extension of the unanimity rule, if applied strictly, might well preclude a State ratifying with reservations from becoming a party to a treaty solely because the reservations are not consented to, or let us say are expressly objected to, by a signatory State which does not thereafter become a party and which may, at the time of objecting to the reservations, have had no genuine expectation of becoming a party.

It is the view of the Government of the United States that in fact, as to most treaties of such a character as to make the unanimity rule an appropriate procedure (organizational treaties, for instance), the situation will be taken care of by requiring a sufficiently large number of States to ratify before the treaty becomes effective, thereby ensuring an adequate measure of control over reservations, to be exercised, as appropriate, by the parties directly or through the appropriate organs of the organization created by the treaty. While in the case of the Genocide Convention, the Court is surely not called upon to prejudge the minutiæ of other cases which must be regarded as unusual and which should be examined on their own merits, it is perhaps worth while to point out, before leaving this subject, that one should start from the general principle that it is only the parties to a treaty which acquire rights under it, and that a signatory has, of course, no power or privilege to prevent the parties from varying the terms of the treaty *inter se*. It is, however, conceivable that an implied term of a treaty, of the very unusual character imagined, might in some instances be found to be that the period during which reservations should be held open to objection should be sufficiently long to permit a reasonable time for completion of the processes of ratification by a prospective party to the treaty. In no case should the conclusion be reached, in the absence of express provision to the contrary in the treaty itself, that a signatory has the power to object to a reservation or to prevent acceptance by the parties of the ratification of another State which has been made subject to a reservation.

As has been indicated, the signatory theory is wholly objectionable with relation to the Genocide Convention. Even if the unanimity rule, contrary to the conclusions to which the Government of the United States believes the facts and the principles of international law must lead in this case, were to be deemed relevant to the Genocide Convention, it is obvious that the Convention itself guards against the sort of three-party revision feared by requiring twenty ratifications before it enters into force. It is a fact also that the Convention has been open for ratification for over two years, which would not seem an unreasonable period for the completion of the average internal processes involved.

Turning, then, to the relevance of the signatory theory to the conclusions which are, it is submitted, the correct ones in the case of the Genocide Convention, it will be obvious that the legitimate interest of a late-ratifying party is adequately safeguarded since the Convention will not have been amended *vis-à-vis* all parties by the acceptance by some of the reservations made by one party. On the contrary, the normal situation would be that the Convention will be in force under its original terms among the great majority. The reasonable application of general principles of law to the facts of the Genocide Convention removes the very problem for which the "signarory rule" has mistakenly been proffered as an answer. What

has been said regarding the "signatory rule" applies with equal or greater force to its extension to other States "entitled to sign or accede".

At the other extreme is the "sovereign power rule". According to this "rule", as sometimes expressed, it is for each sovereign State to decide what provisions of a treaty it can accept and impose upon itself, and any rule to the contrary would be an interference in the domestic jurisdiction of that State. In other words, according to this contention, any State has a basic right to make any reservation it sees fit, irrespective of the views of other States, and the depositary (whether a government or an international body) has no authority to refuse to deposit the instrument of ratification or accession formally and definitively pending receipt from other States of consent to the reservation.

There is no basis in normal international relations for any such practice. First and foremost, it fails to reflect consideration of the countervailing and equal right of all States concerned to have a voice in the contractual commitments which are to be binding upon them. When a considerable number of States, through their representatives at a conference, have formulated a treaty which sets forth the points of agreement (compromises, perhaps, agreed upon with some difficulty), it hardly seems reasonable to say that each of those States has a basic sovereign right to make such modifications or amendments in the treaty as it desires, in the form of reservations, without regard to the right of the other States concerned to determine whether the treaty, so modified or amended, would be acceptable.

True it is that every State has the right, so far as its national action is concerned, to make such reservations as it believes necessary in order that it may become a party to the treaty. It must then, so far as international action is concerned, including the deposit of the instrument of ratification or accession with the depositary authority, be ready to take the risk of having its reservations rejected by some or all of the other States concerned. If all of the other States reject the reservations, it is impossible to perceive how, under any known international law, the State making the reservations could consider itself or be considered a party to the treaty. Obviously, if no other State consented to the reservations, it would be anomalous to suggest that the reserving State could nevertheless be regarded as a party to the treaty—in its relations with itself. If, however, the reservations are rejected by some and not by others, the question then arises as to the extent to which, with due regard to the character of the treaty and the circumstances, the State making the reservations can and should be considered a party to the treaty. The primary importance of this aspect of the question has been authoritatively pointed out :

> "Whether a multilateral treaty may be regarded as in force as between a country making a reservation and countries accepting

such reservation, but not in force as regards countries not accepting the reservation, depends upon whether the treaty as signed is susceptible of application to the smaller group of signatories. Some treaties are susceptible of such application while others are not...." (Hackworth, *Digest of International Law* (1943), 130.)

and :

"There is good reason to think that in the near future many more disputes arising upon treaties will be referred to the decision of international tribunals than has been the case in the past. My submission is that the task of deciding these disputes will be made easier if we free ourselves from the traditional notion that the instrument known as the treaty is governed by a single set of rules, however inadequate, and set ourselves to study the greatly differing legal character of the several kinds of treaties and to frame rules appropriate to the character of each kind. The few pieces of evidence which I have brought together seem to me to justify this submission." (Arnold D. McNair, "The Functions and Differing Legal Character of Treaties", 11 *British Year Book of International Law* (1930), 100, 118.)

IV. *Conclusions*

With specific reference to the questions presented to the International Court of Justice, the conclusions of the Government of the United States are as follows :

I. *Can the reserving State be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others ?*

Yes. Applying the principles developed above, it is to be noted, first, that the Genocide Convention is not an organizational treaty. The Genocide Convention is not a complex multipartite agglomeration of economic concessions and guarantees closely bargained and precariously achieved. It is not a nicely balanced resolution of divergent and conflicting political and territorial aspirations and claims. It is a short and relatively simple instrument embodying, it is true, some important compromises, but consisting essentially of a definition of an international crime, genocide, of undertakings with respect to trial and punishment of offenders, of provisions for the settlement of differences and of the usual formal treaty provisions. Unanimously approved by the General Assembly, opened for accession by all Members of the United Nations and by non-member States active Members of Specialized Agencies or parties to the Statute of the International Court of Justice, the Convention is a very clear expression of the will of the United Nations that every responsible State give its undertaking to prevent the recurrence of those heinous offenses against mankind that condemned whole groups, in the twentieth century, to mass destruction. Its basic purpose and major commitment is to put an end to genocide.

General acceptance of the Convention and its firm establishment as a universal rule of law is an objective outweighing by far any nice considerations regarding the desirable discouragement of undesirable, but nevertheless not fatal, reservations. Here, indeed, is a Convention in nature and purpose designed to be above the power of individual States to exclude the participation of others, even though that participation may to some seem mistakenly conditioned.

It should be noted, of course, that in the absence of the unanimity rule, there are still adequate safeguards against reservations so unreasonable as to make a mockery of ratification. The first is world public opinion which can and will take note of objections to such reservations and of their nature. A second is the probability that *no* party will accept a ratification subject to a completely fraudulent reservation. A third is the ample accumulation of legal precedent distinguishing true reservations from conditions formally stated as reservations, but in fact not reservations at all. It would not be beyond the province of a court to find that a seeming ratification together with its seeming accompanying reservation were futile and fraudulent devices, and without legal effect. There is no greater intrinsic difficulty in distinguishing such a fraudulent reservation than in distinguishing reasonable declarations of understanding from the category of true reservations.

It is with these factors in mind that it is considered that a State should be permitted to become a party to the Genocide Convention even though, for constitutional or other reasons, it finds it necessary to ratify or accede subject to certain reservations, and even though such reservations, while accepted by some, are objected to by other States. In that event, of course, there would be some delay in the actual or definitive deposit of the instrument containing the reservations, until the Secretary-General had been able to communicate the reservations to all other States concerned, including signatories, giving them an opportunity to consent or object to the reservations or to remain silent with respect to them. Such a practice would leave the legal effect of the reservations to be determined as between the reserving State and each of the other States, and would free the Secretary-General of any function except the simple depositary function. Thus this practice would have the merit of relieving the Secretary-General of deciding such potentially troublesome questions as these: (1) Before the treaty enters into force, must all signatory and acceding States consent to the reservations, or is it necessary only that all States ratifying or acceding on or before the date of entry into force consent to the reservations? (2) After the treaty enters into force, is it necessary that all signatories *and* parties consent to the reservations or only that all parties (that is, States which have become parties by ratification or accession prior to the submission for deposit of the instrument containing reservations) consent to the reservations?

In fact, the practice advocated would simplify and clarify the situation to an extraordinary degree, and would operate to the advantage of all concerned. The Secretary-General would receive the instrument containing reservations. He would communicate the reservations to all States *concerned,* including all signatories (concerned by reason of their participation in the drafting of the treaty) and all States, if any, which had ratified or acceded. An objection to the reservations by any of the States to which they were communicated could have an effect on the application of the treaty only in the event that the objecting State thereafter became a party, and then would have the effect, depending on the nature of the objection, either of preventing the treaty from being in force between the reserving State and the objecting State or of preventing that part of the treaty to which the reservations relate from being in force between the reserving State and the objecting State.

A State which finds it necessary to ratify or accede subject to reservations would have an assurance that, unless *all* the States parties to the treaty object to the reservation, it has a reasonable opportunity to become a party. Every State would have an assurance that it need not consider the treaty in force as between it and the State making the reservations if the reservations are found by it to be unacceptable. The Secretary-General would follow a practice which would not be concerned with the question whether the reserving State can become a party if any other State objects to the reservations, but would be concerned only with the question as to when, if any State consented to the reservations, the instrument containing the reservations could be deemed to have been deposited. Above all, application of the procedure contemplated would permit the maximum number of States to participate in the Genocide Convention and would facilitate the broadest possible application of the greater part of the Convention. It would not be within the power of any State, by objecting to reservations made by another State, to prevent the reserving State from becoming a party to the Genocide Convention if the reservations are accepted by one or more other States. The most conclusive effect that any such objection would have would be to prevent the Convention from being effective as between the reserving State and the objecting State.

II. *If the answer to question I is in the affirmative, what is the effect of the reservation as between the reserving State and :*

(a) *The parties which object to the reservation ?*
(b) *Those which accept it ?*

With reference to *(a),* and for the reasons hereinbefore stated, it is the opinion of the Government of the United States that the character and purposes of the Genocide Convention are such that States should be encouraged so far as possible to lend their support

to its effectiveness as a universal condemnation by peoples everywhere of the acts comprehended within the meaning of the term "genocide". To that end, it is desirable that in the case of any State which, for reasons which it deems to be necessary and valid, makes reservations, that State should be allowed to become a party to the Convention, while maintaining for every other State the right to object to the reservations and to make known that it considers either (1) that, because of such reservations, the Convention shall not be deemed to be in effect in the relations of the objecting State with the reserving State, or (2) that so much of the Convention as is affected by the reservations shall not be deemed to be in effect in the relations of the objecting State with the reserving State. It would also be in the power of the objecting State to condition acceptance of relations *vis-à-vis* the reserving State upon acceptance by the latter of counter-reservations of the former.

Some reservations may well be of a nature so slight, in relation to the entirety of the Convention, that the major portion of the Convention can be effective between the reserving State and States objecting to the reservations. On the other hand, some reservations may be of such a nature as to make the Convention meaningless and a mere sham. In any event, while recognizing the right of a State to make reservations, full recognition would be accorded also to the right of any other State to object to such reservations and thereby not to be bound by them, with the result that the Convention may not be in force between the reserving State and the objecting State. This right of objection would extend not only to all States which had become parties prior to the deposit of an instrument containing reservations but also to all States thereafter becoming parties.

With reference to *(b)* of question II, and for the reasons hereinbefore stated, it is the opinion of the Government of the United States that in the case of reservations by any State which deposits an instrument of ratification or accession with respect to the Genocide Convention, the Convention as qualified or modified by those reservations should be deemed to be effective as between the reserving State and any other State which accepts or consents to the reservations. So far as concerns another State which has become a party to the Convention prior to the deposit of the instrument containing the reservations, that other State should have a reasonable period of time, after notification of the reservations, to consent or object thereto. So far as concerns another State which has not itself become a party to the Convention prior to the deposit of the instrument containing the reservations, that other State, having received appropriate notice of the reservations, should be expected to object to the reservations, if it desires to object, not later than the date on which it deposits its own instrument of ratification or accession. In almost all cases, consent should reasonably be implied from a failure to object, within a reasonable period of time, due regard being had for the sometimes lengthy periods required where

the consent of the legislative branch must be sought and may, of course, be denied. Any other formula would make it extremely difficult, if not impossible, for the depositary to maintain accurate records showing who are parties to the Convention and the extent to which the Convention is in effect as between any two parties.

III. *What would be the legal effect as regards the answer to question I if an objection to a reservation is made :*

(a) *By a signatory which has not yet ratified ?*
(b) *By a State entitled to sign or accede but which has not yet done so ?*

Since the answer to question I should be "yes", it follows that an objection to a reservation, whether by a signatory or by a party, cannot prevent a State from ratifying the Genocide Convention subject to reservation. Only the refusal of *all parties* to the Convention to assent to a ratification subject to reservation could have this result. For the purposes of the Genocide Convention, signatories cannot be entitled to object to a reservation until, at the earliest, they themselves become parties, and the same would hold true, *a fortiori*, to non-signatories who may be entitled to sign or accede.

Consistently with this position, moreover, it is the position of the Government of the United States that the signatory at the time it becomes a party to the Convention must, nevertheless, by its silence or by some express notification to the Secretary-General, have indicated whether or not it will accept the obligation of the Convention *vis-à-vis* a reserving State. As a party to the Convention, but not as a signatory, its attitude, whether an objecting or an assenting one, becomes of legal significance.

These conclusions, which are called for by the reasonable application of general legal principles to the Genocide Convention in the light of its history, nature and purpose, would be most susceptible of orderly procedural application by the Secretary-General as depositary. Thus, in the case of a convention which has not yet entered into force, where any State has submitted an instrument containing reservations, the express acceptance of those reservations by any other State which has deposited an unqualified instrument of ratification or accession on or before the date of the entry into force of the convention will suffice to consider the instrument with reservations as having been deposited and for the purpose of having that instrument counted among the number of instruments necessary in order to bring the convention into force. At the same time, it would be recognized that the convention (with reservations) would be effective only as between the reserving State and the State or States accepting the reservations, all other States having a reasonable opportunity to accept or reject them. The convention would, of course, also be in force without reservations as among States ratifying or acceding without reservations, irrespective of

their action *vis-à-vis* the reservations of others. The rule could be applied whether the requisite number to bring the convention into force was two, ten, twenty, or some other number.

Again, in the case of a convention which has entered into force, where any State thereafter submits an instrument containing reservations, that instrument may be considered as having been deposited on the date the Secretary-General shall have satisfied himself that at least one other State, which had become or which becomes a party, had consented thereto, it being regarded that the convention, as qualified or modified by the reservations, is effective between the reserving State and the consenting State. All other States which had become parties would have a reasonable opportunity to accept or reject the reservations ; and all other States which thereafter deposited instruments of ratification or accession, having been appropriately notified of the reservations, would be expected, not later than the deposit of their respective instruments, to express their consent or objection to the reservations, or, by failing to object, leave it to be implied that they consent.

5. WRITTEN STATEMENT OF THE GOVERNMENT OF THE UNITED KINGDOM

INTRODUCTION : GENERAL CONSIDERATIONS

1. The present written statement is intended as a preliminary indication of the views of the United Kingdom Government on the questions addressed to the Court by the Resolution of the General Assembly of the United Nations dated the 16th November, 1950. These views, and the reasons in support of them, will be more fully developed later in an oral statement, for which an opportunity will doubtless be afforded by the Court in due course. This further statement will also deal with the general principles of international law underlying and governing this matter, for, although the actual questions addressed to the Court have reference to a particular convention and arise out of certain specific reservations which have in fact been made to that convention, the questions themselves raise considerations of a general character, and it is only in the light of these that any useful answer to them can be given [1].

2. It is, indeed, largely on account of the existence and importance of these general considerations that the Government of the United Kingdom wishes to make its point of view known to the Court in connexion with the present case; for, as far as the Genocide Convention itself is concerned, the position is that the United Kingdom is not a party to that Convention, and has not even signed it, though it still has the faculty, should it so decide, of becoming a party to the Convention by the procedure of accession [2]. Moreover, one of the questions addressed to the Court relates to this very issue of the right of States which are only potential parties to a convention, to offer effective objection to reservations that other countries

[1] It is not considered to be necessary in the present statement to cite much in the way of precedent or the opinions of international authorities on these general considerations and principles, since this has already been done in a memorandum prepared by Miss J. A. C. Gutteridge, of the Foreign Office, which the Government of the United Kingdom presented to the General Assembly and which forms Annex II to the valuable report of the Secretary-General of the 20th September last (United Nations. Document A/1372), which is already before the Court. A comprehensive statement of the relevant precedents and authorities will also be found in the body of the report itself.

[2] The Genocide Convention, which was drawn up by the General Assembly at its Paris session in 1948, remained open for signature until the 31st December, 1949. After that date it could be acceded to by countries which had not signed it. Countries become actual parties to the Convention either by signature within the prescribed time-limit followed by ratification, or else by accession after the date of closure for signature.

may attempt to make to it, whether on signature, ratification or accession.

NATURE OF QUESTIONS ADDRESSED TO THE COURT

3. The questions addressed to the Court postulate, in relation to the Genocide Convention, the case of a State which purports to become a party to the Convention subject to a reservation which it appends to its ratification or accession or which, in the case of ratification, it has already appended to its signature and which it maintains or does not cancel on ratifying this signature. On this basis, three questions are put to the Court.

(1) The first question is whether the reserving State can be regarded as being a party to the Convention while still maintaining its reservation, if the reservation is objected to by one or more of the parties to the Convention. This question the United Kingdom Government considers should, in the light of the existing principles of international law, be answered in the negative. It is important to note that the question is fundamentally concerned not so much with the validity and effect of the reservation itself, as with the validity and effect *of the act of ratification or accession* (accompanied by the reservation) *according to which the reserving State purports to become a party to the Convention subject to this reservation.* What is here directly in issue, is the right to become a party while reserving in the face of objection made by other States.

(2) The second question, which relates to the effect of the reservation as between the reserving State and *(a)* those who object to it, *(b)* those who accept it, can only arise if the answer to the first question is in the affirmative, since the question of the effect of the reservation *vis-à-vis* the other parties to the Convention can only be material if the reserving State itself is to be regarded as a party, notwithstanding the objections offered to its reservations. Since the United Kingdom considers that a negative answer should be given to the first question, it follows that, in its opinion, the second question does not call for any answer ; nevertheless certain comments on this second question will be offered in due course, because it is partly by considering the consequences of the possible answers to the second question, in relation to such a convention as the Genocide Convention, that a correct answer to the first question can be arrived at. It should be noticed, moreover, that it is principally in relation to this second question, both in itself and as regards its bearing on the first question, or perhaps, more accurately, in relation to both questions combined, that it becomes material what type of convention is involved ; whether, for instance, a convention of a technical or commercial character, or what might be called a system- or régime-creating convention, or a convention of the social or law-making type such as the Genocide Convention.

(3) The third and final question in effect repeats the first question but with reference to the case of objections to a proposed reservation offered not by an actual party to the Convention but by a State which is merely potentially a party, i.e. which has signed but not ratified, or which has not signed but is still entitled to become a party by accession. As to this, it will suffice for the moment to say that in the opinion of the United Kingdom Government, there is no *legal* difference, or difference of principle, between the cases respectively envisaged by the first and third questions, though there may be certain differences of emphasis and degree—that is to say the United Kingdom Government considers that potential parties have a sufficient legal interest in the matter to entitle them to make valid and effective opposition to any attempt by another country to become a party to the Convention subject to a reservation to which they object. In brief, assuming that the right to offer effective objection to an attempted reservation should be limited to the category of what may be termed "interested countries", or countries having a legitimate interest in the matter, the United Kingdom Government would, generally speaking, include in that category not merely actual parties to the Convention concerned, but also countries entitled to become parties, and entitled therefore to object to reservations which, in their opinion, would have the effect of altering the balance of the Convention, thus prejudicing the right of these States to become parties to it in its original form, i.e. impairing that right as it originally existed and substituting for it a different right, to become parties to what might really be a different convention. Such is the broad principle which the United Kingdom Government considers applicable, though certain qualifications to it may be admitted and will be noticed in due course.

NATURE AND MEANING OF THE TERM "RESERVATION"

4. Before developing its reasons for the above-suggested answers to the questions addressed to the Court, the United Kingdom Government desires to make certain preliminary observations on the general nature and character of what is to be regarded as constituting a reservation for the purpose of these questions. Although the questions themselves do not ask the Court to pronounce upon any particular reservations made to the Genocide Convention, the Court will be aware that the whole of this matter has arisen out of a number of specific reservations or purported reservations to that Convention already made by certain States, which have been objected to by other States, actual or potential parties to the Convention, the United Kingdom Government amongst them. While it is not the intention of the United Kingdom Government to comment specifically on these reservations, since the questions put to the Court do not raise the issue of the character or validity of any individual reservation as such, it does seem necessary to stress

the fact that these questions are, and must be, based on certain pre-suppositions as to the general nature of a reservation, and that they necessarily relate and can only relate *(a)* to reservations which are truly in the nature of "reservations" in the proper sense of the term, and *(b)* to reservations which are made, or purport to be made, unilaterally and without the consent, express or implied, of the other interested States having previously been obtained.

5. As regards point *(b)*, it is obvious that no questions of the character envisaged in those addressed to the Court can arise if general consent to the reservation concerned has already been obtained, or can be presumed from silence. *Ex hypothesi*, these questions presuppose the case where previous general consent has not been obtained and cannot be presumed, and the reservation is therefore attempted to be made unilaterally—that is, in effect, to be subsequently imposed on the other interested States[1] at the instance, and purely as the act of the reserving State, and not as part of the common process of drafting and drawing up the Convention. Obvious though it may be, however, that the questions addressed to the Court relate, and can only relate, to unilateral (and so to speak arbitrary) reservations of this character, it is important to notice the point in view of the many reservations to multilateral conventions which undoubtedly exist and have been admitted in the past ; for this situation must not be allowed to obscure the broad fact that, even allowing for irregularities and exceptions, most of these cases would, on examination, usually prove to be cases in which specific consent to the reservations concerned was obtained, or could be presumed from the fact that no active objection was made ; or where, as often occurs, the making of reservations is specifically permitted by or provided for in the convention itself[2]. The present questions relate to an entirely different situation and contemplate reservations of quite a different kind. As has already been observed, the real issue is not the right of countries to seek or to attempt to make reservations—*but their right to become parties to the Convention* while at the same time maintaining reservations to which *objection* has been offered by other interested States.

6. As regards point *(a)* mentioned at the end of paragraph 4 above, namely what constitutes a reservation in the proper sense of the term, the United Kingdom Government wishes to observe that a reservation consists and must consist of an attempt *(a)* to *restrict*

[1] The term "interested States (or countries)" is used here and elsewhere as a convenient piece of description, without prejudice (for the time being) to the question of what States or countries should be regarded as "interested", i.e. whether parties only, or potential parties as well.

[2] For this reason, the existence of numerous conventions to which reservations have been made or admitted in the past, is not in itself a fact which constitutes an argument in support of the proposition that States have an inherent right to make reservations unilaterally and irrespective of the views and wishes of other interested States.

(not enlarge) the scope of the Convention, and *(b)* to do so in relation to the obligations *of the reserving State itself* (not other States). This may seem obvious ; nevertheless certain of the so-called reservations to the Genocide Convention do not conform to this definition and are not, in the opinion of the United Kingdom Government, reservations at all[1]. It is therefore necessary to elucidate the point. It is self evident that a reservation can, in its nature, seek only to restrict not enlarge the scope of the Convention. If an enlargement were involved, then it must either operate as regards the position of the reserving State itself, or it must purport to affect and enlarge the obligations of other States which are, or may become, parties to the Convention. If the former were the case, however, no reservation would be needed or appropriate, for the case would simply be one of the voluntary assumption by the State concerned of additional obligations, over and above those contained in the Convention. Such a voluntary assumption of additional obligations is, of course, inherently within the right of all States to undertake, and no question of consent or objection by other States (such as the questions put to the Court envisage) would normally arise. If, on the other hand, the intention were to enlarge the scope or field of the Convention in its application to *other* States or their territory, this would plainly be something that no State could have the power to do by its own unilateral act. It would amount to imposing on the other States concerned, without their consent, additional obligations not provided for in the Convention, or even, it may be, actually excluded or negatived by it[2]. It follows that a reservation properly so called can only be restrictive in character, directed to limiting the scope of the Convention. Such limitation must equally be with respect to the position and obligations of the reserving State not of other States, for clearly no State can release other States from their obligations under a multilateral convention, though it may express willingness (so far as it itself is concerned) to accept from these States less than the performance of their strict obligations[3].

7. For these reasons, if the Court had been asked in the present case to pronounce on the nature and propriety of the individual

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[1] i.e. those relating to Article XII of the Convention, the effect of which—were they valid—would be to extend the field of the territorial application of the Convention in a manner expressly negatived by the provisions of this article.

[2] Thus Article XII of the Genocide Convention, which is here in question, makes it quite clear that the Convention only applies to overseas territories as and when extended to them by the metropolitan government concerned. No so-called reservation can cause the Convention to apply to an overseas territory otherwise than as provided by this article, and any such purported reservation *must*, juridically, be *ipso facto* a nullity.

[3] Even this may be doubtful. The convention might be of such a nature that it was material to the other parties that its provisions should be carried out with respect to *all* the parties, even if one of them was willing to release another from doing so *vis-à-vis* itself.

reservations so far made to the Genocide Convention, the Government of the United Kingdom would have asked the Court to declare those relating to Article XII of the Convention to be null and void *ab initio*, as being juridically nullities, because not properly in the nature of reservations at all, but rather attempts to impose on other States additional obligations, in this case not merely not provided for, but expressly negatived by the Convention [1]. As it is, the United Kingdom Government contents itself with recording its views on this matter, and considers that these particular "reservations" fall outside the scope of the questions addressed to the Court in the sense of being inadmissible and juridically void whatever view may be taken as to the correct answers to be given to them. These questions contemplate reservations in the true sense of the term, whereas the declarations under discussion are not reservations at all, but mere expressions of opinion on the part of the governments making them that the field of application of the Convention ought to be wider than, by its express terms, it actually is [2].

COURSE OF DISCUSSIONS IN THE GENERAL ASSEMBLY : THREE MAIN CURRENTS OF OPINION ON THE ISSUES RAISED BY THE FIRST TWO QUESTIONS

8. With these preliminary comments as to the proper sense in which the questions addressed to the Court are to be understood, it is proposed to make certain observations which will serve to elucidate the general attitude of the United Kingdom Government to these questions, in the light of the answers to them briefly suggested in paragraph 3 above.

The Extreme View based on the Conception of Sovereignty

9. When this matter was under consideration by the General Assembly during its recent session, three main currents of opinion manifested themselves in regard to the issues raised by the first two questions. At one extreme there were those—consisting mainly of certain Members of the Slav language group—who maintained that all States had an absolute and inherent faculty, in the exercise of their sovereign rights, to make reservations at will as an act of State. The main grounds urged in support of this view were (1) that international practice already exhibited many examples of admitted reservations to international conventions (an argument

[1] See first footnote to paragraph 6 above.

[2] This seems in effect to be recognized by the governments in question, for the so-called reservations are not (as indeed they hardly could be) cast into the language of a proper reservation. They read as expressions of opinion as to what the Convention ought to have provided for, which is not a reservation at all and has no juridical effect.

already considered above—paragraph 5 [1]); (2) that each State alone could judge, and therefore must be the sole judge, of how far and to what extent it could participate in a given convention—a point to which the simplest answer is that no State is ever bound to become a party to an international convention at all, but if it does, it cannot do so on the basis of selecting those parts of the convention that suit it and excluding those that do not—a convention is a balanced integrated whole: it must be accepted as a whole or not at all; and (3) that since most modern conventions are drawn up by the employment of a process of majority voting, and the result broadly represents the views of the majority, a system which does not permit of the States of the minority making reservations at will would result in preventing these from becoming parties to the convention, or force them to become parties only on the majority's terms, which would be to impose the will of the majority on the minority—to which the answer is broadly the same as for the previous argument, with the additional comment that to permit the so-called minority, by a process of unilateral reservations made at will, to become parties to the convention on a basis different from (and it may be even contrary to) that provided by the text itself, and different from that on which the other States become parties, would be to do something far more extraordinary, namely to impose the will of the minority on the majority!—and in the process to alter the balance and effect of the application of the convention.

10. In a very able exposition of these and similar views, the distinguished delegate of Poland, Dr. Manfred Lachs, sought to establish a distinction between the methods of negotiation employed in former times, and particularly during much of the nineteenth century, and those which had come to be employed more recently. He observed, not without some justice, that the usual rule had formerly been unanimity or quasi-unanimity. Most conventions were negotiated between relatively small groups of States. Clauses were only included in them if all or nearly all concerned in their drafting agreed, or were prepared eventually to agree to them. Thus no great necessity for making reservations existed and the matter did not normally arise [2]. Now, however, that conventions were negotiated on a world-wide basis, between countries very differently circumstanced one from another, the practice of elaborating the texts by a majority process had grown up. This meant

[1] The point (ever necessary to be insisted on) is not the making of the reservations, but the failure to adopt the proper methods and procedures for doing so—not the fact that reservations often are made and admitted, but whether this can be done when they are objected to—or rather, whether despite such objection, the reserving State can become a party to the convention while maintaining the reservation. Most of the precedents, therefore, are irrelevant to the real issue.

[2] A number of the examples quoted by Dr. Lachs himself, however, in support of his argument that the making of unilateral reservations is a consecrated practice show that real unanimity was not much more frequently achieved then than now.

that, unless a faculty to make reservations were admitted, many countries would be excluded from participation in multilateral conventions.

11. Dr. Lachs was here in effect contending that there had been such a change in the circumstances surrounding the drawing up of multilateral conventions as to call for a change in the law, or at any rate for a new view as to the legal principles applicable. In this contention there would be some force if it were put forward as an argument for expressly *permitting* certain classes of reservations to be made, and even for making provision to that end in the convention itself; or if it were put forward as a plea for the exercise of reasonableness and understanding on the part of States in giving consent (or at any rate not objecting) to reservations that other States wished to make. But it is not and cannot be a valid argument, juridically, for the proposition that States have an absolute legal right as an act of sovereignty *(a)* to attach what reservations they please to their signature, ratification or accession to a convention; *(b)* to be regarded as parties to the convention subject to such reservations; and *(c)* do all this in spite of actual objection offered by other legitimately interested States, with the result that those States will be bound to respect and give effect to the reservations in their relations with the reserving State despite their objection. Yet that is what the view now under discussion involves, and that is also what would result from an affirmative answer to the first of the questions put to the Court, subject to certain considerations arising out of the second question which will be dealt with later. While, therefore, it may well be, as Dr. Lachs suggested, that a certain change in conditions has occurred, the remedy he advocated in order to meet it is not the right one, and would create greater difficulties than it would solve, for reasons which will be indicated directly.

The Orthodox View

12. Opposed to the views so ably expounded by Dr. Lachs were a number of countries—amongst them the United Kingdom—which took the orthodox view that a contract or convention, once drawn up and adopted as a *text*, cannot be altered, nor can the effect and balance of the obligations it provides for be changed, except by the consent of all concerned—what the Secretary-General's Report (Document A/1372) calls the principle of unanimity. Those taking this view, while recognizing that in many cases it was desirable to give consent to certain proposed reservations, or to allow of a faculty to make them, provided this was done by a regular and agreed procedure, considered that there could be no inherent or unilateral *right* to make reservations to a convention the text of which had already been discussed and drawn up—still less any right to become a party to the convention subject to a

reservation to which objection had been offered by other interested States. Any country could *seek* or *propose* a reservation in order to meet its special difficulties, constitutional or other, and other countries could, and in all proper cases doubtless would, consent, or at any rate refrain from making objection to reservations which were harmless. In the last resort, it was not making (in this sense of proposing) a reservation, that mattered. What mattered was the assertion of a *right* to make it, and to maintain it despite objection, and to become a party to the convention in such circumstances. There were only two correct courses to be followed by a country which, desiring to make a reservation after the text of a convention had been finally elaborated, found that this reservation was objected by other interested States. It must either abandon the reservation or give up becoming a party to that particular convention.

13. Those holding this view considered that, regrettable though it might be that States should on occasion be unable to participate in a convention[1], this was a lesser evil than a position according to which there could never be any finality about the text of any convention, even when the process of its negotiation and drafting was supposed to be completed. States attending an international conference to draw up a convention came with various ideas, and began by putting forward different and divergent views. Eventually, after discussion, something was decided on which met with more or less general agreement, and on that basis the final text was elaborated. If the whole matter could, in effect, be reopened by the subsequent introduction on a unilateral basis of some new point by way of reservation, or the reintroduction of a point already discussed and disposed of, or by the elimination, so far as the reserving State was concerned, of something expressly included during the negotiations[2], then there could be no finality, there could be no completed negotiation, there could be no definitive text. States could not bring a conference to an end thinking they had finished the business in hand, for they might find that reservations were subsequently introduced on important points which had the effect of reopening some vital aspect of the matter, and which, if main-

[1] This need not follow. States may well hope to be permitted to make a reservation, yet not be completely unable or unwilling to participate if this is refused.

[2] It needs to be stressed again (see paragraph 5 above) that the type of reservation under discussion and which has led to the present questions being addressed to the Court, is a reservation on an issue of *substance* ; because where a reservation is purely formal or technical in character, or merely relates to some unimportant detail of the constitutional position of the reserving State, other States do not as a rule take definite objection to it even if they do not particularly approve of it. It is thus no argument in favour of a unilateral right of reservation to say that the great majority of reservations are of a formal, minor of harmless character. Even if this were true (and actually it probably is not true), it would not affect the fact that the difficulty arises precisely over those reservations which, because they relate to important issues of substance, cannot be ignored or overlooked by other States and give rise to objections.

tained, must alter the character and balance of the result[1]. This would be destructive of the whole process of the international negotiation and elaboration of conventions as generally practiced and understood.

14. It was pointed out by those who held this view that every international instrument consisted of a synthesis of different proposals and ideas; it formed a balanced whole, of which the different parts were mutually integrated and interdependent. A practice according to which a State could, at will, accept certain parts of such an instrument while making reservations on others, must destroy this balance, and must often cause the whole character of the obligation to undergo a change. Indeed, in certain circumstances, a small group of States acting in concert might be able in effect to substitute an entirely different instrument for the original one— (this last possibility is more fully discussed in paragraph 42 below). If a general unilateral right of reservation were admitted, what limits could be placed on the practice? In theory, a State might enter reservations on every article of a convention except the one or two which it found acceptable. This would be to make nonsense of the convention and to destroy its whole nature and purpose. Even if, in practice, matters were not normally carried to that extreme, the existence of a general unilateral right of reservation would introduce a serious element of doubt, flux and insecurity into a field where there ought to be certainty, finality and stability[2]. It is, in fact, only comparitively seldom that a real difficulty felt by a State as to its ability to accept a certain obligation genuinely arises as a mere afterthought. The possibility would normally be

[1] It is in fact, as just stated, only reservations of this character or something like it which are likely to lead to formal objection on the part of other States, and therefore to give rise to the issues involved in the questions now addressed to the Court. It is necessary to bear this fact constantly in mind, because it is tempting to conclude that, as many reservations are unimportant or harmless, there is no reason why States should not be permitted to make them. The answer is that if they really are unimportant or harmless, the States concerned *will* normally be permitted to make them; other States will not object. It is precisely those which are not unimportant or harmless that other States take objection to. The correct way to take account of the fact that many reservations are of a minor or harmless character is to rely on the good sense of other States not to object to them, or else to make definite provision for certain categories of such reservations in the text of the convention itself. To allow a general unilateral *right* of reservation on this account, is, however, to open the door to something quite different and much more serious.

[2] The Court cannot of course be, and is not, called upon to state what would be ideally desirable or what practices are or would be objectionable, but to declare what the law on the subject in fact is. The foregoing considerations are adduced in order to show the practical reasons why the law is what the United Kingdom Government believes it to be. The legal considerations involved are of course plain and so elementary as scarcely to need discussion. They might be summed up in the two following propositions which hardly admit of any dispute, namely *(a)* that once a contract has been drawn up it can only be altered by the common consent of all concerned and *(b)* that no party or intending party to a contract can, by his own unilateral act, impose on the others the acceptance from him of a lesser obligation, or the performance by them of a greater one, than the contract itself provides for.

present to the minds of its delegates during the period of the elaboration of the convention. The correct course for a State thus placed, is to raise the matter at the conference itself, or during the negotiations, and ask to be allowed to make a reservation on the subject—or to give formal notice that such a reservation will be made, whereupon, if no objection is offered, general consent may be presumed, and the subsequent entering of the reservation, on signature, ratification or accession, will be in order [1].

15. Finally, it was pointed out that any other process than the one just described, or something analogous to it, and in particular any process of making unilateral reservations as of right, must, in the last analysis, amount to an attempt to secure the benefits of the convention, while "contracting" out of those of its obligations which were disliked ; or alternatively, to secure the status of being a party to the convention, together with such credit, prestige or influence as that might confer, without fully accepting the burdens, restrictions or obligations which the convention might involve, and would involve for States which did not make similar reservations.

16. According to this view, it was an accepted legal principle, and an essential element of *any* contractual system, that, save in so far as the contract itself created or provided for differences in the position of the parties, or in the obligations to be carried out by them, *all* the parties were, and must be, in the same position, and subject to the same obligations. For one party to be able to create a privileged position for itself by unilateral action, without the consent, and indeed despite the active objection of the others, would be contrary to all normal legal principles, and at variance with all the most fundamental concepts of the law of contract, since this process would essentially be one which removed or

[1] This is in fact the process underlying many *apparently* unilateral reservations. In nearly every case it will be found that they have been the subject of previous notice and discussion.

It is not, however, possible to accept the view put forward by Dr. Lachs, of Poland, during the discussions in the General Assembly, that merely to object to a given article or proposal at a conference, in itself entitles the State concerned subsequently to enter a reservation on the subject, or amounts to formal notice that it will do so. At conferences, States frequently object to a suggested provision in order to secure its omission or the adoption of something different. This does not mean that if, despite these objections, the provision is retained, the objecting State is entitled to become a party to the eventual convention subject to a reservation absolving it from compliance with that provision, for that would be to negative and nullify the act of adopting it, and to reduce the negotiations to an absurdity. If at a conference a State merely urges objections or expresses disagreements which do not prevail, other States are entitled to assume that either the objection is insuperable for that State, in which case it will presumably not become a party to the resulting convention, or else that means of overcoming the difficulty will be found, in which case the State in question can become a party to the convention *as it stands*. If the other States are to be asked to agree to the making of a *reservation* on the subject, or if their consent to such a course is validly to be *presumed*, quite a different and much more deliberate procedure must be adopted than the mere urging of objections to or expression of disagreement with, the provisions concerned.

impaired the contractual element itself, and replaced it by the element of the arbitrary. It would thus involve a fundamental legal contradiction, by which it would necessarily be vitiated and rendered void *ab initio*.

Pan-American School of Thought

17. The third main current of opinion in the General Assembly, represented principally by the States of Latin America, urged the application to United Nations conventions[1] such as the Genocide Convention, of the system agreed upon by the States of the Pan-American Union for use in the case of conventions negotiated under the auspices of the Union. The advocates of this system in the General Assembly tended to represent it as a compromise between the two schools of thought already noticed, but in the opinion of the Government of the United Kingdom it cannot truly be regarded in that light, on account of its inappropriateness to the United Nations type of convention and the inconsistencies of a legal character which would result from its application in that case.

18. Superficially, however, this system appeared at first to offer a course midway between the other two. On the one hand, its advocates fully recognized the principle that no State can, by its own unilateral act, impose on another State the acceptance of something less than, or different from, what is provided in a convention as elaborated and drawn up. Consequently they agreed that a State cannot make a unilateral reservation in such a manner as to be valid and binding as between it and States which object to the reservation. On the other hand, they did not consider that, on account of such an objection, the reserving State should be debarred altogether from becoming a party to the convention. They considered that if there were States which were willing to accept the reservation, there was no reason why the convention should not enter into force between those States and the reserving State. But it would not come into force between that State and those objecting to the reservation.

19. A more complete description of this system will be found in paragraphs 24 and 26 of the report of the Secretary-General already referred to (Document A/1372), and the details need not be further gone into here. It will be seen at once, however, that the

[1] This term is a convenient one to describe conventions drawn up under the auspices of the United Nations, which consist almost entirely of that category of international instrument styled law-making, as creating rules of international law, or some status, régime or system, or which are of a social character. The Genocide Convention is a typical United Nations convention, both as to its content and the manner of its drawing up. Other examples are the draft Covenant on Human Rights, the draft Conventions on Freedom of Information, the Prostitution Convention, and the Convention on the Privileges and Immunities of the United Nations.

application of this system leads to the result, which is itself legally an anomaly, that two countries can both be parties to the same convention and yet that convention may not be in force between them. However, the United Kingdom Government does not desire to discuss the merits or demerits, legal or other, of the system *in itself*, because whatever these may be, and whatever *general* legal rules may govern the subject of reservations to multilateral conventions, there is of course nothing to prevent a group of States, by special agreement *inter se*, from adopting different rules for application in the case of certain conventions entered into within the group. The pertinent question for present purposes is whether the application of the Pan-American system to United Nations conventions, and in particular to the Genocide Convention, would be legally possible, having regard to the character of that Convention and to the absence of any special agreement on the part of Members of the United Nations, such as exists among Members of the Pan-American Union in the case of Pan-American conventions, for the application of a similar system to United Nations conventions.

20. But before going on to discuss these legal issues, it is desirable to notice two main advantages claimed for the Pan-American system by its supporters. First, it is said to facilitate the general adoption of international conventions, and the greatest possible degree of participation in them, by enabling States to become parties to them even though making important reservations, while at the same time not forcing those reservations on States which object to them. Even assuming this to be true[1], it still leaves open the question of the value of general participation in a convention on a basis which causes, or may cause that convention not to be applied at all between certain of the parties, and to be applied in an entirely different manner between various groups even of those of the parties between whom it is applied. While the utmost degree of participation in international conventions is no doubt to be desired, it loses its point unless the convention participated in is fundamentally the same for all. If the effect is merely to set up a system of differing cross relationships between various groups of the parties, that result could equally well, perhaps preferably, have been achieved by the negotiation of a series of bilateral or tri- or quadrilateral agreements[2], and it is in any case arguable that what the

[1] It is by no means certain that it is true. A statistical investigation might well reveal that the average number of ratifications or accessions to Pan-American Union conventions, proportionately to the number of possible participants, is no greater than, or is even less than in the case of other conventions to which the Pan-American system is not applied.

[2] There is in fact much to be said for the view that the Pan-American system is really a convenient technical method of creating a set of bi-, tri-, quadri- or quinquipartite relationships of a broadly similar though not identical character. As such, there is a lot to be said for it, but the result is of course a different thing from a single multilateral convention in the ordinary sense of the term.

system really produces is, in fact, a set of bipartite or tri- or quadripartite relationships, rather than the fully multilateral relationships which should result from, and be the effect of, a multilateral convention.

21. Secondly, it is claimed for this system that it eliminates all uncertainty as to whether a given State is a party to the convention concerned or not, and facilitates the task of the headquarters or depositary government or organization. Every State that ratifies or accedes to a convention, even though subject to a reservation, automatically ranks as a party to it. The question of the application of the convention between the State concerned and the other parties, according as they do or do not accept the reservation, is left over for subsequent determination. The attractions of such a position are evident, but it may be doubted whether in the long run it has much advantage over the application of the orthodox rule that ratifications and accessions made subject to reservations (other than such as have previously been agreed on, or except in cases where the convention expressly permits of reservations being made) cannot take effect until it has been ascertained that there is no objection to these. The Pan-American system has, on the other hand, certain striking theoretical flaws. For instance, its application really involves a gamble on no really serious reservation of substance being made, for if such a reservation were made, it might well be objected to by *all* the other States concerned, with the result that the convention would not come into force between the reserving State and any of the others. Yet nominally, the reserving State would be a party to the convention[1] although its participation would be devoid of all content. Moreover, the reserving State would, even in such circumstances, apparently count as a party for the purpose of bringing the convention basically into force in those cases where that event depended on the deposit of a given number of ratifications or accessions[2]. This however is hardly an admissible status for a participation that proves to be merely nominal and has no actual reality. Even if these possibilities be ignored as unlikely to occur in practice, it could easily happen that only a small minority of States was willing to accept the reservation in question. In that case, the reserving State would be a party to a convention which was nevertheless not in force between it and the great majority of the other parties, clearly a most anomalous situation.

[1] Because the whole point of the system is that each ratifying or acceding State automatically, and as of right, becomes a party, whatever its reservations, and the effect of these is only gone into afterwards.

[2] This must be so, because the headquarters or depositary government or organization has to accept the ratification or accession as valid and effective at the moment of receiving it. It may not be until well after the date when the number necessary to bring the convention into force has been received that it will be ascertained that none of the other parties are willing to accept the reservations concerned.

LEGAL DIFFICULTIES AND OBJECTIONS TO THE APPLICATION OF THE PAN-AMERICAN SYSTEM TO UNITED NATIONS CONVENTIONS

22. Attention is drawn to the foregoing points, not in order to criticize the application of the system within the special field of the conventions of the Pan-American Union, but in order to show that, doctrinally, it is open to certain serious legal objections—which exist in themselves and irrespective of the category of international convention to which the system is being applied. But in addition, the application of the system to United Nations conventions would have other and far more serious disadvantages of a legal character, which will be described in a moment. The existence of these legal objections, it is submitted, makes it impossible to regard the system as having any force as a fundamental rule of international law, i.e. as having any force except such as may be derived from a special agreement to apply it in a certain field, such as exists between Members of the Pan-American Union. The system has, in fact, no warrant under the general rules of international law, and depends wholly on special agreement. No such agreement has been entered into between Members of the United Nations for the application of a similar system to United Nations conventions, quite apart from the inherent objections to its application to that type of convention which will be noticed directly. On this ground alone therefore, i.e. of the necessity for agreement and of the absence of any such agreement applicable to or covering the case of the Genocide Convention, it is respectfully submitted that the Court should, on *a priori* grounds, refuse to give, in connexion with the first question addressed to it, any affirmative answer based on the hypothesis that the system of the Pan-American Union is applicable to the case of the Genocide Convention.

23. If this is correct, it is, strictly speaking, unnecessary to discuss the legal difficulties which would arise if an attempt were made to apply the Pan-American system to United Nations conventions of the Genocide type. Nevertheless, it seems desirable to draw attention to some of them. They have been very aptly described in paragraphs 31-37 of the report of the Secretary-General (Document A/1372) already referred to, while in the discussions in the General Assembly the United Kingdom representative further stressed these difficulties and endeavoured to give some concrete examples of what they might lead to. The fundamental objection of a legal character to the application of the Pan-American system to United Nations conventions is that the latter (as a general rule, and in any case so far as the Genocide Convention is concerned) differ in kind from the type of convention for which that system was devised. The Pan-American

type is essentially contractual, not only in form but in operation. It consists of a set of mutual rights and obligations operating reciprocally between each State a party to the convention and each other State a party. As the report of the Secretary-General puts it, the essential nature of this type of convention is

> "to facilitate the exchange of merely contractual undertakings within a group of States. Such conventions, although multilateral in form, are, in operation, simply a complex of bilateral agreements."

In the case of this type of convention, there is clearly no particular objection if the States concerned like to apply a system according to which their reciprocal obligations *inter se* can be controlled and varied by a process of making, and accepting or rejecting, reservations. But it is far different with conventions of the social, law-making, or status-, régime- or system-creating type. Here, as a rule, the essential condition, on the basis of which each party consents to be bound and to accept the obligations of the convention, is that all the other parties shall equally be bound, and by all and by precisely the same obligations. There is no place for any variation in the application of the convention as between particular sets of parties : indeed it is to a large extent meaningless to talk of such variation, because the obligations concerned are for the most part of such a character, that, if assumed at all, they necessarily operate at large, and the question of their being in force between certain countries but not others cannot arise [1]. If, for instance, a country subscribes to a convention forbidding the use of inhuman methods of punishment, it has a general—and absolute—obligation not to use such methods *at all*, and this is not affected by the fact that the convention is not in force between it and certain countries which have not ratified or acceded to it, or have done so only subject to reservations which the first country has not accepted (assuming the application of the Pan-American system). Quoting again from the report of the Secretary-General (paragraph 32) :

> "To use the example at hand, it does not seem entirely plausible to treat a convention for the suppression of the crime of genocide as a bargain adaptable for entry into force between one pair among the parties thereto but not between another pair. Rather the Genocide Convention would seem to represent the true type of legislative convention having the object of creating rules of law for identical operation in the different States adopting them—establishing, in fact, 'a public law transcending in kind and not merely in degree ordinary agreements between States'. [2] "

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[1] Except perhaps on the quite different question of what countries are entitled to make a formal complaint or take other action in the event of a breach of the obligation : but this does not affect the content of the obligation.

[2] The quotation is from McNair, *British Year Book of International Law*, 1930, p. 113.

The representative of the United Kingdom in the Sixth Committee of the General Assembly made the same point, if less felicitously, when he said that the obligations entailed by such conventions as the Genocide Convention were essentially indivisible, assumed and owed as a whole, and that it was contrary to good sense in the case of this type of convention to allow a situation in which two countries were both parties to the same convention yet the convention was not in force between them.

24. These considerations lead to the second main legal objection to the application of the Pan-American system to such conventions as the Genocide Convention. This is that the sanction, relief or remedy which that system provides to meet the case where the reservations made by one State are objected to by another, breaks down, or has no real field of operation as regards conventions of the social, law-making, or status-, régime- or system-creating type. This sanction, relief or remedy is that the convention does not come into force between the reserving and the objecting State. In the case of conventions of a commercial, technical or general type, this is a reality because, as the obligations of the convention are essentially reciprocal and operate *between* the parties, i.e. from each one towards each of the others separately, then, if the convention is not in force between the reserving State and the objecting State, the latter is truly absolved from doing something it would otherwise have to do, namely carry out the obligations of the convention towards the reserving State. Because these obligations are obligations which the objecting State would otherwise have to carry out specifically *towards* and for the benefit of the reserving State, the fact that the convention is not in force between them has real significance and legal effect. But this is not the case where conventions of the United Nations type are concerned, because the obligations they contain exist and have to be carried out *universally*, once they are assumed. They do not consist of duties owed specifically to, and to be carried out towards and for the benefit of, the other parties to the convention. In brief they are not fundamentally contractual. It is only the method of their assumption which is contractual. Their *operation* is not dependent on the existence of a contractual tie with other States.

25. The matter is most easily understood by considering one or two concrete illustrations.

(1) If a group of States enters into a convention for the mutual reduction of tariffs *inter se*, then, if country A becomes a party to the convention, but country B does not, or if country B is a party but, in the application of the Pan-American system, the convention is not in force between A and B, because B ratified subject to a reservation and A objected, it is manifest that A is under no obligation to give B the benefit of any tariff reductions. B's goods can be charged at a higher rate than those of the other parties. Thus the relief to A is real.

(2) In the case of the Genocide Convention on the other hand, the position is quite different. A country which becomes a party to that Convention assumes a general obligation to prevent and punish all acts of genocide within its jurisdiction. The nationality of the victims is immaterial. Such a country could not say to another: "Since you are not a party to the Genocide Convention—or since, though you are a party, the Convention is (in the application of the Pan-American system) not in force between us, because you made a reservation to which we objected—therefore we are not obliged to prevent or punish genocide attempted against your nationals. We are only obliged to protect the nationals of countries between whom and ourselves the Convention is in force." On the contrary, the country concerned would have to carry out the provisions of the Convention absolutely, and irrespective of the position of other countries, because the obligations involved are of a general, self-existent, and non-contractual character, and do not consist of something that has to be done specifically towards another country. If assumed at all, they are assumed for all and towards all, by the mere act of becoming a party.

(3) In the General Assembly the representative of the United Kingdom gave as a further illustration the case of the General Convention on the Privileges and Immunities of the United Nations. He pointed out that this Convention was intended *inter alia* to create a *status* for the United Nations and its officials, and that there was no reality in speaking of it being in force *between* the Members of the United Nations, or between some of them but not others, because the obligations of the Convention did not depend on that, nor did the status of the officials concerned depend on it. It depended on whether the Convention was in force *at all*—or not in force; and for each Member of the United Nations its obligation to give effect to that status, depended not on whether it was bound by the Convention to *other* Members, but on whether it was bound by the Convention at all—in fact, simply on whether it was or was not a party to the Convention, irrespective of what any other country did. If it was a party to the Convention it was obliged, irrespective of whether the same obligation had been assumed by other countries, to grant certain privileges and immunities in its territory to officials of the United Nations. It could not, for instance, say to X, an official of the United Nations: "Because you are a national of country Y, and country Y has not ratified the Convention, we are not bound to grant you these privileges and immunities." It could not say this, because the obligation does not operate in that way. It is not in the nature of a duty owed directly to country Y and therefore dependent for its existence on country Y being a party to the Convention.

26. These examples make it clear that one of the chief claims made for the Pan-American system, namely that it permits countries to participate in conventions subject to reservations while safe-

guarding the position of countries which object to the reservations concerned, is only of limited truth. It is in fact true only of the type of convention to which the Pan-American system is normally applied, and is illusory as regards the type of convention to which the Genocide Convention belongs. The Pan-American system not only consists of, but essentially *depends* on, a balance between, on the one hand, the right, or rather the claim of the reserving State to be allowed to become a party to the convention subject to the reservations it desires to make, and, on the other hand, the right of States objecting to these reservations to treat the convention as not being in force between them and the reserving State, and, pro tanto, *not to have to carry out the obligations of the convention.* If, however, the objecting State, despite its objections, nevertheless *has still to carry out the obligations of the convention and to carry them out in full, while the reserving State can maintain its reservations*, then clearly this balance breaks down completely. This in fact is precisely what must occur with conventions of the Genocide type if the Pan-American system is applied to them. All the advantages would accrue to the reserving State, and all the prejudice to the objecting State, despite its objections. Thus *(a)* the reserving State would become a party to the convention, thereby gaining the considerable degree of credit or prestige which may be involved by participation in this type of convention; *(b)* it would maintain its reservations, which might well be so far reaching as to make its participation little more than nominal and not involve it in any real commitments; while *(c)* the objecting State would be obliged to carry out the convention nonetheless, and to do so in full, except in so far as any particular obligation under it could be regarded as operating in a purely contractual way [1]. This position, it is submitted, must constitute a fatal legal objection to the application of the Pan-American system to the United Nations type of convention, because, on account of the nature of these conventions, the system cannot be applied to them without losing precisely those characteristics which alone justify its use in other fields, and constitute one of its chief *raisons d'être.*

[1] The fact that a convention, *taken as a whole*, is of the social or law-making type, does not of course preclude the possibility that particular articles in it may be capable of operating in a contractual manner as between State and State. Thus, for instance, if a reservation is made in regard to an article in a convention which provides for arbitration or judicial settlement in the event of disputes, it is manifest that an objecting State would not be obliged to go to arbitration or judicial settlement specifically at the instance of the reserving State. But *(a)* it would still remain bound to do so at the instance of all the other parties, whereas the reserving State would never be bound to do so at all—a position of complete unbalance; and *(b)* even its right to refuse arbitration or judicial settlement to the reserving State as such, might prove illusory because, precisely on account of the nature of a convention of the Genocide type, a breach of its obligations would be a breach generally, not a breach committed towards a given party specifically. *Any* party could request arbitration or judicial settlement, and the reserving State could easily arrange for some friendly State to do this.

27. It is also worth drawing attention (in so far as the advocates of the Pan-American system urge and claim the possibility of its universal application) to the patent and manifest impossibility, both legal and practical, of applying the system in the case of any convention setting up an international organization or regulating the position of members of such an organization, or creating obligations for them *qua* members of the organization. In order to see this, it is not necessary to do more than ask whether it would be a tolerable or possible situation that a number of countries should be Members of the United Nations but that the Charter should not be in force between them, because certain of them had made reservations to it which the other did not accept. Although the Genocide Convention does not, of course, have this character, it is thought worth drawing attention to the point as illustrating the limitations of the Pan-American system and its unsuitability for use outside its own immediate field.

28. Finally, it seems desirable to draw attention to certain considerations of a more general character, though they are not without their legal implications. First, is it really appropriate or desirable in the case of instruments such as the draft Covenant on Human Rights or the Genocide Convention, given their special character, *(a)* that countries should be permitted to participate in them subject to any reservations they choose to make, and which may well be far reaching; *(b)* that there should be set up a complicated system according to which the instrument is in full force between certain of the parties, only partially in force between others on account of reservations made and accepted, and, between others still, not in force at all, on account of reservations made but objected to, although both reservers and objectors are parties? It is only necessary to ask this question in order to see what the answer must be in the case of this type of convention.

29. But secondly, the application of the Pan-American system to conventions of the social, law-making or system-creating kind would open the door to serious dangers. There is an essential difference between the effect of a reservation to an ordinary commercial or technical convention, and a reservation to a convention of the United Nations type. The former kind of convention involves rights and benefits as well as duties and liabilities. There is, therefore, a natural deterrent on the making of reservations, because, since the operation of these conventions is contractual, the making of reservations, even if accepted, entails forfeiture of the corresponding benefits [1]. In the case of United Nations conventions of the

[1] If the reservation is objected to, the convention does not apply at all between the reserving and objecting States, and the former receives no benefits from the latter. Even if the reservation is accepted, the accepting State is not bound to accord to the reserving State any benefits which, by reason of the reservation, the latter is not itself bound to accord.

type under discussion, the position is quite different. These conventions involve mainly the assumption of duties and obligations. They seldom involve the acquisition of direct rights for the parties, *qua* States (other than a right to the execution of the convention by the other parties), and such benefits as ensue from them are of an intangible and indirect character. This is because the purpose and effect of the conventions is mainly social. Even where economic, they are directed more to the general improvement of economic conditions than to any specific exchange of economic benefits between the parties as such. Any benefits resulting from these conventions will be the consequence chiefly of the general improvement in world order and conditions to which they may be expected to lead, if all concerned carry out their obligations under them. This situation, it is clear, not only offers no particular deterrent to the making of reservations, but may even be an encouragement to it, since a State which is successful in securing such reservations, limits (it may be substantially) the scope of its obligation, while not thereby surrendering any tangible or immediate benefit. Thus the application of any system which would facilitate the making of reservations to this type of convention is to be deprecated, even if it were free from the serious legal objections already noticed.

30. Nor is this quite all. States do not as a rule become parties to ordinary commercial and technical conventions from any ulterior motive. They do so mainly on account of the tangible advantages to be gained under the provisions of the convention itself. Apart from such advantages, there is no object in becoming a party. But with conventions of the law-making or social type, which involve mainly the assumption of duties—and possibly onerous duties at that—with little in the way of any immediate, direct or tangible benefit, the motives for becoming a party to them are more complex. These may of course consist simply in a desire by the State concerned to play its part as a good member of international society. But participation in this type of convention may also have a prestige or propaganda value. At the very least, the State which participates avoids the odium or criticism which may be entailed by remaining out. In brief, it is liable to be the case with this type of convention that the main motive for participation lies not in the direct advantages to be derived *under* the convention itself, but simply in those to be derived from the *status* of *being* a party to the convention.

31. If this is so, it is easy to see that (leaving moral considerations aside) the maximum benefit would be gained by the State which succeeded in obtaining for itself the status of being a party, while assuming as little as possible of the obligations involved ; and it is hardly too much to say that the Pan-American system could not be more ideally suited to the achievement of this purpose if it had been specially devised to make it possible. Even if it were

modified to the extent of compelling would-be reservers to obtain a certain number of consents to their proposed reservations before being allowed to ratify or accede subject to these reservations[1], it would be a simple matter for a group of States to fulfil this condition by agreeing on a number of reservations which they would all accept *inter se*, and thereupon to become parties to a convention which they would only be bound to carry out in part, while the rest of the world had to carry it out in full, yet nevertheless to enjoy the status and prestige of technically being parties. It is no answer to say that the other States could equally have made similar reservations had they so desired, because on that basis there ceases to be any point in drawing up conventions in given terms at all. In connexion with such instruments as the draft Covenant on Human Rights, the Genocide Convention, and others, this position could only be gravely prejudicial to the name and work of the United Nations.

CONCLUSION IN REGARD TO FIRST TWO QUESTIONS ADDRESSED TO THE COURT

32. It is submitted that the Pan-American system is inapplicable to the case of the Genocide Convention for two fundamental reasons :

(1) because the system does not derive from any general principle of law but depends for its validity on special agreement such as exists between the States of the Pan-American Union as regards conventions negotiated under the auspices of the Union : and no such agreement has been entered into by Members of the United Nations for application either to United Nations conventions in general, or to the Genocide Convention in particular ;

(2) because United Nations conventions of the law-making, social or system-creating type, to which the Genocide Convention belongs, differ fundamentally in their nature from the type of

[1] In its actual form (see paragraph 21 above), and if it has been correctly understood, the Pan-American system enables the reserving State to become a party at once and as of right, and moreover to count as such for the purpose of making up the number required to bring the convention into force, the question of how far its reservations are accepted or rejected only being gone into afterwards. On *that* basis it would theoretically be possible for a country to become (nominally) a party to such instruments in the Covenant on Human Rights or the Genocide Convention, although it had made reservations on almost all the provisions of the convention, and these reservations had been objected to by all or nearly all the other actual or potential parties. Nevertheless, its ratification would count for bringing the convention into force, and it would be a party to the convention though the convention would not be in force between it and any of the other parties, or only one or two of them. Even if this is a *reductio ad absurdum* and unlikely to occur in practice, it does not alter the fact that there must be something legally unsound about a system under which such results are possible, even if unlikely. Under the orthodox system these could not occur. This point really raises the deeper issue of what constitutes a true acceptance or ratification of, or accession to, a convention, but discussion of this must be left over until a later occasion.

convention for which the Pan-American system was devised, and the application of that system to them would be inconsistent with their basic character and would lead to inadmissible anomalies and contradictions.

33. It is therefore submitted that the first question addressed to the Court must be answered in the negative, since, if an affirmative answer cannot (for the foregoing reasons) be based on the application of the Pan-American system, it would have to be based on the view that an absolute inherent right is possessed by States not merely to make unilateral reservations at will, but also to become parties to the Convention concerned subject to these reservations, even where formal objection had been made by other legitimately interested States. For the reasons given in paragraphs 9-16 above, however, it is submitted that this view is contrary to all normal and accepted legal principle and is untenable.

34. There being no other basis on which an affirmative answer could be given to the first question, a negative answer necessarily follows[1]. Since the second question presupposes an affirmative answer to the first, it follows equally that the second question does not arise.

THIRD QUESTION

35. The third of the questions addressed to the Court, if of somewhat smaller practical importance, involves issues which are scarcely less far reaching as regards the fundamental processes of concluding multilateral international conventions. In effect it involves the basic issue : what is the convention which has been concluded and which those who took part in negotiating it are entitled to sign, ratify or accede to,—is it the convention as originally drawn up, or is it the convention as it may (in substance) be altered by the effect of subsequent reservations which those States which happen at the time to have become parties to it may be willing to accept, but which others, potentially but not yet actually parties, are not, or would not be, willing to accept ?

36. In order to appreciate exactly what is involved, it is necessary to realize that the third question implicitly assumes a negative answer to the first question, since if it is found that, on one ground or another, States *can* become parties to conventions while maintaining reservations which have been formally objected to by other States, then it becomes largely pointless to enquire *who* has the right of objection, since no objection at all can be effective to prevent

[1] This is not to say that there are not also strong *positive* reasons for a negative answer to the first question, and these will be developed at a later stage. In the present statement it has been deemed more helpful to consider the only two bases on which an affirmative answer *could* be given, and to show why both of them are legally unsound and inadmissible in the present connexion.

participation in the convention by the reserving State. In such cases, objection only becomes material as regards the subsequent question of the *effect* of the reservation as between the reserving and objecting States, and this in its turn presupposes that both those States are parties to the convention, otherwise that question cannot arise. It is because the third question thus presupposes a negative answer to the first, that it becomes material to enquire what classes of States can, by means of an objection to a reservation, prevent participation in a convention by the reserving State unless the latter abandons the reservation, and can thus render that State's ratification or accession inoperative.

37. This important right must clearly be confined to States having a legitimate interest in the matter ; and this, from the point of view of the Court, must mean a *legal* interest derived from the possession of a legal right. On the other hand, it is submitted that if a legal interest can in fact be shown to exist for certain categories of States in addition to actual parties, and if the protection of that interest requires a right of effective objection[1] to a reservation, such a right must be presumed to exist in the absence of any circumstances indicating that it has been surrendered or lost. This must be stressed, because the argument usually advanced against a right of objection on the part of States not parties, is that it would enable a State which did not intend to become, and never did become a party to the convention concerned, to prevent indefinitely the participation of a State whose reservations did not meet with objection from any other quarter. In so far as this may be true, however, it would not mean more than that it may be desirable to prevent abuses by placing or postulating some limitation on the right concerned, or the existence of some time-limit after which the force of an objection is lost unless the objecting State has become a party. This point is further discussed in the concluding paragraphs 43 and 44 below. But in any case it would not alter the fact that if an initial right exists, it requires protection, at any rate in the initial stages.

38. Very little reflexion is necessary in order to see that all States upon which a right to become parties to a given convention has been conferred, thereby *ipso facto* possess a legal right which is not possessed by States upon whom this right has not been conferred, or who do not come within the category (or do not fulfil the conditions) specified for participation. These States in fact possess a right *to become* parties, and this right is a definite legal right. Nor is this position affected by the fact that in many cases no special conditions are laid down, and the convention is open to participation on the part of all States. All such rights

[1] This will be used as a convenient term to describe an objection that has the effect of preventing participation by the reserving State, and of rendering its ratification or accession inoperative unless it abandons the reservation.

normally derive *from the convention itself*. It is well known that conventions have a certain operative force as regards their formal clauses even before they come substantively into force, and the most obvious example of this consists precisely in those clauses of a convention which specify when or in what circumstances it is to come into force. Clearly any such clause must have a force and validity *ab initio*, not dependent on or deriving from the actual entry into force of the convention [1]. The same applies to clauses providing for instance that the convention is to remain open for signature until a certain date, that after that date it may be acceded to by any State which has not signed it, that signatures require to be completed by ratification, etc. Thus every convention, expressly or by implication, indicates what States have a right to become parties to it, or alternatively that all States have such a right. This right is a definite juridical right which the State possessing it cannot legally be prevented from exercising *so long as it accepts the text of the convention as drafted and without modifications or reservations.*

39. Once it is established that a juridical right exists, it follows automatically that the State concerned must possess a further right of legal objection to any act which would impair the basic right, or prejudice its exercise. This leads to the question: what does the basic right consist of? It is not a mere right to become a party to *a* convention. It is a right to become a party to a *particular* convention, i.e. to become a party to the convention concerned in the form in which it was originally concluded, or in other words in the form in which the text was drawn up and stood at the time when the right to become a party was conferred and became operative. This must be so, because otherwise it would not be that convention, but a different convention, upon which the right would operate.

40. Now it is submitted that while, in form, reservations may leave the actual text of a convention unchanged, the effect of them is to alter the substance or balance of the convention by *adding* to it conditions or exceptions in favour of the reserving State which did not figure in the original text, and formed no part of the conven-

[1] Strictly speaking, all such clauses ought to be placed in a separate protocol having immediate force, for technically, the effect of including them as part of an instrument which does not come into force until later, is that they themselves have no initial force, whereas of course their whole *raison d'être* is to have it. However, it has become customary, for reasons of convenience, to include these provisions as part of the actual text of the convention, and the process assumes a tacit agreement on the part of those drawing it up that these clauses shall be effective from the date on which the convention was initially signed or opened for signature. The same applies to the common form clauses which impose certain duties on the headquarters or depositary government or organization, some of which involve action prior to the coming into force of the convention, e.g. the communication to other governments of authenticated copies of the text, the notification of signatures made or ratifications received, etc.

tion as drafted, and as it stood when the right to become a party to it arose. From this, it follows automatically as a juridical necessity, that unless a right of effective objection to reservations exists on the part of all States having a right to become parties to a convention—which is *ex hypothesi* a right to become a party to a particular convention having a particular text—this right is liable to be impaired and prejudiced by the introduction of reservations which may have the effect of altering the whole nature and balance of the convention and of the obligations it provides for. In such an event, the States concerned (unless possessed of a right of effective objection) are faced with the alternative of foregoing entirely their right to participate in the convention or else of becoming parties to what is in effect a different convention.

41. Moreover, the view that the right of effective objection should be confined to actual parties, fails entirely to take account of the position which might arise at the moment when no actual parties to the convention existed, because no State had yet ratified or acceded to it. Unless all the potential parties have a right *at that stage* to prevent participation by a State that attempts to make reservations they object to, any State could ratify with reservations (in regard perhaps to matters purposely included in the convention when it was drawn up), and this ratification and these reservations would be effective and binding on the other States concerned for all time, because at the moment when they were made, no actual parties existed, able to enter an effective objection. Even if this particular difficulty can be met (as is in effect suggested in paragraphs 43 and 44 below) by recognizing for potential parties a right of effective objection which, however, they can only ultimately *maintain* as effective if they become or intend to become actual parties to the convention, nevertheless the point is one which demonstrates the absolute necessity that potential parties should, basically and in principle, be possessed of at any rate a *prima facie* right of effective objection, if their position as potential parties to a particular instrument as drafted is not to be liable to serious prejudice.

42. Having established the existence of a legal interest in the matter, and the fact that this interest would be impaired or prejudiced unless potential parties have a right of effective objection to reservations, it is not, strictly speaking, necessary to go any further in order to demonstrate that the right in question is not confined to actual parties, but must extend also to potential parties. However, the necessity for this conclusion can be strikingly illustrated by considering some of the other possible consequences which might ensue if such a right on the part of potential parties were not recognized. This can most conveniently be done by quoting a passage from certain of the observations made in the Sixth Committee of the General Assembly by the United Kingdom represent-

ative on that occasion. Speaking of the position of signatories[1], he said :

"A signatory is not an actual party to the convention concerned. He has no final rights. But as signatory he has *certain* rights, of a provisional or inchoate character if you like, but, rights all the same. He has a right to ratify if he wishes to, and, in our view, a right to ratify the convention in the same form as when he signed it. A signatory has a right when he comes to ratify a convention not to find himself faced with a position in which the convention has already entered into force subject to important modifications which may alter the whole balance of its application and render it valueless to him.

Here I would draw attention to two important considerations. They are duly referred to in paragraph 40 of the Secretariat's report[2], but I feel it necessary to emphasize them :

In the first place there are a number of countries whose constitutional processes are slow. They can sign a convention, but quite a long time may elapse before they are in a position to ratify it. In the case of federal countries such as Switzerland or the United States, long and difficult consultations may have to be conducted before ratification is possible.

Yet, and this is the second point, the convention may in the meantime have entered into force subject to reservations agreed on by the countries whose ratifications have brought it into force. The date on which a convention comes into force depends on the number of ratifications (in some cases ratifications or accessions) necessary to bring it into force. That number is often quite small. It is often purposely made quite small expressly in order to bring the convention into force at the earliest possible date. Both the Secretariat's report and the United Kingdom memorandum give as an example the Geneva Conventions of 1949 on the Treatment of the Sick and Wounded in the Field, Prisoners of War, etc. which come into force on ratification by only two signatories. That is an extreme case. But there are many cases where a convention comes into force on the ratification of five, six or ten signatories.

It would then often be possible, if the other signatories did not have a right of objection, for a small group of States, having a

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[1] In the General Assembly the United Kingdom representative offered to agree that the right concerned should be confined to potential parties who had at least signed (though not ratified) the convention. But he intimated that it should strictly speaking extend to *all* States having a right to become parties, at any rate if they had participated in the drafting or were members of the organization under whose auspices the convention had been drawn up. It will be appreciated that these were offers made in the hope of reaching agreement on a settled practice to be allowed in the case of United Nations conventions. The present occasion is a different one. It is not now a question of bargaining with a view to reaching an agreement, but of establishing what the basic legal position is. It was indeed precisely because the Assembly could not determine what the strict legal position was, that it could not reach agreement on the practice to be followed. The advice of the Court as to what the basic legal position is (even though given only in connexion with a particular convention) will assist the Assembly in deciding what special practices, if any, it wishes to recommend for adoption in the case of United Nations conventions.

[2] This is Document A/1372.

common aim and acting in concert, to bring a convention into force subject to important reservations which they themselves would all make and agree to, and thus face forty or fifty other countries, signatories and potential ratifiers, with a situation in which they must either accept these reservations willy-nilly, or else give up all idea of participation in the convention. We say, Mr. President, that such a process would be destructive of all the rights of a signatory. It would be destructive of all confidence that when the text of a treaty or convention has been drawn up and signed—it may be after weeks of difficult and protracted negotiation—that text is final and the treaty or convention will remain as signed. It would enable States or groups of States in effect to reintroduce into the convention things which had been expressly rejected in the course of its negotiation—or alternatively to delete from it things which had been expressly included as being of vital importance. This indeed is precisely what is proposed by the various reservations made to the Genocide Convention and that is why we have felt obliged to object to them.

These very disquieting results would all be rendered possible by the adoption of a system such as that suggested by the Secretariat, and that is why we feel obliged to oppose that system although we appreciate the reasons which have led the Secretariat to advocate it, and recognize that it has advantages as regards certainty and simplicity. Moreover we feel that this system will be liable to have seriously detrimental effects on the prospects of obtaining signatures to United Nations conventions. If, after what is often an immense expenditure of time and trouble in drawing up a convention, Members of the United Nations cannot feel any certainty that further attempts to change the text by entering reservations will not be made—if they feel, or have reason to think, that by the time they are able to ratify they may be faced with the existence of reservations to which they will be powerless to object, will they not hesitate a good deal to sign at all—or at any rate will they not tend to delay their signatures? For our part, given the many consultations and possibly the legislation required before we can become parties to an international convention, we should hesitate very much to append our signature to a text about which there was no finality, and where questions supposed to be settled in the course of drafting the text could be reopened in the form of reservations."

CONCLUSION IN REGARD TO THE THIRD QUESTION

43. The United Kingdom Government fully recognizes that there may be certain practical objections to the exercise of an *unlimited* right of objection on the part of potential parties, in the sense of a right of indefinite duration. Some of these objections, in relation to United Nations conventions, are set out in paragraphs 41-45 of the report of the Secretary-General already referred to (Document A/1372), and need not be further particularized here. The United Kingdom always was, and still is, ready to discuss with other Members of the United Nations the question of putting some

limitation on the right of potential parties. Equally, the Court may consider it correct and possible, on purely legal grounds, to say that a right to become a party to a convention, if not exercised within a reasonable time, and failing any special circumstances to account for the delay, ceases to constitute a valid basis for offering or maintaining objections to reservations desired by other States [1]. In support of such a view, it could be argued that since the right of objection on the part of potential parties exists solely in order to protect their right to *become* parties to the convention as drafted, it ceases to exist once it becomes manifest either that the State concerned does not intend to become a party, or is delaying so long that it must be deemed to have given up its previous direct legal interest in keeping the convention to its original form.

44. However, the very fact that certain limitations of a legal character may be placed on the exercise of the right, would itself presuppose that the right, as an initial right, existed. For all these reasons, the United Kingdom Government considers that the broad answer to the third question addressed to the Court, and in relation to both its sub-heads *(a)* and *(b)*, should be to the effect that the answer to the first question would be the same (i.e. negative) not only in the case contemplated by that question, but also in both the cases envisaged by the third question. If the Court accepts this view, it may think fit to add a ryder to the effect that this answer assumes that the circumstances are not such as to indicate either a definite intention on the part of the objecting State not to ratify or accede, or the probability that ratification or accession will be indefinitely delayed.

(Signed) G. G. FITZMAURICE.
Agent for the Government
of the United Kingdom

Foreign Office,
January, 1951.

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[1] As to what would constitute a reasonable time, it is evident that no definite limits can be laid down, but it should not be difficult to determine what cases must fall outside the limit, having regard to the time normally required by States to consider their position and go through their constitutional processes, and having regard also to the nature of the convention aud the fact that States often do not ratify or accede to conventions for three or four years.

6. WRITTEN STATEMENT OF THE SECRETARY-GENERAL OF THE UNITED NATIONS

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LIST OF ANNEXED DOCUMENTS

I. INTRODUCTION

The General Assembly of the United Nations at its 305th plenary meeting on 16 November, 1950, adopted a Resolution (Document A/1517) requesting the International Court of Justice to give an advisory opinion on the following questions :

> "In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide, in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification:
>
> I. Can the reserving State be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others ?
>
> II. If the answer to question I is in the affirmative, what is the effect of the reservation as between the reserving State and:
>
> *(a)* The parties which object to the reservation ?
> *(b)* Those which accept it ?
>
> III. What would be the legal effect as regards the answer to question I if an objection to a reservation is made :
>
> *(a)* By a signatory which has not yet ratified ?
> *(b)* By a State entitled to sign or accede but which has not yet done so ?"

By the same Resolution the General Assembly invited the International Law Commission to study the question of reservations to multilateral conventions both from the point of view of codification and from that of the progressive development of international law, and to prepare a report thereon, and instructed the Secretary-General, pending the rendering of the advisory opinion, the receipt of the report of the International Law Commission and further action by the Assembly, to follow his prior practice with respect to the receipt of reservations and notification and solicitation of approvals thereof, all without prejudice to any recommendation on the subject by the General Assembly at its sixth session.

On 17 November, 1950, the Secretary-General transmitted to the International Court of Justice a certified copy of the General Assembly's Resolution requesting the advisory opinion. On 14 December, 1950, the Secretary-General also transmitted to the Court a *dossier* containing all records and documents relating to the consideration of the agenda item "Reservations to Multilateral Conventions" by the General Assembly and by its Sixth Committee at the fifth session of the Assembly.

Thus a question intimately concerning the Secretary-General's function as depositary of an important body of multilateral conven-

tions has been brought before the Court. The Secretary-General has consequently deemed it his duty to submit a written statement to the Court, in the hope that the information contained may be of assistance in the consideration of the matter. He will continue to be at the disposal of the Court during the whole proceedings.

The statement will first set out a brief history of the drafting of the Genocide Convention, with special reference to discussions concerning reservations. Then a complete account will be given of the procedure followed by the Secretary-General in connexion with signatures, ratifications and accessions with reservations to the Genocide Convention.

II. HISTORY OF THE GENOCIDE CONVENTION

A. *The Drafting of the Genocide Convention*

The subject of genocide was brought before the General Assembly during the second part of its first session by Cuba, India and Panama. By Resolution 96 (I), adopted unanimously on 11 December, 1946, the General Assembly took note that genocide shocked the conscience of mankind, resulted in great losses to humanity, and was contrary to moral law and to the spirit and aims of the United Nations, that many instances of such crimes had occurred, and that the punishment of genocide was a matter of international concern ; it affirmed that genocide was a crime under international law, and it requested the Economic and Social Council to undertake the necessary studies with a view to drawing up a draft convention on the crime of genocide.

The Economic and Social Council accordingly, by Resolution 47 (IV) of 28 March, 1947, instructed the Secretary-General to undertake the necessary studies with the assistance of experts in the field of international and criminal law, and further instructed him after consultation with the General Assembly Committee on the Development and Codification of International Law and, if feasible, the Commission on Human Rights, and after reference to all Member Governments for comments, to submit a draft convention on the crime of genocide to the next session of the Council.

The Secretary-General thereupon drew up a draft in consultation with three experts, Professors Donnedieu de Vabres, Lemkin and Pella. This draft (Document E/447) was then circulated to Member Governments. The Committee on the Development and Codification of International Law felt itself unable to express any opinion on the draft as no comments of Member Governments had yet been received, and the Commission on Human Rights did not meet before the opening of the next session of the Economic and Social Council.

The Economic and Social Council by Resolution 77 (V) of 6 August, 1947, called upon Member Governments to submit their comments on the draft convention promptly, decided to inform the

General Assembly that it proposed to proceed with the consideration of the question as rapidly as possible, and requested the Secretary-General to transmit the draft to the General Assembly, together with any comments received.

The General Assembly considered the draft at its second session, and on 21 November, 1947, adopted Resolution 180 (II) by which it reaffirmed its Resolution of 11 December, 1946, again declared genocide to be an international crime, adding that it entailed national and international responsibility on the part of individuals and States, and requested the Economic and Social Council to submit a report and a draft convention on genocide to the next regular session of the Assembly.

The Economic and Social Council by Resolution 117 (VI) of 3 March, 1948, established an *Ad Hoc* Committee on Genocide, composed of the following Members of the Council : China, France, Lebanon, Poland, the United States of America, the Union of Soviet Socialist Republics and Venezuela. The Committee was instructed to prepare a draft convention taking into consideration the Secretary-General's draft (Document E/447), the comments of the Member Governments thereon (Documents A/401, A/401/Add. 1, A/401/Add. 2, A/401/Add. 3, E/623, E/623/Add. 2, E/623/Add. 3 and E/623/Add. 4) and other drafts on the matter submitted by any Member Government (Documents E/623 and E/623/Add. 1).

The *Ad Hoc* Committee met at Lake Success from 5 April to 10 May, 1948, and on 30 April adopted a draft convention (Document E/794, pp. 18-19) by a vote of five in favour to one against (The Union of Soviet Socialist Republics), with one abstention (Poland) (Document E/AC.25/SR.26, pp. 4-7).

The Economic and Social Council was unable, at its seventh session, to give detailed consideration to the report of the *Ad Hoc* Committee, but on 26 August, 1948, by Resolution 153 (VII) decided to transmit the draft convention and report to the General Assembly, together with the records of the proceedings of the Council at its seventh session on the subject.

The General Assembly at its 142nd plenary meeting on 24 September, 1948, decided to refer the matter to the Sixth Committee for consideration and report. The Sixth Committee considered the subject from its 67th to 110th meetings held between 5 October and 9 November, 1948, and made extensive modifications in the text. The Committee approved the draft convention as revised at its 132nd meeting on 1 December, 1948, by a vote of 30 to none, with eight abstentions (Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom and Yugoslavia). The Sixth Committee's report (Document A/760 & Corr. 2) was discussed at its 178th and 179th plenary meetings by the General Assembly, which at the latter meeting on

9 December, 1948, adopted Resolution 260 (III), approving the text of the Convention, by a vote of 56 to none.

The Convention was accordingly opened for signature at Paris on 11 December, 1948.

B. *Omission from the Convention of an Article concerning Reservations*

The draft convention prepared by the Secretary-General and circulated to governments included a heading "Article XVII (Reservations)" (Document E/447, p. 11), under which, however, no proposed text was put forward. The comment on the draft (Document E/447, p. 55) expressed a doubt whether reservations ought to be permitted and whether an article relating to reservations ought to be included in the Convention, and made the following observations :

> "1. It would seem that reservations of a general scope have no place in a convention of this kind which does not deal with the private interests of a State, but with the preservations of an element of international order.
>
> For example, the Convention will or will not protect this or that human group. It is unthinkable that in that respect the scope of the Convention should vary according to the reservations possibly accompanying accession by certain States.
>
> 2. Perhaps in the course of discussion in the General Assembly it will be possible to allow certain limited reservations.
>
> These reservations might be of two kinds : either reservations which would be defined by the Convention itself, and which all the States would have the option to express, or questions of detail which some States might wish to reserve and which the General Assembly might decide to allow."

Only one government commented on Article XVII of the Secretary-General's draft. The United States of America expressed the view that "an article on the subject of 'reservations' should be omitted" (Document A/401/Add. 2, p. 15).

During the course of its work the *Ad Hoc* Committee on Genocide appointed a sub-committee, composed of the representatives of Poland, the Union of Soviet Socialist Republics and the United States of America, to study the final provisions of the Convention. The sub-committee "saw no need for any reservations" (Document E/AC. 25/10, p. 5), and this conclusion was unanimously adopted by the full *Ad Hoc* Committee at its 23rd meeting on 4 May, 1948 (E/AC. 25/SR. 23, p. 7). Consequently the *Ad Hoc* Committee's draft made no provision concerning reservations.

No proposal for an article on reservations was made in the Sixth Committee or in the plenary meetings of the General Assembly. Consequently the text of the Convention as approved by the General Assembly on 9 December, 1948, does not contain any provision on the subject.

C. *Discussion, during the Drafting of the Convention, of Articles which subsequently became the Subject of Reservations*

The Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia signed the Convention with identical reservations to Articles IX and XII. The same reservations were embodied in the instruments of accession of Bulgaria, Romania and Poland and maintained in the instrument of ratification of Czechoslovakia. The instrument of ratification of the Philippines contained reservations to Articles IV, VI, VII and IX. It may, therefore, be useful to give a brief account of the drafting of Articles IV, VI, VII, IX and XII, with emphasis on the attitudes expressed by representatives of States which subsequently submitted formal reservations.

Article IV. Article IV of the Convention, concerning persons responsible for genocide, originated in Article V of the *Ad Hoc* Committee's draft, adopted unanimously by that Committee at its 18th meeting on 23 April, 1948. This article was discussed by the Sixth Committee at its 92nd, 93rd, 95th and 96th meetings between 5 and 9 November, 1948. The *Ad Hoc* Committee's phrase describing persons responsible was found satisfactory in the French text, which read "*des gouvernants, des fonctionnaires ou des particuliers*", but considerable effort was devoted to finding an English equivalent for "*gouvernants*", which in the English text of the *Ad Hoc* Committee's draft read "Heads of State". Certain representatives of constitutional monarchies pointed out that according to the constitutions of their countries Heads of State enjoyed immunity and could not, for that reason, be brought to trial before a national court. To meet these difficulties the Sixth Committee at its 95th meeting adopted by a vote of 31 to 1, with 11 abstentions, a Netherlands amendment (document A/C.6/253) as amended by Thailand, whereby the English text came to read "constitutionally responsible rulers, public officials or private individuals". This amendment was opposed by the Philippines, which favoured the phrase "agents of the State" (Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, p. 340). The only statement made in connexion with the adoption of the text was that of Sweden concerning the responsibility imposed by the article with respect to Members of Parliament, which was reproduced in the report of the Sixth Committee (document A/760 & Corr. 2, paragraph 13).

Article VI. Article VI, concerning trials of persons charged with genocide, was one of the most debated provisions of the Convention. The *Ad Hoc* Committee's draft provided in Article VII that persons charged with genocide or other acts enumerated by the Convention should be tried by a competent tribunal of the State in the territory of which the act was committed or by a competent international

tribunal. The question of an international penal tribunal aroused long discussions in the Sixth Committee. At its 98th meeting on 10 November, 1948, the Sixth Committee decided by 23 votes to 19, with 3 abstentions, to delete the words "or by a competent international tribunal" from the *Ad Hoc* Committee's draft. The Philippines voted against deletion. France made a declaration regretting the rejection of the principle of international punishment and stating that France would probably find itself unable to sign such a convention. After the completion of work by a drafting committee, the Sixth Committee again took up the question of an international penal tribunal at its 129th meeting on 30 November, 1948. At that meeting the Committee by a vote of 33 (including the Philippines) to 9, with 6 abstentions, adopted a proposal to reconsider the article. At the 130th meeting on 30 November, 1948, a joint amendment proposed by the United States, France and Belgium was adopted by a vote of 29 (including the Philippines) to 9, with 5 abstentions. This amendment added the following phrase to the text of Article VI : "or by such international penal tribunal as may have jurisdiction with respect to such contracting parties as shall have accepted the jurisdiction of such tribunal". Article VI as amended was then adopted by 27 votes to 5, with 8 abstentions. No declaration was made by the Philippines in connexion with the adoption of the article.

Article VII. Article VII of the final text, concerning extradition, is substantially identical with Article IX of the *Ad Hoc* Committee's draft, which was relatively little discussed in the Sixth Committee. A United Kingdom amendment (Document A/C.6/236) making a change in phrasing was adopted at the 94th meeting of the Sixth Committee on 8 November, 1948, and the text as amended was approved by a vote of 26 to 2, with 5 abstentions, at the 95th meeting on the same day. No declaration was made by the Philippines concerning the article.

Article IX. Article IX, concerning submission of disputes to the International Court of Justice, corresponds to Article XIV of the draft prepared by the Secretary-General (Document E/447, pp. 10, 50) and to Article X of the *Ad Hoc* Committee's draft (Document E/794, pp. 13, 19).

During the course of the *Ad Hoc* Committee's work the representatives of the Union of Soviet Socialist Republics and of Poland consistently opposed the inclusion of a provision conferring compulsory jurisdiction on the International Court of Justice. Article XIV of the Secretariat's draft was considered at the twentieth meeting of the *Ad Hoc* Committee on 26 April, 1948. The Soviet representative objected to the inclusion of the article on the ground that matters concerning genocide should be handled by national courts only ; defining genocide as coming under international

jurisdiction would be interfering with the sovereign rights of States (Document E/AC.25/SR.20, p. 6). The Polish representative thought it unnecessary to include the article *(ibid.)*. At the same meeting the Committee decided by a vote of 5 to 2 to accept the text of Article XIV of the Secretariat's draft, and by a vote of 4 to 1, with 1 abstention, to add to it a proviso proposed by the United States to the effect that no dispute should be submitted to the International Court of Justice involving an issue which had been referred to and was pending before or had been passed upon by a competent international criminal tribunal. The whole text was adopted by a vote of 4 to 3 (Document E/794, p. 14).

This article, which became Article X of the *Ad Hoc* Committee's draft, was considered again by the Committee at its 24th meeting on 28 April, 1948. (Document E/AC.25/SR.24, pp. 12-13). The representative of the Union of Soviet Socialist Republics again declared his opposition to the article, on the grounds that it must inevitably lead to intervention by an international court in the trial of cases of genocide which should be heard by national courts in accordance with their jurisdiction, and that the establishment of an international jurisdiction for cases of genocide would constitute intervention in the internal affairs of States and would be a violation of their sovereignty. This declaration was included in the report of the *Ad Hoc* Committee (Document E/794, p. 14). Poland, which likewise voted against the article, made a declaration, also included in the Committee's report, objecting to the reference to an international criminal tribunal *(ibid.)*.

In the *Ad Hoc* Committee's vote on the whole text of the draft, the Union of Soviet Socialist Republics voted against adoption, and Poland abstained. In giving their reasons for their votes the representatives of these two States did not refer to their opposition to Article X (Document E/AC.25/SR.26, pp. 4-8).

Article X of the *Ad Hoc* Committee's draft was considered at the 103rd to the 105th meetings of the Sixth Committee on 12 and 13 November, 1948. At the 103rd meeting Poland and Czechoslovakia spoke against retaining the article in the Convention. At the 104th meeting the representative of the Philippines spoke in favour of the *Ad Hoc* Committee's draft because it recognized the right of contracting parties to bring a dispute as to the interpretation or application of the Convention before the International Court of Justice, but opposed any mention of the responsibility of States for genocide. The Union of Soviet Socialist Republics proposed the deletion of the article (Document A/C.6/215/Rev. 1). The article was adopted, with various amendments, by a vote of 18 to 2, with 15 abstentions, at the 105th meeting. At the 131st meeting of the Committee on 1 December, 1948, a proposal was made to reconsider the article, which had become Article IX of the Sixth Committee's draft, but the proposal was rejected.

The draft convention was then considered by the General Assembly at its 178th and 179th meetings on 9 December, 1948. The Union of Soviet Socialist Republics proposed various amendments to the text approved by the Sixth Committee (Document A/766), not, however, including any relating to Article IX.

Immediately before the General Assembly's vote on the whole text of the Convention the representative of the Union of Soviet Socialist Republics declared that :

> "With regard to Article IX where reference was made to the International Court of Justice and the international tribunal the U.S.S.R. delegation had to maintain its position and insist that, in each case, the submission of any dispute to the International Court of Justice could only be made with the consent of all the parties directly concerned in the matter."

No other delegation commented on this declaration. The Philippines made no declaration on the question.

Article XII. Article XII, concerning application to non-self-governing territories, originated with a draft additional article proposed by the United Kingdom in the Sixth Committee (Document A/C.6/236), which, with slight modifications by the drafting committee, was identical with the present text. The Ukrainian Soviet Socialist Republic submitted an amendment (Document A/C.6/264) to the United Kingdom proposal, providing that the Convention should apply automatically to all dependent territories. At the Committee's 107th meeting on 15 November, 1948, the Ukrainian amendment, though supported by the Union of Soviet Socialist Republics and Czechoslovakia, was rejected by 19 votes to 10, with 14 abstentions, and the new article proposed by the United Kingdom was adopted by a vote of 18 to 9, with 14 abstentions.

During the discussion of the Convention by the General Assembly the Union of Soviet Socialist Republics proposed an amendment to Article XI (Document A/766) which was very similar to the Ukrainian amendment which had been defeated in the Sixth Committee. This amendment was supported by the representatives of the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic, Poland and Czechoslovakia, but was rejected by the General Assembly by a vote of 23 to 19, with 14 abstentions, at its 179th plenary meeting on 9 December, 1948. The representative of the Soviet Union thereupon observed that the rejection of his amendment diminished the value of the text.

D. *General Discussion of "Reservations" in the Sixth Committee*

After the Sixth Committee had approved the full text of the Convention at its 132nd meeting on 1 December, 1948, the United Kingdom representative stated that "he had abstained from voting in order to indicate the United Kingdom Government's reservations

at that time in regard to the draft convention", and indicated that his Government might not find it possible to sign and ratify.

At the 133rd meeting on 2 December, 1948, the representative of the United States of America observed that if the expression "responsibility of a State" in Article IX of the Convention signified that a State could be sued for damages in respect of injury inflicted by it on its own subjects, then there would be serious objections, and his Government would have reservations to make about the interpretation of the phrase. With regard to Article VII, he declared that until the United States Congress had passed the legislative measures necessary to bring the Convention into force, his Government could not hand over any person accused of a crime by virtue of which he was not already liable to extradition under the terms of the existing laws, and that the United States Constitution prevented his Government from extraditing any person accused of a crime committed before the promulgation of the law defining that new crime.

The representative of the Dominican Republic explained that the fact he had voted in favour of the draft convention in no way implied that his delegation repudiated the reservations it had expressed during the discussion of the draft, particularly with regard to the articles against which it had voted.

The representative of India said that his Government reserved its position with regard to Articles VI and IX, which it might not be able to accept *in toto*, or without some reservations.

The Belgian representative reserved the position of his Government regarding the provision relating to extradition, on the ground that until legislative changes had been made the Belgian Government would be able to implement the Convention only to the extent allowed by existing Belgian legislation and the treaties to which Belgium was a party.

The representative of China reserved his Government's right to ratify or not to ratify the Convention or to ratify it with certain reservations after a thorough examination of its text.

The Peruvian representative mentioned his delegation's dissatisfaction with Articles III, VI and IX, and stated that the delegation wished in due course to make some reservations concerning the draft convention.

The Syrian representative reserved the position of his Government regarding the signature and ratification of the Convention.

The Rapporteur then said that the representative of the Dominican Republic had asked that his statement, together with the reservations contained therein, be included in the Rapporteur's report, and noted that the Committee's approval was required on that point. The following discussion then ensued (Official Records of the General Assembly, Third Session, Part I, Sixth Committee, pp. 710-711) :

"Mr. de Marchena Dujarric (Dominican Republic) agreed that only his reservation should be mentioned in the Rapporteur's report, provided a full text of the statement was reproduced in the records of the meeting. In any case, the reservations would be made formally at the time the Convention was signed.

Mr. Spiropoulos (Greece), Rapporteur, said he would do as requested by the representative of the Dominican Republic. He pointed out that no other member had asked for the statement to be mentioned in the Rapporteur's report. The Committee would have to take a separate decision each time such a request was made.

Mr. Gross (United States of America) felt it would be awkward if the report mentioned only one statement. It would be preferable for the representative of the Dominican Republic to withdraw his request. Otherwise, the United States delegation would also ask for its reservations to be included in the report.

Mr. Kaeckenbeeck (Belgium) said the Committee's report should be as clear and concise as possible. If it were to contain all the statements made during the vote on the draft convention, the impression would be disastrous. The positions of various delegations would be outlined in the records of the meeting. It would be sufficient for the Rapporteur's report to mention that some delegations had made reservations and explanatory statements regarding their vote and that both explanations and reservations could be found in the records of the meeting.

Mr. Maurtua (Peru) emphasized that his reservation had been of a preliminary character. It was for the various governments to make reservations at the time of the signing of the Convention. The Rapporteur should therefore merely mention the reservations made by certain delegations.

Mr. Spiropoulos (Greece), Rapporteur, agreed with the Belgian representative. The statements made on the occasion of the vote on the draft convention would be included in the record of the meeting, but they had no legal significance. He wondered whether certain delegations had fully realized the implications of the reservations they had made. Those reservations could be made at the time of the signature of the Convention. However, if a government made reservations regarding a convention, it could not be considered as a party to that convention unless the other contracting parties accepted those reservations, expressly or tacitly.

Mr. Kaeckenbeeck (Belgium) thought that the point under discussion raised an interesting, though purely theoretical, legal problem. The Committee did not have to take a decision at that stage on whether reservations would prevent a State from becoming a party to a convention. In explaining their votes, some delegations had simply wished to reserve their government's freedom of action regarding the ratification of the Convention.

The Chairman stated that the representatives concerned, and the Rapporteur, were in agreement that the latter should briefly indicate in the Committee's report that some delegations had reserved their government's position in respect of the draft convention on genocide.

The purport of those statements would be recorded in the summary record of the meeting in the usual way. The Chairman felt that there was no necessity to open a discussion on the legal implications of the reservations which had been made."

III. STATUS OF SIGNATURES, RATIFICATIONS, AND ACCESSIONS

Article XI of the Genocide Convention provides :

"The present Convention shall be open until 31 December, 1949, for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January, 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations."

The Convention was approved by General Assembly Resolution 260 (III) of 9 December, 1948, and was opened for signature on 11 December, 1948.

By Resolution 368 (IV) of 3 December, 1949, the General Assembly requested the Secretary-General to dispatch invitations to become parties to the Convention to each non-member State which was or thereafter became an active Member of one or more of the specialized agencies of the United Nations, or which was or thereafter became a party to the Statute of the International Court of Justice.

Accordingly the Secretary-General dispatched invitations on the following dates to the following twenty States, then not members of the United Nations : on 6 December, 1949, Albania, Austria, Bulgaria, Ceylon, Finland, Hungary, Ireland, Italy, Korea, Monaco, Portugal, Romania, Switzerland and Jordan ; on 27 March, 1950, Indonesia ; on 10 April, 1950, Liechtenstein ; on 31 May, 1950, Cambodia, Laos and Viet Nam ; on 20 December, 1950, the Federal Republic of Germany.

The Convention was signed by the following forty-three States :

Australia
Belgium
Bolivia
Brazil
Burma
Byelorussian Soviet Socialist Republic (subject to reservations)
Canada
Chile
China
Colombia
Cuba
Czechoslovakia (subject to reservations)
Denmark
Dominican Republic
Ecuador

Egypt
El Salvador
Ethiopia
France
Greece
Guatemala
Haiti
Honduras
Iceland
India
Iran
Israel
Lebanon
Liberia
Mexico
New Zealand
Norway
Pakistan
Panama
Paraguay
Peru
Philippine Republic
Sweden
Ukrainian Soviet Socialist Republic (subject to reservations)
Union of Soviet Socialist Republics (subject to reservations)
United States of America
Uruguay
Yugoslavia.

Up to 15 January, 1951, instruments of ratification or accession had been received by the Secretary-General from the following States, on the dates indicated :

Instruments of Ratification

Australia	8 July, 1949
Czechoslovakia (subject to reservations)	21 December, 1950
Ecuador	21 December, 1949
El Salvador	28 September, 1950
Ethiopia	1 July, 1949
France	14 October, 1950
Guatemala	13 January, 1950
Haiti	14 October, 1950
Iceland	29 August, 1949
Israel	9 March, 1950
Liberia	9 June, 1950
Norway	22 July, 1949
Panama	11 January, 1950
Philippine Republic (subject to reservations)	7 July, 1950
Yugoslavia	29 August, 1950

Instruments of Accession

Bulgaria (subject to reservations)	21 July, 1950
Cambodia	14 October, 1950
Ceylon	12 October, 1950
Costa Rica	14 October, 1950
Hashemite Jordan	3 April, 1950
Korea	14 October, 1950
Laos	8 December, 1950
Monaco	30 March, 1950
Poland (subject to reservations)	14 November, 1950

Romania (subject to reservations)	2 November, 1950
Saudi Arabia	13 July, 1950
Turkey	31 July, 1950
Viet Nam	11 August, 1950

Article XIII of the Convention provides :

> "On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article XI.
>
> The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.
>
> Any ratification effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession."

On 14 October, 1950, the condition for the coming into force of the Convention had been fulfilled, and a *procès-verbal* to that effect (Annexed Document 2) was drawn up by the Secretary-General in accordance with Article XIII of the Convention. This *procès-verbal* was circulated to the governments concerned on 19 October, 1950 (Annexed Document 1).

The Convention consequently entered into force on 12 January, 1951.

IV. RESERVATIONS TO THE GENOCIDE CONVENTION, AND PROCEDURE OF THE SECRETARY-GENERAL RELATING THERETO

A. *Reservations made on Signature*

Article XVII of the Genocide Convention provides as follows :

> "The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article XI of the following :
>
> *(a)* Signatures, ratifications and accessions received in accordance with Article XI ; . . . ."

On 16 December, 1949, the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic, and on 28 December, 1949, Czechoslovakia, signed the Convention with identical reservations regarding Articles IX and XII. These reservations were as follows :

> "*As regards Article IX :* The Soviet Union [the Byelorussian S.S.R., the Ukrainian S.S.R., Czechoslovakia] does not consider as binding upon itself the provisions of Article IX which provides that disputes between the Contracting Parties with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the

request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the Soviet Union [the Byelorussian S.S.R., the Ukrainian S.S.R., Czechoslovakia] will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

As regards Article XII : The Union of Soviet Socialist Republics [the Byelorussian S.S.R., the Ukrainian S.S.R., Czechoslovakia] declares that it is not in agreement with Article XII of the Convention and considers that all the provisions of the Convention should extend to non-self-governing territories, including trust territories."

These reservations were stated in special *procès-verbaux* drawn up at the time of each signature. The texts of these *procès-verbaux* are reproduced as Annexed Documents 7, 15, 21 and 27.

On 29 and 30 December, 1949, the Secretary-General, in accordance with Article XVII of the Convention, sent notifications of these signatures with reservations, attaching certified copies of the *procès-verbaux*, to each Member State of the United Nations and to each of the non-member States to which an invitation to become parties to the Convention had been addressed.

The notifications sent to States which had not yet ratified or acceded are reproduced as Annexed Documents 6, 14, 20 and 26.

The notifications sent to States which had then ratified the Convention (Australia, Ecuador, Ethiopia, Iceland and Norway) stated that the Secretary-General wished to be informed at the earliest possible opportunity of the attitude of those Governments with regard to the reservations, and that it would be his understanding that all States which had ratified or acceded to the Convention had accepted these reservations unless they had notified him of objections thereto prior to the day on which the first twenty instruments of ratification or accession, necessary to bring the Convention into force, had been deposited. The notifications sent to States which had then ratified are reproduced as Annexed Documents 12, 18, 24 and 30.

The Governments of the Union of Soviet Socialist Republics, Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic and Czechoslovakia were informed that these notifications had been made by the Secretary-General by letters of 13 January, 1950 (Annexed Documents 13, 19, 25 and 31).

The invitations to become parties to the Convention which were addressed to non-member States after the dates of the signatures with reservations contained notifications of those reservations, and copies of the *procès-verbaux* of signature were attached. These invitations are reproduced as Annexed Documents 61, 62, 63 and 64.

Thereafter, as each new State ratified or acceded to the Convention without having made an objection to the reservations, the

Secretary-General informed that State that, as the deposit of the instrument of ratification or accession had been made without any objection, it was his understanding that that government accepted the reservations. These communications are reproduced as Annexed Documents 105, 78, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120 and 121.

B. *Reservations made in Instruments of Ratification and Accession*

1. *Reservations of the Philippines.* On 6 July, 1950, the Secretary-General received from the Philippines an instrument of ratification containing reservations to Articles IV, VI, VII and IX of the Convention. These reservations were as follows :

> "1. With reference to Article IV of the Convention, the Philippine Government cannot sanction any situation which would subject its Head of State, who is not a ruler, to conditions less favourable than those accorded other Heads of State, whether constitutionally responsible rulers or not. The Philippine Government does not consider said article, therefore, as overriding the existing immunities from judicial processes guaranteed certain public officials by the Constitution of the Philippines.
>
> 2. With reference to Article VII of the Convention, the Philippine Government does not undertake to give effect to said article until the Congress of the Philippines has enacted the necessary legislation defining and punishing the crime of genocide, which legislation, under the Constitution of the Philippines, cannot have any retroactive effect.
>
> 3. With reference to Articles VI and IX of the Convention, the Philippine Government takes the position that nothing contained in said articles shall be construed as depriving Philippine courts of jurisdiction over all cases of genocide committed within Philippine territory save only in those cases where the Philippine Government consents to have the decision of the Philippine courts reviewed by either of the international tribunals referred to in said articles. With further reference to Article IX of the Convention, the Philippine Government does not consider said article to extend the concept of State responsibility beyond that recognized by the generally accepted principles of international law."

On 31 July, 1950, the Secretary-General sent notifications of these reservations, attaching a certified copy of the instrument of ratification, to each of the States described in Article XVII of the Convention.

The notification sent to States which had not yet ratified or acceded is reproduced as Annexed Document 32.

The notifications sent to States which had then ratified or acceded to the Convention stated that the Secretary-General wished to be informed at the earliest possible opportunity of the attitude of those Governments with regard to reservations, and that it would be his

understanding that those States accepted the reservations unless they had notified him of objections thereto prior to the day on which the first twenty instruments of ratification or accession had been deposited. The text of this notification is reproduced as Annexed Document 36.

By a letter to the Philippines of 31 July, 1950, the Secretary-General acknowledged the receipt of the instrument of ratification, but stated that it might be received in deposit only subject to no objection to the reservations being taken by any State which had already ratified or acceded to the Convention or by any State which might ratify or accede prior to the day on which the first twenty instruments of ratification or accession should have been deposited; he also informed the Philippines that the above notifications had been made (Annexed Document 38).

The invitation to the Federal Republic of Germany to become a party to the Convention, the only such invitation to a non-member State issued after the date of receipt of the instrument of ratification of the Philippines, contained a notification of the reservations of the Philippines (Annexed Document 64).

Thereafter, as each new State ratified or acceded to the Convention without having made an objection to the reservations, the Secretary-General informed that State that as the deposit of the instrument of ratification had been made without any objection, it was his understanding that that government accepted the reservations. These letters are reproduced as Annexed Documents 112, 113, 114, 115, 116, 117, 118, 119, 120 and 121.

2. *Reservations of Bulgaria.* On 14 July, 1950, the Secretary-General received an instrument of accession with reservations to Articles IX and XII from Bulgaria, the reservations being identical with those made on signature by the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia. These reservations were as follows:

> "1. *As regards Article IX:* The People's Republic of Bulgaria does not consider as binding upon itself the provisions of Article IX which provides that disputes between the Contracting Parties with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the People's Republic of Bulgaria will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.
>
> 2. *As regards Article XII:* The People's Republic of Bulgaria declares that it is not in agreement with Article XII of the Convention

and considers that all the provisions of the Convention should extend to non-self-governing territories, including trust territories."

Precisely the same procedure was followed as in the case of the reservations of the Philippines. The notification of the receipt of this instrument sent on 3 August, 1950, to States which had not yet ratified or acceded is reproduced as Annexed Document 39, and that sent on the same date to States which had already ratified or acceded is Annexed Document 43.

By a letter to Bulgaria of 3 August, 1950, the Secretary-General acknowledged the receipt of the instrument of accession, but stated that it might be received in deposit only subject to no objection to the reservations being taken by any State which had already ratified or acceded to the Convention or by any State which might ratify or accede prior to the day on which the first twenty instruments of ratification or accession should have been deposited; he also informed Bulgaria that the above notifications had been made (Annexed Document 45).

The invitation to become a party, addressed to the Federal Republic of Germany, which contained a notification of the reservations is Annexed Document 64.

The communications thereafter addressed to States subsequently ratifying or acceding without objection to the reservations are given as Annexed Documents 112, 113, 114, 115, 116, 117, 118, 119, 120 and 121.

3. *Reservations of Romania.* On 2 November, 1950, the Secretary-General received an instrument of accession from Romania containing reservations to Articles IX and XII which were identical with those made on signature by the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia, and in the instrument of accession of Bulgaria. The reservations of Romania were as follows:

"*As regards Article IX:* The People's Republic of Romania does not consider itself bound by the provisions of Article IX, which provides that disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the Convention shall be submitted to the International Court of Justice at the request of any of the parties to the dispute, and declares that as regards the jurisdiction of the Court in disputes relating to the interpretation, application or fulfilment of the Convention, the People's Republic of Romania will adhere to the view which it has held up to the present, that in each particular case the agreement of all the parties to a dispute is required before it can be referred to the International Court of Justice for settlement.

As regards Article XII: The People's Republic of Romania declares that it is not in agreement with Article XII of the Convention, and considers that all the provisions of the Convention should apply to the non-self-governing territories, including the trust territories."

The notification sent on 21 November, 1950, to States which had not yet ratified or acceded is reproduced in Annexed Document 46.

The notification sent on the same date to States which had already ratified or acceded differed from that used in the cases of the reservations of the Philippines and Bulgaria, as at the time of the receipt of Romania's instrument of accession a sufficient number of States had ratified or acceded to bring the Convention into force. The Secretary-General asked to be informed of the attitude of those Governments with regard to the reservations, and invited their attention to the second and third paragraphs of Article XIII of the Convention, which provide that the Convention would come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession and that any ratification or accession effected subsequent to the latter date should become effective on the ninetieth day following the deposit of the instrument. This notification is reproduced in Annexed Document 50. *Information copies of these notifications were addressed* to Romania.

The invitation to the Federal Republic of Germany, containing a notification of the reservations, is Annexed Document 64. The communication addressed to Laos, which acceded to the Convention without objection to the reservations of Romania, is Annexed Document 121.

4. *Reservations of Poland.* On 14 November, 1950, the Secretary-General received an instrument of accession from Poland containing reservations similar to those of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic, Czechoslovakia, Bulgaria and Romania. The reservations of Poland were as follows :

> "*As regards Article IX :* Poland does not regard itself as bound by the provisions of this article since the agreement of all the parties to a dispute is a necessary condition in each specific case for submission to the International Court of Justice.
>
> *As regards Article XII :* Poland does not accept the provisions of this article, considering that the Convention should apply to non-self-governing territories, including trust territories."

The same procedure was followed as in the case of the reservations of Romania.

The notification sent on 29 November, 1950, to States which had not yet ratified or acceded is reproduced in Annexed Document 52. The notification sent on 18 December, 1950, to States which had already ratified or acceded is reproduced in Annexed Document 56. By a letter of 7 December, 1950, the Secretary-General informed Poland that these notifications had been made (Annexed Document 57 *a*).

The invitation to the Federal Republic of Germany, containing a notification of the reservations, is Annexed Document 64.

5. *Reservations of Czechoslovakia.* On 21 December, 1950, the Secretary-General received an instrument of ratification from Czechoslovakia maintaining the reservations which had been made by Czechoslovakia on signature.

On 12 January, 1951, the Secretary-General notified all States described in Article XVII of the Convention of the receipt of the instrument of ratification with reservations. He further notified them that replies from the Governments of Guatemala, Ecuador, Australia, El Salvador and Viet Nam, copies of which had been circulated, had expressed disagreement with, or objection to, these reservations, and that pursuant to paragraph three of the General Assembly's Resolution on Reservations to Multilateral Conventions, notification was made of the receipt of the instrument without prejudice to its legal effect, pending the decision of the General Assembly at its sixth session. This notification is reproduced as Annexed Document 58. The Secretary-General also informed Czechoslovakia to the same effect (Annexed Document 60).

V. POSITIONS TAKEN BY STATES IN CORRESPONDENCE CONCERNING RESERVATIONS TO THE GENOCIDE CONVENTION

A. *Ecuador*

Ecuador ratified the Convention on 21 December, 1949. On 30 December, 1949, the Secretary-General inquired as to Ecuador's attitude concerning the reservations made on signature by the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia (Annexed Documents 12, 18, 24 and 30).

In its reply of 10 February, 1950, the Government of Ecuador stated that, in accordance with the position it had previously maintained regarding reservations, it had no objection to make regarding the submission of such reservations, but expressed its disagreement with their content (Annexed Document 66).

The Secretary-General replied on 21 March, 1950, remarking that, as the statement did not seem to indicate clearly the intention of the Government of Ecuador, he would appreciate being informed whether it might be taken as accepting the aforementioned reservations (Annexed Document 67).

The Government of Ecuador replied on 31 March, 1950, stating that it was not in agreement with the reservations and that therefore they did not apply to Ecuador, which had accepted without any modification the complete text of the Convention (Annexed Document 68). The Secretary-General circulated the two Ecuadorian notes and his own note of 21 March, 1950, to the governments concerned on 5 May, 1950 (Annexed Document 65).

The Secretary-General by a note of 3 August, 1950, inquired as to Ecuador's attitude concerning the reservations contained in the instrument of ratification of Bulgaria (Annexed Document 43).

The Government of Ecuador replied on 16 August, 1950, that it was not in agreement with the reservations and that therefore they did not apply to Ecuador, which had accepted without any modification the complete text of the Convention (Annexed Document 73).

B. *The Union of Soviet Socialist Republics*

On 13 January, 1950, the Secretary-General informed the Government of the Union of Soviet Socialist Republics that he had sent notifications of the reservations made on signature by that Government to all States contemplated in Article XI of the Convention, and had further inquired as to the attitude of those States which had ratified the Convention toward the reservations (Annexed Document 13).

The Union of Soviet Socialist Republics replied on 2 March, 1950, that the invitation to States which had ratified to express their attitude on the reservations went beyond the bounds of the functions assigned to the Secretary-General by Article XVII of the Convention (Annexed Document 74).

The Secretary-General replied on 23 March, 1950, drawing attention to the provisions of Article XIII of the Convention concerning the drawing up by the Secretary-General of a *procès-verbal* of the deposit of twenty instruments of ratification or accession, and stating that according to accepted principles of international law a reservation to a treaty made by a State might be valid only if all the other parties consented to it (Annexed Document 75).

Further, the Secretary-General stated in a letter to Guatemala of 14 July, 1950, that if Guatemala objected to the reservations of the Union of Soviet Socialist Republics, the legal consequences would be that the Secretary-General would not be in a position to accept for deposit an instrument of ratification by the Union of Soviet Socialist Republics subject to those reservations (Annexed Document 80). This letter was circulated on 2 August, 1950, to all States concerned, including the Union of Soviet Socialist Republics (Annexed Document 77).

The Government of the latter replied on 10 October, 1950, again asserting that the Secretary-General was exceeding the powers vested in him, which were defined exclusively by the Convention; further, the allegation by the Secretary-General that a reservation to a treaty made by a State might be valid only if all the other parties to the treaty consented to it was incompatible with the principle of the sovereignty of States, and was therefore contrary to the fundamental principles of international law (Annexed Document 76).

C. *Guatemala*

Guatemala ratified the Convention on 13 January, 1950. Accordingly on 19 January, 1950, the Secretary-General informed the Government of Guatemala that as its instrument of ratification had been deposited without any objection concerning the reservations made on signature by the Union of Soviet Socialist Republics, the Byelorussian. Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and. Czechoslovakia, it was his understanding that it accepted those reservations (Annexed Document 78).

The Guatemalan Government replied on 16 June, 1950, that it was not in agreement with the reservations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and Czechoslovakia and that consequently it should not be inferred that the Guatemalan Government accepted them merely because it did not make any reference to them in depositing its instrument of ratification, since they had no relation to the full acceptance of the Convention by Guatemala (Annexed Document 79).

The Secretary-General answered this communication on 14 July, 1950, requesting to be informed whether Guatemala, having had due notice of the reservations, specifically objected to them, and stating that, should Guatemala object, the legal consequences would be that the Secretary-General would not be in a position to accept for deposit instruments of ratification by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and Czechoslovakia subject to the aforesaid reservations. The Secretary-General also inquired as to the position of Guatemala regarding the reservations of the Byelorussian Soviet Socialist Republic, which had not been mentioned in the Guatemalan note of 16 June, 1950 (Annexed Document 80). The three communications were circulated by the Secretary-General on 2 August, 1950 (Annexed Document 77).

The Government of Guatemala replied to the Secretary-General's inquiry on 31 July, 1950, stating that it had always maintained the view that reservations made upon signing or ratifying international conventions were acts inherent in the sovereignty of States and were not open to discussion, acceptance or rejection by other States, and that in its view in collective conventions reservations made by a State affect only the application of the clause concerned, in the relations of other States with the State making the reservation (Annexed Document 86). This reply was circulated by the Secretary-General on 7 September, 1950 (Annexed Document 85).

On 3 August, 1950, the Secretary-General inquired as to Guatemala's attitude concerning the reservations contained in the instrument of accession of Bulgaria (Annexed Document 43).

The Guatemalan Government replied on 26 September, 1950, that it was unable to accept the basis of the reservations made at accession by Bulgaria, and that it confirmed its opinion that reservations made upon signature or ratification of international agree-

ments are a matter inherent in the sovereignty of States, and cannot be subject to discussion, acceptance or rejection by other States ; consequently reservations in respect of collective agreements refer only to the application of the relevant clause in the relations between other States and the State making the reservation (Annexed Document 90). This communication was circulated by the Secretary-General on 18 October, 1950 (Annexed Document 89).

D. *The United Kingdom*

The United Kingdom has not signed, ratified or acceded to the Genocide Convention.

In reply to the Secretary-General's notifications of 29 and 30 December, 1949, of the reservations made on signature by the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia (Annexed Documents 6, 14, 20 and 26), the United Kingdom stated in a letter of 31 July, 1950, that it was unable to accept the reservations because in its view their effect would be to alter the Convention in important respects (Annexed Document 93). The United Kingdom note was accompanied by a memorandum (United Nations Document A/1372, Annex II : Folder 4, pp. 11-16) which the Secretary-General was requested to circulate to all Members of the United Nations. The general conclusion reached by this memorandum was :

> "The most generally accepted opinion clearly is that a State which wishes to make a reservation to a multilateral convention may do so only if, at the least, all other States which are signatories to the convention consent ; and, in the case of conventions which are still open for signature, it is arguable that the consent of all those who have a right to sign must be obtained. It is preferable that consent should be given explicitly, but in some cases it can be assumed from silence. If, however, one of the other States possessing a right to object explicitly refuses to accept a reservation, the reservation must either be abandoned or the State making the reservation must remain outside the convention altogether."

In reply to the Secretary-General's notifications of 31 July and 3 August, 1950, respectively, of the reservations contained in the instrument of ratification of the Philippines and the instrument of accession of Bulgaria (Annexed Documents 32 and 39), the United Kingdom Government stated in a letter of 30 September, 1950, that it was unable to accept the reservations of Bulgaria and the first two of the three reservations of the Philippines for the same reasons as were expressed in the United Kingdom letter of 31 July, 1950 (Annexed Document 94).

In reply to the Secretary-General's notifications of 21 November and 29 November, respectively, of the reservations made in the instruments of accession of Romania and Poland (Annexed Docu-

ments 46 and 52), the United Kingdom stated on 6 December, 1950, that it could not accept any of the reservations for the same reason as those set out in the United Kingdom letter of 31 July, 1950 (Annexed Document 95).

E. *Australia*

Australia ratified the Genocide Convention on 8 July, 1949. Accordingly the Secretary-General on 30 December, 1949, inquired as to Australia's attitude concerning the reservations made on signature by the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia (Annexed Documents 12, 18, 24 and 30), and on 31 July and 3 August, 1950, respectively, concerning the reservations in the instrument of ratification of the Philippines and the instrument of accession of Bulgaria (Annexed Documents 36 and 43).

Australia replied on 26 September, 1950, that it should not be understood for the present that the Australian Government accepted any of the above-mentioned reservations, that it reserved its position as to the effect of the reservations, as well as the effect of the signatures, ratifications or accessions to which they were appended, and that the Secretary-General would be informed at a later date of Australia's attitude thereto (Annexed Document 97). This reply was circulated to the governments concerned by the Secretary-General on 4 October, 1950 (Annexed Document 96).

On 15 November, 1950, Australia confirmed that it did not accept any of the reservations of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic, Czechoslovakia, the Philippines or Bulgaria, and further stated that it would not regard as valid any ratification of the Convention maintaining the reservations made on signature (Annexed Document 101). The Secretary-General circulated this note on 11 December, 1950 (Annexed Document 100).

F. *El Salvador*

El Salvador ratified the Convention on 28 September, 1950. On 6 October, 1950, the Secretary-General informed the Government of El Salvador that as its instrument of ratification had been deposited without any objection to the reservations of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic, Czechoslovakia, the Philippines and Bulgaria, it was his understanding that El Salvador accepted those reservations (Annexed Document 114).

On 27 October, 1950, the Government of El Salvador replied that it could not concur, since it was not its intention, in ratifying the Convention without reservations, to refer in any way whatsoever to

the reservations made by the above-mentioned countries, and that though El Salvador did not wish to make objection to those reservations, it expressed its complete disagreement with them, in particular those relating to Articles II and III of the Convention (Annexed Document 123). The Secretary-General circulated this reply on 25 November, 1950 (Annexed Document 122).

G. *Viet Nam*

Viet Nam acceded to the Convention on 11 August, 1950. On 30 August, 1950, the Secretary-General informed the Government of Viet Nam that as its instrument of accession had been deposited without any objection to the reservations of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic, Czechoslovakia, the Philippines and Bulgaria, it was his understanding that Viet Nam accepted these reservations (Annexed Document 112).

The Government of Viet Nam replied on 3 November, 1950, that in acceding to the Convention it had been Viet Nam's intention to accept only the text of that Convention, and not the reservations submitted by any State ; the Government did not consider that it should at that time give its views on the substance of the reservations, since the question of principle involved, namely, to what extent reservations may be made to multilateral conventions, and the effect thereof, would have to be settled on a more general level (Annexed Document 127). This reply was circulated by the Secretary-General on 6 December, 1950 (Annexed Document 126).

In reply to the Secretary-General's letter of 21 November, 1950, inquiring as to Viet Nam's attitude toward the reservations contained in the instrument of accession of Romania (Annexed Document 50), the Government of Viet Nam replied on 22 December, 1950, that it maintained its point of view, according to which Viet Nam, in acceding to the Convention, intended to accept solely the text of the Convention as it had been approved by the General Assembly, to the exclusion of reservations offered by States on signature or on the deposit of their instruments of ratification or accession (Annexed Document 130).

The Secretary-General replied on 12 January, 1951, stating that in making the notification the Secretary-General had been following his previous practice, in conformity with the provisions of the Resolution concerning reservations to multilateral conventions, adopted by the General Assembly on 16 November, 1950 ; in accordance with paragraph 3 of that Resolution, the method followed by the Secretary-General was without prejudice to the legal effect which the General Assembly at its sixth session might recommend to be attributed to objections to reservations (Annexed Document 131).

H. *France*

France ratified the Convention on 14 October, 1950. Accordingly on 15 November, 1950, the Secretary-General informed the French Government that as its instrument of ratification had been deposited without any objection to the reservations of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic, Czechoslovakia, the Philippines and Bulgaria, it was his understanding that France accepted these reservations (Annexed Document 118).

The French Government replied on 6 December, 1950, that its position was that reservations made by a State at the time of signature or ratification of a convention or accession to it are not valid against a contracting party until after the latter has formally agreed thereto ; therefore the absence of objections by the French Government to the reservations made by certain States could not be considered as an acceptance of those reservations (Annexed Document 132).

The Secretary-General replied on 12 January, 1951, calling the attention of the French Government to the paragraph of the General Assembly's Resolution of 16 November, 1950 (Document A/1517) by which the Secretary-General was instructed to follow his prior practice with respect to the receipt of reservations to conventions and with respect to the notification and solicitation of approvals thereof, without prejudice to any recommendation by the General Assembly at its sixth session. The practice of the Secretary-General was based on the principle that a State accepting a treaty impliedly consented to every reservation thereto of which that State then had notice, and it was in conformity with this principle that the Secretary-General had sent to France his letter of 15 November, 1950 (Annexed Document 133).

I. *Cambodia*

Cambodia acceded to the Convention on 14 October, 1950. By a letter of 15 November, 1950, the Secretary-General informed the Government of Cambodia that as its instrument of accession had been deposited without any objection to the reservations made on signature by the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia, and in the instrument of ratification of the Philippines and the instrument of accession of Bulgaria, it was his understanding that Cambodia accepted those reservations (Annexed Document 116).

On 6 December, 1950, Cambodia replied that it had simply acceded to the Convention, without taking any account of the above-mentioned reservations (Annexed Document 134).

On 12 January, 1951, the Secretary-General replied, calling to Cambodia's attention the paragraph of the General Assembly's Resolution of 16 November, 1950 (Document A/1517) by which the Secretary-General was instructed to follow his prior practice with respect to the receipt of reservations to conventions and with respect to the notification and solicitation of approvals thereof, without prejudice to any recommendation by the General Assembly at its sixth session. The practice of the Secretary-General was based on the principle that a State accepting a treaty impliedly consented to every reservation thereto of which that State then had notice, and it was in conformity with this principle that the Secretary-General had sent to Cambodia his letter of 15 November, 1950 (Annexed Document 135).

J. *The Philippines*

By a circular note of 11 December, 1950, the Secretary-General informed the Philippines of Australia's objection to the reservations contained in the instrument of ratification of the Philippines (Annexed Document 100).

By a letter of 15 December, 1950, the Government of the Philippines informed the Secretary-General that it did not recognize the non-acceptance by the Australian Government of the reservations as in any way affecting the validity of the ratification by the Philippines, and stated that it was prepared to bring the matter as a contentious case before the International Court of Justice in accordance with the procedure laid down in Article IX of the Genocide Convention (Annexed Document 104).

For the Secretary-General :

(Signed) IVAN S. KERNO,
Assistant Secretary-General
in charge of the Legal Department.

ANNEXES

PART ONE.—NOTIFICATION BY THE SECRETARY-GENERAL OF THE DEPOSIT OF TWENTY INSTRUMENTS OF RATIFICATION OR ACCESSION

Annexed Document No. 1

C.N.177.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Entry into Force [1]

19 October, 1950.

Sir,

I am directed by the Secretary-General to refer to Article XIII of the Convention on the Prevention and Punishment of the Crime of Genocide, which provides in its first and second paragraphs that:

> "On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article XI.
>
> The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession."

On 14 October, 1950, the following States deposited with the Secretary-General their instruments of ratification or accession to the Convention:

Cambodia	Accession
Costa Rica	Accession
France	Ratification
Haiti	Ratification
Republic of Korea	Accession

On that date the conditions specified in the first paragraph of Article XIII having been fulfilled, the Secretary-General drew up the required *procès-verbal*, a copy of which is enclosed herewith.

In accordance with the provisions of the second paragraph of Article XIII, the Convention will then enter into force on 12 January, 1951.

[1] Notification sent, in English or in French, to all States invited to sign or accede to the Convention.

Up to 14 October, 1950, the following States have submitted to the Secretary-General their instruments of ratification or accession to the said Convention :

Ratifications

Australia	8 July	1949
Ecuador	21 December	1949
El Salvador	28 September	1950
Ethiopia	1 July	1949
France	14 October	1950
Guatemala	13 January	1950
Haiti	14 October	1950
Iceland	29 August	1949
Israel	9 March	1950
Liberia	9 June	1950
Norway	22 July	1949
Panama	11 January	1950
Philippines (with reservations regarding Articles IV, VI, VII and IX)	7 July	1950
Yugoslavia	29 August	1950

Accessions

Bulgaria (with reservations regarding Articles IX and XII)	21 July	1950
Cambodia	14 October	1950
Ceylon	12 October	1950
Costa Rica	14 October	1950
Hashemite Kingdom of the Jordan	3 April	1950
Korea	14 October	1950
Monaco	30 March	1950
Saudi-Arabia	13 July	1950
Turkey	31 July	1950
Viet Nam	11 August	1950

I have, etc.

(Signed) Dr. I. KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 2

PROCÈS-VERBAL ESTABLISHING THE DEPOSIT OF TWENTY INSTRUMENTS OF RATIFICATION OR ACCESSION TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

CONSIDERING that Article XIII, paragraphs one and two, of the Convention on the Prevention and Punishment of the Crime of Genocide provides that :

"On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article XI.

PROCÈS-VERBAL CONSTATANT LE DÉPÔT DE VINGT INSTRUMENTS DE RATIFICATION OU D'ADHÉSION A LA CONVENTION POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

CONSIDÉRANT que l'article XIII de la Convention pour la prévention et la répression du crime de génocide stipule, dans ses paragraphes un et deux, que :

« Dès le jour où les vingt premiers instruments de ratification ou d'adhésion auront été déposés, le Secrétaire général en dressera procès-verbal. Il transmettra copie de ce procès-verbal à tous les États Membres des Nations Unies et aux non-membres visés par l'article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession."

CONSIDERING that the condition specified in paragraph one has, on this day, been fulfilled;

THEREFORE, the Secretary-General has drawn up this *procès-verbal* in the English and French languages.

La présente Convention entrera en vigueur le quatre-vingt-dixième jour qui suivra la date du dépôt du vingtième instrument de ratification ou d'adhésion. »

CONSIDÉRANT que la condition prévue au paragraphe premier a, ce jour, été réalisée ;

EN CONSÉQUENCE, le Secrétaire général a dressé le présent procès-verbal en langue anglaise et en langue française.

Done at Lake Success, New York, this 14th day of October, 1950.

Fait à Lake Success, New-York, le 14 octobre 1950.

For the Secretary-General:
Pour le Secrétaire général :

(Signed) Dr. IVAN S. KERNO,
Assistant Secretary-General,
Legal Department.
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 3

C.N.177.1950.TREATIES.—Corrigendum [1]

Annexed Document No. 4

C.N.177.1950

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Entrée en vigueur [2]

le 19 octobre 1950.

Je suis chargé par le Secrétaire général de me référer à l'article XIII de la Convention pour la prévention et la répression du crime de génocide, qui stipule, dans ses paragraphes un et deux, que :

« Dès le jour où les vingt premiers instruments de ratification ou d'adhésion auront été déposés, le Secrétaire général en dressera procès-verbal. Il transmettra copie de ce procès-verbal à tous les États Membres des Nations Unies et aux non-membres visés par l'article XI.

[1] Contained a rectification of an error (English text). Not reproduced.
[2] Notification faite, en français ou en anglais, à tous les États invités à signer la convention ou à y adhérer.

La présente Convention entrera en vigueur le quatre-vingt-dixième jour qui suivra la date du dépôt du vingtième instrument de ratification ou d'adhésion. »

Le 14 octobre 1950, les États suivants ont déposé auprès du Secrétaire général leur instrument de ratification ou d'adhésion à ladite convention :

Cambodge	adhésion
Costa-Rica	adhésion
France	ratification
Haïti	ratification
République de Corée	adhésion

A cette date, les conditions prévues au paragraphe premier de l'article XIII ayant été réalisées, le Secrétaire général a dressé le procès-verbal nécessaire dont une copie est jointe à la présente.

Conformément aux dispositions du deuxième paragraphe de l'article XIII, la convention entrera en vigueur le 12 janvier 1951.

A la date du 14 octobre 1950, les États suivants ont déposé auprès du Secrétaire général leur instrument de ratification ou d'adhésion à ladite convention :

Ratifications

Australie	8 juillet	1949
Équateur	21 décembre	1949
Éthiopie	1 juillet	1949
France	14 octobre	1950
Guatémala	13 janvier	1950
Haïti	14 octobre	1950
Islande	29 août	1949
Israël	9 mars	1950
Libéria	9 juin	1950
Norvège	22 juillet	1949
Panama	11 janvier	1950
Philippines (avec réserves relatives aux articles IV, VI, VII et IX)	7 juillet	1950
Salvador	28 septembre	1950
Yougoslavie	29 août	1950

Adhésions

Arabie saoudite	13 juillet	1950
Bulgarie (avec réserves relatives aux articles IX et XII)	21 juillet	1950
Cambodge	14 octobre	1950
Ceylan	12 octobre	1950
Corée	14 octobre	1950
Costa-Rica	14 octobre	1950
Monaco	30 mars	1950
Royaume hachémite de Jordanie	3 avril	1950
Turquie	31 juillet	1950
Viet-Nam	11 août	1950

Je vous prie d'agréer, etc.

(Signé) Dr I. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 5

C.N.177.1950.TREATIES.—Corrigendum [1]

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[1] Portait rectification d'une erreur (texte français). Non reproduit.

PART TWO.—NOTIFICATIONS BY THE SECRETARY-GENERAL OF RESERVATIONS

Annexed Document No. 6

C.N.170.1949.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Signature by the Union of the Soviet Socialist Republics [1]

30 December, 1949.

Sir,

I have the honour to inform you that on 16 December, 1949, the Ambassador Extraordinary and Plenipotentiary of the Union of the Soviet Socialist Republics to the United States of America signed, on behalf of his Government, the Convention of 9 December, 1948, on the Prevention and Punishment of the Crime of Genocide "with the reservations regarding Articles IX and XII stated in the special *procès-verbal* drawn up on signature of the present Convention". A certified copy of this *procès-verbal* is herewith attached.

The present notification is made in accordance with Article XVII *(a)* of the Convention.

I have, etc.

For the Secretary-General:
(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 7

PROCÈS-VERBAL OF SIGNATURE

His Excellency Mr. A. S. Panyushkin, Ambassador of the Union of Soviet Socialist Republics to the United States, prior to signing the Convention on the Prevention and Punishment of the Crime of Genocide, in the office of the Assistant Secretary-General in charge of the Legal Department, at the Interim Headquarters of the United Nations, on Friday, 16 December, 1949, made the following statement:

> "At the time of signing the present Convention the delegation of the Union of Soviet Socialist Republics deems it essential to state the following:
>
> *As regards Article IX:* The Soviet Union does not consider as binding upon itself the provisions of Article IX which provides that

[1] Notification sent, in English or in French, to States which had not yet ratified or acceded.

disputes between the Contracting Parties with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the Soviet Union will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

As regards Article XII : The Union of Soviet Socialist Republics declares that it is not in agreement with Article XII of the Convention and considers that all the provisions of the Convention should extend to non-self-governing territories, including trust territories.'

In witness whereof the present *procès-verbal* was drawn up

Done at Lake Success, New York, this 16th day of December, 1949.

(Signed) Dr. I. KERNO,
Assistant Secretary-General
in charge of the Legal Department.

Translation by the Secretariat :

Ambassador Extraordinary and Plenipotentiary
of the U.S.S.R. to the United States of America,
(Signed) A. PANYUSHKIN.
16 XII 49.

Certified true copy :
(Signed) IVAN S. KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 8

C.N.170 & 172.1949.TREATIES.—Corrigendum [1]

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[1] Contained a rectification of an error (English text). Not reproduced.

Annexed Document No. 9

C.N.170.1949.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Signature de la convention par l'Union des Républiques socialistes soviétiques [1]

Le 30 décembre 1949.

J'ai l'honneur de vous informer que le 16 décembre 1949, l'ambassadeur extraordinaire et plénipotentiaire de l'Union des Républiques socialistes soviétiques aux États-Unis d'Amérique a signé, au nom de son Gouvernement, la Convention du 9 décembre 1948 pour la prévention et la répression du crime de génocide, « sous les réserves relatives aux articles IX et XII formulées dans le procès-verbal spécial établi lors de la signature de la présente convention ».

La présente notification est faite conformément aux dispositions de l'article XVII *a)* de la convention.

Vous trouverez ci-joint une copie certifiée conforme du texte anglais du procès-verbal. Je regrette, à ce propos, de ne pouvoir vous envoyer immédiatement le texte français de ce procès-verbal, que je vous ferai parvenir dès que la traduction en sera achevée.

Je vous prie d'agréer, etc.

Pour le Secrétaire général :
(Signé) IVAN KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 10

C.N.170 & 172.1949.TREATIES.—Corrigendum [2]

Annexed Document No. 11

PROCÈS-VERBAL DE SIGNATURE

Son Excellence Monsieur A. S. Panyushkin, ambassadeur de l'Union des Républiques socialistes soviétiques aux États-Unis d'Amérique, avant de signer la Convention pour la prévention et la répression du crime de génocide, a fait, le vendredi 16 décembre 1949, dans le bureau du Secrétaire général adjoint chargé du Département juridique, au siège provisoire de l'Organisation des Nations Unies, la déclaration suivante :

---

[1] Notification faite, en français ou en anglais, aux États n'ayant pas encore ratifié ou adhéré.

[2] Portait rectification d'une erreur (texte français). Non reproduit.

« Au moment de signer la présente convention, la délégation de l'Union des Républiques socialistes soviétiques tient expressément à déclarer ce qui suit :

En ce qui concerne l'article IX : L'Union soviétique ne s'estime pas tenue par les dispositions de l'article IX qui stipule que les différends entre les parties contractantes relatifs à l'interprétation, l'application ou l'exécution de la présente convention seront soumis à l'examen de la Cour internationale de Justice à la requête d'une partie au différend, et déclare qu'en ce qui concerne la compétence de la Cour en matière de différends relatifs à l'interprétation, l'application et l'exécution de la convention, l'Union soviétique continuera à soutenir, comme elle l'a fait jusqu'à ce jour, que, dans chaque cas particulier, l'accord de toutes les parties au différend est nécessaire pour que la Cour internationale de Justice puisse être saisie de ce différend aux fins de décision.

En ce qui concerne l'article XII : L'Union des Républiques socialistes soviétiques déclare qu'elle n'accepte pas les termes de l'article XII de la convention et estime que toutes les clauses de ladite convention devraient s'appliquer aux territoires non autonomes, y compris les territoires sous tutelle. »

En foi de quoi nous avons dressé le présent procès-verbal.

Fait à Lake Success (New-York), le 16 décembre 1949.

(Signé) I. KERNO,
Secrétaire général adjoint,
Département juridique.

(Traduction effectuée par le Secrétariat)

Ambassadeur extraordinaire et plénipotentiaire
de l'Union des Républiques socialistes soviétiques
aux États-Unis d'Amérique,
(Signé) A. PANYUSHKIN.
16 XII 49.

Copie certifiée conforme :
(Signé) IVAN S. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 12

C.N.170 *a*.1949.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Signature by the Union of the Soviet Socialist Republics [1]

30 December, 1949.

Sir,

I have the honour to inform you that on 16 December, 1949, the Minister for Foreign Affairs of the Union of the Soviet Socialist Republics signed, on behalf of his Government, the Convention of 9 December, 1948, on the Prevention and Punishment of the Crime of Genocide "with the reservations regarding Articles IX and XII stated in the special *procès-verbal* drawn up on signature of the present Convention". A certified copy of this *procès-verbal* is herewith attached. The present notification is made in accordance with Article XVII *(a)* of the Convention.

On .... [2] an instrument of ratification of this Convention was deposited on behalf of your Government.

As depository of the present Convention, I should like to be informed, at the earliest possible opportunity, of the attitude of your Government with regard to these reservations.

Under Article XIII of the Convention, the Secretary-General is required on the day when the first twenty instruments of ratification or accession have been deposited, to draw up a *procès-verbal* and to transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article XI of the Convention. On that day when the first twenty instruments are deposited and the *procès-verbal* is drawn up it will be necessary that the attitude of the parties to the Convention with regard to the afore-mentioned reservations be determined. In this connexion, it will be my understanding that all States which have ratified or acceded to the present Convention have accepted these reservations, unless they have notified me of objections thereto prior to the day on which the first twenty instruments of ratification or accession have been deposited.

I have, etc.

For the Secretary-General:
(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

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[1] Notification sent to States which had already ratified.

[2] For inserts see following list:

Australia	8 VII 49	Norway	22 VII 49
Ecuador	21 XII 49	Iceland	29 VIII 49
Ethiopia	1 VII 49		

Annexed Document No. 13

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR FOREIGN AFFAIRS OF THE UNION OF SOVIET SOCIALIST REPUBLICS

LEG.318/2/01/AL.

13 January, 1950.

Sir,

I have the honour to refer to the signature affixed by His Excellency the Ambassador of the Union of Soviet Socialist Republics to the United States of America on 16 December, 1949, on behalf of the Union of Soviet Socialist Republics to the Convention of 9 December, 1948, on the Prevention and Punishment of the Crime of Genocide "with the reservations regarding Articles IX and XII stated in the special *procès-verbal* drawn up on signature of the present Convention".

In pursuance of Article XVII *(a)* of the Convention, the Secretary-General has addressed an identical letter to the Member States which have ratified the Convention and another identical letter to all the other Member States and to all non-member States contemplated in Article XI of the Convention. One copy of each of these two letters is herewith enclosed for your information.

I have, etc.

For the Secretary-General:
(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 14

C.N.171.1949.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Signature by the Byelorussian Soviet Socialist Republic[1]

Annexed Document No. 15

PROCÈS-VERBAL OF SIGNATURE

His Excellency Mr. Kuzma Venediktovich Kiselev, Minister for Foreign Affairs of the Byelorussian Soviet Socialist Republic, prior to signing the Convention on the Prevention and Punishment of the Crime of Genocide, in the office of the Assistant Secretary-General in charge of the Legal Department, at the Interim Headquarters of the United Nations, on Friday, 16 December, 1949, made the following statement:

[1] Letter dated December 30th, 1949, which is *mutatis mutandis* the same as Annexed Document No. 6. Not reproduced.

"At the time of signing the present Convention the delegation of the Byelorussian Soviet Socialist Republic deems it essential to state the following :

As regards Article IX : The Byelorussian S.S.R. does not consider as binding upon itself the provisions of Article IX which provides that disputes between the Contracting Parties with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the Byelorussian S.S.R. will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

As regards Article XII : The Byelorussian S.S.R. declares that it is not in agreement with Article XII of the Convention and considers that all the provisions of the Convention should extend to non-self-governing territories, including trust territories."

In witness whereof the present *procès-verbal* was drawn up.

Done at Lake Success, New York, this 16th day of December, 1949.

(Signed) K. V. KISELEV.
16 XII 49.

(Signed) Dr. I. KERNO,
Assistant Secretary-General
in charge of the Legal Department.

Certified true copy :
(Signed) IVAN S. KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 16

C.N.171.1949.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Signature de la convention par la République socialiste soviétique de Biélorussie[1]

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[1] Lettre en date du 30 décembre 1949, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 9. Non reproduite.

Annexed Document No. 17

PROCÈS-VERBAL DE SIGNATURE

Son Excellence Monsieur Kuzma Venediktovich Kiselev, ministre des Affaires étrangères de la République socialiste soviétique de Biélorussie, avant de signer la Convention pour la prévention et la répression du crime de génocide, a fait, le vendredi 16 décembre 1949, dans le bureau du Secrétaire général adjoint chargé du Département juridique, au siège provisoire de l'Organisation des Nations Unies, la déclaration suivante :

« Au moment de signer la présente convention, la délégation de la République socialiste soviétique de Biélorussie tient expressément à déclarer ce qui suit :

En ce qui concerne l'article IX : La R. S. S. de Biélorussie ne s'estime pas tenue par les dispositions de l'article IX qui stipule que les différends entre les parties contractantes relatifs à l'interprétation, l'application ou l'exécution de la présente convention seront soumis à l'examen de la Cour internationale de Justice à la requête d'une partie au différend, et déclare qu'en ce qui concerne la compétence de la Cour en matière de différends relatifs à l'interprétation, l'application et l'exécution de la convention, la R. S. S. de Biélorussie continuera à soutenir, comme elle l'a fait jusqu'à ce jour, que, dans chaque cas particulier, l'accord de toutes les parties au différend est nécessaire pour que la Cour internationale puisse être saisie de ce différend aux fins de décision.

En ce qui concerne l'article XII : La R. S. S. de Biélorussie déclare qu'elle n'accepte pas les termes de l'article XII de la convention et estime que toutes les clauses de ladite convention devraient s'appliquer aux territoires non autonomes, y compris les territoires sous tutelle. »

En foi de quoi nous avons dressé le présent procès-verbal.

Fait à Lake Success (New-York), le 16 décembre 1949.

(Signé) K. V. KISELEV.
16 XII 49.

(Signé) I. KERNO,
Secrétaire général adjoint,
Département juridique.

Copie certifiée conforme :
(Signé) IVAN KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 18

C.N.171 *a*.1949.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Signature by the Byelorussian Soviet Socialist Republic [1]

Annexed Document No. 19

LEG.318/2/01

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR FOREIGN AFFAIRS OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC [2]

Annexed Document No. 20

C.N.172.1949.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Signature by the Ukrainian Soviet Socialist Republic [3]

Annexed Document No. 21

PROCÈS-VERBAL OF SIGNATURE

His Excellency Mr. Alexi Dorofeevich Voina, Deputy Foreign Minister of the Ukrainian Soviet Socialist Republic, prior to signing the Convention on the Prevention and Punishment of the Crime of Genocide, in the office of the Assistant Secretary-General in charge of the Legal Department, at the Interim Headquarters of the United Nations, on Friday, 16 December, 1949, made the following statement :

"At the time of signing the present Convention the delegation of the Ukrainian Soviet Socialist Republic deems it essential to state the following :

As regards Article IX : The Ukrainian S.S.R. does not consider as binding upon itself the provisions of Article IX which provides that disputes between the Contracting Parties with regard to the

[1] Letter dated December 30th, 1949, which is *mutatis mutandis* the same as Annexed Document No. 12. Not reproduced.

[2] Letter dated January 13th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 13. Not reproduced.

[3] Letter dated December 29th, 1949, which is *mutatis mutandis* the same as Annexed Document No. 6. Not reproduced.

interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the Ukrainian S.S.R. will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

As regards Article XII : The Ukrainian S.S.R. declares that it is not in agreement with Article XII of the Convention and considers that all the provisions of the Convention should extend to non-self-governing territories, including trust territories."

In witness whereof the present *procès-verbal* was drawn up.

Done at Lake Success, New York, this 16th day of December, 1949.

Translation by the Secretariat :

Deputy Minister of Foreign Affairs of the Ukrainian S.S.R.,
(Signed) A. VOINA.
16 XII 49.

(Signed) Dr. I. KERNO,
Assistant Secretary-General
in charge of the Legal Department.

Certified true copy :
(Signed) I. KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 22

C.N.172.1949.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Signature de la convention par la République socialiste soviétique d' Ukraine [1]

Annexed Document No. 23

PROCÈS-VERBAL DE SIGNATURE

Son Excellence Monsieur Alexi Dorofeevich Voina, ministre adjoint des Affaires étrangères de la République socialiste soviétique d'Ukraine, avant de signer la Convention pour la prévention et la répression du crime de génocide, a fait, le vendredi 16 décembre 1949, dans le bureau

[1] Lettre en date du 30 décembre 1949, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 9. Non reproduite.

du Secrétaire général adjoint chargé du Département juridique, au siège provisoire de l'Organisation des Nations Unies, la déclaration suivante :

« Au moment de signer la présente convention, la délégation de la République socialiste soviétique d'Ukraine tient expressément à déclarer ce qui suit :

En ce qui concerne l'article IX : La République socialiste soviétique d'Ukraine ne se considère pas comme liée par les dispositions de l'article IX qui stipule que les différends entre les parties contractantes relatifs à l'interprétation, l'application ou l'exécution de la présente convention seront soumis à l'examen de la Cour internationale de Justice à la requête d'une partie au différend, et déclare qu'en ce qui concerne la compétence de la Cour en matière de différends relatifs à l'interprétation, l'application et l'exécution de la convention, la R. S. S. d'Ukraine continuera à soutenir, comme elle l'a fait jusqu'à ce jour, la thèse selon laquelle, dans chaque cas particulier, l'accord de toutes les parties au différend est indispensable pour que la Cour internationale puisse être saisie de ce différend aux fins de décision.

En ce qui concerne l'article XII : La R. S. S. d'Ukraine déclare qu'elle ne donne pas son accord à l'article XII de la convention et estime que toutes les dispositions de la convention devraient s'appliquer aux territoires non autonomes, y compris les territoires sous tutelle. »

En foi de quoi nous avons dressé le présent procès-verbal.

Fait à Lake Success (New-York), le 16 décembre 1949.

(Traduction effectuée par le Secrétariat)

Le Ministre adjoint des Affaires étrangères de la République socialiste soviétique d'Ukraine,
(Signé) A. VOINA.
16 XII 49.

(Signé) I. KERNO,
Secrétaire général adjoint,
Département juridique.

Copie certifiée conforme:
(Signé) IVAN S. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 24

C.N.172 *a.*1949.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Signature by the Ukrainian Soviet Socialist Republic [1]

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[1] Letter dated December 30th, 1949, which is *mutatis mutandis* the same as Annexed Document No. 12. Not reproduced.

Annexed Document No. 25

LEG.318/2/01

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR FOREIGN AFFAIRS OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC [1]

Annexed Document No. 26

C.N.180.1949.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Signature by Czechoslovakia [2]

Annexed Document No. 27

PROCÈS-VERBAL OF SIGNATURE

His Excellency Mr. Vladimir Outrata, Ambassador of Czechoslovakia to the United States of America, prior to signing the Convention on the Prevention and Punishment of the Crime of Genocide, in the office of the Assistant Secretary-General in charge of the Legal Department, at the Interim Headquarters of the United Nations, on Wednesday, 28 December, 1949, made the following statement:

"At the time of signing the present Convention the delegation of Czechoslovakia deems it essential to state the following:

As regards Article IX: Czechoslovakia does not consider as binding upon itself the provisions of Article IX which provides that disputes between the Contracting Parties with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, Czechoslovakia will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

As regards Article XII: Czechoslovakia declares that it is not in agreement with Article XII of the Convention and considers

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[1] Letter dated January 13th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 13. Not reproduced.

[2] Letter dated December 29th, 1949, which is *mutatis mutandis* the same as Annexed Document No. 6. Not reproduced.

that all the provisions of the Convention should extend to non-self-governing territories, including trust territories."

In witness whereof the present *procès-verbal* was drawn up.

Done at Lake Success, New York, this 28th day of December, 1949.

(Signed) Dr. I. KERNO,
Assistant Secretary-General
in charge of the Legal Department.

(Signed) OUTRATA,
Ambassador of Czechoslovakia
to the United States of America.

Certified true copy :
(Signed) IVAN S. KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 28

C.N.180.1949.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Signature de la convention par la Tchécoslovaquie [1]

Annexed Document No. 29

PROCÈS-VERBAL DE SIGNATURE

Son Excellence Monsieur Vladimir Outrata, ambassadeur de Tchécoslovaquie aux États-Unis d'Amérique, avant de signer la Convention pour la prévention et la répression du crime de génocide, a fait, le mercredi 28 décembre 1949, dans le bureau du Secrétaire général adjoint chargé du Département juridique, au siège provisoire de l'Organisation des Nations Unies, la déclaration suivante :

« Au moment de signer la présente convention, la délégation de Tchécoslovaquie tient expressément à déclarer ce qui suit :

En ce qui concerne l'article IX : La Tchécoslovaquie ne s'estime pas tenue par les dispositions de l'article IX qui stipule que les différends entre les parties contractantes relatifs à l'interprétation, l'application ou l'exécution de la présente convention seront soumis à l'examen de la Cour internationale de Justice à la requête d'une partie au différend, et déclare qu'en ce qui concerne la compétence de la Cour en matière de différends relatifs à l'interprétation, l'application et l'exécution de la convention, la Tchécoslovaquie continuera à soutenir, comme elle l'a fait jusqu'à ce jour, que,

[1] Lettre en date du 30 décembre 1949, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 9. Non reproduite.

dans chaque cas particulier, l'accord de toutes les parties au différend est nécessaire pour que la Cour internationale de Justice puisse être saisie de ce différend aux fins de décision.

En ce qui concerne l'article XII : La Tchécoslovaquie déclare qu'elle n'accepte pas les termes de l'article XII de la convention et estime que toutes les clauses de la convention devraient s'appliquer aux territoires non autonomes, y compris les territoires sous tutelle. »

En foi de quoi nous avons dressé le présent procès-verbal.

Fait à Lake Success (New-York), le 28 décembre 1949.

(Signé) I. KERNO,
Secrétaire général adjoint,
Département juridique.

(Signé) OUTRATA,
Ambassadeur de Tchécoslovaquie
aux États-Unis d'Amérique.

Copie certifiée conforme :
(Signé) IVAN S. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 30

C.N.180 *a.*1949.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Signature by Czechoslovakia [1]

Annexed Document No. 31

LEG.318/2/03/MB

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR FOREIGN AFFAIRS OF CZECHOSLOVAKIA [2]

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[1] Notification sent to States which had already ratified or acceded.—Letter dated December 30th, 1949, which is *mutatis mutandis* the same as Annexed Document No. 12. Not reproduced.

[2] Letter dated January 13th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 13. Not reproduced.

Annexed Document No. 32

C.N.114.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Ratification with Reservations by the Republic of the Philippines [1]

Annexed Document No. 33

INSTRUMENT OF RATIFICATION

Malacanan Palace
Manila

BY THE PRESIDENT OF THE PHILIPPINES
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, the Convention on the Prevention and Punishment of the Crime of Genocide was approved by the General Assembly of the United Nations during its third session on December 9, 1948, and was signed by the authorized representative of the Philippines on December 11, 1948;

WHEREAS, Article XI of the Convention provides that the present Convention shall be ratified and the instruments of ratification deposited with the Secretary-General of the United Nations; and

WHEREAS, the Senate of the Philippines, by its Resolution No. 9, adopted on February 28, 1950, concurred in the ratification by the President of the Philippines of the aforesaid Convention in accordance with the Constitution of the Philippines, subject to the following reservations:

"1. With reference to Article IV of the Convention, the Philippine Government cannot sanction any situation which would subject its Head of State, who is not a ruler, to conditions less favourable than those accorded other Heads of State, whether constitutionally responsible rulers or not. The Philippine Government does not consider said article, therefore, as overriding the existing immunities from judicial processes guaranteed certain public officials by the Constitution of the Philippines.

2. With reference to Article VII of the Convention, the Philippine Government does not undertake to give effect to said article until the Congress of the Philippines has enacted the necessary legislation defining and punishing the crime of genocide, which legislation, under the Constitution of the Philippines, cannot have any retroactive effect.

3. With reference to Articles VI and IX of the Convention, the Philippine Government takes the position that nothing contained

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[1] Letter dated July 31st, 1950, which is *mutatis mutandis* the same as Annexed Document No. 6. Not reproduced.

in said articles shall be construed as depriving Philippine courts of jurisdiction over all cases of genocide committed within Philippine territory save only in those cases where the Philippine Government consents to have the decision of the Philippine courts reviewed by either of the international tribunals referred to in said articles. With further reference to Article IX of the Convention, the Philippine Government does not consider said article to extend the concept of State responsibility beyond that recognized by the generally accepted principles of international law."

NOW, THEREFORE, be it known that I, ELPIDIO QUIRINO, President of the Philippines, after having seen and considered the said Convention, do hereby, in pursuance of the aforesaid concurrence of the Senate and subject to the reservations above quoted, ratify and confirm the same and every article and clause thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

(Signed) QUIRINO.

By the President :
(Signed) FELINO NERI,
Under-Secretary of Foreign Affairs.

Certified true copy :
(Signed) A. H. FELLER,
General Counsel and Principal Director,
Legal Department.

Annexed Document No. 34

C.N.114.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Ratification avec réserves par la République des Philippines [1]

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[1] Lettre en date du 31 juillet 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 9. Non reproduite.

Annexed Document No. 35

INSTRUMENT DE RATIFICATION

Palais Malacanan

Manille

PROCLAMATION DU PRÉSIDENT DES PHILIPPINES
A TOUS CEUX QUI CES PRÉSENTES VERRONT, SALUT :

CONSIDÉRANT que la Convention pour la prévention et la répression du crime de génocide a été approuvée par l'Assemblée générale des Nations Unies à sa troisième session, le 9 décembre 1948, et signée le 11 décembre 1948 par le représentant autorisé des Philippines ;

CONSIDÉRANT que, l'article XI de la convention dispose qu'elle sera ratifiée et que les instruments de ratification seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies ; et

CONSIDÉRANT que, dans sa Résolution n° 9 adoptée le 28 février 1950, le Sénat des Philippines a donné son assentiment à la ratification de la susdite convention par le Président des Philippines conformément à la Constitution des Philippines, sous condition des réserves suivantes :

« 1. En ce qui concerne l'article IV de la convention, le Gouvernement des Philippines ne peut sanctionner un régime selon lequel son chef d'État, qui n'est pas un gouvernant, se trouverait soumis à un traitement moins favorable que celui qui est accordé à d'autres chefs d'État, qu'ils soient ou non des gouvernants constitutionnellement responsables. En conséquence, le Gouvernement des Philippines ne considère pas que ledit article abolisse les immunités en matière de poursuites judiciaires que la Constitution des Philippines reconnaît actuellement au bénéfice de certains fonctionnaires.

2. En ce qui concerne l'article VII de la convention, le Gouvernement des Philippines ne s'engage pas à donner effet audit article avant que le Congrès des Philippines ait adopté la législation qui s'impose pour définir et punir le crime de génocide, cette législation ne pouvant avoir d'effet rétroactif aux termes de la Constitution des Philippines.

3. En ce qui concerne les articles VI et IX de la convention, le Gouvernement des Philippines maintient qu'aucune disposition desdits articles ne sera interprétée comme enlevant aux tribunaux des Philippines la compétence à l'égard de tous les actes de génocide commis à l'intérieur du territoire des Philippines, à la seule exception des cas dans lesquels le Gouvernement des Philippines donnera son accord pour que la décision rendue par les tribunaux des Philippines soit soumise à l'examen de l'une des juridictions internationales mentionnées dans lesdits articles. En ce qui concerne plus précisément l'article IX de la convention, le Gouvernement des Philippines ne considère pas que ledit article donne à la notion de responsabilité étatique une étendue plus grande que celle qui lui est attribuée par les principes du droit international généralement reconnus. »

EN CONSÉQUENCE, Nous, ELPIDIO QUIRINO, Président des Philippines, vu le texte de ladite convention, conformément à l'assentiment susmentionné du Sénat et compte tenu des réserves précitées, ratifions et confirmons par les présentes ladite convention dans chacun de ses articles et de ses clauses.

EN FOI DE QUOI, Nous avons revêtu les présentes de notre signature et fait apposer le sceau de la République des Philippines.

Fait en la ville de Manille, le 23 juin de l'an de grâce mil neuf cent cinquante, quatrième année de l'indépendance des Philippines.

(Signé) QUIRINO.

Par le Président :
(Signé) FELINO NERI,
Sous-Secrétaire d'État
aux Affaires étrangères.

(Traduction du Secrétariat)

Copie certifiée conforme :
(Signé) A. H. FELLER,
Conseiller général et Directeur principal,
Département juridique.

Annexed Document No. 36

C.N.114 *a.*1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Ratification with Reservations by the Republic of the Philippines[1]

Annexed Document No. 37

C.N.114 *a.*1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Ratification avec réserves par la République des Philippines[2]

Le 31 juillet 1950.

Monsieur le Ministre,

Je suis chargé par le Secrétaire général de vous faire connaître que, le 6 juillet 1950, le chargé d'affaires par intérim de la Mission des

[1] Notification sent to States which had already ratified or acceded.—Letter dated July 31st, 1950, which is *mutatis mutandis* the same as Annexed Document No. 12. Not reproduced.

[2] Notification faite, en français ou en anglais, aux États ayant ratifié ou adhéré.

Philippines auprès des Nations Unies a transmis aux fins de dépôt l'instrument de ratification, avec réserves, de la République des Philippines à la Convention pour la prévention et la répression du crime de génocide. Ci-joint copie certifiée conforme de cet instrument de ratification.

La présente notification est faite conformément aux dispositions de l'article XVII *a)* de ladite convention.

Un instrument d'adhésion à cette convention a été déposé à la date du .... au nom du Gouvernement de ....

Le Secrétaire général, en sa qualité de dépositaire de la convention ci-dessus mentionnée, vous serait obligé de bien vouloir lui faire connaître dans le délai le plus proche l'attitude de votre Gouvernement à l'égard des réserves du Gouvernement de la République des Philippines.

Conformément aux dispositions de l'article XIII de la convention « dès le jour où les vingt premiers instruments de ratification ou d'adhésion auront été déposés, le Secrétaire général dressera procès-verbal. Il transmettra copie de ce procès-verbal à tous les États Membres des Nations Unies et aux États non membres visés par l'article XI ». Le jour où les vingt premiers instruments de ratification auront été déposés et le procès-verbal dressé, il sera nécessaire que l'attitude des États qui auront ratifié ou adhéré à la convention à l'égard des réserves mentionnées ci-dessus soit précisée. Sauf notification des objections de votre Gouvernement avant l'établissement du procès-verbal de dépôt des vingt premiers instruments de ratification et d'adhésion, le Secrétaire général considérera que votre Gouvernement accepte les réserves du Gouvernement de la République des Philippines.

Je vous prie d'agréer, etc.

(Signé) A. H. FELLER,
Conseiller général et Directeur principal,
Département juridique.

Annexed Document No. 38

THE GENERAL COUNSEL AND PRINCIPAL DIRECTOR OF THE LEGAL DEPARTMENT OF THE UNITED NATIONS TO THE PERMANENT MISSION OF THE PHILIPPINES TO THE UNITED NATIONS

LEG.318/2/03

31 July, 1950.

Sir,

I am directed by the Secretary-General to acknowledge the receipt of your letter of 6 July, 1950, transmitting, for deposit, the original of the instrument of ratification with reservations, of the Government of the Republic of the Philippines of the Convention on Prevention and Punishment of the Crime of Genocide.

I am further directed by the Secretary-General to inform you that this instrument of ratification with reservations may be received in deposit only subject to no objection being taken by any State which has already ratified or acceded to the Convention or by any State which may

ratify or accede to the Convention prior to the day on which the first twenty instruments of ratification or accession shall have been deposited.

In this connexion, I have the honour to inform you that, pursuant to Article XVII *(a)* of the Convention, the Secretary-General has transmitted to the Member and non-member States which have ratified or acceded to the Convention, a certified copy of the said instrument of ratification with reservations, requesting such States to inform him, at the earliest possible opportunity, of their attitude with regard to these reservations, stating that it would be his understanding that such States accept these reservations unless notification of objections thereto are received prior to the day on which the first twenty instruments of ratification or accession have been deposited.

The Secretary-General also transmitted, pursuant to Article XVII *(a)* of the Convention, a certified copy of the said instrument of ratification with reservations to all other Members of the United Nations and other non-member States to which an invitation to become a party to the Convention has been addressed by the General Assembly. One copy of each of these two letters is herewith enclosed for your information.

I have, etc.

(Signed) A. H. FELLER,
General Counsel and Principal Director,
Legal Department.

Annexed Document No. 39

C.N.118.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Accession with Reservations by the People's Republic of Bulgaria [1]

Annexed Document No. 40

INSTRUMENT OF ACCESSION

THE PRESIDIUM OF THE NATIONAL ASSEMBLY
OF THE PEOPLE'S REPUBLIC OF BULGARIA

HAVING SEEN AND EXAMINED the Convention of 9 December, 1948, on the Prevention and Punishment of the Crime of Genocide,

CONFIRMS its accession to this Convention with the following reservations:

1. *As regards Article IX:* The People's Republic of Bulgaria does not consider as binding upon itself the provisions of Article IX which provides that disputes between the Contracting Parties

[1] Letter dated August 3rd, 1950, which is *mutatis mutandis* the same as Annexed Document No. 6. Not reproduced.

with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the People's Republic of Bulgaria will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

2. *As regards Article XII:* The People's Republic of Bulgaria declares that it is not in agreement with Article XII of the Convention and considers that all the provisions of the Convention should extend to non-self-governing territories, including trust territories.

AND DECLARES its assurance of the application thereof.

IN FAITH WHEREOF, has signed the present instrument and has had affixed the seal of the State thereto.

GIVEN at Sofia, on 12 July, one thousand nine hundred and fifty.

The President,
(Signed) [Illegible.]

The Secretary,
(Signed) [Illegible.]

The Minister for Foreign Affairs,
(Signed) M. NEITCHEFF.

Translation by the Secretariat :

(Signed) A. H. FELLER,
General Counsel and Principal Director,
Legal Department.

Annexed Document No. 41

C.N.118.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Adhésion avec réserves par la République populaire de Bulgarie [1]

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[1] Lettre en date du 3 août 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 9. Non reproduite.

Annexed Document No. 42

INSTRUMENT D'ADHÉSION

LE PRESIDIUM DE L'ASSEMBLÉE NATIONALE
DE LA RÉPUBLIQUE POPULAIRE DE BULGARIE

AYANT VU ET EXAMINÉ la Convention du 9 décembre 1948 pour la prévention et la répression du crime de génocide,

CONFIRME son adhésion à cette convention avec les réserves suivantes :

1. *En ce qui concerne l'article IX :* La République populaire de Bulgarie ne s'estime pas tenue par les dispositions de l'article IX qui stipulent que les différends entre les parties contractantes relatifs à l'interprétation, l'application ou l'exécution de la convention seront soumis à l'examen de la Cour internationale de Justice à la requête d'une partie au différend, et déclare qu'en ce qui concerne la compétence de la Cour en matière de différends relatifs à l'interprétation, l'application et l'exécution de la convention, la République populaire de Bulgarie continuera à soutenir, comme elle l'a fait jusqu'à ce jour, que, dans chaque cas particulier, l'accord de toutes les parties au différend est nécessaire pour que la Cour internationale de Justice puisse être saisie de ce différend aux fins de décision.

2. *En ce qui concerne l'article XII :* La République populaire de Bulgarie déclare qu'elle n'accepte pas les termes de l'article XII de la convention et estime que toutes les clauses de ladite convention devraient s'appliquer aux territoires non autonomes, y compris les territoires sous tutelle.

ET DÉCLARE en assurer l'application.

EN FOI DE QUOI, a signé les présentes et y a fait apposer le sceau de l'État.

DONNÉ à Sofia, le 12 juillet de l'an mil neuf cent cinquante.

Le Président,
(Signé) [Illisible.]

Le Secrétaire,
(Signé) [Illisible.]

Le Ministre des Affaires étrangères,
(Signé) M. NEITCHEFF.

Copie certifiée conforme :
(Signé) A. H. FELLER,
General Counsel and Principal Director,
Legal Department.

Annexed Document No. 43

C.N.118 *a.*1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Accession with Reservations by the People's Republic of Bulgaria [1]

Annexed Document No. 44

C.N.118 *a.*1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Adhésion avec réserves par la République populaire de Bulgarie [2]

Annexed Document No. 45

LE CONSEILLER GÉNÉRAL ET DIRECTEUR PRINCIPAL DU DÉPARTEMENT JURIDIQUE DES NATIONS UNIES AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE POPULAIRE DE BULGARIE

LEG.318/2/03 Le 3 août 1950.

Monsieur le Ministre,

Je suis chargé par le Secrétaire général d'accuser réception de votre lettre n° 34437-20-VII du 14 juillet 1950, transmettant aux fins de dépôt, l'instrument d'adhésion avec réserves de la République populaire de Bulgarie à la Convention pour la prévention et la répression du crime de génocide.

Je suis également chargé par le Secrétaire général de vous faire savoir que cet instrument d'adhésion avec réserves ne peut être reçu, aux fins de dépôt, qu'à la condition de ne pas soulever d'objections de la part d'un État quelconque qui a déjà ratifié la convention ou qui y a déjà adhéré ou d'un État quelconque susceptible de ratifier la convention ou d'y adhérer avant la date à laquelle les vingt premiers instruments de ratification ou d'adhésion auront été déposés.

A cet égard, j'ai l'honneur de vous faire connaître qu'en application de l'article XVII *a)* de la convention, le Secrétaire général a transmis aux États Membres et aux États non membres qui ont ratifié la convention

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[1] Notification sent to States which had already ratified or acceded.—Letter dated August 3rd, 1950, which is *mutatis mutandis* the same as Annexed Document No. 12. Not reproduced.

[2] Lettre en date du 3 août 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 37. Non reproduite.

ou qui y ont adhéré une copie certifiée conforme dudit instrument d'adhésion avec réserves, en priant ces États de bien vouloir lui faire connaître, dans le délai le plus proche, leur attitude à l'égard de ces réserves, et en les informant qu'à moins d'avoir reçu notification de leurs objections auxdites réserves avant le jour où les vingt premiers instruments de ratification ou d'adhésion auront été déposés, il considérera qu'ils acceptent ces réserves.

Conformément à l'article XVII *a)* de la convention, le Secrétaire général a également transmis une copie certifiée conforme dudit instrument d'adhésion avec réserves à tous les autres Membres des Nations Unies et aux États non membres invités par l'Assemblée générale à devenir parties à la convention.

Vous trouverez ci-joint, pour votre information, copie de chacune de ces deux lettres.

Je vous prie d'agréer, etc.

(Signé) A. H. FELLER,
Conseiller général et Directeur principal,
Département juridique.

Annexed Document No. 46

C.N.191.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Accession with Reservations by Romania [1]

Annexed Document No. 47

RESERVATIONS OF ROMANIA

[*Translated from French*]

As regards Article IX : The People's Republic of Romania does not consider itself bound by the provisions of Article IX, which provides that disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the Convention shall be submitted to the International Court of Justice at the request of any of the parties to the dispute, and declares that as regards the jurisdiction of the Court in disputes relating to the interpretation, application or fulfilment of the Convention, the People's Republic of Romania will adhere to the view which it has held up to the present, that in each particular case the agreement of all the parties to a dispute is required before it can be referred to the International Court of Justice for settlement.

As regards Article XII : The People's Republic of Romania declares that it is not in agreement with Article XII of the Convention, and

[1] Letter dated November 21st, 1950, which is *mutatis mutandis* the same as Annexed Document No. 6. Not reproduced.

considers that all the provisions of the Convention should apply to the non-self-governing territories, including the trust territories.

Annexed Document No. 48

C.N.191.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Adhésion de la Roumanie avec réserves [1]

Annexed Document No. 49

RÉSERVES DE LA ROUMANIE

[*Traduction fournie par le Gouvernement de la Roumanie*]

En ce qui concerne l'article IX : La République populaire roumaine considère comme non obligatoires pour elle les dispositions de l'article IX qui stipule que les différends entre les parties contractantes relatifs à l'interprétation, l'application ou l'exécution de la présente convention seront soumis à l'examen de la Cour internationale de Justice à la requête de toute partie au différend, et déclare qu'en ce qui concerne la compétence de la Cour en matière de différends relatifs à l'interprétation, l'application et l'exécution de la convention, la République populaire roumaine restera dans le futur, comme elle l'a fait jusqu'à présent, sur la position que, dans chaque cas particulier, l'accord de toutes les parties au différend est nécessaire pour que tel ou tel différend puisse être transmis à la Cour internationale de Justice aux fins de solution.

En ce qui concerne l'article XII : La République populaire roumaine déclare qu'elle n'est pas d'accord avec l'article XII de la convention et estime que toutes les stipulations de la convention doivent s'appliquer aux territoires non autonomes, y compris les territoires sous tutelle.

Copie certifiée conforme :
(Signé) I. S. KERNO,
Secrétaire général adjoint,
Département juridique.

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[1] Lettre datée du 21 novembre 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 9. Non reproduite.

Annexed Document No. 50

C.N.191 *a.*1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Accession with Reservations by Romania [1]

Annexed Document No. 51

C.N.191 *a.*1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Adhésion de la Roumanie, avec réserves [2]

Annexed Document No. 52

C.N.196.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Accession with Reservations by Poland [3]

Annexed Document No. 53

INSTRUMENT OF ACCESSION

[*English translation*]

In the name of the Polish Republic,

BOLESŁAW BIERUT,

President of the Polish Republic,
to all men who may see these presents: be it known that:

A Convention for the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly of the United Nations on 9 December, 1948.

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[1] Notification sent to States which had already ratified or acceded.—Letter dated November 21st, 1950, which is *mutatis mutandis* the same as Annexed Document No. 12. Not reproduced.

[2] Lettre en date du 21 novembre 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 37. Non reproduite.

[3] Letter dated November 29th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 6. Not reproduced.

Having read and examined the said Convention, we accede to it in the name of the Polish Republic, subject to the following reservations :

"As regards Article IX :

Poland does not regard itself as bound by the provisions of this article since the agreement of all the parties to a dispute is a necessary condition in each specific case for submission to the International Court of Justice,

As regards Article XII :

Poland does not accept the provisions of this article, considering that the convention should apply to non-self-governing territories, including trust territories."

We declare that the above-mentioned convention is accepted, ratified and confirmed and promise that it shall be observed without violation.

In faith whereof, We have issued the present letters bearing the seal of the Republic.

Given at Warsaw, 22 September, 1950.

(Signed) J. CYRANKIEWICZ,
President of the Council of Ministers.

(Signed) BOLESŁAW BIERUT.
ST. SKRZESZEWSKI,
Minister for Foreign Affairs.

Annexed Document No. 54

C.N.196.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Adhésion avec réserves par la Pologne [1]

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[1] Lettre en date du 29 novembre 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 9. Non reproduite.

Annexed Document No. 55

INSTRUMENT D'ADHÉSION

Au nom de la République de Pologne,

BOLESŁAW BIERUT,

Président de la République de Pologne,
à tous ceux qui ces présentes lettres verront,
fait savoir ce qui suit :

Une Convention pour la prévention et la répression du crime de génocide a été adoptée par l'Assemblée générale des Nations Unies le 9 décembre 1948.

Après avoir vu et examiné ladite convention, Nous y adhérons au nom de la République de Pologne avec les réserves suivantes :

« En ce qui concerne l'article IX, la Pologne ne s'estime pas tenue par les dispositions de cet article, considérant que l'accord de toutes les parties au différend constitue dans chaque cas particulier une condition nécessaire pour saisir la Cour internationale de Justice.

En ce qui concerne l'article XII, la Pologne n'accepte pas les dispositions de cet article, considérant que la convention devrait s'appliquer aux territoires non autonomes, y compris les territoires sous tutelle. »

Nous déclarons que la convention susmentionnée est acceptée, ratifiée et confirmée et promettons qu'elle sera inviolablement observée.

En foi de quoi Nous avons délivré les Présentes Lettres revêtues du sceau de la République.

Donné à Varsovie, le 22 septembre 1950.

(Signé) J. CYRANKIEWICZ,
Président du Conseil
des Ministres.

(Signé) BOLESŁAW BIERUT.

ST. SKRZESZEWSKI,
pour Ministre des Affaires
étrangères.

Copie certifiée conforme :
(Signé) I. S. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 56

C.N.196 *a*.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Accession with Reservations by Poland[1]

Annexed Document No. 57

C.N.196 *a*.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Adhésion avec réserves par la Pologne[2]

Annexed Document No. 57 a

THE ASSISTANT SECRETARY-GENERAL TO THE PERMANENT REPRESENTATIVE OF POLAND TO THE UNITED NATIONS

LEG.318/2/03 7 December, 1950.

Sir,

I am directed by the Secretary-General to acknowledge the receipt of your letter No. L/2038/50/4222 of 13 November, 1950, transmitting the instrument of accession by the Government of the Republic of Poland to the Convention on the Prevention and Punishment of the Crime of Genocide, with reservations relating to its Articles IX and XII.

I have the honour to inform you that this instrument of accession was received on 14 November, 1950, and that all the interested governments are being notified accordingly, in the manner required by the final paragraph of the Resolution on reservations to multilateral conventions adopted by the General Assembly on 16 November, 1950.

I have, etc.

(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

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[1] Notification sent to States which had already ratified or acceded.—Letter dated December 18th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 12. Not reproduced.

[2] Lettre en date du 18 décembre 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 37. Non reproduite.

Annexed Document No. 58

C.N.204.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Ratification by Czechoslovakia [1]

12 January, 1951.

Sir,

I am directed by the Secretary-General to inform you that the instrument of ratification of the Convention on the Prevention and Punishment of the Crime of Genocide by Czechoslovakia was received on 21 December, 1950. This instrument of ratification maintains the reservations relating to Articles IX and XII made at the time of signature by the representative of Czechoslovakia and announced in letter C.N.180.1949. TREATIES of 30 December, 1949.

Replies from the Governments of Guatemala (C.N.113.1950 and C.N.131.1950), Ecuador (LEG.318/2/03 of 5 May, 1950), Australia (C.N.170.1950 and C.N.197.1950), El Salvador (C.N.188.1950) and Viet Nam (C.N.195.1950), however, expressed disagreement with, or objection to, the afore-mentioned reservations.

Accordingly, pursuant to paragraph three of the Resolution on reservations to multilateral conventions, adopted by the General Assembly at its 305th plenary meeting on 16 November, 1950, notification is hereby made of the receipt of the above-mentioned instrument, without prejudice to its legal effect, pending the decision, contemplated by that Resolution, of the General Assembly at its sixth session.

I have, etc.

(Signed) I. S. KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 59

C.N.204.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Ratification par la Tchécoslovaquie [2]

Le 12 janvier 1951.

Je suis chargé par le Secrétaire général de porter à votre connaissance qu'il a reçu, le 21 décembre 1950, l'instrument par lequel le Gouverne-

[1] Notification sent, in English or in French, to all governments invited to sign or accede to the Convention.

[2] Notification faite, en français ou en anglais, à tous les gouvernements invités à signer la convention ou à y adhérer.

ment de la République tchécoslovaque ratifie la Convention pour la prévention et la répression du crime de génocide. Cet instrument de ratification maintient les réserves relatives aux articles IX et XII, formulées, lors de la signature, par le représentant de la Tchécoslovaquie et dont il est fait état dans la lettre C.N.180.1949.TREATIES du 30 décembre 1949.

Dans les réponses qu'ils ont fait parvenir au Secrétaire général, les Gouvernements du Guatemala (C.N.113.1950 et C.N.131.1950), de l'Équateur (LEG.318/2/03, du 5 mai 1950), de l'Australie (C.N.170.1950 et C.N.197.1950), du Salvador (C.N.188.1950) et du Viet-Nam (C.N. 195.1950), ont indiqué qu'ils n'étaient pas d'accord avec les réserves en question ou qu'ils formulaient des objections à leur égard.

Dans ces conditions, et conformément aux dispositions du paragraphe 3 de la Résolution relative aux réserves aux conventions multilatérales adoptée par l'Assemblée générale à sa 305me séance plénière, le 16 novembre 1950, la présente communication a pour objet de vous aviser de la réception de l'instrument susmentionné, sans préjudice de son effet juridique, en attendant que l'Assemblée générale adopte, lors de sa sixième session, la décision que prévoit cette résolution.

Je vous prie d'agréer, etc.

(Signé) I. S. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 60

THE ASSISTANT SECRETARY-GENERAL TO THE ACTING PERMANENT REPRESENTATIVE OF CZECHOSLOVAKIA TO THE UNITED NATIONS

LEG.318/2/03

12 January, 1951.

Sir,

I am directed by the Secretary-General to acknowledge the receipt of your letter No. 2124-50 of 19 December, 1950, submitting the instrument of ratification by the Government of Czechoslovakia of the Convention on the Prevention and Punishment of the Crime of Genocide.

I have the honour to refer to my letters LEG.318/2/03 of 5 May 1950, C.N.113.1950, C.N.131.1950, C.N.170.1950, C.N.188.1950, C.N.195.1950 and C.N.197.1950 communicating to you copies of the letters from the Governments of Ecuador, Guatemala, Australia, El Salvador and Viet Nam, expressing disagreement with, or objection to, the reservations made at the time of signature by the Representative of Czechoslovakia, mention of which is also made in the instrument of ratification.

Pursuant to the Resolution on reservations to multilateral conventions, adopted by the General Assembly at its 305th plenary meeting on 16 November, 1950, the Secretary-General is accordingly giving notice to all interested States of the receipt of the above-mentioned instrument,

without prejudice to its legal effect, pending the decision, contemplated by that Resolution, of the General Assembly at its sixth session.

I have, etc.

(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

PART THREE.—INVITATIONS TO NON-MEMBER STATES TO BECOME PARTIES, CONTAINING NOTIFICATIONS OF RESERVATIONS

Annexed Document No. 61

THE ASSISTANT SECRETARY-GENERAL TO THE ACTING MINISTER FOR FOREIGN AFFAIRS OF THE UNITED STATES OF INDÔNESIA

LEG.318/2/03

27 March, 1950.

Sir,

In Resolution 260 (III) A and C, copy of which is enclosed herein, adopted on 9 December, 1948, the General Assembly approved the Convention on the Prevention and Punishment of the Crime of Genocide and proposed it for signature and ratification or accession in accordance with Article XI of the Convention.

Under the provisions of the aforesaid Article XI, the Convention was open until 31 December, 1949, for signature and since 1 January, 1950, is open for accession on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

In the course of the fourth regular session at its 265th meeting on 3 December, 1949, the General Assembly adopted the following resolution:

> *"Invitations to be addressed to non-member States to become parties to the Convention on the Prevention and Punishment of the Crime of Genocide*
>
> *The General Assembly,*
>
> *Considering* that Article XI of the Convention on the Prevention and Punishment of the Crime of Genocide, approved by General Assembly Resolution 260 (III) A of 9 December, 1948, provides, *inter alia*, that the Convention shall be open to signature and ratification or to accession on behalf of any non-member State to which an invitation has been addressed by the General Assembly,
>
> *Considering* that it is desirable to send invitations to those non-member States which, by their participation in activities related to the United Nations, have expressed a desire to advance international co-operation,
>
> 1. *Decides* to request the Secretary-General to despatch the invitations above mentioned to each non-member State which

is or hereafter becomes an active Member of one or more of the specialized agencies of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice ;

2. *Remains convinced* of the necessity of inviting Members of the United Nations which have not yet done so to sign or ratify the Convention on the Prevention and Punishment of the Crime of Genocide as soon as possible."

Accordingly, I have the honour to address to your Government an invitation to accede to the Convention on the Prevention and Punishment of the Crime of Genocide. In pursuance of its Article XVIII I have also the honour to transmit to you a certified copy of the Convention showing all signatures affixed to the Convention up to 14 December, 1948. Since that date the following States have signed the Convention :

Honduras	22 April	1949	Iran	8 Dec. 1949
El Salvador	27 April	1949	Belgium	12 Dec. 1949
Iceland	14 May	1949	U.S.S.R.	16 Dec. 1949*
Guatemala	22 June	1949	Byelorussian S.S.R.	16 Dec. 1949*
China	20 July	1949	Ukrainian S.S.R.	16 Dec. 1949*
Colombia	12 August	1949	Cuba	28 Dec. 1949
Israel	17 August	1949	Czechoslovakia	28 Dec. 1949*
Denmark	28 Sept.	1949	Greece	29 Dec. 1949
New Zealand	25 Nov.	1949	Burma	30 Dec. 1949
Canada	28 Nov.	1949	Lebanon	30 Dec. 1949
India	29 Nov.	1949	Sweden	30 Dec. 1949

* With reservations concerning Articles IX and XII, as mentioned in the enclosed certified true copies.

I wish furthermore to inform you that the following States have deposited instruments of ratification of the Convention on the dates indicated below :

Ethiopia	1 July	1949	Ecuador	21 December 1949
Australia	8 July	1949	Panama	11 January 1950
Norway	22 July	1949	Guatemala	13 January 1950
Iceland	29 August	1949	Israel	9 March 1950

and that by notification received on 8 July, 1949, the Government of Australia extended the application of the Convention to all territories for the conduct of whose foreign relations Australia is responsible.

I will not fail in the future to address to you all notifications provided for in Article XVII.

I have, etc.

For the Secretary-General :
(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

APPENDICES TO ANNEXED DOCUMENT NO. 61

Resolution 260 (III) A, adopted by the General Assembly at its 179th plenary meeting, on 9 December, 1948.

Adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, and text of the Convention

The General Assembly

Approves the annexed Convention on the Prevention and Punishment of the Crime of Genocide and proposes it for signature and ratification or accession in accordance with its Article XI.

* * *

Resolution 260 (III) C, adopted by the General Assembly at its 179th plenary meeting, on 9 December, 1948.

Application with respect to dependent territories, of the Convention on the Prevention and Punishment of the Crime of Genocide

The General Assembly recommends that Parties to the Convention on the Prevention and Punishment of the Crime of Genocide which administer dependent territories should take such measures as are necessary and feasible to enable the provisions of the Convention to be extended to those territories as soon as possible.

Annexed Document No. 62

LE SECRÉTAIRE GÉNÉRAL ADJOINT AU CHEF DU GOUVERNEMENT DE LA PRINCIPAUTÉ DU LIECHTENSTEIN

LEG.318/2/03

Le 10 avril 1950.

Monsieur le Ministre,

Dans les parties A et C de la Résolution 260 (III) qu'elle a adoptée le 9 décembre 1948, parties dont vous trouverez copie ci-joint, l'Assemblée générale a approuvé le texte de la Convention pour la prévention et la répression du crime de « génocide » et a soumis cette convention à la signature et à la ratification ou à l'adhésion conformément à l'article XI de la convention.

Aux termes de l'article XI, la convention était ouverte jusqu'au 31 décembre 1949 à la signature et, depuis le 1er janvier 1950, à l'adhésion, au nom de tout Membre de l'Organisation des Nations Unies et de tout État non membre à qui l'Assemblée générale aura adressé une invitation à cet effet.

Au cours de la quatrième session ordinaire, à sa 265me séance, tenue le 3 décembre 1949, l'Assemblée générale a adopté le résolution suivante :

« *Invitation aux États non membres à devenir parties à la Convention pour la prévention et la répression du crime de « génocide »*

L'Assemblée générale,

Considérant que l'article XI de la Convention pour la prévention et la répression du crime de génocide, approuvée par l'Assemblée générale le 9 décembre 1948 (Résolution 260 (III) A), porte notamment que la convention sera ouverte à la signature et ratification ou à l'adhésion au nom de tout État non membre à qui l'Assemblée générale aura adressé une invitation à cet effet,

Considérant qu'il est souhaitable que des invitations soient adressées aux États non membres qui ont manifesté, en prenant part aux activités qui se rapportent aux Nations Unies, le désir de développer la coopération internationale,

1. *Décide* d'inviter le Secrétaire général à envoyer l'invitation précitée à tous les États non membres de l'Organisation qui sont ou qui deviendront Membres actifs d'une ou plusieurs institutions spécialisées des Nations Unies ou qui sont ou deviendront parties au Statut de la Cour internationale de Justice ; et

2. *Demeure convaincue* de la nécessité d'inviter les États Membres des Nations Unies qui n'ont pas encore signé ou ratifié la Convention pour la prévention et la répression du crime de génocide à le faire le plus tôt possible. »

En conséquence, j'ai l'honneur d'inviter votre Gouvernement à adhérer à la Convention pour la prévention et la répression du crime de « génocide ». Conformément à l'article XVIII de la convention, j'ai également l'honneur de vous adresser une copie certifiée conforme indiquant toutes les signatures qui y étaient apposées à la date du 14 décembre 1948. Depuis cette date, ont signé la convention les États dont le nom suit :

Honduras	22 avril	1949	Iran	8 déc.	1949
Salvador	27 avril	1949	Belgique	12 déc.	1949
Islande	14 mai	1949	U. R. S. S.	16 déc.	1949*
Guatemala	22 juin	1949	R. S. S. de Biélorussie	16 déc.	1949*
Chine	20 juillet	1949	R. S. S. d'Ukraine	16 déc.	1949*
Colombie	12 août	1949	Cuba	28 déc.	1949
Israël	17 août	1949	Tchécoslovaquie	28 déc.	1949*
Danemark	28 sept.	1949	Grèce	29 déc.	1949
Nouvelle-Zélande	25 nov.	1949	Birmanie	30 déc.	1949
Canada	28 nov.	1949	Liban	30 déc.	1949
Inde	29 nov.	1949	Suède	30 déc.	1949

* Avec réserve en ce qui concerne les articles IX et XII (voir copies certifiées conformes ci-jointes).

J'ai en outre l'honneur de vous faire connaître que les États suivants ont déposé, aux dates indiquées ci-dessous, les instruments de ratification de la convention :

Éthiopie	1er juillet	1949	Équateur	21 décembre	1949
Australie	8 juillet	1949	Panama	11 janvier	1950
Norvège	22 juillet	1949	Guatemala	13 janvier	1950
Islande	29 août	1949	Israël	9 mars	1950

et que par notification parvenue au Secrétaire général le 18 juillet 1949, le Gouvernement australien a étendu l'application de la convention à tous les territoires dont l'Australie dirige les relations extérieures.

D'autre part, Monaco a déposé, le 30 mars 1950, un instrument d'adhésion à la Convention pour la prévention et la répression du crime de génocide.

Je ne manquerai pas de vous communiquer à l'avenir toutes les notifications énumérées à l'article XVII.

Je vous prie d'agréer, etc.

Pour le Secrétaire général :
(Signé) IVAN KERNO,
Secrétaire général adjoint,
Département juridique.

APPENDICES AU DOCUMENT ANNEXÉ N° 62

Résolution 260 (III) A, adoptée par l'Assemblée générale, le 9 décembre 1948, à sa 179me séance plénière.

Adoption de la Convention pour la prévention et la répression du crime de génocide et texte de la convention

L'Assemblée générale

Approuve le texte ci-annexé de la Convention pour la prévention et la répression du crime de génocide et soumet cette convention à la signature et à la ratification ou à l'adhésion conformément à l'article XI de la convention.

* * *

Résolution 260 (III) C, adoptée par l'Assemblée générale, le 9 décembre 1948, à sa 179me séance plénière.

Application aux territoires non autonomes de la Convention pour la prévention et la répression du crime de génocide

L'Assemblée générale recommande aux parties de la Convention pour la prévention et la répression du crime de génocide qui administrent des territoires dépendants, de prendre les mesures nécessaires et possibles pour que les dispositions de la convention puissent être étendues à ces territoires dans le plus bref délai.

Annexed Document No. 63

LEG.318/2/03

LETTRES ADRESSÉES, LE 31 MAI 1950,
PAR LE SECRÉTAIRE GÉNÉRAL ADJOINT AUX GOUVERNEMENTS
DU VIET-NAM, DU CAMBODGE ET DU LAOS [1]

Annexed Document No. 64

LEG.318/2/03

LETTER ADDRESSED, ON DECEMBER 20th, 1950,
BY THE SECRETARY-GENERAL TO THE CHANCELLOR
OF THE FEDERAL REPUBLIC OF GERMANY [2]

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[1] Le texte de ces lettres est *mutatis mutandis* le même que celui du document annexé n° 62. Non reproduit.

[2] *Mutatis mutandis* same letter as Annexed Document No. 61. Not reproduced.

PART FOUR.—CORRESPONDENCE CONCERNING EXPRESSION BY GOVERNMENTS OF DISAGREEMENT WITH, OR OBJECTION TO, THE FOREGOING RESERVATIONS

Annexed Document No. 65

CIRCULAR NOTE [1]

LEG.318/2/03

5 May, 1950.

Sir,

I have been requested by the Secretary-General to inform you that in reply to my letters C.N.170 *a*, C.N.171 *a*, C.N.172 *a*, C.N.180 *a*, concerning the signature, with reservations, of the Convention of 9 December, 1948, for the Prevention and Punishment of the Crime of Genocide by the representatives of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia, he has received from the Minister for Foreign Affairs of Ecuador a communication (see Annex I), to which he replied on 21 March, 1950 (see Annex II). The Minister for Foreign Affairs of Ecuador, in reply to this latter communication, has now sent the Secretary-General a letter dated 31 March, 1950 (see Annex III).

I have, etc.

(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

ANNEXES TO DOCUMENT NO. 65

Annexed Document No. 66

Annex I

The Minister for Foreign Affairs of Ecuador to the Secretary-General

[*Translated from Spanish*]

No. 56
Quito, 10 February, 1950.

Sir,

With reference to notes Nos. C.N.170 *a*, C.N.171 *a*, C.N.172 *a* and C.N.180 *a*, signed by Mr. Ivan Kerno, Assistant Secretary-General in charge of the Legal Department, and dated 30 December, 1949, I have the honour to inform you that the Government of Ecuador has duly

[1] Sent, in English or in French, to all States invited to sign or accede to the Convention.

noted that the Ministers for Foreign Affairs of the Union of Soviet Socialist Republics, of the Byelorussian Soviet Socialist Republic and of the Ukrainian Soviet Socialist Republic and the Ambassador of Czechoslovakia to the United States of America have signed, on behalf of their respective Governments, the Convention on the Prevention and Punishment of the Crime of Genocide as recorded in the *procès-verbaux* dated, in the case of the three countries first mentioned, 16 December, 1949, and, in the case of the country last mentioned, 28 December, 1949.

2. I wish to thank you for having transmitted to me the above-mentioned *procès-verbaux*, in accordance with Article XIII of the Convention, informing me of the reservations made by the Governments concerned with regard to Articles IX and XII of the Convention.

3. I note that, in conformity with international practice and the decision of the Sixth International Conference of American States in Havana, it is provided in Article XI of the Convention on the Prevention and Punishment of the Crime of Genocide that the Convention shall be open until 31 December, 1949, for signature by any Member of the United Nations and any non-member States to which an invitation to sign has been addressed by the General Assembly.

4. The Government of Ecuador, in accordance with the position previously maintained regarding reservations, has no objection to make regarding the submission of such reservations but expresses its disagreement with their content.

I have, etc.

(Signed) L. NEFTALI PONCE,
Minister for Foreign Affairs.

* * *

Annexed Document No. 67

Annex II

The Assistant Secretary-General to the Minister for Foreign Affairs of Ecuador

LEG.318/2/03/AL

21 March, 1950.

Sir,

I am directed by the Secretary-General to acknowledge the receipt of your letter No. 56 of 10 February, 1950, which refers to my letters Nos. C.N.170 *a*, C.N.171 *a*, C.N.172 *a* and 180 *a* concerning the signatures with reservations of the Convention on the Prevention and Punishment of the Crime of Genocide by the representatives of the Union of Soviet Socialist Republics, of the Ukrainian Soviet Socialist Republic, of the Byelorussian Soviet Socialist Republic and of Czechoslovakia.

Your letter states that the Government of Ecuador has no objection to make concerning the submission of the reservations by the aforesaid States as contained in the *procès-verbaux*, copies of which were annexed to my previous letters, and, at the same time, expresses disagreement with the content of these reservations.

As the statement does not seem to indicate clearly the intention of your Government, it will be appreciated if Your Excellency would be good enough to inform me whether it may be taken as accepting the afore-mentioned reservations.

I have, etc.

(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

* * *

Annexed Document No. 68

Annex III

The Minister for Foreign Affairs of Ecuador to the Secretary-General

[*Translated from Spanish*]

No. 105
Quito, 31 March, 1950.

Sir,

With reference to note No. 318/2/03/AL of 21 March last, signed by Mr. Ivan Kerno, Assistant Secretary-General in charge of the Legal Department, in which the Government of Ecuador was requested to clarify the official view expressed in note No. 56-DAO of 10 February last, concerning the reservations made by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic and Czechoslovakia to the Convention on the Prevention and Punishment of the Crime of Genocide, I have the honour to inform you that the Government of Ecuador is not in agreement with these reservations and that therefore they do not apply to Ecuador, which accepted without any modification the complete text of the Convention in question.

I have, etc.

(Signed) L. NEFTALI PONCE,
Minister of Foreign Affairs.

Annexed Document No. 69

NOTE CIRCULAIRE [1]

LEG.318/2/03

Le 5 mai 1950.

Je suis chargé par le Secrétaire général de vous informer qu'en réponse à mes lettres C.N.170 *a*, C.N.171 *a*, C.N.172 *a*, C.N.180 *a*, relatives à la signature, avec réserves, de la Convention du 9 décembre 1948 pour la prévention et la répression du crime de génocide, par les représentants de l'Union des Républiques socialistes soviétiques, la

[1] Envoyée, en français ou en anglais, à tous les États invités à signer la convention ou à y adhérer.

République socialiste soviétique de Byélorussie, la République socialiste soviétique d'Ukraine et la Tchécoslovaquie, il a reçu, du ministre des Relations extérieures de l'Équateur, une communication (voir annexe I), à laquelle il a été répondu par lettre en date du 21 mars 1950 (voir annexe II). Le ministre des Relations extérieures de l'Équateur, en réponse à cette dernière communication, a fait alors parvenir au Secrétaire général une lettre datée du 31 mars 1950 (voir annexe III).

Veuillez agréer, etc.

(Signé) IVAN KERNO,
Secrétaire général adjoint,
Département juridique

ANNEXES AU DOCUMENT N° 69

Annexed Document No. 70

Annexe I

Le ministre des Relations extérieures de l'Équateur au Secrétaire général

N° 56-DAO

[*Traduit de l'espagnol*] Quito, le 10 février 1950.

Monsieur le Secrétaire général,

Comme suite aux notes C.N.170 *a*, C.N.171 *a*, C.N.172 *a* et C.N.180 *a* du 30 décembre 1949, signées de M. Ivan Kerno, Secrétaire général adjoint chargé du Département juridique, j'ai l'honneur de faire connaître à Votre Excellence que le Gouvernement de l'Équateur a pris bonne note du fait que le ministre des Affaires étrangères de l'Union des Républiques socialistes soviétiques, celui de la République socialiste soviétique de Biélorussie, celui de la République socialiste soviétique d'Ukraine et l'ambassadeur de Tchécoslovaquie aux États-Unis d'Amérique ont signé, au nom de leurs Gouvernements respectifs, la Convention pour la prévention et la répression du crime de génocide, comme en font foi les procès-verbaux datés du 16 décembre 1949, en ce qui concerne les trois premiers de ces pays, et du 28 du même mois, en ce qui concerne le dernier d'entre eux.

2. Je suis très reconnaissant à Votre Excellence d'avoir bien voulu, conformément à l'article XIII de la convention, m'adresser copie des procès-verbaux mentionnés plus haut, par lesquels j'ai été informé des réserves formulées par ces Gouvernements au sujet des articles IX et XII de l'instrument en question.

3. Je prends bonne note du fait que, conformément à la pratique internationale et aux décisions de la Sixième Conférence panaméricaine de La Havane, l'article XI de la Convention pour la prévention et la répression du crime de génocide dispose que cet instrument sera ouvert, jusqu'au 31 décembre 1949, à la signature de tout État Membre de l'Organisation des Nations Unies et de tout État non membre à qui l'Assemblée générale aura adressé une invitation à cet effet.

4. Le Gouvernement de l'Équateur, conformément au principe qu'il a déjà professé en matière de réserves, déclare qu'il n'a pas d'objection à élever contre le fait que ces réserves se sont fait jour mais qu'il n'adhère pas aux idées qu'elles expriment.

Je profite de cette occasion, etc.

(Signé) L. NEFTALI PONCE,
Ministre des Relations extérieures.

* * *

Annexed Document No. 71

Annexe II

Le Secrétaire général adjoint au ministre des Relations extérieures de l'Équateur

LEG.318/2/03/AL

Le 21 mars 1950.

Excellence,

J'ai l'honneur, au nom du Secrétaire général, d'accuser réception de votre lettre n° 56, du 10 février 1950, qui se réfère à mes lettres C.N.170 *a*, C.N.171 *a*, C.N.172 *a*, et C.N.180 *a* relatives à la signature, avec réserves, de la Convention pour la prévention et la répression du crime de génocide par les représentants de l'Union des Républiques socialistes soviétiques, de la République socialiste soviétique d'Ukraine, de la République socialiste soviétique de Biélorussie et de la Tchécoslovaquie.

Vous déclarez dans votre lettre que le Gouvernement de l'Équateur n'a pas d'objection à élever contre le fait que les États en question aient fait des réserves comme en font foi les procès-verbaux dont copie était jointe à mes lettres précédentes, mais vous déclarez que le Gouvernement de l'Équateur n'adhère pas aux idées qu'expriment ces réserves.

Cette déclaration ne semblant pas indiquer clairement quelle est l'intention de votre Gouvernement, je serais très obligé à Votre Excellence de bien vouloir me faire connaître si je puis considérer que votre Gouvernement accepte les réserves mentionnées plus haut.

Je vous prie d'agréer, etc.

(Signé) IVAN KERNO,
Secrétaire général adjoint,
Département juridique.

* * *

Annexed Document No. 72

Annexe III

Le ministre des Relations extérieures de l'Équateur au Secrétaire général

N° 105-DAO
[*Traduit de l'espagnol*] Quito, le 31 mars 1950.

Monsieur le Secrétaire général,

En réponse à votre note n° 318/2/03/AL, du 21 mars 1950, signée de M. Ivan Kerno, Secrétaire général adjoint chargé du Département juridique, note où vous demandiez au Gouvernement de l'Équateur de bien vouloir préciser l'opinion officielle exprimée dans sa note n° 56-DAO du 10 février 1950, relativement aux réserves formulées par l'Union des Républiques socialistes soviétiques, la République socialiste soviétique d'Ukraine, la République socialiste soviétique de Biélorussie et la Tchécoslovaquie à l'égard de la Convention pour la prévention et la répression du crime de génocide, j'ai l'honneur de faire connaître à Votre Excellence que le Gouvernement de l'Équateur n'adhère pas à ces réserves et que, par conséquent, ces réserves ne sauraient être valables en ce qui concerne l'Équateur, qui a accepté sans aucune modification le texte intégral de la convention en question.

Je profite de cette occasion, etc.

(Signé) L. NEFTALI PONCE,
Ministre des Relations extérieures.

Annexed Document No. 73

THE MINISTER FOR FOREIGN AFFAIRS OF ECUADOR TO THE SECRETARY-GENERAL

[*Translated from Spanish*] No. 271-DAO (3)
Quito, 16 August, 1950.

Mr. Secretary-General,

I have the honour to acknowledge to Your Excellency receipt of communication No. C.N.118 *a*, of the 3rd of the current month, by which you inform this Ministry that the Government of Bulgaria has confirmed its ratification of the Convention of 9 December, 1948, on the Prevention and Punishment of the Crime of Genocide, accepting it with reservations to Article IX and to Article XII of that international instrument.

In reply, I have the honour to inform Your Excellency that the Government of Ecuador is not in agreement with these reservations and that therefore they do not apply to Ecuador, which accepted without any modification the complete text of the Convention in question.

I have, etc.

(Signed) L. NEFTALI PONCE,
Minister of Foreign Affairs.

Annexed Document No. 74

THE PERMANENT REPRESENTATIVE OF THE UNION OF SOVIET SOCIALIST REPUBLICS TO THE UNITED NATIONS TO THE SECRETARY-GENERAL

[*Translated from Russian*]

2 March, 1950.

Sir,

I am instructed by the Minister of Foreign Affairs of the U.S.S.R. to acknowledge the receipt of the letter from Mr. I. Kerno, Assistant Secretary-General in charge of the Legal Department, reference No. LEG.318/2/01/AL of 13 January, 1950, enclosing copy of a letter to the Ministry of Foreign Affairs of the Soviet Union and have the honour to inform you that the invitation in the annexed letter to States which have ratified the Convention on the Prevention and Punishment of the Crime of Genocide to give their views on the reservations made by the U.S.S.R. in signing the Convention, lies outside the scope of the functions devolving upon the Secretary-General of the United Nations under Article XVII of the Convention on Genocide.

I have, etc.

(Signed) Y. MALIK.

Annexed Document No. 75

THE SECRETARY-GENERAL TO THE PERMANENT REPRESENTATIVE OF THE UNION OF SOVIET SOCIALIST REPUBLICS TO THE UNITED NATIONS

LEG.318/2/03/AL

23 March, 1950.

Sir,

I have the honour to acknowledge the receipt of Your Excellency's letter of 2 March, 1950, in which you informed me that the invitation contained in the letters sent to the governments which have ratified the Convention on the Prevention and Punishment of the Crime of Genocide to express their attitude to the reservations which the Union of Soviet Socialist Republics has made on signing the Convention, goes beyond the bounds of the functions assigned to the Secretary-General of the United Nations by Article XVII of the Convention on the Prevention and Punishment of the Crime of Genocide.

I have the honour to draw the attention of Your Excellency to Article XIII of the afore-mentioned Convention, which provides that the Secretary-General should, on the day when the first twenty instruments of ratification or accession have been deposited, draw up a *procès-verbal* and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article XI of the Convention. The Convention would come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession. According to accepted principles of international law, a reservation to a treaty made by a State may be valid only if all the other parties to the treaty consent to it. It is for this reason that I have found it necessary, in the performance of my

functions under the said Convention, to ascertain the views of the States which have ratified the Convention regarding the reservations of your Government.

I have, etc.

(Signed) TRYGVE LIE,
Secretary-General.

Annexed Document No. 76

THE PERMANENT REPRESENTATIVE OF THE UNION OF SOVIET SOCIALIST REPUBLICS TO THE UNITED NATIONS TO THE SECRETARY-GENERAL

[Translated from Russian]

No. 212 10 October, 1950.

Sir,

On the instructions of the Ministry of Foreign Affairs of the U.S.S.R. I have the honour to make the following communication.

In my letter of 2 March, 1950, I had already pointed out that in inviting the States signatories to the Convention on the Prevention and Punishment of Genocide to state their views regarding the reservations made by the Government of the U.S.S.R. on signing that Convention, the Secretary-General was going beyond the bounds of the functions vested in him by Article XVII of the Convention.

As is evident from Mr. Feller's letter of 2 August, 1950, the Secretary-General, exceeding the powers vested in him, is not only continuing to ask for the views of the States signatories to the Convention regarding the reservations made by the Government of the U.S.S.R., but has declared that the "legal consequences" of the rejection of those reservations by the other States signatories to the Convention "would be that the Secretary-General would not be in a position to accept for deposit instruments of ratification from the Governments of the U.S.S.R., the Ukrainian S.S.R. and Czechoslovakia".

In your letter LEG.318/2/03/AL an attempt is made to justify the Secretary-General's actions in breach of the Convention on Genocide by a reference to "accepted principles of international law", according to which, it is alleged, "a reservation to a treaty made by a State may be valid only if all the other parties to the treaty consent to it".

These assertions are unfounded.

The powers of the Secretary-General, as depository, are defined exclusively by the Convention on Genocide, and the Secretary-General is therefore not entitled to take any actions beyond those provided for by the Convention.

In addition, I have to point out that your allegation that a reservation to a treaty made by a State may be valid only if all the other parties to the treaty consent to it is incompatible with the principle of the sovereignty of States, and is therefore contrary to the fundamental principles of international law.

With, etc.

(Signed) Y. MALIK.

Annexed Document No. 77

C.N.113.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Ratification by Guatemala [1]

2 August, 1950.

Sir,

I am directed by the Secretary-General to refer to the letters from the Assistant Secretary-General in charge of the Legal Department, C.N.170 *a*, 171 *a*, 172 *a*, 180 *a*, concerning the signature with reservations of the Convention of 9 December, 1948, for the Prevention and Punishment of the Crime of Genocide by the representatives of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia.

In this connexion, I have the honour to inform you, pursuant to Article XVII *(a)*, that the Permanent Representative of Guatemala to the United Nations deposited with the Secretary-General on 13 January, 1950, the instrument of ratification of Guatemala to the said Convention without objection to the above-mentioned reservations. The Assistant Secretary-General in charge of the Legal Department informed the Minister for External Relations of Guatemala by letter of 19 January, 1950, that the deposit of the instrument of ratification by the Government of Guatemala having been made without objection to the above-mentioned reservations, it was his understanding that the Guatemalan Government accepted the said reservations (see Annex I).

I further have the honour to inform you that the Secretary-General, in reply to this communication of 19 January, 1950, has received a letter from the Under-Secretary of External Relations of Guatemala, dated 16 June, 1950, by which the Government of Guatemala, having now had due notice of these reservations, states that it is not in agreement with the reservations made by the Governments of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and Czechoslovakia and that, consequently, it should not be inferred that the Government of Guatemala accepts them merely because it did not make any reference to them in depositing its instrument of ratification (see Annex II).

I am further directed by the Secretary-General to inform you that I have replied to the Government of Guatemala requesting it to state whether it was its intention specifically to object to the reservations in question. I further stated that, should the Government of Guatemala so object, the legal consequences would be that the Secretary-General would not be in a position to accept for deposit instruments of ratification from the Governments of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and Czechoslovakia subject to the aforesaid reservations (see Annex III).

I have, etc.

(Signed) A. H. FELLER,
General Counsel and Principal Director,
Legal Department.

[1] Letter sent, in English or in French, to all States invited to sign or accede to the Convention.

ANNEXES TO DOCUMENT NO. 77

Annexed Document No. 78

Annex I

The Assistant Secretary-General to the Minister for External Relations of Guatemala

LEG.318/2/03/AL

19 January, 1950.

Sir,

I have the honour to inform you that His Excellency Dr. Carlos Garciá Bauer, Permanent Representative of Guatemala to the United Nations, deposited with the Secretary-General, on 13 January, 1950, the instrument of ratification of Guatemala to the Convention on Prevention and Punishment of the Crime of Genocide.

I have the honour to refer in this respect to my letters Nos. C.N.172. 1949.TREATIES and C.N.180.1949.TREATIES of 29 December, 1949, and C.N.170.1949.TREATIES and C.N.171.1949.TREATIES of 30 December, 1949, notifying you of the signatures to the above-mentioned Convention, with reservations relating to Articles IX and XII, by the representatives of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia.

The deposit of the instrument of ratification of your Government having been made without any reservation concerning the afore-mentioned reservations, it is my understanding that your Government accepts these reservations.

I have, etc.

For the Secretary-General:
(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

* * *

Annexed Document No. 79

Annex II

The Under-Secretary of External Relations of Guatemala to the Assistant Secretary-General

[*Translated from Spanish*]

360 G

Guatemala, 16 June, 1950.

Sir,

I have pleasure in referring to your letter No. LEG.318/2/03/AL, of 19 January last, containing notification of the deposit on 13 January last by Mr. Carlos Garciá Bauer, Permanent Representative of Guatemala to the United Nations, of the instrument of ratification by the Govern-

ment of Guatemala of the Convention on Prevention and Punishment of the Crime of Genocide.

In the aforesaid communication you refer to your letters of 29 and 30 December, 1949, relating to the signature of the above-mentioned Convention by the Union of Soviet Socialist Republics, the Ukrainian S.S.R. and Czechoslovakia with reservations in regard to Articles IX and XII of the Convention.

You also point out that this Government's ratification, without any reference to the above-mentioned reservations, implies that the Government of Guatemala accepts them.

I must inform you that the Government of Guatemala is not in agreement with the reservations made by the Governments of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and Czechoslovakia to the Convention on Prevention and Punishment of the Crime of Genocide; and that, consequently, it should not be inferred that this Government accepts them merely because it did not make any reference to them in depositing its instrument of ratification, since they have no relation to the full acceptance of the Convention by this Republic.

I have, etc.

(Signed) EDUARDO DE LEON S.,
Under-Secretary of External Relations.

* * *

Annexed Document No. 80

Annex III

The General Counsel and Principal Director of the Legal Department of the United Nations to the Minister for External Relations of Guatemala

LEG.318/2/03

14 July, 1950.

Sir,

I have the honour to acknowledge the receipt of letter No. 360 G of 16 June, 1950, from the Under-Secretary of External Relations of Guatemala to the Assistant Secretary-General in charge of the Legal Department concerning the deposit on 13 January last by Mr. Carlos Garciá Bauer, Permanent Representative of Guatemala to the United Nations, of the instrument of ratification by the Government of Guatemala of the Convention on Prevention and Punishment of the crime of Genocide.

I have the further honour to state that, in connexion with the signature of the said Convention by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and Czechoslovakia, with reservations to Articles IX and XII thereof, to which our letter LEG.318/2/03/AL of 19 January referred, due note has been taken that the Government of Guatemala is not in agreement with these reservations and that consequently it should not be inferred that the Government of Guatemala accepts them merely because it did not make any reference to them in depositing its instrument of ratification, since they have no relation to the full acceptance of the said Convention by the Government of Guatemala.

In this connexion, it would be appreciated if Your Excellency would be good enough to inform me whether the statements that the "Government of Guatemala is not in agreement with these reservations, and that it should not be inferred that the Government of Guatemala accepts them merely because it did not make any reference to them in depositing its instrument of ratification", are intended to convey the meaning that the Government of Guatemala, having had due notice of these reservations, specifically objects to them.

I have the further honour to advise that, should Your Excellency inform me that the Government of Guatemala objects to these reservations, the legal consequences will be that the Secretary-General would not be in the position to accept for deposit instruments of ratification by the Governments of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and Czechoslovakia, subject to the aforesaid reservations.

I may further draw your attention to the fact that our letter LEG.318/2/03 of 19 January, 1950, referred also to the signature of the aforesaid Convention with reservations in respect of Articles IX and XII by the Byelorussian Soviet Socialist Republic. As the letter of 16 June, 1950, from the Under-Secretary of External Relations does not refer to these reservations made by the Byelorussian Soviet Socialist Republic, it would be appreciated if Your Excellency would be good enough to specify the position of your Government in this regard.

I may inform you that copies of our letter LEG.318/2/03/AL of 19 January, 1950, of the letter from the Under-Secretary of External Relations of Guatemala of 16 June, 1950, and of the present letter, are being circulated to all Members of the United Nations and to all non-member States to whom an invitation to become a party to the Convention has been addressed by the General Assembly.

I have, etc.

(Signed) A. H. FELLER,
General Counsel and Principal Director,
Legal Department.

Annexed Document No. 81

C.N.113.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Ratification par le Guatemala [1]

Le 2 août 1950.

Je suis chargé par le Secrétaire général d'attirer votre attention sur les lettres Nos. C.N.170 *a*, 171 *a*, 172 *a* et 180 *a*, du Secrétaire général adjoint chargé du Département juridique, relatives à la signature, avec réserves, de la Convention du 9 décembre 1948 pour la prévention et la

[1] Lettre envoyée, en français ou en anglais, à tous les États invités à signer la convention ou à y adhérer.

répression du crime de génocide par les représentants de l'Union des Républiques socialistes soviétiques, de la République socialiste soviétique de Biélorussie, de la République socialiste soviétique d'Ukraine et de la Tchécoslovaquie.

A ce sujet, j'ai l'honneur de vous faire connaître qu'en application des dispositions de l'alinéa *a)* de l'article XVII de la convention susvisée, le représentant permanent du Guatemala auprès de l'Organisation des Nations Unies a déposé près le Secrétaire général, le 13 janvier 1950, l'instrument de ratification par lequel le Guatemala ratifie ladite convention sans formuler d'objection à l'égard des réserves susmentionnées. Par lettre en date du 19 janvier 1950, le Secrétaire général adjoint chargé du Département juridique a fait savoir au ministre des Relations extérieures du Guatemala qu'il considérait que le Gouvernement du Guatemala acceptait lesdites réserves, puisque ce Gouvernement avait déposé son instrument de ratification sans soulever d'objection à l'égard des réserves susmentionnées (voir Annexe I).

J'ai l'honneur de vous faire connaître en outre qu'en réponse à sa lettre du 19 janvier 1950, le Secrétaire général a reçu du sous-secrétaire aux Relations extérieures du Guatemala une lettre en date du 16 juin 1950, dans laquelle le Gouvernement du Guatemala, ayant maintenant dûment pris note de ces réserves, déclare qu'il n'est pas d'accord avec les réserves faites par le Gouvernement de l'Union des Républiques socialistes soviétiques, le Gouvernement de la République socialiste soviétique d'Ukraine et le Gouvernement de la Tchécoslovaquie et que par conséquent il ne faut pas conclure, du fait que le Gouvernement du Guatemala n'a pas mentionné ces réserves en déposant son instrument de ratification, qu'il les accepte (voir annexe II).

Je suis chargé par le Secrétaire général de vous faire connaître également qu'en réponse au Gouvernement du Guatemala, je lui ai demandé de déclarer s'il avait l'intention expresse de soulever des objections à l'égard des réserves en question. J'ai ajouté que si le Gouvernement du Guatemala s'oppose à ces réserves, les conséquences juridiques en seront que le Secrétaire général ne sera pas en mesure d'accepter le dépôt des instruments de ratification émanant du Gouvernement de l'Union des Républiques socialistes soviétiques, du Gouvernement de la République socialiste soviétique d'Ukraine et du Gouvernement de la Tchécoslovaquie, avec les réserves susmentionnées (voir annexe III).

Je vous prie d'agréer, etc.

(Signé) A. H. FELLER,
Conseiller général et Directeur principal,
Département juridique.

ANNEXES AU DOCUMENT N° 81

Annexed Document No. 82

Annexe I

Le Secrétaire général adjoint au ministre des Relations extérieures du Guatemala

Le 19 janvier 1950.

LEG.318/2/03/AL

Monsieur le Ministre,

J'ai l'honneur de faire connaître que Son Excellence M. Carlos Garciá Bauer, représentant permanent du Guatemala auprès des Nations Unies, a déposé auprès du Secrétaire général, le 13 janvier 1950, l'instrument par lequel le Guatemala ratifie la Convention pour la prévention et la répression du crime de génocide.

J'ai l'honneur de me référer à ce sujet à mes lettres C.N.172.1949.TRAITÉS et C.N.180.1949.TRAITÉS du 29 décembre 1949 et C.N.170.1949.TRAITÉS et C.N.171.1949.TRAITÉS du 30 décembre 1949, dans lesquelles je portais à votre connaissance la signature de la convention, avec des réserves concernant les articles IX and XII par les représentants de l'Union des Républiques socialistes soviétiques, de la République socialiste soviétique de Biélorussie, de la République socialiste soviétique d'Ukraine et de la Tchécosclovaquie.

L'instrument de ratification de votre Gouvernement ayant été déposé sans objection à l'égard des réserves susmentionnées, je comprends que votre Gouvernement accepte ces réserves.

Veuillez agréer, etc.

Pour le Secrétaire général :
(Signé) IVAN KERNO,
Secrétaire général adjoint,
Département juridique.

* * *

Annexed Document No. 83

Annexe II

Le sous-secrétaire aux Relations extérieures du Guatemala au Secrétaire général adjoint

360 G

Guatemala, le 16 juin 1950.

Monsieur le Secrétaire général adjoint,

J'ai l'honneur de me référer à votre lettre n° LEG.318/2/03/AL du 19 janvier dernier, qui me notifie le dépôt effectué le 13 janvier dernier, par M. Carlos Garciá Bauer, représentant permanent du Guatemala auprès des Nations Unies, de l'instrument de ratification par le Gouverne-

ment du Guatemala à la Convention pour la prévention et la répression du crime de génocide.

Dans cette communication, vous vous référez à vos lettres du 29 et du 30 décembre 1949, relatives à la signature de cette convention, avec des réserves concernant les articles IX et XII, par l'Union des Républiques socialistes soviétiques, la République socialiste soviétique d'Ukraine et la Tchécoslovaquie.

Vous indiquez également dans votre lettre que la ratification de mon Gouvernement, sans aucune référence à ces réserves, laisse à entendre que le Gouvernement du Guatemala les accepte.

Je dois vous faire connaître que le Gouvernement du Guatemala n'est pas d'accord avec les réserves faites par les Gouvernements de l'Union des Républiques socialistes soviétiques, de la République socialiste soviétique d'Ukraine et de la Tchécoslovaquie à la Convention pour la prévention et la répression du crime de génocide, et qu'il ne faut par conséquent pas conclure du fait que mon Gouvernement n'a pas mentionné ces réserves en déposant son instrument de ratification, qu'il les accepte, puisqu'elles n'ont rien à voir avec la pleine acceptation de la convention par la République de Guatemala.

Je saisis, etc.

(Signé) EDUARDO DE LEON S.,
Sous-Secrétaire aux Relations extérieures.

* * *

Annexed Document No. 84

Annexe III

Le conseiller général et directeur principal du Département juridique des Nations Unies au ministre des Relations extérieures du Guatemala

LEG.318/2/03

Le 14 juillet 1950.

Monsieur le Ministre,

J'ai l'honneur d'accuser réception de la lettre n° 360 G, adressée au Secrétaire général adjoint chargé du Département juridique, le 16 juin 1950, par le sous-secrétaire aux Relations extérieures du Guatemala, au sujet du dépôt, effectué le 13 janvier dernier par M. Carlos Garciá Bauer, représentant permanent du Guatemala auprès des Nations Unies, de l'instrument par lequel le Gouvernement du Guatemala ratifie la Convention pour la prévention et la répression du crime de génocide.

En ce qui concerne la signature de cette convention par l'Union des Républiques socialistes soviétiques, la République socialiste soviétique d'Ukraine et la Tchécoslovaquie avec des réserves concernant les articles IX et XII de la convention, signature à laquelle faisait allusion notre lettre LEG.318/2/03/AL du 19 janvier 1950, nous avons pris bonne note de ce que le Gouvernement du Guatemala n'est pas d'accord avec les réserves faites par ces Gouvernements et que, par conséquent, il ne faut pas conclure, du fait que le Gouvernement du Guatemala n'a pas mentionné ces réserves en déposant son instrument de ratification, qu'il les accepte, puisqu'elles n'ont rien à voir avec la pleine acceptation de cette convention par le Gouvernement du Guatemala.

A ce propos, nous serions obligés à Votre Excellence de bien vouloir nous faire savoir si le Gouvernement du Guatemala, en déclarant qu'il n'est pas d'accord avec ces réserves et qu'il ne faut pas conclure, du fait qu'il ne les a pas mentionnées en déposant son instrument de ratification, qu'il les accepte, entend, après avoir dûment pris note de ces réserves, s'y opposer expressément.

Je dois vous aviser que, si Votre Excellence me fait savoir que le Gouvernement du Guatemala s'oppose à ces réserves, les conséquences juridiques en seront que le Secrétaire général ne sera pas en mesure d'accepter le dépôt des instruments de ratification par les Gouvernements de l'Union des Républiques socialistes soviétiques, de la République socialiste soviétique d'Ukraine et de la Tchécoslovaquie avec les réserves susmentionnées.

Je voudrais de plus attirer votre attention sur le fait que notre lettre LEG.308/2/03/AL du 19 janvier 1950 signalait aussi la signature de ladite convention, avec des réserves concernant les articles IX et XII, par la République socialiste soviétique de Biélorussie. La lettre du 16 juin 1950 du sous-secrétaire aux Relations extérieures ne faisant pas mention des réserves de la République socialiste soviétique de Biélorussie, nous serions obligés à Votre Excellence de bien vouloir spécifier la position de votre Gouvernement à ce sujet.

J'ai l'honneur de vous faire connaître que je fais distribuer à tous les Membres des Nations Unies et à tous les États non membres que l'Assemblée générale a invités à devenir parties à la convention, copie de notre lettre LEG.318/2/03/AL du 19 janvier 1950, de la lettre du 16 juin 1950, du sous-secrétaire aux Relations extérieures du Guatemala et de la présente lettre.

Veuillez agréer, etc.

(Signé) A. H. FELLER,
Conseiller général et Directeur principal,
Département juridique.

Annexed Document No. 85

C.N.131.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Communication from Guatemala [1]

7 September, 1950.

Sir,

I am directed by the Secretary-General to refer to letter C.N.113.1950. TREATIES of 2 August, 1950, concerning the ratification by Guatemala of the Convention on the Prevention and Punishment of the Crime of Genocide and relating to certain reservations already made to that Convention by the representatives of the Union of Soviet Socialist

[1] Letter sent, in English or in French, to all States invited to sign or accede to the Convention.

Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia.

With that letter I communicated the expression of disagreement on the part of the Government of Guatemala with the reservations in question and advised that I had enquired whether it was the intention of Guatemala specifically to object to the reservations in question, at the same time drawing attention to the legal effect to be given by the Secretary-General to such an objectiou.

I now have the honour to submit herewith for your information the answer received from the Government of Guatemala to the latter enquiry.

I have, etc.

(Signed) A. H. FELLER,
General Counsel and Principal Director,
Legal Department.

Annexed Document No. 86

THE UNDER-SECRETARY OF EXTERNAL RELATIONS OF GUATEMALA TO THE SECRETARY-GENERAL

[*Translation from Spanish*]

032

Guatemala, 31 July, 1950.

Sir,

I have the honour to acknowledge the receipt of note LEG.318/2/03, of 14 July, 1950, from the Legal Department of the United Nations, asking, in connexion with the ratification by Guatemala of the Convention on Prevention and Punishment of the Crime of Genocide, whether the Guatemalan Government objects to the reservations made to the Convention by the Union of Soviet Socialist Republics and other countries, and pointing out that, if it does so object, the Secretary-General could not accept for deposit instruments of ratification from those Governments containing the aforesaid reservations.

In reply I have pleasure in repeating the view expressed in my communication No. 7865, of 16 June, 1950, in which this Ministry stated that the Government of Guatemala was not in agreement with these reservations and that they had no relation to ratification and full acceptance of the text of the Convention by my Government. I wish to add, in reply to your question, that the Government of Guatemala has always maintained the view that reservations made upon signing or ratifying international conventions are acts inherent in the sovereignty of States and are not open to discussion, acceptance or rejection by other States. In collective conventions reservations made by a State affect only the application of the clause concerned, in the relations of other States with the State making the reservation.

With reference to the final paragraph of the note to which I refer, my Government has no objection to this reply being circulated in the same manner as the previous correspondence.

I have, etc.

(Signed) EDUARDO DE LEON S.,
Under-Secretary of External Relations.

Annexed Document No. 87

C.N.131.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Communication du Guatemala [1]

Le 7 septembre 1950.

D'ordre du Secrétaire général, je me réfère à ma lettre C.N.113.1950. TREATIES, en date du 2 août 1950, relative à la ratification par le Guatemala de la Convention pour la prévention et la répression du crime de génocide, et qui portait sur certaines réserves faites précédemment à cette convention par les représentants de l'Union des Républiques socialistes soviétiques, de la République socialiste soviétique de Biélorussie, de la République socialiste soviétique d'Ukraine et de la Tchécoslovaquie.

J'indiquais dans cette lettre que le Gouvernement du Guatemala n'était pas d'accord avec les réserves en question et que je lui demandais de faire savoir s'il avait l'intention de faire des objections formelles à ces réserves, en appelant en même temps son attention sur les conséquences juridiques que le Secrétaire général devrait donner à ces objections.

J'ai maintenant l'honneur de vous communiquer, ci-joint, pour information, la réponse que le Gouvernement du Guatemala a faite à cette demande de précisions.

Je vous prie d'agréer, etc.

(Signé) A. H. FELLER,
Conseiller général et Directeur principal,
Département juridique.

Annexed Document No. 88

LE SOUS-SECRÉTAIRE AUX RELATIONS EXTÉRIEURES DU GUATEMALA AU SECRÉTAIRE GÉNÉRAL

[*Traduit de l'espagnol*]

Guatemala, le 31 juillet, 1950.

Monsieur le Secrétaire général,

J'ai l'honneur d'accuser réception de la note LEG.312/2/03, du 14 juillet 1950, par laquelle le Département juridique de l'Organisation des Nations Unies demandait à mon Gouvernement de préciser, en ce qui concerne la ratification par le Guatemala de la Convention pour la prévention et la répression du crime de génocide, s'il s'opposait expressément aux réserves faites à cette convention par l'Union soviétique et

[1] Lettre envoyée, en français ou en anglais, à tous les États invités à signer la convention ou à y adhérer.

par d'autres pays, et lui faisait observer qu'au cas où le Gouvernement du Guatemala s'opposerait à ces réserves, le Secrétaire général ne serait pas en mesure d'accepter le dépôt des instruments de ratification par ces Gouvernements avec les réserves en question.

En réponse, je tiens à confirmer à Votre Excellence ma communication n° 7865, du 16 juin 1950, où notre Chancellerie déclarait que le Gouvernement du Guatemala n'était pas d'accord avec ces réserves, et qu'elles n'avaient rien à voir avec la ratification et la pleine acceptation du texte de la convention par mon Gouvernement.

Je tiens à ajouter, en réponse à la question précise qui m'est posée, que le Gouvernement du Guatemala a toujours soutenu cette thèse que les réserves faites lors de la signature ou de la ratification de conventions internationales sont des actes inhérents à la souveraineté des États et que d'autres États ne sauraient ni les discuter, ni les accepter, ni les rejeter. Dans les conventions collectives, les réserves faites par un État n'affectent que l'application de la clause correspondante dans les relations des autres États avec celui qui fait la réserve.

En ce qui concerne le dernier alinéa de votre note, mon Gouvernement ne voit aucun inconvénient à ce que Votre Excellence fasse distribuer la présente réponse de la même manière que la correspondance antérieure.

Je saisis, etc.

(Signé) EDUARDO DE LEON S.,
Sous-Secrétaire aux Relations extérieures.

Annexed Document No. 89

C.N.171.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Communication from Guatemala [1]

18 October, 1950.

Sir,

I am directed by the Secretary-General to refer to letter No. C.N.118. 1950.TREATIES of 3 August, 1950, notifying you of the deposit by the Government of the People's Republic of Bulgaria of its instrument of accession to the Convention on the Prevention and Punishment of the Crime of Genocide, with reservations relating to Articles IX and XII.

I have the honour to submit herewith a copy of a letter dated 26 September, 1950, from the Permanent Representative of Guatemala to the United Nations stating the position of the Government of Guatemala in respect of the afore-mentioned reservations.

I have, etc.

(Signed) I. S. KERNO,
Assistant Secretary-General,
Legal Department.

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[1] Letter sent, in English or in French, to all States invited to sign or accede to the Convention.

Annexed Document No. 90

THE PERMANENT DELEGATE OF GUATEMALA TO THE UNITED NATIONS TO THE GENERAL COUNSEL AND PRINCIPAL DIRECTOR OF THE LEGAL DEPARTMENT OF THE UNITED NATIONS

[Translated from Spanish]

New York, 26 September, 1950.

Dear Sir,

I have the honour to refer to your note C.N.118 *a*.1950.TREATIES, dated 3 August last, referring to the accession, subject to reservations, of the People's Republic of Bulgaria to the Convention of 9 December, 1948, on the Prevention and Punishment of the Crime of Genocide.

I have to inform you that my Government is unable to accept the basis of the reservations made at accession by Bulgaria; and that it wishes to confirm the opinion expressed in notes Nos. 7865 and 9830 of the Guatemalan Chancellery, dated 16 June and 31 July of this year, to the effect that reservations made upon its signature or ratification of international agreements are a matter inherent in the sovereignty of States, and cannot be subject to discussion, acceptance or rejection by other States; these reservations in respect of collective agreements refer only to the application of the relevant clause in the relations between other States and the State making the reservation.

I have, etc.

(Signed) RICARDO CASTANEDA PAGANINI,
Permanent Delegate of Guatemala to the United Nations.

Annexed Document No. 91

C.N.171.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Communication du Guatemala [1]

Le 18 octobre 1950.

Je suis chargé par le Secrétaire général de me référer à la lettre No. C.N.118.1950.TREATIES du 3 août 1950, vous notifiant du dépôt par le Gouvernement de la République populaire de Bulgarie de l'instrument d'adhésion, avec réserves relatives aux articles IX et XII, à la Convention pour la prévention et la répression du crime de génocide.

J'ai l'honneur de vous communiquer, ci-joint, une copie de la lettre en date du 26 septembre 1950, émanant du représentant permanent du

[1] Lettre envoyée, en français ou en anglais, à tous les États invités à signer la convention ou à y adhérer.

Guatemala auprès des Nations Unies et exprimant la position du Gouvernement du Guatemala à l'égard des réserves mentionnées ci-dessus.

Je vous prie d'agréer, etc.

(Signé) I. S. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 92

LE DÉLÉGUÉ PERMANENT DU GUATEMALA AUPRÈS DES NATIONS UNIES AU CONSEILLER GÉNÉRAL ET DIRECTEUR PRINCIPAL DU DÉPARTEMENT JURIDIQUE DES NATIONS UNIES

[*Traduit de l'espagnol*]

New-York, le 26 septembre 1950.

Monsieur le Conseiller,

J'ai l'honneur de me référer à votre note C.N.118 *a.*1950 TRAITÉS, du 3 août 1950, relative à l'adhésion sous réserves de la République de Bulgarie à la Convention du 9 décembre 1948 sur la prévention et la répression du crime de génocide.

Je tiens à vous faire connaître que mon Gouvernement ne partage pas la conception sur laquelle se fondent les réserves faites par la Bulgarie à cette convention, et qu'il confirme la thèse, exprimée dans les notes nos 7865 et 9830, des 16 juin et 31 juillet 1950, de la Chancellerie guatémaltèque que les réserves faites lors de la signature ou de la ratification de conventions internationales sont des actes inhérents à la souveraineté des États et que d'autres États ne sauraient ni les discuter, ni les accepter, ni les rejeter, ces réserves n'affectant dans les conventions collectives que l'application de la clause correspondante dans les relations des autres États avec celui qui fait la réserve.

Je saisis, etc.

(Signé) S. R. CASTANEDA PAGANINI,
Délégué permanent du Guatemala
auprès des Nations Unies.

Annexed Document No. 93

THE SECRETARY OF STATE OF THE UNITED KINGDOM TO THE SECRETARY-GENERAL

No. UP 252/32

31st July, 1950.

Your Excellency,

His Majesty's Government has taken note of the reservations expressed by the Governments of the Union of Soviet Socialist Republics, the Byelorussian S.S.R., the Ukrainian S.S.R. and Czechoslovakia at the time of their signature of the Convention on the Prevention and Punish-

ment of the Crime of Genocide. The text of these reservations in each case reads as follows:

"At the time of signing the present Convention the delegation of [name of country] deems it essential to state the following:

As regards Article IX: [Name of country] does not consider as binding upon itself the provisions of Article IX which provides that disputes between the Contracting Parties with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, [name of country] will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

As regards Article XII: [Name of country] declares that it is not in agreement with Article XII of the Convention and considers that all the provisions of the Convention should extend to non-self-governing territories, including trust territories."

2. His Majesty's Government regrets that they are unable to accept the above-mentioned reservations because in their view the effect of these reservations would be to alter in important respects the Convention as drafted and as adopted at the third session of the General Assembly. His Majesty's Government cannot therefore regard as valid any ratification of the Convention maintaining such reservations.

3. The views of His Majesty's Government as to the legal considerations governing this matter are set out in the annexed memorandum. As this question has now been placed on the provisional agenda of the fifth session of the General Assembly, His Majesty's Government requests the Secretary-General to circulate this memorandum to all Members of the United Nations, and hopes that it will be possible for such Governments to be in possession of the document at a sufficiently early date for them to study the views contained therein before the subject is taken up in the General Assembly.

I am, etc.

[Signature illegible],
for the Secretary of State.

Annexed Document No. 94

THE UNITED KINGDOM DELEGATION TO THE UNITED NATIONS TO THE SECRETARY-GENERAL

23/47/50 E

30th September, 1950.

Your Excellency,

I have the honour to refer to Mr. Feller's letters C.N.114 and 118. 1950.TREATIES, of July 31st and August 3rd, 1950, to Mr. Bevin,

informing him of the accessions, subject to reservations, of the Republic of the Philippines and the People's Republic of Bulgaria to the Convention on the Prevention and Punishment of the Crime of Genocide. His Majesty's Government have taken note of the reservations expressed by these two Governments at the time of their respective ratifications and accessions to the Convention.

I regret to inform Your Excellency that His Majesty's Government are unable to accept the reservations made at accession by the People's Republic of Bulgaria for the same reasons as those set out in my letter of July 31, 1950, regarding the reservations expressed by the Governments of the U.S.S.R., the Byelorussian S.S.R., the Ukrainian S.S.R. and Czechoslovakia.

I have also to inform you that, for similar reasons, His Majesty's Government are unable to accept the first two of the three reservations made on ratification by the Government of the Republic of the Philippines.

I have, etc.

(Signed) GLADWYN JEBB.

Annexed Document No. 95

THE UNITED KINGDOM DELEGATION TO THE UNITED NATIONS TO THE SECRETARY-GENERAL

23/64/50 E
No. 424

6th December, 1950.

Your Excellency;

I have the honour to refer to Mr. Feller's letters C.N.191 and 196.1950. TREATIES of 21st and 29th November to Mr. Bevin informing him of the accessions, subject to reservations, of the Government of the People's Republic of Romania and of the Government of the Republic of Poland to the Convention on the Prevention and Punishment of the Crime of Genocide. His Majesty's Government have taken note of the reservations expressed by these two Governments.

I regret to inform Your Excellency that His Majesty's Government are unable to accept the reservations made at accession by the People's Republic of Romania and the Republic of Poland, for the same reasons as those set out in my letter of 31st July, 1950, regarding the reservations expressed by the Governments of the U.S.S.R., the Byelorussian S.S.R., the Ukrainian S.S.R. and Czechoslovakia.

I have, etc.

(Signed) GLADWYN JEBB.

Annexed Document No. 96

C.N.170.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Communication from Australia [1]

4 October, 1950.

Sir,

I am directed by the Secretary-General to refer to letters Nos. C.N.172. 1949.TREATIES and C.N.180.TREATIES of 29 December, 1949, and C.N.170.1949.TREATIES and C.N.171.1949.TREATIES of 30 December, 1949, notifying you of the signatures, with reservations relating to Articles IX and XII, by the representatives of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia, to the Convention on the Prevention and Punishment of the Crime of Genocide.

I am further to refer to letters C.N.114.1950.TREATIES of 31 July, 1950, and C.N.118.1950.TREATIES of 3 August, 1950, notifying you respectively of the deposit by the Government of the Republic of the Philippines of its instrument of ratification of the said Convention with reservations relating to Articles IV, VI, VII and IX, and of the deposit of the instrument of accession by the People's Republic of Bulgaria to this Convention with reservations relating to its Articles IX and XII.

I now have the honour to submit herewith a copy of a letter dated 26 September, 1950, from the Australian Mission to the United Nations in which the Australian Government declines for the present to accept any of the afore-mentioned reservations.

I have, etc.

(Signed) I. S. KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 97

THE AUSTRALIAN MISSION TO THE UNITED NATIONS TO THE SECRETARY-GENERAL

File No. 214/3 26 September, 1950.

Convention of 9 December, 1948, on the Prevention and Punishment of the Crime of Genocide

Sir,

I have the honour, by direction of the Minister of State for External Affairs, to inform you in reply to your letters C.N.170 *a*, 171 *a*, 172 *a* and 180 *a*.1949.TREATIES, and C.N.114 *a*. and 118 *a*.1950.TREATIES, that

[1] Letter sent, in English or French, to all States invited to sign or accede to the Convention.

it must not be understood for the present that the Australian Government accepts any of the reservations specified in the copies of the *procès-verbaux* of signature and instruments of ratification and accession enclosed therewith.

In view of the forthcoming discussion of the general question of reservations to multilateral conventions by the fifth General Assembly, the Australian Government reserves its position as to the effect of the above-mentioned reservations, as well as the effect of the signatures, ratifications or accessions to which they were appended, and will at a later date inform you of its attitude thereto.

I have, etc.

(Signed) K. SHANN,
for the Minister.

Annexed Document No. 98

C.N.170.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Communication de l'Australie[1]

Le 4 octobre 1950.

Je suis chargé par le Secrétaire général de me référer aux lettres nos C.N.172.1949.TREATIES et C.N.180.1949.TREATIES du 29 décembre 1949 et C.N.170.1949.TREATIES et C.N.171.1949.TREATIES du 30 décembre 1949, vous notifiant les signatures avec réserves relatives aux articles IX et XII par les représentants de l'Union des Républiques socialistes soviétiques, de la République socialiste soviétique de Biélorussie, de la République socialiste soviétique d'Ukraine et de la Tchécoslovaquie.

Je suis en outre chargé par le Secrétaire général de me référer aux lettres nos C.N.114.1950.TREATIES du 31 juillet 1950 et C.N.118.1950. TREATIES du 3 août 1950, vous notifiant respectivement du dépôt par le Gouvernement de la République des Philippines de l'instrument de ratification de ladite convention avec réserves relatives à ses articles IV, VI, VII et IX, et du dépôt de l'instrument d'adhésion du Gouvernement de la République populaire de Bulgarie à cette convention avec réserves relatives à ses articles IX et XII.

J'ai l'honneur de vous communiquer ci-joint une copie de la lettre en date du 26 septembre 1950, émanant de la Mission permanente de l'Australie auprès des Nations Unies par laquelle le Gouvernement de l'Australie regrette de ne pouvoir accepter, pour le moment, les réserves mentionnées ci-dessus.

Je vous prie d'agréer, etc.

(Signé) I. S. KERNO,
Secrétaire général adjoint,
Département juridique.

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[1] Lettre envoyée, en français ou en anglais, à tous les États invités à signer la convention ou à y adhérer.

Annexed Document No. 99

LA DÉLÉGATION AUSTRALIENNE AUPRÈS DES NATIONS UNIES
AU SECRÉTAIRE GÉNÉRAL

Dossier n° 214/3 Le 26 septembre 1950.

Convention du 9 décembre 1948 pour la prévention et la répression du crime de génocide

Monsieur le Secrétaire général,

D'ordre du ministre d'État pour les Affaires étrangères, j'ai l'honneur, en réponse à vos lettres C.N.170 *a*, 171 *a*, 172 *a* et 180 *a*.1949.TRAITÉS et C.N.114 *a* et 118 *a*.1950.TRAITÉS, de vous informer qu'il ne faut pas entendre pour le moment que le Gouvernement australien accepte l'une quelconque des réserves précisées dans les copies des procès-verbaux de signature et des instruments de ratification et d'accession jointes auxdites lettres.

Étant donné la discussion qui va s'ouvrir devant l'Assemblée générale, lors de sa cinquième session, sur la question générale des réserves aux conventions multilatérales, le Gouvernement australien réserve sa position sur l'effet des réserves susdites, ainsi que sur l'effet des signatures, ratifications ou accessions qu'elles accompagnaient et il vous fera connaître ultérieurement l'attitude qu'il entendra prendre à cet égard.

Veuillez agréer, etc.

Pour le Ministre :
(Signé) K. SHANN.

Annexed Document No. 100

C.N.197.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Communication by Australia [1]

11 December, 1950.

Sir,

I am directed by the Secretary-General to refer to my letter No. C.N.170.1950.TREATIES of 4 October, 1950, transmitting a copy of a letter dated 26 September, 1950, from the Australian Mission to the United Nations in which the Australian Government declined for the present to accept any of the reservations made at the time of signature by the representatives of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia, and by the Government of the Republic of the Philippines in its instrument of ratification, and by the Government of the People's Republic of Bulgaria in its instrument of accession.

[1] Letter sent, in English or in French, to all States invited to sign or accede to the Convention.

I now have the honour to submit herewith a copy of a letter dated 15 November, 1950, from the Australian Mission to the United Nations confirming the attitude of the Australian Government with respect to the afore-mentioned reservations.

The present communication is circulated in accordance with paragraph 3 of the Resolution on reservations to multilateral conventions adopted by the General Assembly on 16 November, 1950.

I have, etc.

(Signed) I. S. KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 101

THE AUSTRALIAN MISSION TO THE UNITED NATIONS TO THE SECRETARY-GENERAL

File 214/3

15th November, 1950.

Convention of 9th December, 1948, on the Prevention and Punishment of the Crime of Genocide

Sir,

I have the honour, by direction of the Minister of State for External Affairs, to refer to my letter No. 214/3 of 26th September, 1950, and to confirm that the Australian Government does not accept any of the reservations contained in the instrument of accession dated 12th July, 1950, of the People's Republic of Bulgaria, or in the instrument of ratification dated 23rd June, 1950, of the Republic of the Philippines.

Also, the Australian Government does not accept any of the reservations made at the time of signature of the above-named Convention by Czechoslovakia, the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic, respectively, and would not, therefore, regard as valid any ratification of the Convention maintaining such reservations.

I have, etc.

(Signed) B. C. BALLARD,
for the Minister.

Annexed Document No. 102

C.N.197.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Communication de l'Australie [1]

Le 11 décembre 1950.

Je suis chargé par le Secrétaire général de me référer à la lettre C.N.170. 1950.TREATIES, en date du 4 octobre 1950, vous transmettant la copie

[1] Lettre envoyée, en français ou en anglais, à tous les États invités à signer la convention ou à y adhérer.

d'une lettre du 26 septembre 1950 de la délégation australienne auprès des Nations Unies. Dans cette dernière lettre, le Gouvernement de l'Australie déclarait qu'il n'acceptait, pour le moment, aucune des réserves formulées, lors de la signature, par les représentants de l'Union des Républiques socialistes soviétiques, de la République socialiste soviétique de Biélorussie, de la République socialiste soviétique d'Ukraine et de la Tchécoslovaquie, ni les réserves formulées par le Gouvernement de la République des Philippines dans son instrument de ratification et par le Gouvernement de la République populaire de Bulgarie dans son instrument d'adhésion.

J'ai maintenant l'honneur de vous adresser ci-joint la copie d'une lettre en date du 15 novembre 1950, émanant de la délégation australienne auprès des Nations Unies, dans laquelle le Gouvernement de l'Australie confirme son attitude au sujet de ces réserves.

La présente communication est transmise conformément au paragraphe 3 de la Résolution adoptée par l'Assemblée générale le 16 novembre 1950, concernant les réserves aux conventions multilatérales.

Je vous prie d'agréer, etc.

(Signé) I. S. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 103

LA DÉLÉGATION AUSTRALIENNE AUPRÈS DES NATIONS UNIES AU SECRÉTAIRE GÉNÉRAL

Dossier 214/3

Le 15 novembre 1950.

Convention du 9 décembre 1948 pour la prévention et la répression du crime de génocide

Monsieur le Secrétaire général,

D'ordre du ministre d'État pour les Affaires extérieures, j'ai l'honneur de me référer à ma lettre 214/3, du 26 septembre 1950, et de confirmer que le Gouvernement australien n'accepte aucune des réserves formulées dans l'instrument d'adhésion de la République populaire de Bulgarie daté du 12 juillet 1950, ou dans l'instrument de ratification de la République des Philippines daté du 23 juin 1950.

En outre, le Gouvernement australien n'accepte aucune des réserves formulées, lors de la signature de la convention susmentionnée, par la Tchécoslovaquie, l'Union des Républiques socialistes soviétiques, la République socialiste soviétique d'Ukraine et la République socialiste soviétique de Biélorussie, respectivement ; il ne considérera donc pas comme valides les ratifications de cette convention qui maintiendraient ces réserves.

Je vous prie d'agréer, etc.

Pour le Ministre :
(Signé) B. C. BALLARD.

Annexed Document No. 104

THE SECRETARY FOR FOREIGN AFFAIRS OF THE PHILIPPINES TO THE SECRETARY-GENERAL

285

December 15, 1950.

Excellency,

Reference is made to your despatch (File No. C.N.197.1950. TREATIES) dated 11 December, 1950, enclosing copy of a letter of 15 November, 1950, from the Australian Mission to the United Nations confirming the previous position of the Australian Government to the effect that it does not accept any of the reservations made to the Convention of 9 December, 1948, on the Prevention and Punishment of the Crime of Genocide, among others, by the Government of the Republic of the Philippines in its instrument of ratification dated June 23, 1950.

Please be informed that my Government does not recognize such non-acceptance by the Australian Government of the reservations contained in the aforesaid instrument, as in any way affecting the validity of the ratification by the Philippine Government of the Convention. My Government is prepared to bring this matter as a contentious case before the International Court of Justice in accordance with the procedure laid down in Article IX of the Convention.

Accept, etc.

(Signed) CARLOS P. ROMULO,
Secretary of Foreign Affairs
of the Philippines.

PART FIVE.—ACKNOWLEDGEMENTS OF GOVERNMENTS RATIFYING OR ACCEDING, AFTER NOTICE OF RESERVATIONS, WITHOUT COMMENT THEREON

Annexed Document No. 105

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR EXTERNAL RELATIONS OF PANAMA

LEG.318/2/03/AL

13 January, 1950.

Sir,

His Excellency Mr. Mario de Diego, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Panama to the United Nations, has deposited with the Secretary-General, on 11 January, 1950, the instrument of ratification of Panama to the Convention on the Prevention and Punishment of the Crime of Genocide.

I have the honour to refer in this respect to my letters Nos. C.N.172.1949.TREATIES and C.N.180.1949.TREATIES of 29 December, 1949, and C.N.170.1949.TREATIES and C.N.171.1949. TREATIES of 30 December, 1949, by which I notified you of the signatures to the said Convention, with reservations relating to Articles IX and XII, by the representatives of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia.

The deposit of the instrument of ratification having been made without any observations concerning the afore-mentioned reservations, it is my understanding that your Government accepts these reservations.

I have, etc.

For the Secretary-General:
(Signed) IVAN KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 106

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR FOREIGN AFFAIRS OF ISRAEL [1]

[1] Letter dated January 15th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 105. Not reproduced.

Annexed Document No. 107

LE SECRÉTAIRE GÉNÉRAL ADJOINT AU MINISTRE D'ÉTAT DIRECTEUR DU SERVICE DES RELATIONS EXTÉRIEURES DE LA PRINCIPAUTÉ DE MONACO

LEG.318/2/03

Le 10 avril 1950.

Monsieur le Ministre,

J'ai l'honneur de vous informer que Monsieur Jean Dubé, consul de la Principauté de Monaco à New-York, a transmis au Secrétaire général le 28 mars 1950 l'instrument d'adhésion de Monaco à la Convention sur la prévention et la répression du crime de génocide, qui a été reçu au Secrétariat le 30 mars 1950.

J'ai l'honneur de me référer à ce sujet à mes lettres nos C.N.172.1949.TREATIES et C.N.180.1949.TREATIES du 29 décembre 1949, et C.N.170.1949.TREATIES et C.N.171.1949.TREATIES du 30 décembre 1949, vous notifiant les signatures à la convention ci-dessus mentionnée, avec des réserves concernant les articles IX et XII, par les représentants de l'Union des Républiques socialistes soviétiques, de la République socialiste de Biélorussie, de la République socialiste soviétique d'Ukraine et de la Tchécoslovaquie.

Le dépôt par votre Gouvernement de l'instrument d'adhésion ayant été effectué sans aucune observation relative aux réserves ci-dessus mentionnées, je comprends que votre Gouvernement accepte ces réserves.

Je vous prie d'agréer, etc.

(Signé) IVAN KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 108

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR FOREIGN AFFAIRS OF THE HASHEMITE KINGDOM OF THE JORDAN [1]

Annexed Document No. 109

THE GENERAL COUNSEL AND PRINCIPAL DIRECTOR OF THE LEGAL DEPARTMENT OF THE UNITED NATIONS TO THE SECRETARY OF STATE OF LIBERIA [2]

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[1] Letter dated May 4th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 105. Not reproduced.

[2] Letter dated June 19th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 105. Not reproduced.

Annexed Document No. 110

THE GENERAL COUNSEL AND PRINCIPAL DIRECTOR OF THE LEGAL DEPARTMENT OF THE UNITED NATIONS TO THE MINISTER FOR FOREIGN AFFAIRS OF SAUDI ARABIA [1]

Annexed Document No. 111

THE GENERAL COUNSEL AND PRINCIPAL DIRECTOR OF THE LEGAL DEPARTMENT OF THE UNITED NATIONS TO THE MINISTER FOR FOREIGN AFFAIRS OF TURKEY [2]

Annexed Document No. 112

LE CONSEILLER JURIDIQUE ET DIRECTEUR PRINCIPAL DU DÉPARTEMENT JURIDIQUE DES NATIONS UNIES AU MINISTRE DE LA JUSTICE DU VIET-NAM [3]

Annexed Document No. 113

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR FOREIGN AFFAIRS OF YUGOSLAVIA [4]

Annexed Document No. 114

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR EXTERNAL RELATIONS OF EL SALVADOR [5]

Annexed Document No. 115

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER FOR EXTERNAL RELATIONS OF CEYLON [6]

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[1] Letter dated July 21st, 1950, which is *mutatis mutandis* the same as Annexed Document No. 105. Not reproduced.

[2] Letter dated August 7th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 105. Not reproduced.

[3] Lettre en date du 30 août 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 107. Non reproduite.

[4] Letter dated September 7th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 105. Not reproduced.

[5] Letter dated October 6th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 105. Not reproduced.

[6] Letter dated November 15th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 105. Not reproduced.

Annexed Document No. 116

LE SECRÉTAIRE GÉNÉRAL ADJOINT AU PRÉSIDENT DU CONSEIL DES MINISTRES, MINISTRE DES AFFAIRES ÉTRANGÈRES DU CAMBODGE [1]

Annexed Document No. 117

THE ASSISTANT SECRETARY-GENERAL TO THE SECRETARY OF STATE FOR EXTERNAL RELATIONS OF COSTA RICA [2]

Annexed Document No. 118

LE SECRÉTAIRE GÉNÉRAL ADJOINT AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE [1]

Annexed Document No. 119

LE SECRÉTAIRE GÉNÉRAL ADJOINT AU SECRÉTAIRE D'ÉTAT DES RELATIONS EXTÉRIEURES DE HAÏTI [1]

Annexed Document No. 120

THE ASSISTANT SECRETARY-GENERAL TO THE MINISTER OF STATE FOR FOREIGN AFFAIRS OF KOREA [2]

Annexed Document No. 121

LE SECRÉTAIRE GÉNÉRAL ADJOINT AU PREMIER MINISTRE, PRÉSIDENT DU CONSEIL DES MINISTRES DU LAOS [3]

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[1] Lettre en date du 15 novembre 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 107. Non reproduite.

[2] Letter dated November 15th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 105. Not reproduced.

[3] Lettre en date du 12 janvier 1951, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 107. Non reproduite.

PART SIX.—REPLIES OF GOVERNMENTS TO THE FOREGOING

Annexed Document No. 122

C.N.188.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Communication from El Salvador[1]

25 November, 1950.

Sir,

I am directed by the Secretary-General to transmit herewith a translation of the letter I have received from the Minister for Foreign Affairs of the Government of El Salvador concerning the attitude of his Government in respect to the reservations to the Convention on the Prevention and Punishment of the Crime of Genocide made at the time of signature by the representatives of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia, and by the People's Republic of Bulgaria in its instrument of accession, and the Republic of the Philippines in its instrument of ratification, all prior to the date of deposit of the instrument of ratification to the said Convention by the Government of El Salvador.

The present communication is circulated in accordance with paragraph 3 of the Resolution on reservations to multilateral conventions adopted by the General Assembly on 16 November, 1950.

I have, etc.

(Signed) I. S. KERNO,
Assistant Secretary-General,
Legal Department.

Annexed Document No. 123

THE MINISTER FOR FOREIGN AFFAIRS OF EL SALVADOR TO THE ASSISTANT SECRETARY-GENERAL

[*Translated from Spanish*]

A-500-E-736

San Salvador, 27 October, 1950.

Sir,

I have the honour to acknowledge the receipt of your note LEG.318/2/03 of 6 October, 1950, in which, with reference to the deposit by my Government of the instrument of ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, you informed me that it is the understanding of the Secretary-General of the United

[1] Letter sent, in English or in French, to all States invited to sign or accede to the Convention.

Nations that the Government of El Salvador, having made no objection to the reservations to the Convention made by the representatives of the Soviet Union, Byelorussia, the Ukraine, Czechoslovakia, the Philippines and Bulgaria, prior to the date of deposit of the instrument of ratification, has tacitly accepted those reservations.

This Ministry profoundly regrets that it cannot concur in so authoritative an opinion since it was not the intention of the Government of El Salvador, in ratifying the aforesaid Convention without reservation, to refer in any way whatsoever to the reservations made, in an act of full sovereignty, by the above-mentioned countries. My Government does not wish to make objection to those reservations, but it expresses its complete disagreement with them, in particular those relating to Articles IX and XII of the Convention.

In respectfully informing you of the foregoing, I must ask you to regard the present note as a faithful expression of my Government's views in this matter. I avail myself of this opportunity, etc.

(Signed) ROBERTO E. CANESA.

Annexed Document No. 124

C.N.188.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Communication du Salvador[1]

Le 25 novembre 1950.

Le Secrétaire général m'a chargé de vous communiquer ci-joint la traduction de la lettre que j'ai reçue du ministre des Relations extérieures du Gouvernement du Salvador concernant l'attitude de son Gouvernement au sujet des réserves à la Convention pour la prévention et la répression du crime de génocide, formulées, lors de la signature, par les représentants de l'Union des Républiques socialistes soviétiques, de la République socialiste soviétique de Biélorussie, de la République socialiste soviétique d'Ukraine et de la Tchécoslovaquie, ainsi que les réserves formulées par la République populaire de Bulgarie dans son instrument d'adhésion et par la République des Philippines dans son instrument de ratification ; toutes ces réserves sont antérieures à la date à laquelle le Gouvernement du Salvador a déposé l'instrument de ratification de ladite convention.

La présente communication est transmise conformément au paragraphe 3 de la Résolution adoptée par l'Assemblée générale le 16 novembre 1950, relative aux réserves aux conventions multilatérales.

Veuillez agréer, etc.

(Signé) I. S. KERNO,
Secrétaire général adjoint,
Département juridique.

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[1] Lettre envoyée, en français ou en anglais, à tous les États invités à signer la convention ou à y adhérer.

Annexed Document No. 125

LE MINISTRE DES RELATIONS EXTÉRIEURES DU SALVADOR AU SECRÉTAIRE GÉNÉRAL ADJOINT

[*Traduit de l'anglais*]

A-500-E-736

San Salvador, le 27 octobre 1950.

Monsieur le Secrétaire général,

J'ai l'honneur d'accuser réception de votre note LEG.318/2/03 du 6 octobre 1950 par laquelle vous m'avez fait savoir, au sujet du dépôt par mon Gouvernement de l'instrument de ratification de la Convention pour la prévention et la répression du crime de génocide, que, le Gouvernement du Salvador n'ayant pas soulevé d'objections, avant la date de dépôt de l'instrument de ratification, aux réserves à la convention formulées par les représentants de l'Union soviétique, de la Biélorussie, de l'Ukraine, de la Tchécoslovaquie, des Philippines et de la Bulgarie, le Secrétaire général considère que le Gouvernement du Salvador a accepté ces réserves.

Le ministère des Relations extérieures regrette profondément de ne pouvoir partager une opinion aussi autorisée, car le Gouvernement du Salvador, en ratifiant sans réserve la convention précitée, n'a pas eu l'intention de se référer en aucune façon aux réserves formulées dans le plein exercice de leur souveraineté par les pays mentionnés ci-dessus. Mon Gouvernement ne désire pas formuler d'objections à ces réserves, mais il tient à déclarer qu'il les désapprouve complètement, en particulier les réserves aux articles IX et XII de la convention.

En vous informant de ce qui précède, je vous prie de bien vouloir considérer que la présente note est l'expression fidèle des vues de mon Gouvernement en la matière.

Je saisis, etc.

(Signé) ROBERTO E. CANESA.

Annexed Document No. 126

C.N.195.1950.TREATIES

CONVENTION OF 9 DECEMBER, 1948, ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Communication by Viet Nam[1]

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[1] Letter dated December 6th, 1950, which is *mutatis mutandis* the same as Annexed Document No. 122. Not reproduced.

Annexed Document No. 127

THE GENERAL SECRETARY OF THE MINISTRY FOR FOREIGN AFFAIRS OF VIET NAM TO THE GENERAL COUNSEL AND PRINCIPAL DIRECTOR OF THE LEGAL DEPARTMENT OF THE UNITED NATIONS

[*Translated from French*]

Saigon, 3 November, 1950.

Sir,

I have the honour to acknowledge receipt of your letter LEG.318/2/03 of 30 August, 1950, informing me that the instrument of accession of the Government of Viet Nam to the Convention for the Prevention and Punishment of the Crime of Genocide was received by the Secretariat of the United Nations on 11 August, 1950.

In this communication you referred to your letter LEG.318/2/03 of 31 May, 1950, concerning the signature of this Convention with reservations in regard to Articles IX and XII by the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Czechoslovakia; and to your letters C.N.114.TREATIES of 31 July, 1950, and C.N.118.TREATIES of 3 August, 1950, concerning the deposit by the Government of the Philippine Republic of its instrument of ratification of the said Convention with reservations in regard to Articles IV, VI, VII and IX, and to the deposit of the instrument of accession of the Government of the People's Republic of Bulgaria to that Convention with reservations in regard to Articles IX and XII.

You conclude that, since the Government of Viet Nam deposited its instrument of accession to the Convention without remark on the above-mentioned reservations, my Government has implicitly accepted them.

I wish to inform you that it was the intent of the Government of Viet Nam, in acceding to the Convention for the Prevention and Punishment of the Crime of Genocide, to accept only the text of that Convention as approved on 9 December, 1948, in Resolution 260 (III) A and voted by the General Assembly of the United Nations at its 179th plenary meeting, and not the reservations submitted by the above-mentioned States or by any other State at the time of signature by their representatives, or of deposit of their instruments of ratification or accession to the Convention.

The Government of Viet Nam does not consider that it should at this time give its views on the substance of the reservations made by the States concerned, since a question of principle is involved which will have to be settled on a more general level: namely, to what extent reservations may be made to multilateral conventions, and the effect thereof.

I have, etc.

For the President of the Council and
Minister of Foreign Affairs:
[Signature illegible],
General Secretary.

Annexed Document No. 128

C.N.195.1950.TREATIES

CONVENTION DU 9 DÉCEMBRE 1948 POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

Communication par le Viet-Nam [1]

Annexed Document No. 129

LE SECRÉTAIRE GÉNÉRAL AUX AFFAIRES ÉTRANGÈRES DU VIET-NAM AU CONSEILLER GÉNÉRAL ET DIRECTEUR PRINCIPAL DU DÉPARTEMENT JURIDIQUE DES NATIONS UNIES

Saïgon, le 3 novembre 1950.

Monsieur le Conseiller général,

J'ai l'honneur d'accuser réception de votre lettre n° LEG.318/2/03 du 30 août 1950 me faisant savoir que l'instrument d'adhésion du Gouvernement du Viet-Nam à la Convention pour la prévention et la répression du crime de génocide a été reçu au Secrétariat général de l'O. N. U. à la date du 11 août 1950.

Dans cette communication, vous vous êtes référé à votre lettre n° LEG.318/2/03 du 31 mai 1950 relative à la signature de cette convention avec des réserves concernant les articles IX et XII par l'Union des Républiques socialistes soviétiques, la République socialiste soviétique de Biélorussie, la République socialiste soviétique d'Ukraine et la Tchécoslovaquie ; vous vous êtes référé également à vos lettres C.N.114. TREATIES du 31 juillet 1950 et C.N.118.TREATIES du 3 août 1950 relatives au dépôt par le Gouvernement de la République des Philippines de l'instrument de ratification de ladite convention avec réserves concernant les articles IV, VI, VII et IX et au dépôt de l'instrument d'adhésion du Gouvernement de la République populaire de Bulgarie à cette convention avec réserves concernant ses articles IX et XII.

Vous avez conclu que le dépôt par le Gouvernement viétnamien de l'instrument d'adhésion à la convention ayant été effectué sans aucune observation relative aux réserves ci-dessus mentionnées, mon Gouvernement est censé avoir accepté ces réserves.

Je crois devoir vous faire connaître que le Gouvernement du Viet-Nam, en adhérant à la Convention pour la prévention et la répression du crime de génocide, entend accepter seulement le texte de ladite Convention telle qu'elle a été approuvée le 9 décembre 1948 par la Résolution 260 (III) A votée par l'Assemblée générale des Nations Unies à sa 179me séance plénière, à l'exception des réserves présentées par les États sus-indiqués ou par d'autres États lors de la signature par leurs représentants, ou du dépôt de leur instrument de ratification ou d'adhésion à la convention.

Le Gouvernement du Viet-Nam estime n'avoir pas pour le moment à donner son opinion sur la valeur des réserves exprimées par les États

[1] Lettre en date du 6 décembre 1950, dont le texte est *mutatis mutandis* le même que celui du document annexé n° 124. Non reproduite.

intéressés, s'agissant d'une question de principe qui doit être réglée sur un plan plus général, à savoir dans quelle mesure des réserves peuvent être apportées aux conventions multilatérales et quels seront leurs effets.

Je saisis, etc.

P. le Président du Conseil,
Ministre des Affaires étrangères et P. O. :
Le Secrétaire général,
[Signature illisible.]

Annexed Document No. 130

LE SECRÉTAIRE GÉNÉRAL AUX AFFAIRES ÉTRANGÈRES DU VIET-NAM AU SECRÉTAIRE GÉNÉRAL ADJOINT

N° 1118-MAE/Cal

Saïgon, le 22 décembre 1950.

Monsieur le Secrétaire général adjoint,

J'ai l'honneur d'accuser réception de votre lettre n° C.N. 191 *a.*1950. TREATIES du 21 novembre 1950 portant notification de l'adhésion de la République populaire de Roumanie à la Convention pour la prévention et la répression du crime de génocide, avec des réserves concernant les articles IX et XII.

Dans la même lettre, vous avez fait part du désir du Secrétaire général de connaître l'attitude de notre Gouvernement vis-à-vis de ces réserves.

J'ai l'honneur de vous faire connaître que notre Gouvernement maintient son point de vue exprimé dans notre lettre n° 886-MAE/Cab du 3 novembre 1950, et selon lequel le Viet-Nam, en adhérant à la Convention pour la prévention et la répression du crime de génocide, entend accepter seulement le texte de ladite convention telle qu'elle a été approuvée le 9 décembre 1948 par l'Assemblée générale des Nations Unies, à l'exclusion des réserves présentées par les États Membres lors de la signature de la convention ou du dépôt de leur instrument de ratification ou d'adhésion à la convention.

Veuillez agréer, etc.

P. le Président du Gouvernement,
Ministre des Affaires étrangères :
Le Secrétaire d'État à la Présidence,
(Signé) [Illisible.]
[Cachet]

Annexed Document No. 131

LE SECRÉTAIRE GÉNÉRAL ADJOINT AU SECRÉTAIRE GÉNÉRAL AUX AFFAIRES ÉTRANGÈRES DU VIET-NAM

LEG.318/2/03

Le 12 janvier 1951.

Monsieur,

Je suis chargé par le Secrétaire général d'accuser réception de votre lettre 1118-MAE/Cal du 22 décembre 1950 par laquelle vous faites

connaître que votre Gouvernement maintient son point de vue selon lequel « le Viet-Nam, en adhérant à la Convention pour la prévention et la répression du crime de génocide, entend accepter seulement le texte de ladite convention tel qu'il a été approuvé le 9 décembre 1948 par l'Assemblée générale des Nations Unies, à l'exclusion des réserves présentées par les États Membres lors de la signature de la convention ou du dépôt de leur instrument de ratification ou d'adhésion ».

Par sa lettre circulaire 191 *a*.1950.TREATIES du 21 novembre 1950 à laquelle vous vous référez, le Secrétaire général a suivi sa pratique antérieure conformément aux dispositions de la Résolution adoptée par l'Assemblée générale à sa 305me séance plénière, le 16 novembre 1950, relative aux réserves aux conventions multilatérales.

Cependant, conformément au paragraphe 3 de ladite résolution, la méthode suivie par le Secrétaire général est sans préjudice de l'effet juridique que l'Assemblée générale pourra à sa sixième session recommander d'attribuer aux objections élevées contre les réserves aux conventions.

Je vous prie d'agréer, etc.

(Signé) IVAN S. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 132

LE MINISTÈRE DES AFFAIRES ÉTRANGÈRES DE FRANCE AU SECRÉTAIRE GÉNÉRAL

N° 150

Paris, le 6 décembre 1950.

Monsieur le Secrétaire général,

Vous avez bien voulu, par lettre LEG.318/2/03 du 15 novembre dernier, accuser réception du dépôt par la France de son instrument de ratification de la Convention pour la prévention et la répression du crime de génocide, et indiquer que, ce dépôt ayant été effectué sans aucune observation relative aux réserves exprimées par certains États, vous compreniez que le Gouvernement de la République acceptait ces réserves.

J'ai l'honneur de vous rappeler que la thèse du Gouvernement français, longuement exposée par son représentant devant la Sixième Commission de l'Assemblée générale des Nations Unies, et dont vos services ont certainement eu connaissance, est que les réserves formulées par un État lors de la signature ou de la ratification d'une convention ou de son adhésion à celle-ci ne sont opposables à une partie contractante qu'après avoir fait l'objet d'un accord formel de sa part. L'absence d'observations du Gouvernement français aux réserves formulées par certains États ne saurait donc dans le cas présent être considérée comme une acceptation desdites réserves.

Le Gouvernement de la République ne pourrait éventuellement modifier son point de vue en ce qui concerne la validité des réserves aux traités multilatéraux qu'après que se seront prononcées, conformément à la Résolution de l'Assemblée du 16 novembre dernier, la Cour internationale de Justice et la Commission du droit international.

[Signature illisible.]

Annexed Document No. 133

LE SECRÉTAIRE GÉNÉRAL AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

LEG.318/2/03

Le 12 janvier 1951.

Monsieur le Ministre,

Je suis chargé par le Secrétaire général d'accuser réception de votre lettre n° 150 du 6 décembre 1950 dans laquelle vous exprimez l'opinion du Gouvernement français que « les réserves formulées par un État lors de la signature ou de la ratification d'une convention ou de son adhésion à celle-ci ne sont opposables à une partie contractante qu'après avoir fait l'objet d'un accord formel de sa part » et que « l'absence d'observations du Gouvernement français aux réserves formulées par certains États ne saurait donc dans le présent cas [Convention pour la prévention et la répression du crime de génocide] être considérée comme une acceptation desdites réserves ».

Je me permets à cet égard d'attirer votre attention sur la Résolution adoptée par l'Assemblée générale à sa 305me séance plénière, le 16 novembre 1950, concernant les réserves aux conventions multilatérales par laquelle l'Assemblée générale

> « Invite le Secrétaire général, en attendant que la Cour internationale de Justice ait donné son avis consultatif, que la Commission du droit international ait fait parvenir son rapport et que l'Assemblée générale ait pris une nouvelle décision, à appliquer la méthode qu'il a suivie jusqu'ici pour la réception des réserves aux conventions, pour leur notification et pour les demandes d'approbation de ces réserves, le tout sans préjudice de l'effet juridique que l'Assemblée générale pourra, à sa sixième session, recommander d'attribuer aux objections élevées contre les réserves aux conventions. »

Or, la pratique du Secrétaire général est basée notamment sur le principe que : « un État ou une organisation internationale qui accepte un traité consent implicitement à toute réserve à ce traité dont ledit État ou ladite organisation a connaissance à ce moment » (article 10, paragraphe 5, du projet de convention sur le droit des traités inclus dans le Rapport sur les traités du professeur J. L. Brierly, présenté à la Commission du droit international lors de sa deuxième session, Document A/CN.4/23, page 57, texte français). C'est conformément à ce principe que le Secrétaire général vous a adressé sa lettre du 15 novembre dernier.

Je vous prie d'agréer, etc.

(Signé) IVAN S. KERNO,
Secrétaire général adjoint,
Département juridique.

Annexed Document No. 134

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DU CAMBODGE AU SECRÉTAIRE GÉNÉRAL

N° 888-SG/SE

Phnom-Penh, le 6 décembre 1950.

Monsieur le Secrétaire général,

J'ai l'honneur d'accuser réception de votre lettre n° LEG.318/2/01 en date du 15 novembre 1950 relative à l'adhésion du Royaume du Cambodge à la Convention pour la prévention et la répression du crime de génocide.

Aux termes de l'avant-dernier paragraphe de votre lettre précitée vous avez bien voulu me confirmer que le dépôt de l'instrument d'adhésion de mon pays a été effectué sans aucune observation relative aux réserves faites par les représentants de la Russie, de la Bulgarie et des autres pays et que, dans ces conditions, mon Gouvernement accepte ces réserves.

Je vous remets ci-joint une copie de ma lettre n° 432-SG/SE en date du 19 août 1950 qui a spécifié que le Royaume du Cambodge adhère à la Convention pour la prévention et la répression du crime de génocide sans aucune réserve.

Je précise donc que le Royaume du Cambodge adhère purement à cette convention sans tenir compte des réserves faites par les représentants des pays précités.

Veuillez agréer, etc.

(Signé) SON-SANN.

Annexed Document No. 135

LE SECRÉTAIRE GÉNÉRAL ADJOINT AU PRÉSIDENT DU CONSEIL, MINISTRE DES AFFAIRES ÉTRANGÈRES DU CAMBODGE

LEG.318/2/03

Le 12 janvier 1951.

Monsieur le Ministre,

Je suis chargé par le Secrétaire général d'accuser réception de votre lettre n° 888-SG/SE du 6 décembre 1950 par laquelle vous précisez que le Royaume du Cambodge a entendu adhérer purement à la Convention pour la prévention et la répression du crime de génocide sans tenir compte des réserves formulées antérieurement par les gouvernements d'autres États au moment de leur signature, de leur ratification ou de leur adhésion à ladite convention.

Je me permets à cet égard d'attirer votre attention sur la Résolution adoptée par l'Assemblée générale à sa 305me séance plénière, le 16 novembre 1950, concernant les réserves aux conventions multilatérales par laquelle l'Assemblée générale

> « Invite le Secrétaire général, en attendant que la Cour internationale de Justice ait donné son avis consultatif, que la Commission du droit international ait fait parvenir son rapport et que l'Assemblée générale ait pris une nouvelle décision, à appliquer la méthode qu'il a suivie jusqu'ici pour la réception des réserves aux conventions, pour leur notification et pour les demandes d'approba-

tion de ces réserves, le tout sans préjudice de l'effet juridique que l'Assemblée générale pourra, à sa sixième session, recommander d'attribuer aux objections élevées contre les réserves aux conventions. »

Or, la pratique du Secrétaire général est basée notamment sur le principe que : « un État ou une organisation internationale qui accepte un traité consent implicitement à toute réserve à ce traité dont ledit État ou ladite organisation a connaissance à ce moment » (article 10, paragraphe 5, du projet de convention sur le droit des traités inclus dans le Rapport sur les traités du professeur J. L. Brierly présenté à la Commission du droit international lors de sa deuxième session, document A/CN.4/23, page 57, texte français). C'est conformément à ce principe que le Secrétaire général vous a adressé sa lettre du 15 novembre dernier.

Je vous prie d'agréer, etc.

(Signé) IVAN S. KERNO,
Secrétaire général adjoint,
Département juridique.

7. WRITTEN STATEMENT OF THE GOVERNMENT OF ISRAEL

By a Resolution dated 16 November, 1950, the General Assembly of the United Nations decided to request the International Court of Justice for an advisory opinion on certain questions relative to reservations to international conventions. The text of this Resolution is as follows :

"*The General Assembly,*

Having examined the report of the Secretary-General regarding reservations to multilateral conventions,

Considering that certain reservations to the Convention on the Prevention and Punishment of the Crime of Genocide have been objected to by some States,

Considering that the International Law Commission is studying the whole subject of the law of treaties, including the question of reservations,

Considering that different views regarding reservations have been expressed during the fifth session of the General Assembly, and particularly in the Sixth Committee,

1. *Requests* the International Court of Justice to give an advisory opinion on the following questions :

'In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification :

I. Can the reserving State be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others ?

II. If the answer to question I is in the affirmative, what is the effect of the reservation as between the reserving State and ;

(a) The parties which object to the reservation ?

(b) Those which accept it ?

III. What would be the legal effect as regards the answer to question I if an objection to a reservation is made :

(a) By a signatory which has not yet ratified ?

(b) By a State entitled to sign or accede but which has not yet done so ?' ;

2. *Invites* the International Law Commission :

(a) In the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions both from the point of view of codification and from

that of the progressive development of international law; to give priority to this study and to report thereon, especially as regards multilateral conventions of which the Secretary-General is the depositary, this report to be considered by the General Assembly at its sixth session;

(b) In connexion with this study, to take account of all the views expressed during the fifth session of the General Assembly, and particularly in the Sixth Committee;

3. *Instructs* the Secretary-General, pending the rendering of the advisory opinion by the International Court of Justice, the receipt of a report from the International Law Commission and further action by the General Assembly, to follow his prior practice with respect to the receipt of reservations to conventions and with respect to the notification and solicitation of approvals thereof, all without prejudice to the legal effect of objections to reservations to conventions as it may be recommended by the General Assembly at its sixth session."

2. It is not necessary here to do more than describe succinctly the background of the present problem. The Convention on the Prevention and Punishment of the Crime of Genocide was adopted at the 179th plenary meeting of the General Assembly on 9 December, 1948. Resolution 260 (III) bringing this about provided:

"*The General Assembly,*

Approves the annexed Convention on the Prevention and Punishment of the Crime of Genocide and proposes it for signature and ratification or accession in accordance with its Article XI."

(This is followed by the annex containing the full text of the Convention.)

The said Article XI establishes various ways by which States Members of the United Nations, and any non-member State invited to do so by the General Assembly [1], can become parties to the Convention, i.e. legally bound by its terms. Article XIII deals with the coming into force of this Convention ninety days after the first twenty instruments of ratification or accession have been deposited with the Secretary-General. Additional functions of a ministerial character, similar to those normally exercised by a depositary government, are conferred upon the Secretary-General by Article XVII. The attention of the Court is also drawn to the terms of Article XVIII under which the original of the present Convention shall be deposited in the archives of the United Nations. Although the original of the treaty is thus deposited with the Organization as a whole, the functions of the depositary government are to be exercised by the Secretary-General.

3. In the period between the adoption of the Convention by the General Assembly on 9 December, 1948, and the opening of the

[1] As to this, see Resolution 368 (IV) adopted at the 266th plenary meeting on 3 December, 1949.

fifth session of the General Assembly, several States signed the Convention on the Prevention and Punishment of the Crime of Genocide or acceded to it subject to certain reservations, while other States not only signed the said Convention but ratified it, or acceded to it, in some cases before the existence of these reservations had been communicated to them. During that period, States which ratified or acceded to the Convention were potential contracting parties, for, as the Convention had not then come into force, they were not, nor could they have been contractually bound by its terms. Among the States which had signed and ratified the Genocide Convention in that period is Israel, whose instrument of ratification was deposited with the Secretary-General on 9 March, 1950. The action of the Secretary-General in regard to the problem posed by these reservations in these, and in similar circumstances, has been described in various documents and articles, including in particular the Annual Report of the Secretary-General to the fifth session of the General Assembly, Doc. A/1287, at p. 122; the Secretary-General's report entitled "Reservations to Multilateral Conventions", Doc. A/1372 (which contains, in pp. 28-40, a valuable memorandum on the subject presented by the United Kingdom), and articles such as Schachter's "The Development of International Law through the Legal Opinions of the United Nations Secretariat", in *British Year Book of International Law*, Vol. 25 (1948), 91, particularly at pp. 122 ff., and Liang's "Notes on Legal Questions concerning the United Nations" in *American Journal of International Law*, Vol. 44 (1950), 100, at p. 117.

4. It is not desired here to comment directly upon this practice as described in the quoted documents and articles. However, it will be noted that the Secretary-General placed the matter upon the agenda of the fifth session of the General Assembly as a general problem which faces him whilst exercising his functions as depositary of conventions which have been adopted or approved by the General Assembly and of the many other multilateral instruments which have been concluded under the auspices of the United Nations. True, he did draw particular attention to the problem because of what was happening in connexion with the Genocide Convention, having regard to that Convention's provisions about its coming into force. To a certain extent the earlier and more important stage of the debate in the Sixth Committee was marked by some confusion between the general aspect and the particular aspect of the Genocide Convention. It is not irrelevant, indeed, to point out that at one stage it was proposed to ask the Court for an advisory opinion couched in more general terms without mentioning any particular convention, but on 17 October, 1950, previous proposals were replaced by a joint draft resolution (A/C.6/L.125), out of which the present text emerged. This, sponsored by thirteen Powers, referred specifically to the Genocide Convention. However, while the discus-

sions were proceeding in the Sixth Committee it was announced that the necessary number of unconditional ratifications or accessions to the Genocide Convention had been deposited and that on 14 October, 1950, the *procès-verbal* had been drawn up in conformity with Article XIII of the Convention. In accordance with its terms the Convention entered into force on 12 January, 1951, upon which date all the potential contracting parties which are enumerated in the said *procès-verbal*, became actual contracting parties [1]. The drawing up of the *procès-verbal* had therefore solved the problem of the coming into force of the Convention, although the problem of the legal consequences arising from the deposit of the instrument of ratification of the Philippines and the instrument of accession of Bulgaria, both of which included reservations which had met with objections from one Member State, still remained to be settled. (A/C.6/SR.222.) It is a matter for regret that the resolution, as finally adopted by the General Assembly, did not sufficiently reflect either the general nature of the problem as originally placed before it or the change in the circumstances surrounding the particular problem of the Genocide Convention after the *procès-verbal* had been drawn up. The fact that the Genocide Convention entered into force on 12 January, 1951, may have the consequence that the problem, at all events in so far as concerns possible and potential contracting parties, has become to a certain extent an abstract one to be considered in relation to the general exercise of functions as depositary of international conventions by the Secretary-General. This observation does not, however, apply to the questions included in group III, which refer to possible contracting parties only.

5. In suggesting in this way that the question before the Court is to a certain extent abstract, it is not intended to cast any doubt upon the jurisdiction of the Court to render an advisory opinion. In its Advisory Opinion of 28 May, 1948, on *Admission of a State to the United Nations (Charter, Art. 4)*: I.C.J. Reports 1948, p. 57, the Court dealt with the contention that a question which must be regarded as a *political* one falls outside the jurisdiction of the Court. In rejecting this contention it was said, at page 61 :

> "The Court cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision. It is not concerned with the motives which may have inspired this request .... It is the duty of the Court to envisage the question submitted to it only in the abstract form which has been given to it."

Again, in its Advisory Opinion of 3 March, 1950, on the *Competence of the Assembly regarding admission to the United Nations*:

[1] The enumeration appears not in the *procès-verbal* itself, but in the covering letter of October 19th, 1950, addressed by the Secretary-General to all States invited to sign or accede to the Convention. See *supra*, pp. 111, 112 and 113, 115, 116 and 117, annexed Doc. 1, 2 and 4.

I.C.J. Reports 1950, p. 4, the Court recalled, at p. 6, both its previous opinion and Article 96 of the Charter and Article 65 of the Statute according to which it may give an opinion on any legal question. Similar considerations can be applied in the present case, even if some of the questions before the Court be regarded as abstract. This aspect is particularly brought to the notice of the Court because of the terms of Article IX of the Genocide Convention itself, which provides :

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

As far as the Government of Israel is concerned, it knows of no dispute—it is certainly party to none—with any other of the contracting parties relating to the interpretation, application or fulfilment of the Genocide Convention. As was said by the representative of Israel during the 224th meeting of the Sixth Committee on 18 October, 1950 :

> "This legal question cannot be solved under Article IX of the Convention, since it is not a dispute between parties, but a legal question concerning those who aspire to become parties as well as those who have already become parties. Therefore Article 37 of the Statute, of which Article IX of the Genocide Convention is nothing but an application, does not come into account."

6. The Resolution of 16 November, 1950, does three things : first, it requests the Court to give an advisory opinion, secondly, it invites the International Law Commission to take certain action, and, thirdly, it gives interim instructions to the Secretary-General to be observed pending the rendering of the advisory opinion by the International Court of Justice, the receipt of a report from the International Law Commission and further action by the General Assembly. The second recital of the resolution : "Considering that certain reservations to the Convention on the Prevention and Punishment of the Crime of Genocide have been objected to by some States", is the basic recital which is of concern to the International Court of Justice. Despite some obscurity in its phrasing, it contains the essence of the questions referred to the Court, namely : are reservations admissible in the case of this Convention ; and if so, what are the consequences if some States object thereto. By "some States" is obviously meant "some States which stand in a certain relationship to the Convention, so that they have the legal right to object to reservations which may be made to it by other States". The precise meaning of this phrase, as well as the general question of the admissibility of reservations, will be discussed more fully later in this statement. On the other hand this recital does not

invite the Court to consider the effect of those "certain reservations" which have already been made. Yet, although this is a subjective matter for the parties or prospective parties, and not an objective matter for the consideration of the Court, the problem as a whole has to be considered "in so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide". This makes it necessary to go beyond the mechanical and ministerial problems inherent in this aspect, and to examine the more fundamental aspect of the application of the rules to the Convention itself, and the consequences thereof. In other words the starting point for the examination is the Convention itself and not this or that reservation that may have been in the past or may be in the future proposed by a State as a condition for its acceptance of the stipulations of the Convention. The opinion of the Court will therefore be of the greatest importance, for it will establish the legal framework within which the subjective element of the parties' will is to operate.

7. The words "ratification" and "accession" appearing in the Resolution also require further precision. Having regard to the terms of Article XIII of the Convention the words express different ideas according to whether the actions they describe are performed before or after the Convention has come into force ; that is to say, according to whether the ratifications or accessions in question are included in the first twenty of such actions or not. Under the scheme of the Convention three categories of States can be envisaged, namely : possible contracting parties, potential contracting parties and actual contracting parties. Possible contracting parties are States which, under the terms of the Convention, are entitled to sign and ratify, or accede to it. Until they ratify or accede to it, their interest in the Convention is inchoate only. Potential contracting parties are those possible contracting parties which actually ratify or accede to the Convention before it has come into force. By so doing they not only take a necessary step to make the Convention binding upon them : they also perform a necessary action to bring the Convention into force in relation to themselves and the other nineteen potential contracting parties which together make up the twenty required to bring the Convention into force at all. Actual contracting parties are those States whose ratifications or accessions are subsisting when the Convention itself is in force. In this statement it is necessary to consider the problems raised by the request for the advisory opinion in relation to all three categories of States.

8. The Convention itself presents three particular characteristics which, as the questions before the Court have to be considered "in so far as concerns the Convention", are of relevance.

9. The first of these characteristics is that the stipulations of the Convention are of three distinct kinds, that is to say, normative,

contractual and ministerial. The normative character of the Convention as a whole is demonstrated by the first recital of the preamble and by the confirmation contained in the first article of the text. According to these :

> "The Contracting Parties,
> Having considered the declaration made by the General Assembly of the United Nations in its Resolution 96 (I) dated 11 December, 1946, that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world [1] ;
>
> . . . . . .
>
> *Article I*
>
> The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish."

Following on this declaration and confirmation the Convention proceeds to define the characteristics of genocide as a crime under international law (Articles II and III), the persons who shall be punished therefor (Article IV), and the competent tribunal to try such acts (Article VI). However, the purpose of the Convention is not merely to establish the legal nature of the crime and the manner of its punishment. As is clearly stated in Article I the contracting parties also undertake to prevent and punish it. The Convention also contains, therefore, contractual stipulations to implement this undertaking. In Article V is found a unilateral

[1] The full text of this Resolution is :

"Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings ; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

"Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

"The punishment of the crime of genocide is a matter of international concern.

"The General Assembly, therefore,

"Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices—whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds—are punishable ;

"Invites the Member States to enact the necessary legislation for the prevention and punishment of this crime ;

"Recommends that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide, and, to this end,

"Requests the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly."

This Resolution was reaffirmed in Resolution 180 (II) adopted by the General Assembly on 21 November, 1947.

obligation imposed upon every contracting party to enact certain necessary legislation, thereby re-enforcing an invitation first made in Resolution 96 (I). Article VII contains a multilateral pledge about extradition, while Article IX specifies contractual stipulations about the settlement of certain disputes between the contracting parties. The ministerial stipulations about the entry into force of the Convention and the duties of the Secretary-General of the United Nations as depositary, as well as the territorial application of the Convention, are contained in Articles X to XIX. The normative character of the Convention as a whole is further seen in the fact that the expression "contracting parties" does not appear in the crucial Articles II, III, IV, VI (first clause) and VII (first sentence).

10. As will be shewn later in this statement, it is believed that the essential legal characteristic of reservations is that they are of a contractual nature. From this it follows that they are especially appropriate to international stipulations of a contractual character. Their aptness in international conventions of a normative and constitutive character is less apparent. True, it can be argued that international legislation rests entirely upon a conventional or contractual basis, and that international law does not have different rules for the different kinds of treaty. It is doubtful, however, if international law to-day adopts so rigid an attitude. It is considered more in harmony with developments over the last fifty years to state that *prima facie* reservations are out of place when proposed in relation to normative and constitutive stipulations. For a State cannot outlaw itself, which is what it would do if it were to proclaim certain declared legal norms to be inapplicable to it. This is, of course, always subject to the express attitude of the other parties, for it lies with them to agree to permit what may be otherwise inherently forbidden. This, indeed, is expressly recognized in the Secretary-General's report (A/1372), particularly in paragraphs 29 to 36, where the requirement of unanimous consent to reservations is forcefully examined. The theory here put forth is vividly illustrated in its application to the Convention on the Prevention and Punishment of the Crime of Genocide. The normative articles of the Convention purport to state and do state international criminal norms. These norms are uniformly binding on all States, whether or not they are parties to the Convention, as much as any other norm of international law, and this is not diminished by the possibility and probability of varying interpretations of these norms. In other words, a State's liability to co-operate in the prevention and punishment of genocide is not necessarily dependent upon whether that State is a party to the Convention, with or without reservations. The mutual undertakings which the contractual stipulations of the Convention establish are concerned only with extradition (Article VII) and the settlement of certain disputes

(Article IX) : the unilateral undertaking refers only to the enactment of certain municipal legislation to give effect to the Convention (Article V). The question accordingly arises : assuming the inadmissibility of reservations to the normative stipulations, are reservations to the contractual stipulations here admissible ? In other words, are the stipulations of the Convention severable one from the other ? Little difficulty is felt in answering this question positively. Article VII of the Convention is, so to speak, a gloss on the many bilateral conventions which regulate the extradition of fugitive criminals. In the almost complete absence of multilateral conventions on this topic, dealing both with its normative and with its contractual aspects, Article VII of the Genocide Convention is a hub through which have been concluded sets of bilateral agreements modifying or interpreting the existing extradition treaties and limiting States' freedom of contract in this regard in the future. A reservation to this article would not affect the obligation of the reserving State to punish the criminal. Its refusal to punish the criminal might give rise to a dispute justiciable under Article IX and its refusal to submit to the jurisdiction of the Court, whether in those or in other circumstances, might under certain conditions affect the international responsibility of the State. Similar considerations are applicable to reservations proposed to the other contractual and ministerial articles of the Convention. In each case the normative rules are left unaffected, but the reservation, if effective, will modify the actual application of the law. But the same result can be reached otherwise than by means of a reservation : for example, a mere refusal by a State to perform its contractual obligations has the same consequence. However, the difference between modifying the application of legal norms by means of an effective reservation, i.e. one to which the other contracting parties agree, and modifying their application by unilateral refusal to observe contractual obligations, is too glaring to require any argument as to the advantages of the former, from the point of view of organized international society. Herein lies the sociological and institutional justification of reservations, for were they not possible doubtless many States would be deterred even from taking upon themselves those restricted obligations deriving from international conventions which they ratify or to which they accede subject to reservation.

11. The second characteristic of the Convention is that it does not indicate or provide any means by which it is possible to identify the "contracting parties", an omission which is to some degree the cause for the present difficulties, and which is particularly relevant in considering the questions contained in group III. True, this characteristic is found in other conventions drawn up under the ægis of the United Nations otherwise than after a diplomatic conference the activities of which have been terminated by a final

act which, in addition to establishing the final text, also specifies the States which participated therein. It may be questioned whether this is, indeed, a desirable technique in treaty drafting, unless there are special circumstances to justify it. For an example of a case in which special circumstances existed, reference can be made to the General Convention on the Privileges and Immunities of the United Nations (*United Nations Treaty Series*, Vol. I, p. 15). That Convention has no contracting parties at all, although "accession" to it is made by deposit of an instrument with the Secretary-General. The difference between that Convention and the Genocide Convention can be explained by the fact that the General Convention on the Privileges and Immunities of the United Nations was designed particularly to implement Article 105 of the Charter and is probably limited in its effect to conferring rights and duties upon the individual Members of the United Nations in their relations to the Organization as a whole (see Clive Parry, "The Treaty-making Power of the United Nations", in *British Year Book of International Law*, Vol. 26 (1949), 108, at p. 143); whereas the Convention on the Prevention and Punishment of the Crime of Genocide, in addition to its normative character, confers mutual rights and duties on its contracting parties, so that the relation of this Convention to the Charter of the United Nations is possibly incidental, even if the conclusion thereof can be related to certain of the purposes of the United Nations as mentioned in Articles 1 and 55 of the Charter, or to the operative parts of the General Assembly's Resolution 96 (I).

12. The problem of ascertaining what States are parties to conventions of the type here being considered arises particularly from the practice which has been adopted by the United Nations. As far as concerns conventions concluded under the auspices of the United Nations, the practice hitherto observed discloses that such conventions are normally open for signature followed by ratification to all Members of the United Nations, including States which become Members of the United Nations after the date of the opening of the Convention to signature ; and that accession to the Convention by non-member States depends upon the extension to them of an invitation by the General Assembly or an organ authorized by it [1].

Does a stipulation such as this make those States to which it refers parties to the Convention for the purpose of consenting to proposed reservations even before they have ratified the Convention ? It is submitted that the answer to this question is in the negative.

[1] See for example : Article XI of the Convention on the Prevention and Punishment of the Crime of Genocide ; the revised Article 43 of the General Act for the Pacific Settlement of International Disputes, Resolution 268 (III) ; Article XVI of the Convention on the International Transmission of News and the Right of Correction, Resolution 277 (III) ; Article 23 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Resolution 317 (IV) ; Article 13 of the Convention on the Declaration of Death of Missing Persons of 6 April, 1950 ; and so on.

Apart from the fact that, having regard to Article 4 of the Charter, the body of Members of the United Nations cannot be regarded as fixed, and apart from the extension of invitations to non-member States it is believed that, prior to ratification or accession, that is prior to the date upon which, to use the terminology here proposed to describe the scheme of the Genocide Convention, a State becomes a potential or actual contracting party, such States have no more than an inchoate interest in the terms of the treaty. By virtue of this inchoate interest these States are entitled to be informed by the depositary government or organization of reservations proposed by other States entitled to become parties to the Convention, for indeed their own intentions as to ratification may be affected thereby. But so long as they themselves have not substantiated their inchoate rights by ratifying the Convention, thereby becoming potential or actual contracting parties, their objection to the proposed reservations does not affect the validity of the reservation. If, however, in due course such States object to the said reservations at a time when by ratification or accession they have become potential or actual contracting parties, then the Convention cannot be regarded as being in force as between the reserving State and the State or States which object to the said reservations. In this connexion there is seen to be no essential difference between the position of a signatory which has not yet ratified, and a State which is entitled to sign or accede but which has not yet done so. Both these types of States are possible contracting parties, and as none of these States is a party to the Convention, no State in either of these categories can affect the coming into force of the Convention by objecting to proposed reservations, or affect the status of States already parties to the Convention when it itself becomes a party thereto. On the other hand, such States are entitled, by objecting to the reservation, to suspend the application of the Convention between themselves and the reserving State, should they subsequently decide to ratify or accede to it.

13. The third characteristic is that the Convention contains no provision whatsoever regarding signature and ratification or accession subject to reservation. That being so, it will be necessary to consider as a general problem the question of the admissibility of reservations in any multilateral convention which is silent on the question of reservations, and then apply the conclusions reached to the Genocide Convention, that is to say to consider the consequences which flow from objections to admissible reservations. In the terms of the request for the advisory opinion the General Assembly seems to have realized the existence of three distinct possibilities in this regard. They are : reservations made on *(a)* ratification ; *(b)* accession ; and *(c)* signature to be followed by ratification. However, having regard to the scheme of the Genocide Convention, as previously explained this requires to be restated as reservations pro-

posed by possible, potential and actual contracting parties, and, as a corollary, objections by possible, potential and actual contracting parties to such reservations. The general conclusions about the admissibility of reservations can be summarized as being :

(a) The Convention itself must not be of a nature to preclude reservations and furthermore it must not explicitly forbid them ; and

(b) Reservations are not normally admissible to stipulations of a normative or constitutive character, but should be limited to the purely contractual undertakings ; and

(c) Advance notification of the proposed reservation should be given in adequate time so that the other contracting parties—in the present context this certainly includes the actual contracting parties and probably the potential contracting parties as well—may have opportunity to object to the said reservation.

As to the legal effect of an admissible reservation, the view expressed by the Secretary-General in A/1372, that :

> "A State may make a reservation when signing, ratifying or acceding to a convention, prior to its entry into force, only with the consent of all States which have ratified or acceded thereto up to the date of entry into force ; and may do so after the date of entry into force only with the consent of all States which have theretofor ratified or acceded."

is in principle correct. One result of this is that the consequence of a State objecting to a proposed reservation is to defer the entry into force of the Convention until either the reservation is withdrawn or the consent given, or the requisite number of States accept the proposed reservation. It is not necessary to expatiate on this point as the Convention entered into force on 12 January, 1951. However, the second result to be considered is the effect of objections to reservations made after the coming into force of the Convention. The ministerial functions to be performed by the depositary government or by the Secretary-General when the United Nations is acting as depositary are consequently concerned with the solicitation of such approvals to reservations as are necessary under this rule, which approvals may be implied, expressed, or tacit.

14. A reservation has been defined in the following terms :

> "La réserve, c'est la déclaration faite par un État partie à un traité portant qu'il entend exclure une disposition de ce traité, en modifier la portée ou lui attribuer un sens déterminé. Plus brièvement, on peut dire que c'est une stipulation dérogatoire à la réglementation générale.... C'est un mode *unilatéral* de limitation des effets du traité, formulé par les États contractants avant son entrée en vigueur." Rousseau, *Principes généraux du Droit international public*, Vol. I (1944), p. 290.

See also Accioly, *Tratado de Direito Internacional Publico*, Vol. 2, p. 400 ; Anzilotti, *Cours de Droit international*, Vol. 1, p. 399 ; Basdevant, "La Conclusion et la Rédaction des Traités et des Instruments diplomatiques autres que les Traités" in *Recueil des Cours*, Vol. 15, 539, at p. 597 ; Bustamante, *Droit international public*, Vol. 3, p. 430 ; Fauchille, *Traité de Droit international public*, Vol. 1, Part 3, p. 312 ; Frangulis, *Théorie et pratique des Traités internationaux*, at p. 71 ; Genet, *Traité de Diplomatie et de Droit diplomatique*, Vol. 3, p. 458 ; Guggenheim, *Lehrbuch des Voelkerrechts*, Vol. 1, p. 76 ; Hackworth, *Digest of International Law*, Vol. 5., p. 101, quoting the Harvard *Draft Convention on the Law of Treaties*, Article 13 ; etc. Special attention is also drawn to the manner in which Hyde puts the matter. In his *International Law*, Vol. 2, p. 1435, he wrote :

> "The practice of States seemingly rejects the conclusion that a reservation must be confined to a proposal or condition that lessens the scope of burdens set forth in a text in relation to the reserving State. There are instances where a reservation has served to modify by enlargement obligations to be borne by other parties or prospective parties in relation to the reserving State."

See also Brierly, *Report on Law of Treaties*, prepared for the International Law Commission (A/CN.4/23, paragraphs 84 ff.). A reservation in this sense is essentially of a contractual nature. It has to be distinguished from the type of stipulation, sometimes found in multilateral conventions, which introduces limitations upon the breadth of basic provisions. Stipulations of this nature are also occasionally denominated "reservations" : cf. *Systematic Survey of Treaties for the Pacific Settlement of International Disputes 1928-1948* (U.N. Publication, Sales No. 1949, V. 3), at p. 23. This nomenclature is, however, misleading, for the essential feature of these limitations is that they form part of the substantive provisions of the convention itself and are therefore not necessarily limited to stipulations of a contractual nature ; whereas we are concerned not with any conditions which form part of the substantive provisions of the Convention itself, and thence binding *ipso facto* on all the contracting parties, but with additional and extraneous conditions imposed or desired to be imposed by one of the contracting parties in connexion with the application to itself of the Convention in question. The reservation is thus unilateral in the sense that it is put forward unilaterally. Its acceptance by other States may transform it into a bilateral or multilateral stipulation.

15. The right to make reservations derives from that one of the attributes of statehood which is summed up in the expression "treaty-making power". "C'est (la) possibilité de .... prendre soi-même des décisions, notamment en matière de relations et de tractations internationales, ou d'un mot, en matière de *treaty-making power*, qui caractérise ce qu'on appelle un État, et un État souve-

rain." From the oral statement by Professor Scelle before the Court in connexion with the advisory opinion on *Admission of a State to the United Nations;* Pleadings, Oral Arguments, Documents, at p. 67. This, no doubt, is the axiomatic starting point for the view expressed in Lauterpacht-Oppenheim, *International Law*, Vol. I (7th Ed.), p. 821, where it is written: "A State in signifying its consent to a treaty may *wish* (italics supplied) not to be bound by a particular provision contained in it." Cf. also Sir Arnold McNair, *The Law of Treaties*, p. 105. Arising from this, as the learned editor of Oppenheim's *International Law* points out, *loc. cit.*, is an "important question of principle":

> "A reservation is, upon analysis, the refusal of an offer and the making of a fresh offer. Therefore in principle it seems necessary that the other party should consent to the reservation either expressly or by implication arising from acquiescence, and practice accords with this view."

See also Anzilotti, *op. cit.*, at p. 400, and Malkin, "Reservations to Multilateral Conventions" in *British Year Book of International Law*, Vol. 7 (1926), p. 141. This contractual theory of the nature of reservation explains and justifies both the operation of the subjective will which enables the reserving State to propose its reservation, and the legal right of the other contracting States to give their consent or to object thereto. As the reservation, if effective, imports changes in the treaty obligations of the various parties it would be redundant to explain why their consent is necessary at all, a matter to which all the writers refer: e.g. Accioly, *loc. cit.;* Bustamante, *op. cit.*, p. 432; Hackworth, *op. cit.*, p. 104; Hudson, "Reservations to Multipartite International Instruments" in *American Journal of International Law*, Vol. 32 (1938), p. 330; Hyde, *op. cit.*, p. 1438; Liang, *op. cit.*, at p. 117; Malkin, *op. cit.*, at p. 141; Rousseau, *op. cit.*, p. 296; Sanders, "Reservations to Multilateral Treaties made in the Act of Ratification or Adherence", *American Journal of International Law*, Vol. 33 (1939), p. 488; Schachter, *op. cit.*, at p. 122; etc. As to the existence of implied consent, and the requirements of time which will lead to the presumption of consent, see in particular Guggenheim, *op. cit.*, at p. 78; Hackworth, *op. cit.*, p. 130, and Rousseau, *op. cit.*, at p. 292. A State cannot be compelled to assume, in whole or in part, binding obligations arising *ex contractu* by which it is not willing to be bound; nor can other States be compelled to accept obligations deriving from unilateral declarations by other States which are, or which intend to be, parties to a given international convention. This proposition is the easiest illustrated by reference to bilateral conventions. Thus, in the arbitration between Great Britain and Costa Rica in the *Tinoco Case* on 18 October, 1923, a reservation to the Special Agreement was made by Costa Rica on ratification. Great Britain expressly accepted the said reservation: I *Reports of*

International Arbitral Awards, 369, at p. 374. The same principle is operative in regard to multilateral conventions, although, as Lauterpacht-Oppenheim points out, *loc. cit.*, p. 822, fn. 1, the "mechanical difficulty" may be greater in the case of multilateral conventions.

16. This contractual character of reservations furthermore explains why it is necessary for the convention expressly to forbid reservations it is intended to exclude all possibility thereof. An example of this is afforded by the unratified Declaration of London concerning the laws of maritime war of 26 February, 1909 (which although in form normative was actually in essence a contractual bargain representing a compromise between the legal expositions of conflicting military interests). Article 65 of this Declaration stipulated: "The provisions of the present Declaration must be treated as a whole and can not be separated." A reservation to such a stipulation is inadmissible not because of any inherent sanctity in this particular type of clause, but because otherwise violence would be done to the principle of effectiveness and the cogent requirement of good faith, which form the basis for the law of treaties. It might be objected that abuse of the right to make reservations would destroy the principle of effectiveness. This may be true: but the non-existence of legal rights, in this case the right to make reservations, cannot be deduced from the abuse thereof, and the problem can only be solved by a law-creating agency, and not by a law-applying agency such as the Court. Although the view here put forward as to the admissibility of reservations is occasionally challenged, it is submitted that the existence of this rule is in fact adequately demonstrated by the practice of States to which many references are made in the doctrinal literature quoted herein.

17. For the same reason, in order that the formulation of a reservation be valid, adequate advance notification of the reservation has to be given. This ensures that the other parties to the convention have the opportunity to consent or object to the proposed reservation. In what might be termed the normal case there will elapse a period of time between the formal ceremony of signature and the coming into force of the convention with a deposit of a predetermined number of instruments of ratification or acts of accession. Indeed, it is becoming increasingly common for the coming into force of the convention to be deferred to a pre-determined date *after* the deposit of the requisite number of instruments of ratification or acts of accession. In the case of the Convention on the Prevention and Punishment of the Crime of Genocide, for example, this date is, as we have seen, ninety days after the deposit of the twentieth instrument of ratification or act of accession. Where the convention itself fixes such period of time, it is submitted that such period as is fixed by the convention constitutes adequate

advance notice, and that the depositary government or organization will properly discharge its ministerial functions in relation to the convention in question if it makes its dispositions for soliciting the approval of the other contracting parties or, before the convention has come into force, the potential contracting parties, dependent upon the period fixed in the convention. On the other hand, this task must not be performed mechanically. Regard must also be had for the efficacy of the means of communication at the disposal of the depositary government or organization. A condition of turbulence, national or international, may disrupt the means of communication. The rule is probably sufficiently flexible to overcome difficulties arising under this head.

18. There exists, however, a patent source of difficulty in cases where the convention itself is open for signature for a long period of time, during the running of which some States might not only sign, but also deposit their instruments of ratification of the convention, or accede to it before other States sign the said convention, thereby also making known their reservations. This is what has happened in regard to the Genocide Convention, for this Convention was open for signature by States Members of the United Nations and other States invited to do so for a period exceeding twelve months, i.e. from its adoption by the General Assembly on 9 December, 1948, until 31 December, 1949, in accordance with Article XI of the Convention. After 1 January, 1950, such States can only accede to the Convention. That being so it is suggested that the requirement of adequate notice operates in these instances in the following way: Where the signing was accompanied with notification of a reservation, other States which deposit their instruments of ratification or acts of accession before the expiration of ninety days from the day of the signing accompanied by reservation are presumed to have completed the formalities of ratification or accession required by their domestic law without knowledge of the reservations. In other words, the depositary government or organization is then under the duty, in the exercise of its ministerial functions, of soliciting the approval of such States, and they have the right to object to the proposed reservations. But where the instrument of ratification or act of accession is deposited after the expiration of the said period, the depositary government or organization will be entitled to presume that the constitutional processes of ratification or accession were operated in the knowledge of the proposed reservation, so that no further ministerial functions in this regard are required. In other words a temporal order of events—reservation followed by ratification—will give rise to the presumption of consent. In this connexion it may be pointed out that no consent is required by any State where a proposed reservation is subsequently withdrawn by the receiving State. When this happens, to use the analysis of Lauterpacht-Oppenheim, the

offer formerly refused is subsequently accepted, so that the fresh offer implied in the proposed reservation lapses. Thus it has been held in an international arbitration that an unconditional ratification, after a reservation formulated at the signing, has the effect of waiving the proposed reservation : German-Portuguese Arbitration of 16 February, 1933, regarding the execution of the German-Portuguese Arbitral Award of 30 June, 1930, in 3 *Reports of International Arbitral Awards* 1371, at pp. 1384/5. The ministerial functions then consist of notifying the withdrawal of the reservation.

19. These remarks make it necessary to mention briefly the question of the times at which a reservation may be properly formulated, because of the influence which the timing has on the problem. The whole object of formulating rules as to timing is to facilitate the solicitation of approval to reservations on the part of the interested States. This, again, is closely related to the essentially contractual nature of reservations. The primordial requirement is that the terms of the reservation should be formally made known before the convention becomes binding upon the State desirous of making the reservation. How this is to be done depends in the ultimate resort upon the terms of the convention itself, and is closely connected with the principle of effectiveness coupled with the requirement of good faith which form the basis of the law relating to treaties generally. The problem is thus simpler where the convention itself provides for a fixed period between the deposit of the instrument of ratification or act of accession and its coming into force in relation to the ratifying or acceding State—as is the case of the Genocide Convention—for this period can be properly utilized by the depositary government or organization to solicit the approval of other interested States to the proposed reservations. Where there is no fixed period such as this, then, it is submitted, the views expressed earlier as to the need for adequate advance notification are applicable. In the light of these general considerations, four specific mutually exclusive possibilities are seen to exist, namely : the reservation may be formulated and notified on one only of the following occasions: *(a)* prior to the signature ; *(b)* at signature ; *(c)* concomitant with the deposit of the instrument of ratification ; *(d)* at accession or adherence. The commonly accepted rule that the absence of protestation is to be taken as acceptance or recognition of a given situation, leads to the conclusion that ratification of a convention or accession thereto by a State acting in the knowledge of reservations proposed by other States as conditions to their becoming parties to the same convention must be taken to imply the consent of the ratifying or acceding States to the terms of the proposed reservation. And on the other hand it follows that States which ratify or accede to international conventions without knowledge of proposed reservations, either because

the formulation thereof may not have reached them when their formalities of ratification or of accession were proceeding or because the said reservations had not been made public before the instrument of ratification or the act of accession was deposited with the depositary government or organization, cannot be presumed to have given their consent to any proposed reservation. In their case it is incumbent upon the depositary government or organization to solicit the approval of each such State, with the corollary that such States have the right to object to such reservations. This illustrates the essential difference between implied consent, which derives from a certain calendarial relation between the formulation of the reservation and the deposit of the instrument of ratification or act of accession, and express consent which is necessary when there exists another calendarial relation, i.e. between the deposit of the instrument of ratification or act of accession and the formulation of the reservation. In other words, consent will be implied if the order of events is : reservation—ratification, and only in those circumstances. Implied consent is not to be confused with tacit consent, which is presumed to have been given when the depositary government or organization, in soliciting the views of the various parties to the Convention, imposes a time-limit within which the replies of such States are requested to be made, and no reply is in fact made within that time-limit.

20. A reservation, admissible under the terms of the Convention made at the appropriate time and in the appropriate form, will be effective when it receives the consent of the other parties to the Convention. This gives rise to two problems. The first is : what States are, for this purpose, considered to be parties. This has been answered above. The second problem is : what is the effect of an objection, that is to say a refusal of consent on the part of a State entitled so to do. Obviously the Convention does not come into force between the reserving State and the State objecting to the reservations. But what has to be considered is not the non-operation of the Convention as between the reserving State and potential or actual contracting parties which object to the proposed reservation. The real problem is whether in such circumstances the reserving State can be regarded as being a party to the Convention at all. This means, before the Convention comes into force : is the Secretary-General, as depositary, obliged to include the ratification or accession subject to ratification among the twenty ratifications or accessions which, under Article XIII of the Convention, are required to bring it into force ; and after the Convention has come into force can such ratifications or accessions be included in the sixteen which are necessary to maintain the Convention in force under Article XV ? It is suggested that these questions have to be answered in the following manner. It has been said that the practice described by the Secretary-General in A/1372 is in prin-

ciple correct, and that one consequence of this is that the effect of a State objecting to a proposed reservation is to defer the entry into force of the Convention until either the reservation is withdrawn, or consent given, or until the requisite number of States accept the proposed reservation. Applying this to the specific circumstances of the Genocide Convention it can be said that, had the reservation been accepted by nineteen States, with the reserving State as the twentieth, the Convention would have entered into force. Similarly, if the number of contracting parties, by denunciation or otherwise, should be reduced to sixteen, of which some are parties subject to reservations and all the remainder have consented to the said reservations, then the Convention would remain in force. But this will not be the case where any of the contracting parties is objecting to the said reservations. In that event the reserving State cannot be included in the enumeration of twenty or sixteen as the case may be.

21. The remarks made in the previous paragraph refer, of course, to objections to reservations when these objections are made by the States which, at the time when the reservations are proposed, are the potential contracting parties if the Convention has not come into force, or the actual contracting parties, if it is in force. Once a State has become a party to the Convention subject to a reservation, by virtue of its reservation having been accepted by the existing potential or actual contracting parties, it remains a party for all time : its status as a party cannot be affected by objection to the reservations on the part of a future contracting party. Once the Convention has entered into force, future contracting parties have to accept it as it is. They are not obliged to accept existing reservations : on the other hand they cannot, by combining with their ratification or accession an objection to already existing reservations, thereby bring about the caducity of the Convention in so far as concerns States parties to it subject to reservations. To hold otherwise would enable subsequent contracting parties to destroy the existing list of contracting parties simply by objecting to existing reservations, a state of affairs hardly conducive to the orderly conduct of international administration, and one not, it is submitted, in accordance with the practice that has pertained hitherto.

22. It is conceded that this solution results in a different effect being accorded to an objection to a reservation dependent upon whether it is made by an existing potential or actual contracting party at the time the reservation is proposed, or whether it is made by a State desirous of becoming an actual contracting party after the reserving State is itself already a contracting party. Short of holding that the effect of objection to a reservation by a State in the first category is only to prevent the application of the Convention as between the reserving State and the State objecting to the

said reservation, it is impossible to avoid this result. In this connexion the following remark can be made: The question of choosing between what is sometimes called the Latin-American system and the League of Nations system is to be solved not by reference to the merits of the two systems considered in the abstract. The answer can only be sought by derivation from the economy of the Convention, for it is the Convention that is being interpreted, and the debate is not one on the merits of the two different legal solutions for the particular problem of reservations. Looking at the matter from the standpoint of the Convention it seems inevitable that the problem can only be solved partly on the lines of the one and partly on the lines of the other system, for it appears clearly that the intention underlying Articles XIII and XV is that the respective enumerations of twenty and sixteen refer to States unconditionally parties to the Convention or, if some States have entered reservations, then to acceptance of the said reservations by all the parties at the relevant date. In considering reservations the following reflexion is put forward: It cannot be imputed to the reserving State that it in fact desired or intended to prevent the Convention from coming into force generally except on its own terms. The reserving State is entitled to have its reservation taken in good faith, unless *mala fides* can be clearly established. Similarly an objection to a reservation by any State entitled to do so has to be taken in good faith. It should not give rise to the imputation that the intention of the State in objecting to a reservation is to prevent generally the application of the Convention to the reserving State, which, indeed, by proposing its reservation does no more than indicate its willingness to be bound by the terms of the Convention upon certain conditions which other States can accept or reject as they will. To hold otherwise would mean creating a new type of "veto" (for want of a better term). The view here put forward would preclude a veto of this type, for it has the consequence that where the Convention is ratified or acceded to by a State subject to a reservation, once the Convention is in force generally, the reserving State is to be regarded as a party to it except in so far as concerns the actual contracting parties as object to the said reservation.

23. Finally, it is necessary to say a few words about the manner in which the objection should be stated. Document A/1372 contains, on pp. 24 ff., the texts of some of the correspondence exchanged between the Secretary-General and certain other States on the subject of certain of the reservations proposed to the Genocide Convention. Two States indicated their view of the consequences of their disagreement with these reservations as being the non-application of the reservations to themselves. The third State stated that it could not regard as valid any ratification of the Convention maintaining such reservations. This correspondence

clearly reflects the influence of the two systems operative in regard to reservations generally. It is suggested that communications of this nature go beyond the statement of objection to the reservations, which is their main purpose, for they indicate the views of the governments concerned as to the legal effects of their objections. However, it is submitted that this is not a matter which can be determined subjectively, for it depends upon various legal rules, the nature and extent of which cannot be defined unilaterally.

24. Having regard to the foregoing considerations, it is possible to suggest the following answers to the questions which have been put to the Court, always on the assumption and to the extent that reservations are admissible as of right to the Genocide Convention :

In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide, in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification :

I. Where the reserving State is being enumerated for the purposes of Article XIII or Article XV of the Convention, it cannot be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others. The expression "parties to the Convention" means the potential or actual contracting parties on the relevant date. For all other purposes, however, the reserving State can in these circumstances be regarded as being a party to the Convention in so far as concerns its relations with such other of the parties to the Convention as do not object to the said reservation.

II. To the extent that the answer to question I may be affirmative, the effect of the reservation as between the reserving State and :

(a) the parties which object to the reservation, is that the Convention does not enter into force ;

(b) those which accept it, is that the Convention enters into force subject to the terms of the accepted reservation.

III. The only States entitled to object to a reservation are those which have signed and ratified the Convention or which have acceded to it. Therefore an objection to a reservation made

(a) by a signatory which has not yet ratified ; or

(b) by a State entitled to sign or acceded which has not yet done so, would have no legal effect as regards the answer to question I.

Hakirya, Israel.

14 January, 1951.

8. WRITTEN STATEMENT OF THE INTERNATIONAL LABOUR ORGANIZATION

MEMORANDUM BY THE INTERNATIONAL LABOUR OFFICE

1. On 16 November, 1950, the General Assembly of the United Nations adopted a Resolution requesting the International Court of Justice to give an advisory opinion on the following questions:

> "In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification:
>
> I. Can the reserving State be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others?
>
> II. If the answer to question I is in the affirmative, what is the effect of the reservation as between the reserving State and:
>
> *(a)* The parties which object to the reservation?
>
> *(b)* Those which accept it?
>
> III. What would be the legal effect as regards the answer to question I if an objection to a reservation is made:
>
> *(a)* By a signatory which has not yet ratified?
>
> *(b)* By a State entitled to sign or accede but which has not yet done so?"

2. On 1 December, 1950, the President of the Court made an Order reciting that the International Labour Organization and the Organization of American States are likely to be able to furnish information on the practice of reservations to multilateral conventions and it is, therefore, advisable to receive such information in so far as this practice might enlighten the Court on the questions submitted to it, which are confined to the Convention on the Prevention and Punishment of the Crime of Genocide, and appointed Saturday, 20 January, 1951, as the time-limit within which States and international organizations notified by the Registrar of the request made by the General Assembly may file written statements with the Court.

3. On 1 December, 1950, the Registrar of the Court communicated the Order of the President of the Court to the Director-General of the International Labour Office by a letter constituting

the special communication provided for in paragraph 2 of Article 66 of the Statute of the Court.

4. Article IX, paragraph 1, of the Agreement between the United Nations and the International Labour Organization, which came into force on 14 December, 1946, in virtue of approval by the General Conference of the International Labour Organization on 2 October, 1946, and by the General Assembly of the United Nations on 14 December, 1946, provides that "the International Labour Organization agrees to furnish any information which may be requested by the International Court of Justice in pursuance of Article 34 of the Statute of the Court". In discharge of this obligation the Director-General of the International Labour Office has prepared the present memorandum in response to the request made by the Court.

5. International labour conventions are adopted and enter into force by a procedure which differs in important respects from the procedure applicable to other international instruments. The special features of this procedure have always been regarded as making international labour conventions intrinsically incapable of being ratified subject to any reservation. The question of the admissibility or inadmissibility of reservations to international labour conventions is not at present before the Court, but the established practice does not appear to have been challenged from any quarter. In these circumstances the question whether a reserving State can, while still maintaining its reservation, be regarded as being a party to a convention in relation to those parties which accept the reservation does not arise in respect of international labour conventions. It is, however, for the Court to consider how far the practice and experience of the International Labour Organization may have any bearing upon the problems which arise in respect of other international conventions in the case of which reservations are considered to be admissible in certain circumstances and in respect of which the questions formulated by the General Assembly in its request for the opinion of the Court may accordingly arise. The practice of the International Labour Organization has, therefore, been summarized as succinctly as possible in the following paragraphs for the information of the Court.

6. International labour conventions are not negotiated by representatives of the potential contracting parties and signed on their behalf. They are adopted by the General Conference of the International Labour Organization, commonly known as the International Labour Conference, which is one of the principal organs of the International Labour Organization.

7. The membership of the International Labour Organization, a certified copy of the Constitution of which, as now in force, is attached hereto as Appendix I, consists of States. The International Labour Conference is composed of four representatives of each of

the Members, of whom two are Government delegates, and the two others are delegates representing respectively the employers and the workpeople of each of the Members (Article 3 (1) of the Constitution of the International Labour Organization). The Members undertake to nominate non-government delegates and advisers chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries (Article 3 (5)). The Permanent Court of International Justice has pointed out that the engagement contained in this paragraph "is not a mere moral obligation" but "is a part of the Treaty and constitutes an obligation by which the Parties to the Treaty are bound to each other". (Permanent Court of International Justice, *Collection of Advisory Opinions*, Series B, No. 1, p. 19.) The credentials of delegates and their advisers are subject to scrutiny by the Conference which may, by two-thirds of the votes cast by the delegates present, refuse to admit any delegate or adviser whom it deems not to have been nominated in accordance with the Constitution (Article 3 (9)). Such a refusal to admit, the Permanent Court of International Justice has pointed out, may be based on any grounds, either of fact or law, which satisfy the Conference that the delegates have not been so nominated. (Permanent Court of International Justice, *Collection of Advisory Opinions*, Series B, No. 1, p. 21.) Every delegate is entitled to vote individually on all matters which are taken into consideration by the Conference (Article 4 (1)). In brief, the Conference is not a meeting of plenipotentiaries but an international pre-legislative organ with a unique composition.

8. The procedure for the adoption of conventions is governed by Article 19 of the Constitution of the Organization and the relevant provisions of the Standing Orders of the Conference. The Constitution as amended in 1946 provides that, when the Conference has decided on the adoption of proposals with regard to an item on the agenda, it will rest with the Conference to determine whether these proposals should take the form: *(a)* of an international convention, or *(b)* of a recommendation to meet circumstances where the subject, or a part of it, dealt with is not considered suitable or appropriate at that time for a convention (Article 19 (1)). In either case a majority of two-thirds of the votes cast by the delegates present is necessary on the final vote for the adoption of the convention or recommendation, as the case may be, by the Conference (Article 19 (2)). The Constitution specifically provides that "in framing any convention or recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization or other special circumstances, make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet

the case of such countries". (Article 19 (3)). It also provides that two copies of the convention or recommendation shall be authenticated by the signatures of the President of the Conference and of the Director-General ; that, of these copies, one shall be deposited in the archives of the International Labour Office and the other with the Secretary-General of the United Nations ; and that the Director-General will communicate a certified copy of the convention or recommendation to each of the Members (Article 19 (4)). Prior to the amendment of the Constitution in 1946, conventions were described at this stage of the procedure (i.e. at the time of and following their adoption until their entry into force) as "draft conventions" and this term will, therefore, be found in many of the older documents. The terminology was changed when the Constitution was amended in 1946 on the ground that the expression "draft convention" was misleading since its normal use in international practice was to describe instruments not yet signed and the "draft conventions", as they were then called, adopted by the International Labour Conference, were the equivalent of instruments already signed by plenipotentiaries but not yet ratified since only ratification by States remained necessary to bring them into force as binding instruments [1].

[1] The reasons for the change of terminology are stated more fully in the following terms in paragraph 52 of the Report of the Conference Delegation on Constitutional Questions on the basis of which it was decided to make the change :

"52. The Delegation also recommends a second formal change in Article 19 which, though it does not involve any issue of principle, is not for that reason without substantial practical importance. The use of the word 'draft' in the term 'draft convention' has frequently led to misunderstanding and has tended to obscure the binding character of the obligation resulting from the ratification of conventions. The matter was discussed by the Committee on the Application of Conventions of the 25th session of the Conference (Geneva, 1939), which summarized the position as follows :

> 'It would appear that in some countries the view is taken that draft conventions, as distinct from conventions, do no more than lay down a principle which ought at some point to take a concrete form in national legislation. The Committee desires to stress the fact that the technical term "draft convention" means a convention adopted by the Conference but not yet ratified by the requisite number of States. It seems necessary to point out that once the requisite number of ratifications is obtained, a labour convention ceases to be a "draft" and becomes a binding international instrument giving rise to precise legal obligations. The Committee accordingly wishes to repeat the observation made on more than one occasion that the ratification of an international labour convention is as solemn and binding as the ratification of any other international treaty, and that ratification thereof imposes a definite obligation upon the ratifying Member State to give effect to the terms of the convention completely and punctually *.'

The Delegation considers it desirable to remove the source of the equivocation by eliminating the word 'draft' from the Constitution. The term 'draft convention' is normally used in international practice to describe instruments which have not been signed ; instruments which have been signed but not yet ratified are not so

* International Labour Conference, 25th session, Geneva, 1939 : *Record of Proceedings*, p. 415.

9. The entry into force of conventions is governed partly by the provisions of the Constitution and partly by the final articles of the individual conventions.

10. Article 19 of the Constitution states as follows the procedure to be followed in respect of conventions adopted by the Conference and the obligations of Members with regard thereto :

"5. In the case of a convention :

(a) the convention will be communicated to all Members for ratification ;

(b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment, and in no case later than eighteen months from the closing of the session of the Conference, bring the convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action ;

(c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the convention before the said competent

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designated but are described as 'conventions' or by some similar title. Now, under the Constitution of the International Labour Organization, the formality of signature by plenipotentiaries is replaced by adoption by the Conference as the act which gives life to the instrument by opening it to ratification by States. A draft convention adopted by the International Labour Conference but not yet ratified is, therefore, the equivalent of a diplomatic convention which has been signed but not yet ratified and not the equivalent of a draft diplomatic convention which has not yet been signed. Only ratification by States remains necessary in order to bring it into force as a binding instrument. The use of the term 'draft' to describe conventions adopted by the International Labour Conference is, therefore, a misnomer which is almost bound to be misleading. It is significant that all 67 of the existing conventions refer to themselves, except in their titles and preambles, as 'conventions' and not as 'draft conventions' in respect of periods both before and after their coming into force. There is no impropriety in this for, as has been pointed out above, the use of terms such as 'convention' to describe instruments not yet in force is well established in diplomatic practice. It is also significant that the Constitution of the Food and Agriculture Organization empowers the F.A.O. to submit conventions to its Members with a view to their acceptance by the appropriate constitutional procedure, that the U.N.E.S.C.O. Constitution gives the U.N.E.S.C.O. Conference a similar power to adopt 'conventions', and that the Charter of the United Nations uses the term 'draft convention' to describe drafts to be submitted by the Economic and Social Council to the Assembly and not to describe instruments which have received the approval of the Assembly and are already open to ratification. The Delegation therefore recommends that, with a view to removing a source of misunderstanding and bringing I.L.O. terminology into conformity with accepted diplomatic usage and the terminology used in recent United Nations instruments, the word 'draft' should be eliminated from the expression 'draft convention' in Articles 19 and 30 of the Constitution of the Organization."

Source : First Report of the Conference Delegation on Constitutional Questions, International Labour Conference, 29th session, Montreal 1946, Report II (1) Constitutional Questions, Part I, Reports of the Conference Delegation on Constitutional Questions, pp. 43-45.

authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them ;

(d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the convention to the Director-General and will take such action as may be necessary to make effective the provisions of such convention ;

(e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such convention."

11. It is clear from the report submitted to the 1919 Peace Conference by its Commission on International Labour Legislation that the purpose of these provisions was to ensure that national legislatures have an opportunity of expressing their opinion on the measures favoured by a two-thirds majority of the International Labour Conference. It has been the general practice of Members of the International Labour Organization to submit conventions adopted by the Conference to legislative bodies in fulfilment of their obligations under this provision of the Constitution, a detailed legal analysis of which by the International Labour Office was submitted to the International Labour Conference at its 26th session (International Labour Conference, 26th session, Philadelphia, 1944, Report I, *Future Policy, Programme and Status of the International Labour Organization*, pp. 169-183, "The Nature of the Competent Authority comtemplated by Article 19 of the Constitution of the International Labour Organization"). The Conference Delegation on Constitutional Questions, considering the matter further on behalf of the Conference during the interval between its 1945 and 1946 sessions when the 1946 amendments to the Constitution were being framed, reported as follows : "The Delegation does not consider it necessary to clarify the obligation imposed by Article 19 (5) of the Constitution in order to leave no doubt that the 'authority or authorities' to which conventions and recommendations must be submitted shall be the national parliament or other competent legislative authority in each country. It does not consider that any doubt in regard to the matter exists and it would see serious disadvantages in modifying the language of so fundamental a provision of the Constitution of the Organization which has given rise to the development of a large body of

national constitutional practice and which, as Members of the Economic and Social Council of the United Nations have pointed out in the course of the deliberations of the Council, represents a great advance on the practice of other international organizations" (First Report of the Conference Delegation on Constitutional Questions, paragraph 49, International Labour Conference, 29th session, Montreal, 1946, Report II (1) Constitutional Questions, Part I, Reports of the Conference Delegation on Constitutional Questions, pp. 42-43).

12. Certain special provisions are applicable to federal States. These are stated as follows in paragraph 7 of Article 19 of the Constitution of the Organization :

> "7. In the case of a federal State, the following provisions shall apply :
>
> *(a)* in respect of conventions and recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States ;
>
> *(b)* in respect of conventions and recommendations which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, provinces, or cantons rather than for federal action, the federal government shall :
>
> (i) make, in accordance with its constitution and the constitutions of the States, provinces or cantons concerned, effective arrangements for the reference of such conventions and recommendations not later than eighteen months from the closing of the session of the Conference to the appropriate federal, State, provincial or cantonal authorities for the enactment of legislation or other action ;
>
> (ii) arrange, subject to the concurrence of the State, provincial or cantonal governments concerned, for periodical consultations between the federal and the State, provincial or cantonal authorities with a view to promoting within the federal State co-ordinated action to give effect to the provisions of such conventions and recommendations ;
>
> (iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such conventions and recommendations before the appropriate federal, State, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them ;
>
> (iv) in respect of each such convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent States, provinces or cantons in regard to the convention, showing the extent to which

effect has been given, or is proposed to be given, to any of the provisions of the convention by legislation, administrative action, collective agreement, or otherwise ;

(v) [*Relates only to recommendations*]"

13. While the procedure for the submission of conventions to national competent authorities and for the communication of ratifications to the Director-General is governed by the provisions of the Constitution, the conditions for the entry into force of each convention are prescribed by the final articles of the convention itself. A collection of the texts of the conventions and recommendations adopted by the International Labour Conference as amended by the Final Articles Revision Convention, 1946, published by the International Labour Office under the title *Conventions and Recommendations 1919-1949*, is attached hereto as Appendix II. The normal form of the relevant final articles currently in use is as follows :

"Article *(a)*. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article *(b)*. (1) This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General.

(2) It shall come into force X months after the date on which the ratifications of Y Members have been registered with the Director-General.

(3) Thereafter, this Convention shall come into force for any Member X months after the date on which its ratification has been registered.

. . . . . .

Article *(f)*. (1) The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organization.

(2) When notifying the Members of the Organization of the registration of the Y ratifications communicated to him the Director-General shall draw the attention of the Organization to the date upon which the Convention will come into force.

Article *(g)*. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles."

In the absence of special circumstances the final articles provide that the convention will come into force 12 months after the date on which the ratifications of two Members have been registered,

but both the period of 12 months and the number of ratifications are sometimes varied and ratification by either all or a prescribed number of certain named States, or of States fulfilling certain conditions such as the possession of a prescribed tonnage of shipping, is sometimes required.

14. It will be observed that the Constitution of the Organization itself provides, in paragraph 3 of Article 19, a method of varying, by the inclusion of appropriate special provisions in a convention at the time of its adoption, the obligations of any State which is unable for any of various reasons to give full effect to the provisions of the convention of general application. A number of conventions contain articles embodying specific modifications of their provisions in respect of named States (Hours of Work (Industry) Convention, 1919, Articles 9, 10, 11, 12 and 13; Night Work (Women) Convention, 1919, Article 5; Minimum Age (Industry) Convention, 1919, Articles 5 and 6; Night Work of Young Persons (Industry) Convention 1919, Articles 5 and 6; Minimum Age (Trimmers and Stokers) Convention, 1921, Article 3 *(c)*; Minimum Age (Non-Industrial Employment) Convention, 1932, Article 9; Night Work (Women) Convention (Revised), 1934, Article 5; Minimum Age (Industry) Convention (Revised), 1937, Articles 6, 7 and 8; Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, Article 9; Social Security (Seafarers) Convention, 1946, Article 1 (2) *(a) (v)*; Seafarers' Pensions Convention, 1946, Article 2 (2) *(a) (v)*; Medical Examination of Young Persons (Industry) Convention, 1946, Article 10; Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946, Article 8; Night Work (Women) Convention (Revised), 1948, Articles 10 and 11; Night Work of Young Persons (Industry) Convention (Revised), 1948, Articles 8 and 9). Some of these Conventions permit the amendment of these articles by a special procedure involving the adoption of an amendment by the International Labour Conference and ratification thereof by the Member or Members concerned (Minimum Age (Industry) Convention (Revised), 1937, Article 9; Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, Article 9; Medical Examination of Young Persons (Industry) Convention, 1946, Article 10; Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946, Article 8; Night Work (Women) Convention (Revised), 1948, Article 12; Night Work of Young Persons (Industry) Convention (Revised), 1948, Article 10).

15. It will also be observed that the procedure provided for in the Constitution in cases in which a convention is applied only in part, is for a Member to report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, "the position of its law and practice in regard to the matters dealt with in the convention, showing the extent to which effect has been given, or is proposed to be given,

to any of the provisions of the convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such convention" (Article 19 (5) *(e)*). This provision may be contrasted with the comparable provision concerning recommendations which refers to "such modifications of" the provisions of the recommendation "as it has been found or may be found necessary to make in adopting or applying them".

16. Ratification of an international labour convention involves an obligation for the Member under the Constitution (Article 19 (5) *(d)*) to "take such action as may be necessary to make effective the provisions of such convention". The individual conventions frequently include provisions specifying in greater detail the action to be taken by Members to ensure their effective application, including provisions concerning inspection, the keeping of records, penalties and similar matters. Many of the conventions leave a wide range of questions to national discretion but provide that the discretion left to each Member shall be exercised after consultation with the organizations of employers and workers concerned (e.g. Hours of Work (Industry) Convention, 1919, Article 6 (2); Safety Provisions (Building) Convention, 1937, Article 2 (2); Employment Service Convention, 1948, Article 5; Night Work of Young Persons (Industry) Convention (Revised), 1948, Articles 2 (3) and 3 (2); Accommodation of Crews Convention (Revised), 1949, Article 1 (5); Labour Clauses (Public Contracts) Convention, Articles 1 (4) and (5); Protection of Wages Convention, 1949, Article 2). Sometimes the discretion left to Members takes the form of a provision permitting certain requirements of the convention to be waived or varied by agreement between the organizations concerned (e.g. Hours of Work (Industry) Convention, 1919, Articles 2 *(b)* and 5). Each of the Members agrees by the Constitution (Article 22) to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the conventions to which it is a party. These reports are to be made in such a form and are to contain such particulars as the Governing Body may request (Article 22). The form of report approved by the Governing Body currently in use always includes a question requesting information concerning observations received from the organizations of employers and workers concerned regarding the practical application of the convention. The Constitution provides that each Member shall communicate to the representative organizations of employers and workpeople recognized for the purpose of the nomination of delegates to the Conference copies of these reports (Article 23 (2)), a summary of which the Director-General is to lay before the next meeting of the Conference (Article 23 (1)). In the event of any representation being made to the International Labour Office by an industrial associa-

tion of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made and may invite that government to make such statement on the subject as it may think fit. (Article 24 of the Constitution.) If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it (Article 25 of the Constitution). The Constitution also provides for a procedure of complaint, which may involve the appointment of a commission of enquiry (Article 26); this procedure may be adopted by the Governing Body, which includes employer and worker members who have the same rights as government members (Article 7 of the Constitution), either of its own motion or on receipt of a complaint from a delegate to the Conference (Article 26 (4) of the Constitution). In certain cases these provisions of the Constitution of the Organization of general application are qualified or supplemented by special arrangements. They are qualified in the case of certain maritime conventions which contain clauses providing that effect may be given to all or certain of their provisions by laws or regulations, collective agreements between shipowners or seafarers, or a combination of the above, and that where effect has been given to a provision of the convention by means of a collective agreement the Member shall not be required to take in respect of such provision the enforcement action provided for in the convention; any observations or suggestions concerning the degree in which such agreements give effect to the provisions of the convention, which may be made by a committee representative of governments and of shipowners' and seafarers' organizations to be set up for examining the measures taken to give effect to the convention, are to be brought to the notice of the organizations of employers and workers who are parties to the collective agreements (Social Security (Seafarers) Convention, 1946, Article 10; Paid Vacations (Seafarers) Convention, 1946, Article 10; Wages, Hours of Work and Manning (Sea) Convention, 1946, Article 21; Paid Vacations (Seafarers) Convention (Revised), 1949, Article 10; Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949, Article 21). The provisions of the Constitution are supplemented in the case of the Freedom of Association Convention, 1948, by the existence of a Fact-Finding and Conciliation Commission on Freedom of Association established by the Governing Body in agreement with the Economic and Social Council of the United Nations to consider allegations made by governments or by trade unions or employers' organizations referred to it by the Governing Body or the Economic and Social Council with the concurrence of the government concerned. It will be observed that while the

ratification of international labour conventions is a matter for Member States, acting through their national competent authorities in accordance with the provisions of the Constitution of the Organization which lay down a procedure different from that applicable to diplomatic instruments, organizations of employers and workers are allotted a definite and important part in both national and international procedures for the application of the conventions as well as in the original adoption of conventions by the International Labour Conference.

17. The purposes which it is sought to achieve by the adoption of international labour conventions are various and the relative importance of different purposes varies appreciably from one case to another. In the *First Report of the Conference Delegation on Constitutional Questions* which reviewed the Constitution on behalf of the Conference during the interval between its 1945 and 1946 sessions these purposes are summarized as follows :

> "44. The obligations resulting from ratified conventions have a number of functions the relative importance of which varies from one case to another. In addition to giving a certain stability to the main outlines of social legislation, thereby strengthening the forces of social progress, and giving a social content to the law of nations which promises a great accession of needed strength to the growing world community, they also fulfil a variety of more immediately tangible and measurable purposes. When ratified and applied, they constitute codes of fair international competition ; they afford protection for workers employed in countries other than their own ; they furnish the necessary legal basis for the international co-ordination of placing arrangements and social services ; they resolve conflicts of laws and conflicts of jurisdiction in regard to the application of social legislation ; they create rights of an international character, such as the pension rights of migrant workers, which could not be effectively established by action by any one country ; they make possible reforms, like the marking of the weight on heavy packages transported by vessels, which it is impossible to make effective without concerted action by a number of countries." (International Labour Conference, 29th session, Montreal, 1946, Report II (1), Constitutional Questions, Part I, Reports of the Conference Delegation on Constitutional Questions, pp. 36-37.)

Most of these purposes are of such character that the acceptance of reservations to ratifications of conventions would gravely prejudice the possibility of attaining them.

18. The foregoing survey of the Constitution and constitutional practice of the International Labour Organization indicates the context in which the question of the admissibility of reservations to international labour conventions has arisen. It has been the consistent view of the International Labour Organization, since its establishment, that reservations are not admissible. This view is based upon and supported by the consistent practice of the

International Labour Organization and by the practice of the League of Nations during the period from 1920-1946 when the League was responsible for the registration of ratifications of international labour conventions. 1,188 ratifications of international labour conventions, distributed over 95 conventions and 60 parties, have been registered over a period of thirty years, and none of these ratifications is subject to a substantive reservation qualifying the terms of the convention. In each case in which a ratification subject to a reservation has been presented for registration, the inadmissibility of reservations to international labour conventions has been drawn to the attention of the government concerned; in each case the government concerned has concurred in the view put forward by the International Labour Office; in certain cases the proposed reservations have subsequently been withdrawn and the convention ratified without reservations; in the other cases the conventions have remained unratified; in no case has a ratification been registreed subject to a substantive reservation.

19. The principle that reservations to ratifications of international labour conventions are not admissible was first formulated by the International Labour Office in 1920, has been repeatedly reaffirmed since that time, and has been generally accepted by the Members of the International Labour Organization.

(a) In 1920 the Polish Government asked the International Labour Office whether it would be possible for it to ratify three international labour conventions (the Unemployment Convention, 1919; the Maternity Protection Convention, 1919, and the Night Work (Women) Convention, 1919) subject to reservations. The Office replied that this was not possible and this view was accepted by the Polish Government which subsequently ratified one of the conventions without a reservation and abstained from ratifying the other two. The correspondence was drawn to the attention of the Members of the Organization in the *Official Bulletin* of the International Labour Office (Volume II, No. 5, p. 18).

(b) In 1921 the Government of India informed the Secretary-General of the League of Nations when ratifying certain conventions that if ratification subject to reservations was permissible it was also prepared to ratify the Minimum Age (Industry) Convention, 1919. The Secretary-General communicated the letter of the Government of India to the International Labour Office and the International Labour Office advised the Government of India, which accepted its view, that ratification subject to reservations was not permissible. This correspondence was drawn to the attention of the Members of the Organization in the *Official Bulletin* of the International Labour Office (Volume IV, pp. 290-297) and was submitted to the International Labour Conference in the Director's Report (International Labour Conference, Third Session,

Geneva, 1921, Official Record, Volume II, pp. 1043-1050). The Government of India's acceptance of this view was confirmed in 1937 when explaining its inability to ratify the Minimum Age (Sea) Convention (Revised), 1936 (International Labour Office, *Official Bulletin*, Vol. XXII, No. 4, p. 199).

(c) In 1928 the Cuban Government communicated to the Secretary-General of the League of Nations instruments of ratification of eight conventions. The instruments for three conventions : the Hours of Work (Industry) Convention, 1919 ; the Weekly Rest (Industry) Convention, 1921, and the Inspection of Emigrants Convention, 1926, contained reservations. In these circumstances the Secretary-General of the League of Nations consulted the Director of the International Labour Office before registering the ratifications. The International Labour Office took the view that the reservations were inadmissible and this view was accepted by the Secretary-General and by the Cuban Government which subsequently ratified the Hours of Work (Industry) Convention, 1919, without reservation, in 1934. The instruments of ratification for the other conventions were not registered.

(d) In 1936 the Peruvian Government submitted to the Peruvian Congress a decree proposing the ratification of certain international labour conventions subject to reservations. The International Labour Office drew the attention of the Peruvian Government to the inadmissibility of reservations. The Peruvian Minister of Foreign Affairs acknowledged the validity of the thesis put forward by the International Labour Office, transmitted the communication received from the Office to Congress, and suggested the withdrawal of the proposed reservations.

The view expressed in these cases by the International Labour Office has met with the general acquiescence of the Members of the Organization. In most cases such acquiescence has been tacit, but in Great Britain it was stated in debate in the House of Commons by the Minister of Labour on 9 May, 1923, and confirmed by his predecessor, that two successive Ministers of Labour had advised the Government against ratification subject to reservations (Parliamentary Debates, *Official Report*, House of Commons, Fifth Series, Vol. 163, columns 2418-2439). The fundamental issue of policy involved was stated by Dr. Macnamara in the following terms "You can ratify and reserve and reserve until there is nothing left" (*ibid.*, column 2439). The official correspondence relating to these various cases exchanged between the governments concerned, the Secretary-General of the League of Nations and the Director of the International Labour Office is reproduced in Appendix III. The main arguments put forward in this correspondence by the International Labour Office, and accepted by the governments concerned, are succinctly stated in the following extract from the

first letter on the subject written by the Office, that to the Polish Government of 10 July, 1920 :

> "First, as regards the general question as to whether a Member of the Organization can ratify with reservations a convention which has been adopted by the International Labour Conference in accordance with Article 405 of the Treaty of Versailles, the Office is of opinion that any such procedure would appear to be contrary to the spirit of the labour part of the Treaty. Article 405 of the Treaty provides that the Conference itself shall consider the modifications required by the special circumstances of any country, and it was undoubtedly the intention of the Treaty that any modifications necessary should be considered by the Conference and dealt with by it in the convention if it thought fit. Moreover, the usual procedure with regard to the ratification of a treaty with reservations is dependent upon the acquiescence of the other contracting parties. Reservations in regard to an ordinary treaty are made at the time of the formal deposit of ratifications and it is open to any of the other contracting parties to say at the time of the exchange of ratifications whether they accept them. In the case of the conventions adopted by an international labour conference there is no exchange of ratifications and therefore no opportunity for other States to express assent or dissent when the ratifications are communicated to the Secretary-General of the League.
>
> Furthermore, the new procedure in the negotiation of labour treaties initiated by the creation of the International Labour Conference brings into the field of negotiation other interested parties than the States concerned, namely, representatives of organizations of employers and of workers. Since these representatives are parties in the negotiation of the convention for which the Conference as a whole is responsible, it would seem that they should also have the opportunity of giving their acquiescence in a reservation and this would appear to be difficult save in the case that the Conference itself should deal with the matter in the manner provided in Article 405 as regards special modifications desired by any particular country."

20. The view that reservations to ratifications of international labour conventions are inadmissible was restated in detail in a memorandum submitted by the Director of the International Labour Office to the Committee of Experts for the Progressive Codification of International Law of the League of Nations on 31 March, 1927. This Memorandum put forward three main arguments : that "the rights which the treaties have conferred on non-governmental interests in regard to the adoption of international labour conventions would be overruled if the consent of governments alone should suffice to modify the substance and detract from the effect of the conventions" ; that the object of the framers of the Constitution, in imposing on the Conference an obligation to give preliminary consideration to the special circumstances of each country, was to prevent States from pleading, after the adoption of a convention, a special situation which had not been submitted

to the Conference's judgment; and that, since the object of the International Labour Organization is to safeguard conditions of labour against the detrimental influence of international competition, international labour conventions must establish a network of mutual obligations among the various States and it is essential that exact reciprocity should be preserved in these obligations. The text of the Memorandum is attached hereto as part of Appendix IV. The Memorandum was examined by the Committee, which, without endorsing all the details of its argument, reported to the Council of the League that the main contention of the Memorandum is entirely accurate and that "it rightly draws attention to the objections to any unilateral reservation or modification which a State might claim to attach to its assent". The relevant passage of the report of the Committee of Experts and an extract from the Resolution adopted by the Council are also attached hereto as parts of Appendix IV. In accordance with the Resolution adopted by the Council, the Report of the Committee of Experts and the Memorandum of the International Labour Office were communicated to all Members of the League of Nations.

21. In 1932, the Governing Body of the International Labour Office considered, as possible alternatives, proposals for the introduction of a procedure for the amendment of conventions and proposals for permitting reservations to conventions approved by a Reservations Committee of government, employer and worker representatives to be appointed by the International Labour Conference (and including *ad hoc* members appointed by the Governing Body for each particular case on the basis of their special technical knowledge of the convention in question) for the purpose of examining the reasonableness and acceptability of the proposed reservations. On the report of its Standing Orders Committee the Governing Body decided to take no immediate action in the matter. The question has not been taken up again by the Governing Body since that time. The relevant passage of the Report of the Standing Orders Committee, as approved by the Governing Body and the document submitted to the Committee by the International Labour Office, are reproduced in Appendix V.

22. The practice followed by the International Labour Organization in regard to reservations is reflected in the practice of the International Labour Office in regard to registration with the Secretary-General of the United Nations of conventions and particulars of ratifications. Article 5 of the Treaty Registration Regulations, adopted by the General Assembly of the United Nations on 14 December, 1946, to give effect to Article 102 of the Charter of the United Nations, specifies that a specialized agency registering a treaty or international agreement under Article 4 of the Regulations shall certify that the text is a true and complete copy thereof and includes all reservations made by the parties thereto. In view

of the inadmissibility of reservations to international labour conventions the necessary certificate has always been given by the International Labour Office in the form of a statement that the ratifications of the conventions are not subject to any reservations instead of in the form of a statement that the text registered includes all reservations made by the parties. An example of the formula used by the International Labour Office for this purpose is reproduced in Appendix VI.

23. A distinction must be drawn between reservations, which have always been regarded as inadmissible, and certain cases in which conventions permit Members to make, when ratifying or shortly thereafter, various types of declaration qualifying the obligations assumed by ratification. Certain conventions contain optional parts (e.g. the Convention concerning Statistics of Wages and Hours of Work, 1938; the Labour Inspection Convention, 1947), or alternative parts (the Fee-Charging Employment Agencies Convention (Revised), 1949), or optional annexes (the Migration for Employment Convention (Revised), 1949) and provide that Members shall make declarations when ratifying indicating the extent of the obligations which they undertake by ratification (Convention concerning Statistics of Wages and Hours of Work, 1938, Article 2; Labour Inspection Convention, 1947, Article 25; Fee-Charging Employment Agencies Convention (Revised), 1949, Article 2; Migration for Employment Convention (Revised), 1949, Article 14). Certain conventions permit substitution by certain countries of a prescribed standard lower than the normal standard laid down by the convention provided that the Member makes an appropriate declaration when ratifying the convention (Medical Examination of Young Persons (Industry) Convention, 1946, Article 9; Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946, Article 9; Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946, Article 7; Night Work of Young Persons (Industry) Convention (Revised), 1948, Article 7). The Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949, contains different rules for near-trade and distant-trade ships in respect of certain matters and requires each Member desiring to take advantage of the special provisions for near-trade ships to notify the geographical limits of operation of near-trade ships by a declaration annexed to its ratification (Article 11 *(a)*). The obligation to apply ratified conventions to non-metropolitan territories is a qualified one under the terms of the Constitution itself which provides (Article 35 (1) and (2)) for the communication to the Director-General of declarations stating the extent to which the Member undertakes that the provisions of the convention will be applied to non-metropolitan territories and giving such particulars as may be prescribed by the convention. The particulars prescribed by the individual conventions include particulars

of the modifications subject to which the convention will be applied to the various non-metropolitan territories. One convention, the Labour Standards (Non-Metropolitan Territories) Convention, 1947, is essentially a procedural device for the purpose of securing a more precise definition by Members of the obligations accepted by them in respect of non-metropolitan territories under other conventions. In some cases a declaration at the time of ratification is not required as a condition of exercising a discretionary power left to Members by the convention, but the Member is only entitled to exercise the discretionary power to the extent indicated in its first annual report on the application of the convention. Thus, certain conventions give the parties a discretion to exempt under-developed areas from their provisions but limit this provision to areas specified in the first annual report on the application of the convention (Safety Provisions (Building) Convention, 1937, Article 5 ; Convention on Statistics of Wages and Hours of Work, 1938, Article 23 ; Medical Examination of Young Persons (Industry) Convention, 1946, Article 8 ; Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946, Article 7 ; Labour Inspection Convention, 1947, Article 29 ; Employment Services Convention, 1948, Article 12 ; Labour Clauses (Public Contracts) Convention, 1949, Article 7 ; Protection of Wages Convention, 1949, Article 17 ; Fee-Charging Employment Agencies Convention (Revised), 1949, Article 15). The Protection of Wages Convention, 1949, permits the exclusion from its application of certain categories of persons subject to particulars of such categories being included in the first annual report (Article 2 (3)). The Migration for Employment Convention (Revised), 1949, specifies that the provisions of a particular article apply to federal States, "in so far as the matters dealt with are regulated by federal law or regulations or are subject to the control of federal administrative authorities" and requires Members taking advantage of this provision to indicate in their annual reports the extent to which the matters in question are regulated by federal law or regulations or are subject to the control of federal administrative authorities (Article 6 (2)). Certain conventions contain provisions permitting Members to vary certain of their requirements in their relations with each other by mutual agreement (e.g. Old-Age Insurance (Industry, etc.) Convention, 1933, Article 13 (2) ; Maintenance of Migrants' Pension Rights Convention, 1935, Article 6). In one case certain requirements of a convention may be varied by the Member subject to certain conditions ; particulars of such variations are to be communicated by the Member to the Director-General of the International Labour Office who is to notify the Members of the Organization (Accommodation of Crews Convention (Revised), 1949, Article 1 (5)).

In all of these cases the qualifications of the obligations assumed by ratification which are permissible and the procedure to be followed by a Member wishing to qualify its obligations are defined

by the convention itself ; they are therefore a part of the terms of the convention as approved by the Conference when adopting the convention and both from a legal and from a practical point of view are in no way comparable to reservations.

24. Apart from these cases in which Members have, in pursuance of the special provisions of particular conventions, or by the provisions of the Constitution itself relating to non-metropolitan territories, embodied in or attached to their instrument of ratification a declaration limiting in some respect the obligations assumed by ratification, there are also three other types of case in which limitations upon, or explanations of, the assent given to a convention must be distinguished from reservations. In certain cases conventions have been ratified conditionally upon ratification by other Members. The distinction between ratification subject to a suspensive condition and ratification subject to a reservation appears to have been generally accepted in international practice. The question whether a convention shall be ratified subject to a condition that the ratification will only take effect when certain other ratifications have been registered is purely a question of policy, and any difficulties which a conditional ratification may create are not of a legal character and will not make impossible the registration of the ratification. In a few cases the documents communicating ratification have been so drafted as to limit geographically the extent of the obligations undertaken, and no question has been raised in regard to the validity or effect of such a limitation. In a few cases Members have, when ratifying, placed on record their understanding of the meaning to be attached to a particular provision of a convention, generally specifying that in so stating their understanding of the position they are not to be regarded as making a reservation ; no question has arisen hitherto in regard to the effect of such understandings. In certain cases of this kind there is clearly no problem. Thus a requirement by a legislative body that the executive shall satisfy itself of certain things, by enquiry from other States or from an international organization or otherwise, before communicating an instrument of ratification, or shall exercise in a certain manner a discretion left to national competent authorities by a convention, are not reservations and will not make it impossible to register the ratification. Particulars of these various types of cases are contained in Appendix VII. They do not qualify the fact that in no case has a ratification been registered subject to a substantive reservation.

25. The foregoing survey of the Constitution and constitutional practice of the International Labour Organization has now made it possible to summarize the grounds on which international labour conventions have been regarded as inherently incapable of ratification subject to a reservation.

(a) The underlying principle, on the basis of which customary international law recognizes that reservations to the ratification of international conventions may be regarded as admissible in certain circumstances, is that such conventions are simply an expression of the will of, and in a sense the exclusive property of, the States which are parties to them, and are subject to modification at any time if the consent of all the States concerned can be obtained. Where this principle is applicable it is natural to regard a reservation which is in effect a modification of the provisions of the treaty in its application to one or more parties, as being admissible if it receives the assent of the other parties. In such cases the question whether a State may become a party to a convention, in relation to a limited number of the parties thereto when other parties object to its reservation, may arise.

(b) The underlying principle on the basis of which a reservation may be regarded as admissible in certain circumstances has no application to international labour conventions ; such conventions are not the exclusive property of the parties thereto but are governed by special rules consisting of the accepted principles of treaty law and practice as qualified by the Constitution of the International Labour Organization, the body of accepted constitutional practice which has developed in the course of years on the basis of this Constitution, and the relevant provisions of the individual conventions.

(c) The special considerations applicable to international labour conventions may be summarized as follows :

(i) they are adopted by a conference with a unique tripartite composition by a special procedure provided for in an international instrument of a constituent character, the Constitution of the International Labour Organization ; and in this respect they are in a position entirely different from all other international instruments ;

(ii) the governing constituent instrument, the Constitution of the International Labour Organization, contemplates the submission of conventions to national competent authorities, normally legislatures, in the form in which they were adopted by the Conference, and provides for ratification when the consent of the competent authority is obtained ;

(iii) the governing constituent instrument, the Constitution of the International Labour Organization, grants to employers' and workers' organizations rights to invoke, and to initiate procedures in connexion with the application of, the provisions of conventions, and gives their representatives an important place in the international organs entrusted with the supervision of such application, and the individual conventions provide for consultation with such organizations in connexion with the application of a

wide range of provisions leaving certain matters to national discretion ; the purpose of all these provisions would be completely frustrated by the acceptance of reservations in regard to which governments alone had been consulted and, in the absence of any special procedure provided for in conventions for examining and deciding upon the acceptability of reservations, the only procedure by which the necessary consent of non-governmental elements could be validly obtained would be that of the adoption by the International Labour Conference of a revising convention incorporating the effect of the reservation ;

(iv) international labour conventions are designed to promote uniformity of conditions among the parties except in so far as the particular convention leaves matters to national discretion on the ground that uniformity is unattainable or undesirable ; the acceptance of reservations is therefore inconsistent with their whole object ;

(v) the governing constituent instrument, the Constitution of the International Labour Organization, provides a procedure for the modification of the provisions of conventions to meet special circumstances, and a wide range of further procedures, adapted to the circumstances of individual cases, are provided for by the terms of the various conventions ; provision has therefore been made for the necessary flexibility by other procedures expressly sanctioned by the Constitution and the Conference ;

(vi) the governing constituent instrument, the Constitution of the International Labour Organization, provides for a system of reports as an alternative to the acceptance of international obligations in cases in which a Member is not in a position to accept the full obligations of a convention.

26. It is for the Court to consider how far the principles which have been followed in respect of international labour conventions have any bearing upon or application to the problems which may arise in respect of conventions adopted or approved by the General Assembly or by organs of other international organizations which may exercise pre-legislative functions similar in general character to those entrusted to the International Labour Conference.

12 January, 1951.

Appendix I

CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANIZATION

A certified copy of the Constitution of the International Labour Organization, as now in force, has been communicated to the Registrar together with the present memorandum.

Appendix II

CONVENTIONS AND RECOMMENDATIONS 1919-1949

A copy of the volume "Conventions and Recommendations 1919-1949" published by the International Labour Office and containing all conventions and recommendations adopted by the International Labour Conference, from 1919 to 1949, has been communicated to the Registrar together with the present memorandum.

Appendix III

OFFICIAL CORRESPONDENCE CONCERNING THE RATIFICATION OF CERTAIN INTERNATIONAL LABOUR CONVENTIONS

A.—Poland

1. LETTER SENT ON 16 JUNE, 1920, BY THE MINISTER OF LABOUR OF POLAND TO THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE

Monsieur le Directeur,

En nous référant à votre circulaire du 26 février dern., nous vous demandons de vouloir bien nous dire si vous considérez comme possible la ratification des projets de conventions adoptés par la Conférence internationale du Travail sous certaines réserves. Le Traité de Versailles ne tranchant pas ce doute, nous vous serions reconnaissants de vouloir bien nous communiquer votre opinion là-dessus, ou bien la demander, le cas échéant, au Conseil d'administration du Bureau.

C'est surtout les projets de conventions concernant le travail des femmes qui présenteraient pour nous certaines difficultés dans leur application. Nous craignons que l'introduction du repos de douze semaines prévu pour les femmes en couches par le projet de convention n'impose à l'industrie et au trésor d'État des difficultés financières trop considérables auxquelles, dans les conditions actuelles, ils seraient hors d'état de faire face. Le projet de loi que le ministère du Travail vient d'élaborer en vue d'unifier la législation actuellement en vigueur sur les

terres polonaises, prévoyait un repos de huit semaines et constituait un certain progrès en comparant avec la législation antérieure. Pour mettre ce projet en accord avec la Convention de Washington, le ministère propose de l'amender de sorte qu'un repos de douze semaines serait introduit par étapes.

L'introduction trop rigoureuse du repos de nuit des femmes se heurtera chez nous pareillement à des difficultés occasionnées par les conditions exceptionnelles de notre situation économique actuelle. Ainsi, à Lodz, notre grand centre textile, l'usine électrique étant hors d'état de fournir le courant à toutes les manufactures pendant la journée, certains établissements sont obligés de travailler et d'employer les femmes pendant la nuit. Notre loi prévoira probablement, en conséquence, qu'un arrêté ministériel peut suspendre temporairement les dispositions contenant l'interdiction absolue du travail de nuit des femmes.

Par conséquent, le ministère du Travail ne pourrait probablement proposer à la Diète de ratifier les Conventions de Washington concernant le travail des femmes que sous réserve que des lois nationales, décrets du Conseil des Ministres ou arrêtés ministériels statueront sur les dérogations à apporter à leurs dispositions. Le Bureau international du Travail estime-t-il que cette manière de procéder ne contient rien de contraire aux dispositions du Traité de Versailles ?

Les projets de loi que vous trouverez ci-joints, vous apporteront, Monsieur le Directeur, des précisions sur la question que nous venons de discuter.

Nous vous demandons ensuite, Monsieur le Directeur, votre avis sur la question de ratification du projet concernant le chômage. Nos conditions ne nous permettent pas de s'obliger d'une manière absolue — comme le demande la convention susmentionnée « seront nommés » — « shall be appointed » — de former auprès des bureaux de placement des comités consultatifs composés de patrons et ouvriers. Notre projet de loi en cette matière prévoit la constitution de comités pareils seulement facultativement. Nous estimons, en outre, que des bureaux de placement gratuit doivent être gratuits pour les travailleurs, mais pourraient très bien prélever une taxe modeste des patrons qui recourent à leurs services. Le Bureau croit-il que, dans ces conditions, nous pourrions ratifier la Convention concernant le chômage, sans réserves ? Ou, si des réserves seraient nécessaires, de quelle manière devraient-elles être formulées ?

Je vous remercie d'avance, Monsieur le Directeur, pour vos renseignements, etc.

Le Ministre,
(Signé) PEPLOWSKI.

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2. REPLY OF THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE TO THE MINISTER OF LABOUR OF POLAND, DATED 10 JULY, 1920

Sir,

I have the honour to acknowledge the receipt of your letter of the 16th June (Ref. No. Dz. Gt. 7021/20), which has been handed to me by M. Sokal, the Representative of the Polish Government on the Governing Body of the International Labour Office, and to thank you for the very full information which you have been so good as to furnish in reply to my letter of the 26th February.

As regards the questions on which you have asked the opinion of the International Labour Office, I must first point out that the Treaty of Versailles does not confer any special authority on this Office to interpret the texts of the conventions adopted by the International Labour Conference nor to give any decision as to the conditions under which a Member of the Organization would be entitled to ratify such conventions.

The Treaty in Article 423 only provides that any question in dispute relating to the interpretation of the labour part of the Treaty or of any subsequent convention concluded by the Members under the terms of that part of the Treaty shall be referred for decision to the Permanent Court of International Justice.

The International Labour Office is, however, entirely at the disposal of the governments of the Members in order to render them every assistance possible as regards such questions and to place at their disposal any information which may be available. It has therefore carefully considered the questions contained in your letter and is glad to communicate to you the following observations :

First, as regards the general question as to whether a Member of the Organization can ratify with reservations a convention which has been adopted by the International Labour Conference in accordance with Article 405 of the Treaty of Versailles, the Office is of opinion that any such procedure would appear to be contrary to the spirit of the labour part of the Treaty. Article 405 of the Treaty provides that the Conference itself shall consider the modifications required by the special circumstances of any country, and it was undoubtedly the intention of the Treaty that any modifications necessary should be considered by the Conference and dealt with by it in the convention if it thought fit. Moreover, the usual procedure with regard to the ratification of a treaty with reservations is dependent upon the acquiescence of the other contracting parties. Reservations in regard to an ordinary treaty are made at the time of the formal deposit of ratifications and it is open to any of the other contracting parties to say at the time of exchange of ratifications whether they accept them. In the case of the conventions adopted by an International Labour Conference, there is no exchange of ratifications and therefore no opportunity for other States to express assent or dissent when the ratifications are communicated to the Secretary-General of the League.

Furthermore, the new procedure in the negotiation of labour treaties initiated by the creation of the International Labour Conference brings into the field of negotiation other interested parties than the States concerned, namely, representatives of organizations of employers and workers. Since these representatives are parties in the negotiation of the conventions for which the Conference as a whole is responsible, it would seem that they should also have the opportunity of giving their acquiescence in a reservation and this would appear to be difficult save in the case that the Conference itself should deal with the matter in the manner provided in Article 405 as regards the special modifications desired by any particular country.

As regards the Convention concerning the employment of women before and after childbirth, the Office is pleased to note that Article 16 of the amended text of the Bill brought forward by the Polish Ministry of Labour is in accordance with the Convention adopted at Washington. Article 26 of the Bill, however, provides that Article 16 shall not come

into operation for a period of three years, and that in the meantime certain transitory measures which are not in conformity with the Washington Convention shall operate.

The situation as regards this Convention would therefore appear to be that Poland would be unable to ratify the Convention until the period of three years has elapsed when Article 16 of the law which is in conformity with the Washington Convention will come into operation.

The obligation of a Member of the International Labour Organization under paragraph 7 of Article 405 of the treaty is to put into effect the provisions of a convention which it has ratified, and it would therefore appear clear that the State should not ratify unless it is able to give effect to this obligation immediately.

As regards the Convention concerning the employment of women during the night, Article 5 of the Bill brought forward by the Polish Ministry of Labour would appear to be in conformity with the Convention. If the power given in the latter part of that article to the Minister of Labour and other competent ministers to reduce the period of rest during the night to 10 hours does not in itself constitute a non-fulfilment of the Convention, the *exercise* of that power after the period of three years provided in Article 2 of the Washington Convention would undoubtedly be a contravention of the Convention. It may presumably be assumed that it is not the intention of the Polish Government to exercise this power otherwise than in conformity with the Convention and therefore it would appear that so far as this article is concerned, the Government might proceed to ratify.

With regard to the special circumstances to which you draw attention as pertaining at Lodz, and the probability that the Polish law will in consequence contain a clause giving power to the competent minister to suspend temporarily the provisions relating to the prohibition of night work for women, such a provision would appear to be in accordance with paragraph *a* of Article 4 of the Washington Convention, provided that the article is so drafted as to restrict these operations to cases of *force majeure* in circumstances which are not of a recurring character.

Finally, as regards the question relating to the Washington Convention concerning unemployment, I find it difficult to understand the obstacle which appears to present itself with regard to the application of Article 2. The terms of the article seem to be sufficiently elastic to allow of the constitution of the committees by alternative methods. It would seem very difficult, however, to admit that the obligation contained in the Convention would be fulfilled if the appointment of such committees were not made obligatory.

Secondly, in connexion with the same article, both the wording and the intention of the text would appear to be perfectly clear as regards the non-payment of fees by all parties who use the employment agencies referred to and any provision to the contrary would not seem to be in conformity with the Convention.

In conclusion, I have to thank you on behalf of the International Labour Office for the very complete and valuable information which you have been good enough to supply in connexion with the consideration which is being given by the Polish Government to the Conventions adopted at Washington, and I venture to express the hope that on further consideration you will be able to make such changes in the

projected legislation as will enable the Government of Poland to ratify the Conventions in question.

I am, etc.

(Signed) ALBERT THOMAS,
Director.

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3. SUMMARY OF THE ABOVE CORRESPONDENCE, AS COMMUNICATED TO THE MEMBERS OF THE ORGANIZATION IN THE "OFFICIAL BULLETIN OF THE INTERNATIONAL LABOUR OFFICE" [1]

* * *

On 26 June, 1924, Poland ratified without reservation the Unemployment Convention, 1919 (Convention No. 2).

B.—India

1. EXTRACT FROM A LETTER SENT BY THE SECRETARY OF STATE FOR INDIA TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS, DATED 12 JULY, 1921

2. EXTRACT FROM THE REPLY OF THE ACTING SECRETARY-GENERAL OF THE LEAGUE OF NATIONS TO THE SECRETARY OF STATE FOR INDIA, DATED 22 JULY, 1921

3. LETTER FROM THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE TO THE SECRETARY OF STATE FOR INDIA, DATED 24 SEPTEMBER, 1921

This correspondence was communicated to the International Labour Conference [2] and to the States Members in the *Official Bulletin* [3]. The Minimum Age (Industry) Convention, 1919 (Convention No. 5), has not been ratified by India.

In 1937, the International Labour Conference adopted the Minimum Age (Industry) Convention (Revised), 1937 (Convention No. 59); this Convention also has not been ratified by India.

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[1] Not reproduced, see *Official Bulletin of the International Labour Office*, Vol. II, 6 October, 1920, No. 5, p. 18.

[2] Not reproduced, see *International Labour Conference*, Third Session, Geneva, 1921, Vol. II, pp. 1043-1050.

[3] *Official Bulletin of the International Labour Office*, Vol. IV, 20 July, 1921, No. 3, pp. 19-23, and 12 October, 1921, No. 15, pp. 4-11.

C.—Cuba

I. LETTER FROM THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS TO THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE, DATED 11 JULY, 1928

Monsieur le Directeur,

J'ai l'honneur de porter à votre connaissance que M. le Sous-Secrétaire d'État aux Affaires étrangères de la République de Cuba m'a transmis, en exécution de l'article 405 du Traité de Versailles et des articles correspondants des autres traités de paix, la ratification formelle, par S. Ex. le Président de la République de Cuba, à la Convention tendant à limiter à 8 heures par jour et à 48 heures par semaine, le nombre des heures de travail dans les établissements industriels, adoptée par la Conférence internationale du Travail à sa première session, Washington, le 29 octobre-29 novembre 1919.

La ratification de cette convention serait, d'après une lettre que j'ai reçue le 25 mai 1928 du secrétaire d'État aux Affaires étrangères de la République de Cuba y insérant une dépêche câblographique qu'il vous avait adressée le même jour et d'après l'instrument de ratification dont copie est jointe à la présente, donnée sous la réserve que l'application de la convention de la part de l'État cubain serait subordonnée aux dispositions législatives actuellement en vigueur. Par conséquent, je vous prie, Monsieur le Directeur, de bien vouloir me faire connaître si possible l'avis du Bureau international du Travail en ce qui concerne l'admissibilité de cette ratification donnée sous réserve.

Je saisis, etc.

Pour le Secrétaire général :
Le Conseiller juridique
du Secrétariat,
(Signé) J. A. BUERO.

* * *

The instrument of ratification was worded as follows :

[*Translation from the Spanish*]

"*Gerardo Machado y Morales, President of the Republic of Cuba*

To all to whom these presents come, greetings :

I hereby give notice: That, at the International Labour Conference held in the City of Washington, United States of America, from 29 October to 29 November, 1919, a Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week was adopted.

That the said Convention, in the English and French languages, was accepted by the representatives of the Republic of Cuba and approved by the Senate of the Nation on 16 May of this year with the reservation that its application by the State of Cuba shall be subject to the provisions of the legislation in force on the matter.

Therefore I hereby declare that I ratify the whole of the said Convention and promise to cause it to be enforced and observed in all its details, subject to the reservation with which it was approved.

In witness whereof, I send these presents signed with my own hand, authenticated with the seal of the Nation and countersigned by the Secretary of State, to be deposited in the archives of the General Secretariat of the League of Nations.

Given in Havana at the Presidential Palace on 30 May, 1928.

. . . . . .

President.

. . . . . .

Secretary for Health and Welfare
and Acting Secretary of State."

* * *

The Director of the International Labour Office received on the same date two other similar letters from the Secretary-General relating to the ratification with reservations by Cuba of the Weekly Rest (Industry) Convention, 1921, and the Inspection of Emigrants Convention, 1926.

The instruments of ratification relating to these two Conventions were expressed in the same terms as the above instrument of ratification.

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2. LETTER FROM THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS, DATED 31 JULY, 1928

Monsieur le Secrétaire général,

Par des lettres nos 3 B/5131/162, 3 B/5132/624 et 3 B/5133/2147 en date du 11 juillet, vous avez bien voulu me transmettre copie des instruments de ratification par S. Exc. le Président de la République de Cuba des Conventions concernant la simplification de l'inspection des émigrants à bord des navires, concernant l'application du repos hebdomadaire dans les établissements industriels et tendant à limiter à 8 heures par jour et à 48 heures par semaine le nombre des heures de travail dans les établissements industriels. Vous avez bien voulu, en même temps, me signaler que, d'après une lettre du 25 mai 1928 qui vous a été adressée par M. le Secrétaire d'État aux Affaires étrangères de la République de Cuba ainsi que d'après le texte même des instruments de ratification, ces trois conventions sont ratifiées « avec la réserve que leur application, de la part de l'État cubain, sera subordonnée aux dispositions de la législation en vigueur en la matière », et vous me demandez de vous faire connaître l'avis du Bureau international du Travail quant à l'admissibilité de cette réserve.

En vous accusant réception de ces communications, dont je vous remercie très vivement, j'ai l'honneur de faire connaître que la réserve inscrite dans les instruments de ratification des trois conventions susmentionnées ne me paraît pas admissible. J'ai déjà eu l'occasion d'exposer,

dans un mémoire que je vous ai adressé à la date du 31 mars 1926 et qui a été communiqué aux Membres du Conseil de la Société des Nations le 20 avril 1927 (document C. 212. 1927. V), les motifs d'ordre juridique pour lesquels la ratification, sous réserves, des conventions internationales du travail ne me semble pas pouvoir être admise. L'opinion exprimée par le Bureau dans ce mémoire a été formellement approuvée par le Comité d'experts pour la codification progressive du droit international dans un rapport adopté par lui le 24 mars 1927 et soumis aux Membres du Conseil le 20 avril 1927 (document C. 211. 1927. V). Je crois donc inutile de revenir sur les arguments qui ont été développés dans ces documents et me bornerai à constater qu'ils paraissent s'appliquer à la réserve formulée par le Gouvernement cubain. En subordonnant l'application des conventions dont il s'agit à l'état de la législation nationale, cette réserve renverse complètement le rapport juridique que doivent établir les conventions : c'est la législation nationale qui doit se modeler sur les dispositions des conventions et non point les dispositions des conventions qui doivent s'adapter à la législation nationale.

Cette doctrine a été rappelée par la Commission chargée par la XIme session de la Conférence internationale du Travail d'examiner le résumé des rapports présentés par les gouvernements en exécution de l'article 408 du Traité de Versailles, dans le passage suivant de son rapport :

> « 1. Les conventions sont des traités internationaux. En vertu des règles générales du droit public international et des dispositions relatives au travail dans les traités de paix, les États qui ratifient sont tenus d'appliquer sans aucune restriction sur tout leur territoire le contenu des conventions, l'article 421 du Traité de Versailles et les articles correspondants des autres traités de paix demeurant réservés.
>
> 2. La conséquence de cette obligation est que la législation nationale des États qui ratifient doit être mise en harmonie avec les conventions et appliquée en fait. »

Les conventions internationales ayant pour objet d'instituer des normes stables qui échappent aux fluctuations et aux mouvements du droit interne, la réserve formulée par le Gouvernement cubain a en réalité pour effet d'annuler totalement l'engagement international qui doit résulter de la ratification et prive cette dernière de toute signification juridique.

Dans ces conditions, les ratifications dont il s'agit ne me semblent pas pouvoir être admises telles quelles et, si vous partagez ma manière de voir à ce sujet, vous jugerez sans doute opportun de surseoir à leur enregistrement. Je me propose d'ailleurs d'attirer l'attention du Gouvernement cubain sur la doctrine qui a été constamment soutenue en cette matière par le Bureau international du Travail dans les cas analogues et, en même temps, de lui demander des précisions sur la portée exacte qu'il attache à la réserve dont il s'agit. Dès que j'aurai reçu une réponse du Gouvernement cubain à ce sujet, je ne manquerai pas de vous en informer.

Veuillez agréer, etc.

(Signé) ALBERT THOMAS.

3. LETTER FROM THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS TO THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE, DATED 23 AUGUST, 1928

Monsieur le Directeur,

J'ai l'honneur de vous accuser réception de la lettre du 31 juillet dernier, n° D/600/2001/16, par laquelle vous avez bien voulu, en réponse aux miennes du 11 du même mois (3B/5131/162, 3B/5132/624, 3B/5133/2147), me faire part du point de vue du Bureau international du Travail en ce qui concerne la ratification, par le Gouvernement de la République de Cuba, des Conventions concernant la simplification de l'inspection des émigrants à bord des navires, l'application du repos hebdomadaire dans les établissements industriels et tendant à limiter à 8 heures par jour et à 48 heures par semaine le nombre des heures de travail dans les établissements industriels, avec la réserve que leur application, de la part de l'État cubain, sera subordonnée aux dispositions de la législation en vigueur sur la matière.

Vous avez bien voulu me faire part de l'avis du Bureau international du Travail au sujet de la ratification des conventions du travail, sous la réserve indiquée se basant sur votre mémoire du 31 mars 1926, communiqué aux Membres du Conseil de la Société des Nations le 20 avril 1927, ainsi que sur la doctrine soutenue par la Commission chargée, par la onzième session de la Conférence internationale du Travail, d'examiner le résumé des rapports présentés par les gouvernements en exécution de l'article 408 du Traité de Versailles, et je tiens à vous faire savoir que l'opinion du Bureau international du Travail à ce sujet concorde entièrement avec celle du Secrétariat.

Dans ces conditions, je me propose d'accuser simplement réception au Gouvernement de la République de Cuba des lettres par lesquelles il voulait bien me notifier la ratification des conventions sus-indiquées et d'attendre la réponse qu'il pourra adresser à votre lettre, avant de prendre une décision en ce qui concerne cette matière.

Veuillez agréer, etc.

Pour le Secrétaire général :
Le Conseiller juridique du Secrétariat,
(Signé) J. A. BUERO.

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4. LETTER FROM THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE TO THE UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS OF CUBA, DATED 3 AUGUST, 1928

Monsieur le Sous-Secrétaire d'État,

J'ai l'honneur de vous accuser réception et de vous remercier très vivement de votre télégramme du 25 mai dernier, ainsi que de votre lettre du même jour le confirmant, par lesquels vous avez bien voulu m'annoncer la ratification par la République de Cuba des six conventions suivantes, adoptées par la Conférence internationale du Travail :

1) Convention concernant l'emploi de la céruse dans la peinture ;
2) Convention fixant l'âge minimum d'admission des jeunes gens au travail en qualité de soutiers et chauffeurs ;

3) Convention concernant l'examen médical obligatoire des enfants et jeunes gens employés à bord des bateaux ;

4) Convention concernant l'application du repos hebdomadaire dans les établissements industriels ;

5) Convention concernant la simplification de l'inspection des émigrants à bord des navires ;

6) Convention tendant à limiter à 8 heures par jour et à 48 heures par semaine le nombre des heures de travail dans les établissements industriels.

Par un télégramme du 31 mai, confirmé par une lettre du 2 juin, vous m'avez en outre annoncé la ratification des Conventions concernant respectivement le contrat d'engagement et le rapatriement des marins.

M. le Secrétaire général de la Société des Nations vient de m'informer qu'il a reçu récemment les instruments de ratification desdites conventions par S. Exc. le Président de la République de Cuba, et qu'il a procédé, le 7 juillet, à l'enregistrement de la ratification de cinq d'entre elles, à savoir des conventions mentionnées sous nos .1, 2 et 3, ainsi que des Conventions concernant le contrat d'engagement et le rapatriement des marins.

M. le Secrétaire général m'a fait connaître, d'autre part, ainsi que vous me l'aviez déjà annoncé, que les Conventions concernant l'application du repos hebdomadaire dans les établissements industriels, concernant la simplification de l'inspection des émigrants à bord des navires et tendant à limiter à 8 heures par jour et à 48 heures par semaine le nombre des heures de travail dans les établissements industriels, étaient ratifiées « avec la réserve que leur application, de la part de l'État cubain, sera subordonnée aux dispositions de la législation en vigueur sur la matière ». Étant donné que, jusqu'à présent, aucune ratification sous réserve d'une convention internationale du travail n'a été enregistrée au Secrétariat de la Société des Nations, conformément à la procédure prévue à l'article 406 du Traité de Versailles, le Secrétaire général m'a demandé, avant de procéder à leur enregistrement, l'avis du Bureau international du Travail quant à l'admissibilité de telles ratifications sous réserve.

Je crois donc utile de vous indiquer brièvement l'opinion du Bureau à ce sujet. Bien que les traités de paix n'aient conféré au Bureau international du Travail aucune autorité spéciale pour donner des avis sur les conditions dans lesquelles un État Membre de l'Organisation peut ratifier les conventions adoptées par la Conférence internationale du Travail, le Bureau ne croit cependant pas devoir s'abstenir d'exprimer son opinion sur des questions qui touchent aux intérêts vitaux de l'Organisation internationale du Travail. C'est ainsi que le Bureau a déjà été amené à exposer son opinion quant à l'admissibilité des ratifications sous réserve, notamment dans des échanges de correspondance avec le Gouvernement polonais en 1920 et avec le Gouvernement de l'Inde en 1921. Or, il a toujours soutenu — et sa thèse a été acceptée par les gouvernements intéressés et n'a soulevé des observations de la part d'aucun autre Membre de l'Organisation — que de telles ratifications ne sont pas admissibles. Il s'est appuyé en particulier sur les arguments suivants :

En son paragraphe 3, l'article 405 du Traité de Versailles stipule qu'en « formant une recommandation ou un projet de convention d'une application générale, la Conférence devra avoir égard aux pays dans

lesquels le climat, le développement incomplet de l'organisation industrielle ou d'autres circonstances particulières rendent les conditions de l'industrie essentiellement différentes, et elle aura à suggérer telles modifications qu'elle considérerait comme pouvant être nécessaires pour répondre aux conditions propres à ces pays ». Il résulte de cette disposition qu'il appartient à la Conférence elle-même d'examiner, avant l'adoption des projets de convention, les modalités qui peuvent être requises pour tenir compte de la situation spéciale de certains pays et d'insérer dans ces projets les modalités qui lui paraissent justifiées par les circonstances. Le texte des projets de convention étant ainsi arrêté *erga omnes* par la Conférence, les États Membres sont tenus de le soumettre « à l'autorité ou aux autorités dans la compétence desquelles rentre la matière en vue de la transformer en loi ou de prendre des mesures d'un autre ordre » (article 405, paragraphe 5) ; si l'autorité ou les autorités compétentes accordent leur consentement à la ratification d'un projet de convention, l'État Membre est tenu en outre : 1) de communiquer « sa ratification formelle au Secrétaire général » et 2) de prendre « telles mesures qui seront nécessaires pour rendre effectives les dispositions de ladite convention » (article 405, paragraphe 7). Ainsi, les États sont libres de donner ou non leur adhésion aux projets de convention, mais s'ils procèdent à la ratification de l'un d'eux, ils ne peuvent altérer la valeur de ses dispositions par des conventions ou des déclarations spéciales. Les dispositions d'un projet de convention forment un tout et, en cas de ratification, doivent être appliquées intégralement et sans réserves.

L'impossibilité d'admettre la ratification sous réserves des conventions internationales du travail se dégage d'ailleurs nettement de toute la procédure nouvelle instituée par la partie XIII du Traité de Versailles pour la négociation et la ratification de ces conventions, procédure qui diffère sur plusieurs points essentiels de la procédure diplomatique traditionnelle.

Il est reconnu que l'admissibilité d'une ratification sous réserves dépend du consentement des autres parties contractantes. Dans la procédure traditionnelle, ce consentement peut être sollicité et donné au moment de l'échange officiel des ratifications. Pour les conventions adoptées par la Conférence internationale du Travail, il n'y a pas d'échange des ratifications ; les ratifications sont communiquées directement et séparément par chaque État au Secrétaire général de la Société des Nations. Dans l'hypothèse d'une ratification sous réserves, les autres parties contractantes n'auraient ainsi pas la possibilité de donner ou de refuser leur consentement à ces réserves. Aucun autre système d'approbation générale des réserves, après la clôture de la session de la Conférence, n'a été prévu par le traité. Il est donc clair que, si les ratifications sous réserves étaient admises, elles pourraient comporter, pour les États qui ont ratifié, une telle multiplicité et diversité d'obligations que la portée véritable des conventions, à savoir l'institution d'engagements strictement réciproques serait annihilée.

De plus, la nouvelle procédure de négociation des conventions du travail établie par la partie XIII fait participer à ces négociations d'autres parties intéressées que les gouvernements : les représentants des organisations d'employeurs et de travailleurs. Du fait que ces représentants participent aux négociations qui incombent à la Conférence tout entière, il semble qu'ils devraient également avoir l'occasion de donner

leur consentement aux réserves qui pourraient être formulées. Cette procédure serait toutefois difficile à établir, à moins que la Conférence examine elle-même, dans les conditions prévues à l'article 405, les modifications spéciales demandées par tel ou tel pays.

Tels sont les arguments qui paraissent prouver de façon concluante que la procédure de ratification avec réserves n'a pas été envisagée par les auteurs de la partie XIII.

Le Bureau international du Travail a eu l'occasion de les exposer, non seulement dans la correspondance à laquelle j'ai fait allusion, mais aussi dans un mémoire qu'il a adressé au Secrétaire général de la Société des Nations en date du 31 mars 1926, et qui a été distribué aux Membres du Conseil, le 20 avril 1927. La thèse défendue dans ce mémoire a été expressément approuvée par le Comité d'experts pour la codification progressive du droit international, dans un rapport adopté par lui le 24 mars 1927 et distribué aux Membres du Conseil, le 20 avril de la même année. Je vous adresse, ci-joint, à titre d'information, un exemplaire de chacun de ces documents.

Pour les motifs indiqués ci-dessus, j'ai donc cru devoir répondre au Secrétaire général de la Société des Nations qu'à première vue, la réserve introduite par le Gouvernement cubain dans les instruments de ratification des trois conventions dont il s'agit ne me paraissait pas admissible. Je lui ai annoncé en même temps que je me mettais directement en rapport avec vous à ce sujet, et que je vous demanderais notamment des éclaircissements quant à la portée exacte de la réserve. Si je la comprends bien, elle signifie que les conventions en question ne seraient appliquées à Cuba que dans celles de leurs dispositions qui ne sont pas contraires à la législation cubaine en vigueur. Il ne vous échappera pas qu'en subordonnant ainsi l'application des conventions à l'état de la législation en vigueur, une telle clause renverserait complètement le rapport juridique que doivent établir les conventions : c'est la législation nationale qui doit se modeler sur les dispositions des conventions et non point les dispositions des conventions qui doivent s'adapter à la législation nationale. Cette doctrine a été rappelée par la Commission chargée par la onzième session de la Conférence internationale du Travail d'examiner le résumé des rapports présentés par les gouvernements en exécution de l'article 408 du Traité de Versailles, dans le passage suivant de son rapport :

> « 1. Les conventions sont des traités internationaux. En vertu des règles générales du droit public international et des dispositions relatives au travail dans les traités de paix, les États qui ratifient sont tenus d'appliquer sans aucune restriction sur tout leur territoire le contenu des conventions, l'article 421 du Traité de Versailles et les articles correspondants des autres traités de paix demeurant réservés.
>
> 2. La conséquence de cette obligation est que la législation nationale des États qui ratifient doit être mise en harmonie avec les conventions et appliquée en fait. »

Les conventions internationales ont pour objet d'instituer des normes stables, soustraites aux fluctuations et aux mouvements du droit interne. Une réserve qui subordonne l'application d'une convention à la volonté du législateur national serait donc inadmissible dans son principe. Elle aurait pour effet d'annuler totalement l'engagement international que

doit comporter la ratification et priverait cette dernière de sa véritable signification juridique.

Je vous serais très vivement obligé de vouloir bien attirer l'attention du Gouvernement cubain sur les considérations qui précèdent et de me communiquer les observations auxquelles elles pourraient donner lieu de sa part, en particulier sur la portée exacte que le Gouvernement cubain attache à la réserve dont il s'agit.

Veuillez agréer, etc.

(Signé) ALBERT THOMAS.

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5. LETTER FROM THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE TO THE SECRETARY FOR AGRICULTURE, COMMERCE AND LABOUR OF CUBA, DATED 3 AUGUST, 1928

Monsieur le Ministre,

Par lettres en date du 25 mai et du 2 juin derniers, M. le Sous-Secrétaire d'État a bien voulu m'annoncer la ratification par S. Exc. le Président de la République de Cuba de huit conventions adoptées par la Conférence internationale du Travail.

M. le Secrétaire général de la Société des Nations m'a fait connaître récemment qu'il a reçu les instruments de ratification de ces huit conventions et il a, en même temps, attiré mon attention sur le fait que trois de ces conventions, à savoir les Conventions concernant l'application du repos hebdomadaire dans les établissements industriels, concernant la simplification de l'inspection des émigrants à bord des navires et tendant à limiter à 8 heures par jour et à 48 heures par semaine le nombre des heures de travail dans les établissements industriels, sont ratifiées « avec la réserve que leur application, de la part de l'État cubain, sera subordonnée aux dispositions de la législation en vigueur sur la matière ».

Étant donné que jusqu'à présent aucune ratification sous réserve d'une convention internationale du travail n'a été enregistrée au Secrétariat de la Société des Nations, conformément à la procédure prévue à l'article 406 du Traité de Versailles, le Secrétaire général m'a demandé, avant de procéder à leur enregistrement, l'avis du Bureau international du Travail quant à l'admissibilité de telles ratifications sous réserves.

J'ai cru devoir indiquer à M. le Sous-Secrétaire d'État, en même temps qu'au Secrétaire général de la Société des Nations, l'opinion du Bureau à ce sujet et j'ai l'honneur de vous faire parvenir ci-joint copie de la communication que j'adresse à M. le Sous-Secrétaire d'État.

Veuillez agréer, etc.

(Signé) ALBERT THOMAS.

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6. LETTER FROM THE UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS OF CUBA TO THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE, DATED 20 FEBRUARY, 1930

[*Translation from the Spanish*]

Sir,

In reply to your kind letter (D.600/2001/16) of 2 January last, I have pleasure in sending you copies of the messages of the President of the Republic to the Senate, submitting for its approval the conventions and recommendations adopted by the International Labour Conference at its 10th and 11th sessions.

I am grateful to you for the attention which you gave to our earlier letter respecting the publication in the table of ratifications in "Industry and Labour" of notes to the effect that the conventions adopted by the sessions of the Labour Conference have been submitted to the appropriate authority. The last table contains such references.

As regards the reservations made by the Senate when approving the Convention concerning the application of the weekly rest in industrial undertakings, the Convention concerning the simplification of the inspection of emigrants on board ship and the Convention limiting the hours of work in industrial undertakings to 8 in the day and 48 in the week, I have to inform you that this Department hopes that the Senate will shortly re-examine the said Conventions and if possible approve them without reservations. Your letter of 3 August, 1928, setting forth the doctrine maintained by the International Labour Office with regard to the ratification of conventions adopted by the Conferences, has been carefully examined by this Department, which is in agreement with its fundamental principles.

I *remain, etc.*

(Signed) MIGUEL ANGEL CAMPA,
Under-Secretary of State.

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On 20 September, 1934, Cuba ratified without reservation the Hours of Work (Industry) Convention, 1919 (Convention No. 1).

D.—Peru

1. DECISION OF THE PERUVIAN GOVERNMENT, DATED 6 MARCH, 1936

[*Translation from the Spanish*]

Having considered the communications of the Peruvian Delegate to the International Labour Conference,

In conformity with the Report of the Special Committee appointed by the Government Decision of 20 November, 1935,

And in accordance with the opinion of the Legal Adviser of the Ministry of External Relations :

IT IS DECIDED :

1. To approve the following twenty-eight conventions adopted by the International Labour Conference in its first ten sessions, 1919-1935 :

Convention limiting the hours of work in industrial undertakings to 8 in the day and 48 in the week (No. 1) ;
Convention concerning unemployment (No. 2) ;
Convention concerning the employment of women before and after childbirth (No. 3) ;
Convention concerning the employment of women during the night (No. 4) ;
Convention fixing the minimum age for admission of children to industrial employment (No. 5) ;
Convention concerning the night work of young persons employed in industry (No. 6) ;
Convention fixing the minimum age for admission of children to employment at sea (No. 7) ;
Convention concerning the age for admission of children to employment in agriculture (No. 10) ;
Convention concerning the rights of association and combination of agricultural workers (No. 11) ;
Convention concerning the use of white lead in painting (No. 13) ;
Convention concerning the application of the weekly rest in industrial undertakings (No. 14) ;
Convention fixing the minimum age for the admission of young persons to employment as trimmers or stokers (No. 15) ;
Convention concerning the compulsory medical examination of children and young persons employed at sea (No. 16) ;
Convention concerning workmen's compensation for accidents (No. 17) ;
Convention concerning workmen's compensation for occupational diseases (No. 18) ;
Convention concerning equality of treatment for national and foreign workers as regards workmen's compensation for accidents (No. 19) ;
Convention concerning sickness insurance for workers in industry and commerce and domestic servants (No. 24) ;
Convention concerning sickness insurance for agricultural workers (No. 25) ;
Convention concerning the regulation of hours of work in commerce and offices (No. 30) ;
Convention concerning compulsory old-age insurance for persons employed in industrial or commercial undertakings, in the liberal professions, and for outworkers and domestic servants (No. 35) ;
Convention concerning compulsory old-age insurance for persons employed in agricultural undertakings (No. 36) ;
Convention concerning compulsory invalidity insurance for persons employed in industrial or commercial undertakings, in the liberal professions, and for outworkers and domestic servants (No. 37) ;
Convention concerning compulsory invalidity insurance for persons employed in agricultural undertakings (No. 38) ;
Convention concerning compulsory widows' and orphans' insurance for persons employed in industrial or commercial undertakings, in the liberal professions, and for outworkers and domestic servants (No. 39) ;

Convention concerning compulsory widows' and orphans' insurance for persons employed in agricultural undertakings (No. 40) ;
Convention concerning the employment of women during the night (Revised 1934) (No. 41) ;
Convention concerning workmen's compensation for occupational diseases (Revised 1934) (No. 42) ;
Convention concerning the employment of women on underground work in mines of all kinds (No. 45).

2. To limit the said approval, by making it subject to the following reservations :

(a) in the case of the Convention on unemployment, to the effect that supervision of unemployment will be carried out by the authority of the State, without establishing advisory committees ;

(b) in the case of the Convention on the employment of women before and after childbirth, to the effect that free attendance by a medical practitioner or midwife will be considered in the Social Insurance Act ;

(c) in the case of the Convention on industrial accidents, to the effect that its application is subject to the modification of Act No. 1378 ;

(d) in the case of the Conventions concerning sickness insurance for persons employed in industry, commerce, domestic service and for agricultural workers ; concerning compulsory old-age insurance for persons employed in industrial and commercial undertakings and in the liberal professions and for outworkers and domestic servants ; concerning compulsory old-age insurance for persons employed in agricultural undertakings ; concerning compulsory invalidity insurance for persons employed in the same undertakings ; concerning compulsory widows' and orphans' insurance for the same employees : to the effect that employees of commercial, agricultural and private undertakings to whom the Peruvian Act applies are not at present covered by the social insurance plan made by the Government and that the latter consider a lump sum death benefit more appropriate for the organization of social insurance in Peru than the pension system ;

(e) in the case of all the conventions approved, to the effect that their application is subject to the making of special laws on all these matters (even if not already legislated on in Peru) or of regulations on matters requiring them.

3. To submit the conventions listed in Article 1 and the reservations given in Article 2 to ratification by Congress.

To be registered, communicated and published.

Signature of the President of the Republic :

CONCHA.

2. LETTER FROM THE ACTING DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE TO THE MINISTER FOR FOREIGN AFFAIRS OF PERU, DATED 15 MAY, 1936

[*Translation from the Spanish*]

Sir,

I have the honour to acknowledge your letter reference 70-B/1 of 14 March, 1936, enclosing the following two documents: (1) the report sent to your Ministry by the Committee charged on 20 November, 1935, with studying the conventions and recommendations adopted by the International Labour Conference; (2) the Government decision of 6 March, 1936, by which the Government of the Republic decided to submit 28 of the said conventions for consideration by the Congress of Peru.

When thanking you for this communication I should like to emphasize the satisfaction which I felt at knowing that the Government of Peru wishes to adhere to certain of the international labour conventions. This initiative has all my sympathy as it corresponds to the aims pursued by the Organization, that is to say, the establishment of fair and human labour conditions in the States which form it, by means of international legislation.

The full application of the conventions by the States Members of the Organization determines the international scope of the conventions because it is clear that the object mentioned cannot be attained if the States derogate from the uniformity aimed at in international legislation by introducing modifications or reservations in the instruments of ratification.

However, I am uncertain as to the scope and aim attributed by the Government of Peru to the reservations to the conventions appearing in the Government Order which you have communicated to me.

If it is the intention of the Government of Peru that such reservations are merely to make a distinction between the parliamentary procedure of ratification of conventions, on the one hand, and the procedure required for bringing the legislation into accordance with the conventions, on the other hand, I should for my part have no observations to make.

But if, on the contrary, it is a question of provisos which the Government intends to incorporate in the instrument of ratification of the conventions mentioned so that certain provisions shall not apply in Peru or shall apply in a different manner, in this case I would respectfully draw your attention to the legal impossibility of making reservations in the ratification of international labour conventions.

The principle which I have just mentioned is based upon the nature of international labour conventions, which differ substantially from traditional diplomatic treaties where ratifications with reservations are legally possible because they are drafted entirely by the representatives of the States, while the conventions to which I have referred are discussed and adopted by a Conference consisting of employers' and workers' representatives in addition to the government representatives and a vote of two-thirds of the members suffices for adoption. This circumstance makes it impossible for States to make reservations, which would only be valid if they were approved by all the parties concerned in the preparation of the convention in question.

In view of the character *sui generis* of the international labour conventions, the Constitution of the Organization considers them as general conventions to be adhered to by the States Members of the Organization. According to paragraph 5 of Article 19 (Article 405 of the Treaty of Versailles), the governments merely undertake to submit the conventions adopted by the Conference to the competent legislative authority within one year (or a maximum of 18 months) reckoned from the closing meeting of the Conference. The States may approve them or reject them, but if they approve them they are bound to apply them in full without any reservations or modifications of the conventions in the instrument of ratification.

The doctrine which I have mentioned is that also held by the Secretariat of the League of Nations, which, as you know, is responsible under paragraph 7 of Article 19 of the Constitution (Article 405 of the Treaty of Versailles) for registering ratifications of international labour conventions; and the said Secretariat has not accepted in previous years any ratifications of conventions by countries such as Cuba and Colombia which have introduced reservations in the ratification. In the case of certain other countries, such as India, which intended to send ratifications with reservations, the governments of the countries decided not to ratify with reservations after having been informed of the principles given above.

You will appreciate that, in giving you the results of the experience of this Office as regards the international labour conventions, I am genuinely desirous that the ratifications of your country should be duly made and that the Republic may be among the countries which have ratified conventions.

I venture to suggest that, in order that your country may not encounter the difficulties arising out of ratifications with reservations, the Government of Peru should at the moment only ratify those conventions for which no reservations would be required.

According to the information at present available in the Office, it appears that the legislation of Peru is in conformity with the following seven conventions at least:

(1) Convention 4—Night Work of Women, or
,, 41—Night Work of Women (Revised);
(2) ,, 45—Underground work of Women;
(3) ,, 6—Night Work of Young Persons in Industry;
(4) ,, 7—Minimum Age for Employment at Sea;
(5) ,, 11—Right of Association in Agriculture;
(6) ,, 14—Weekly Rest in Industry;
(7) ,, 19—Equality of Treatment.

As regards the conventions concerning social insurance, for which the Bill submitted to Congress in November, 1935, appears to me adequate for ratification, I take the liberty of making the following observations:

Convention 3—Maternity Protection. The reservation as to medical attendance is unnecessary if the women covered by the Convention receive such attendance under the Social Insurance Act.

Convention 24—Sickness Insurance (Industry, Commerce and Domestic Work).

Convention 35—Old-age Insurance (Industry, Commerce, Liberal Professions, Outworkers and Domestic Work).

Convention 37—Invalidity Insurance (Industry, etc.).

As soon as the Social Insurance Bill has been adopted there will be no difficulty provided that (1) the salaried employees and other persons covered by Act No. 4916 participate in a special scheme equivalent to that provided for in the Conventions, and (2) that workers of foreign nationality are admitted to insurance under the same conditions as nationals.

Convention 25—Sickness Insurance (Agriculture).

Convention 36—Old-age Insurance (Agriculture).

Convention 38—Invalidity Insurance (Agriculture).

As soon as the Social Insurance Bill has been adopted there will be no difficulty provided that no category of persons employed in agriculture is excluded from social insurance, subject naturally to the exceptions provided for in Article 2 of the Conventions.

As regards the conventions not already mentioned above, I take the liberty of referring to communication No. 9 of 7 February, 1936, in which the Minister of Health, Labour and Social Welfare expressed the desire to bring about the simultaneous ratification of the conventions and the reform of the implementing legislation, and added that Bills were being prepared for the complete application of the 28 draft conventions for which immediate ratification had been proposed by the Committee charged with examining them.

I was particularly pleased to learn from your letter that the Bills required for the application of the conventions for which ratification has been sought were already under preparation, since I have become aware that the present legislation in your country is not in complete conformity with certain of the conventions.

I sincerely hope that the preparation of the said Bills may be soon completed and I should be grateful if you would inform me of the progress made in this respect.

The Office, for its part, is studying the position of Peru as regards the conventions not mentioned in your letter, and this will form the subject of a subsequent communication.

I have, etc.

(Signed) E. J. PHELAN.

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3. REPLY FROM THE MINISTER FOR EXTERNAL RELATIONS OF PERU, DATED 8 JULY, 1936

[*Translation from the Spanish*]

Sir,

I have pleasure in acknowledging your communication of 15 May last, which I have read with the attention which it deserves.

The sound observations which you were kind enough to make as to the inapplicability of reservations in labour conventions and the approval of the Compulsory Social Insurance Act have persuaded me to withdraw

the reservations which the Government had proposed when submitting 28 of the said conventions for ratification by the Constituent Congress.

I have pleasure in enclosing a copy of the note which I have sent in the matter to the Secretaries of Congress.

I regret that our Legislative Body did not succeed in reaching a decision on the conventions submitted before suspending its meetings.

I have, etc.

(Signed) ALBERTO ULLOA.

* * *

The note, dated 5 June, 1936, sent by the Minister for External Relations of Peru to the Secretaries of the Peruvian Congress, mentioned in the above letter, is as follows :

[*Translation from the Spanish*]

"To the Secretaries of the Constituent Congress.

I have pleasure in sending you a copy of a note from the Director of Labour which I have just received in this office, giving the reasons for withdrawing the reservations proposed in respect of certain of the 28 conventions adopted by the International Labour Conference which are awaiting legislative ratification.

As the said Conference is at present sitting in Geneva and as Peru appears, to the detriment of its prestige, as one of the rare countries which have not ratified these conventions, I take the liberty of requesting the Congress, through your intermediary, for the earliest approval of these 28 conventions which involve no substantial modification of our current legislation on conditions of employment."

* * *

The note from the Director of Labour, mentioned in the preceding note, is as follows :

[*Translation from the Spanish*]

"To the Secretary-General of the Ministry of External Relations.

In view of the approval by the Constituent Congress of the Bill authorizing the Executive to carry out compulsory social insurance and of the preparation by my Department of provisions for establishing public employment agencies with the assistance of advisory committees of employers and workers, it is unnecessary to make reservations when approving the draft conventions of the International Labour Conference, mentioned in the Government Decision of 6 May last, issued by your Ministry.

On the other hand, the said reservations should, in view of their character, be regarded as indications of an internal character, towards the modification or supplementing of the relevant text of the national legislation in order to ensure due compliance with the conventions, without being incorporated in the actual decision of approval.

In view of the foregoing, this Directorate suggests to your Department that the reservations should be suppressed, not merely because they are

unnecessary (as explained above) but also because they are in reality equivalent to a private condition or requirement.

[Seal of the Directorate of Labour and Social Welfare.]

(Signed) REBAGLIATI,
Director of Labour and Social Welfare."

* * *

As regards the various conventions ratified by Peru, no reservations have been made.

Appendix IV

MEMORANDUM SUBMITTED BY THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE TO THE COMMITTEE OF EXPERTS FOR THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW AND EXTRACT FROM THE REPORT SUBMITTED BY THE COMMITTEE TO THE COUNCIL OF THE LEAGUE OF NATIONS, 1927

A

TEXT OF THE MEMORANDUM SUBMITTED BY THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE TO THE COMMITTEE OF EXPERTS FOR THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW [1]

B

EXTRACT FROM THE REPORT BY THE COMMITTEE OF EXPERTS FOR THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW CONCERNING THE ADMISSIBILITY OF RESERVATIONS TO GENERAL CONVENTIONS, SUBMITTED TO THE COUNCIL OF THE LEAGUE OF NATIONS ON JUNE 15th, 1927 [2]

C

EXTRACT FROM THE RESOLUTION ADOPTED BY THE COUNCIL OF THE LEAGUE OF NATIONS ON JUNE 17th, 1927 [3]

The Council;

Takes note of the report and directs it to be circulated to the Members of the League; ....

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[1] Not reproduced, see League of Nations Document C.212.1927.V; reproduced in *League of Nations, Official Journal*, VIIIth Year, 1927, pp. 882-884.

[2] Not reproduced, see League of Nations Document C.211.1927.V; reproduced in *League of Nations, Official Journal*, VIIIth Year, 1927, pp. 880-882.

[3] *League of Nations, Official Journal*, VIIIth Year, 1927, p. 800.

Appendix V

EXTRACT FROM THE REPORT SUBMITTED TO THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE, AT ITS 60TH SESSION (MADRID—OCTOBER 1932) BY ITS STANDING ORDERS COMMITTEE AND APPROVED BY THE GOVERNING BODY

AND

DOCUMENT SUBMITTED BY THE INTERNATIONAL LABOUR OFFICE TO THE COMMITTEE

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1. EXTRACT FROM THE REPORT OF THE STANDING ORDERS COMMITTEE [1]

.... (3) *Institution of a Procedure for proposing Amendments to Conventions*

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2. DOCUMENT SUBMITTED BY THE INTERNATIONAL LABOUR OFFICE TO THE STANDING ORDERS COMMITTEE [2]

Institution of a Procedure for proposing Amendments to Conventions

At its fifty-sixth session the Governing Body decided to request its Standing Orders Committee to consider the possibility of instituting a procedure for proposing amendments to conventions. This decision was taken in accordance with a suggestion made in a note submitted by the Office which stated that the difficulties which had then arisen in connexion with the ratification of the Convention concerning the protection against accidents of workers employed in loading or unloading ships had shown once again the desirability of instituting a procedure whereby the difficulties of application to which the provisions of conventions occasionally give rise could be overcome. In the same note the Governing Body was reminded that M. de Michelis had suggested at its previous session a reconsideration of the proposal which he made in 1923 that Part XIII be amended so as to authorize Members whose legislation, while not in exact conformity with the requirements of a convention, is almost identical therewith, to deposit a conditional ratification with the Secretary-General, the Conference at its session next following being called upon to decide, on receipt of a report from a committee appointed to examine the matter, whether such a conditional ratification can be accepted as satisfactory. The Governing Body was also informed at the same time that the Office had received from Dr. A. D. McNair, Reader in Public International Law in the University of Cambridge and a member of the Committee on Article 408, a memorandum suggesting the

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[1] Not reproduced, see Minutes of the 60th session of the Governing Body of the International Labour Office, Madrid, October 1932, pp. 175-176.

[2] International Labour Office Document C.R.8.1932.

institution of a procedure which would enable Members of the Organization to make reservations on points of detail when ratifying conventions.

Dr. McNair's suggestion is summarized in the two concluding paragraphs of his memorandum as follows:

> "7. To put my suggestion into concrete form, it is this—that every convention, and, upon its periodical revision, every revised convention, shall contain a clause running somewhat as follows:
>
> 'In order to obviate difficulties in the way of ratification arising from points of minor discrepancy between the text of this convention and the text of national laws or decrees in existence or to be passed to give effect to this convention each Member may submit to the Reservations Committee of the Conference the text of any reservation which it may desire to make. The Reservations Committee shall take such proposed reservations into consideration, and if, acting by a majority of not less than two-thirds, they are of opinion that the reservation is reasonable having regard to the legal system and other circumstances prevailing in the country of the Member proposing it and can be permitted without endangering the uniformity of the application of this convention, they shall notify their assent to the Member. Thereupon a ratification to which such reservation is attached shall become effective unless and until it shall be disallowed by the General Conference of the Organization at the session next ensuing.'
>
> 8. Further, it would be necessary for the Conference to constitute a Reservations Committee on some such basis as the following:
>
> 'The Reservations Committee shall be a standing committee of the Conference, consisting of six members, of whom four shall be permanent members (two being government delegates, one other being a delegate representing employers, and one other being a delegate representing workers) and two shall be non permanent and appointed *ad hoc* by the Governing Body and having special technical knowledge with reference to each convention.' "

It will be remembered that the same problem was discussed from another angle in the years 1922-1924 when the Conference discussed the possibility of the institution of a procedure for the amendment of conventions.

The Office has now made a study of both the proposals referred to the Standing Orders Committee in the light of the discussions at the Conference during these years, and has reached the conclusions set forth below.

* * *

The Office would prefer a procedure permitting the amendment of conventions to a procedure permitting ratification with reservations. It acknowledges that in many respects the distinction between the two is formal rather than substantial and that the effective result is the same if some States are allowed to accept a convention subject to the exclusion of a particular provision as if the convention is amended to exempt them from any obligation to comply with that provision, but it believes that despite this general similarity of result a procedure of amendment would

have certain advantages over a procedure permitting reservations. There may be cases in which a State desires, as a condition of its ratification, to have some provision of a convention made more or less precise, a result which could not always be secured to its satisfaction by permitting it to make a reservation stating its views of the effect of the provision in question; while in all cases it will conduce to clarity if the conditions on which Members are permitted to accept conventions are inserted in the texts of the conventions and do not take the form of reservations the exact effect of which on the obligations of other Members towards the Member making the reservations may be open to question. For these reasons the Office does not feel in a position to recommend the adoption of either M. de Michelis' proposal or the suggestion of Dr. McNair.

Examination of the alternative of a procedure permitting the amendment of conventions at once confronts one with a serious dilemma—a dilemma which, be it noted, presents itself in much the same form if one examines in detail the possibility of introducing a procedure permitting reservations. It would be possible to include in future conventions an article providing for the amendment, by some procedure defined therein, of certain of their provisions restrictively enumerated. Such an article would almost certainly fail to achieve the desired result, for it will often be impossible to foresee when conventions are drafted which provisions may require amendments. Alternatively, there could be included an article permitting the amendment by some stated procedure of any provision of the convention in which it appears. The effect of such an article would largely depend on the procedure for which it provided. If the conditions to be satisfied for the adoption of an amendment were exacting, the practical utility of such an article would be small. If these conditions were not particularly exacting—if, for instance, the absence of any objection from any or a given number of the Members of the Organization or from representatives of the employers' and workers' groups were taken as equivalent to approval of a proposed amendment—there would be some danger of the content of conventions being whittled away by successive amendments.

On these grounds the Office considers that the Standing Orders Committee would be well advised to postpone recommending the adoption of any general procedure of amendment intended for application to all conventions. When the desirability of instituting a procedure of amendment was referred to it for consideration the procedure of revision had not been put to the test of experiment. Now that the Dockers' Convention has been revised and that there is every reason to look upon its revision as successful and as likely to facilitate ratification the problem would appear to be of less urgency, and it may be desirable to await further experience of the procedure of revision before making any attempt to develop a procedure of amendment. The desirability of instituting a procedure of amendment can always be raised in any particular cases in which the subject-matter of a proposed convention makes the inclusion in it of some provision for amendment specially desirable and at the same time suggests a technique of amendment appropriate to that subject-matter. If the Standing Orders Committee shares this view no immediate action on its part will be necessary.

Appendix VI

COMMUNICATIONS FROM THE INTERNATIONAL LABOUR OFFICE TO THE SECRETARY-GENERAL OF THE UNITED NATIONS CONCERNING THE REGISTRATION OF INTERNATIONAL LABOUR CONVENTIONS

The following communications from the International Labour Office to the Secretary-General of the United Nations illustrate the form in which such communications specify that ratifications received are not subject to reservations.

LETTER FROM THE LEGAL ADVISER OF THE INTERNATIONAL LABOUR OFFICE TO THE SECRETARY-GENERAL OF THE UNITED NATIONS DATED 10 AUGUST, 1949, COMMUNICATING FOR DEPOSIT AND REGISTRATION THE TEXT OF THE MAINTENANCE OF MIGRANTS' PENSION RIGHTS CONVENTION, 1935

Monsieur le Secrétaire général,

Conformément aux dispositions de l'article 102 de la Charte des Nations Unies, des paragraphes 2 de l'article 4, et 2 de l'article 5 du Règlement destiné à mettre en application l'article 102 de la Charte des Nations Unies, de l'article 20 de la Constitution de l'Organisation internationale du Travail et des paragraphes 1 et 2 du mémorandum d'accord relatif à la procédure à suivre pour le dépôt et l'enregistrement à l'Organisation des Nations Unies des conventions internationales du travail et de certains autres instruments adoptés par la Conférence internationale du Travail, j'ai l'honneur de vous adresser ci-joints, aux fins de dépôt et d'enregistrement, l'un des deux exemplaires originaux du texte officiel de la Convention sur la conservation des droits à pension des migrants, 1935, qui fut adoptée par la Conférence internationale du Travail au cours de sa 19me session (Genève, juin 1935), telle qu'elle a été modifiée par la Convention portant revision des articles finals, 1946, ainsi que trois copies certifiées conformes de ladite convention.

Cette convention est entrée en vigueur conformément à la procédure définie en son article 24 qui est rédigé comme suit :

> « 1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général.
>
> 2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.
>
> 3. Par la suite, cette convention entrera en vigueur pour chaque Membre douze mois après la date où sa ratification aura été enregistrée. »

Conformément à ces dispositions, j'ai l'honneur de vous informer que les ratifications requises ayant été enregistrées, la Convention sur la conservation des droits à pension des migrants, 1935, est entrée en vigueur le 10 août 1938, soit douze mois après la date à laquelle a été enregistrée par le Secrétaire général de la Société des Nations la seconde ratification

de la convention, celle de la Hongrie, la première ratification, celle de l'Espagne, ayant été enregistrée par le Secrétaire général à la date du 8 juillet 1937.

Veuillez trouver ci-jointe une déclaration certifiée indiquant les États ayant communiqué leur ratification formelle de la convention en question, ainsi que les dates auxquelles ces communications ont été enregistrées. Ces indications comprennent les informations requises par le paragraphe 2 de l'article 5 du Règlement destiné à mettre en application l'article 102 de la Charte des Nations Unies. Les ratifications de ladite convention ne comportent aucune réserve.

Dans la liste des Membres ayant ratifié cette convention qui est contenue dans la déclaration certifiée ci-jointe, le nom des Membres qui sont parties à la Convention portant revision des articles finals, 1946, entrée en vigueur le 28 mai 1947, est précédé d'un astérisque.

Conformément aux dispositions de la Convention portant revision des articles finals, 1946, toute ratification ultérieure de la Convention sur la conservation des droits à pension des migrants, 1935, vous sera notifiée dès sa réception par le Bureau international du Travail.

Veuillez agréer, etc.

Pour le Directeur général :
(Signé) C. W. JENKS,
Conseiller juridique.

* * *

The certified statement attached to this letter reads as follows :

"Déclaration certifiée

Il est certifié par la présente déclaration que la Convention sur la conservation des droits à pension des migrants, 1935, qui a été adoptée par la Conférence internationale du Travail le 22 juin 1935, au cours de sa 19me session, et qui est entrée en vigueur le 10 août 1938, a fait l'objet, à ce jour, des ratifications des États dont la liste suit, et que ces ratifications ont été enregistrées aux dates indiquées ci-dessous[1] :

Pays	*Date d'enregistrement de la ratification*
Espagne	8. 7. 1937
Hongrie	10. 8. 1937
* Pays-Bas	6. 10. 1938
* Pologne	21. 3. 1938
Yougoslavie	4. 1. 1946

A Genève, le 10 août, 1949.

Pour le Directeur général :
(Signé) C. W. JENKS,
Conseiller juridique."

[1] Le nom des Membres qui sont parties à la Convention portant revision des articles finals, 1946, est précédé d'un astérisque.

LETTER FROM THE LEGAL ADVISER OF THE INTERNATIONAL LABOUR OFFICE TO THE SECRETARY-GENERAL OF THE UNITED NATIONS DATED 27 JUNE, 1950, COMMUNICATING FOR REGISTRATION A CERTIFIED STATEMENT RELATING TO A RATIFICATION SUBSEQUENT TO THE COMING INTO FORCE OF THE MAINTENANCE OF MIGRANTS' PENSION RIGHTS CONVENTION, 1935

Monsieur le Secrétaire général,

Comme suite à ma lettre du 10 août 1949 (réf. D. 600/2000/48), par laquelle je vous adressais, aux fins de dépôt et d'enregistrement, le texte de la Convention sur la conservation des droits à pension des migrants, 1935, telle qu'elle a été modifiée par la Convention portant revision des articles finals, 1946, j'ai l'honneur de vous communiquer, également aux fins d'enregistrement, la déclaration certifiée ci-jointe relative à la ratification de ladite convention par la Tchécoslovaquie.

Cette ratification ne comporte aucune réserve.

Veuillez agréer, etc.

Pour le Directeur général :
(Signé) C. W. JENKS,
Conseiller juridique.

* * *

The certified statement attached to this letter reads as follows :

"*Déclaration certifiée*

Il est certifié par la présente déclaration que la Convention sur la conservation des droits à pension des migrants, 1935, adoptée par la Conférence internationale du Travail le 22 juin 1935 au cours de sa 19me session, entrée en vigueur le 10 août 1938, et enregistrée par le Secrétaire général des Nations Unies le 15 septembre 1949, a été ratifiée par la suite par la Tchécoslovaquie et que cette ratification a été enregistrée par le Directeur général du Bureau international du Travail le 12 juin 1950.

A Genève, le 17 juin 1950.

Pour le Directeur général :
(Signé) C. W. JENKS,
Conseiller juridique."

Appendix VII

EXAMPLES OF RATIFICATIONS OF INTERNATIONAL LABOUR CONVENTIONS SUBJECT TO SUSPENSIVE CONDITIONS, GEOGRAPHICAL LIMITATIONS AND UNDERSTANDINGS

I.—Example of ratification subject to suspensive conditions

CONDITIONAL RATIFICATION BY THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND OF THE CONVENTION CONCERNING THE SIMPLIFICATION OF THE INSPECTION OF EMIGRANTS ON BOARD SHIP, 1926 (CONVENTION NO. 21)

Letter from His Britannic Majesty's Secretary of State for Foreign Affairs to the Secretary-General of the League of Nations, dated 14 September, 1927

Sir,

I am directed by Secretary Sir Austen Chamberlain to inform you, in accordance with the seventh paragraph of Article 405 of the Treaty of Versailles, that His Majesty's Government have formally ratified the draft Convention concerning the simplification of the inspection of emigrants on board ship which was adopted at the eighth session of the General Conference of the International Labour Organization. A copy of the Order of Council, authorizing the communication of formal ratification of the draft Convention in respect of Great Britain and Northern Ireland, is enclosed herewith. In accordance with the terms of the Order of Council the ratification will have effect only when the draft Convention has been ratified by the States specified in the Order.

2. I am further to inform you that His Majesty's Government have decided to accept the Recommendation subsidiary to the Convention in question, viz. Recommendation concerning the protection of emigrant women and girls on board ship.

3. His Majesty's Government are advised that the proposals contained in this draft Convention are in accordance with the existing law and practice in Great Britain and Northern Ireland and that its ratification will not involve any legislative or administrative changes.

4. With regard to the Recommendation, His Majesty's Government are advised that its terms are substantially in accord with existing practice.

I am, etc.

(Signed) G. H. VILLIERS.

* * *

The text of the instrument of ratification is as follows :

"At the Council Chamber, Whitehall,
The 27th day of August, 1927.

By the Lords of His Majesty's Most Honourable Privy Council.

Whereas on 20th August, 1926, the Secretary-General of the League of Nations communicated to His Majesty's Government a certified copy of a draft Convention concerning the simplification of the inspection of emigrants on board ship which had been adopted by the International Labour Conference at Geneva on 5th June, 1926;

And whereas it is provided in Article 405 of the Treaty of Versailles that in the case of a draft convention so communicated each Member of the International Labour Organization shall, if such draft Convention obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification thereof to the Secretary-General of the League of Nations;

And whereas such draft Convention has in respect of Great Britain and Northern Ireland obtained the consent of the authority or authorities within whose competence the matter lies and such action as is necessary to make the provisions of the said draft Convention conditionally effective therein has been taken:

NOW, THEREFORE, the Lords of the Council are pleased to order, and it is hereby ordered, that the said draft Convention be confirmed and approved, provided, however, that such confirmation and approval shall not take effect until the date by which the Secretary-General of the League of Nations shall have received and registered the formal ratifications without reservations of the said draft Convention by France, Germany, the Netherlands, Italy, Norway and Spain.

And it is further ordered that formal communication thereof be made to the Secretary-General of the League of Nations.

(Signed) M. P. A. HANKEY."

* * *

The ratification in question was registered by the Secretary-General of the League of Nations on 16 September, 1927.

The above letter and instrument of ratification were communicated to the Members of the International Labour Organization in the *Official Bulletin* [1].

As the suspensive condition has not been fulfilled, the ratification has not taken effect.

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[1] *Official Bulletin* of the International Labour Organization, Vol. XII, 15 November, 1927, No. 4, p. 171.

II.—Examples of ratifications subject to geographical limitations

1. FORMAL RATIFICATION BY INDIA OF THE CONVENTIONS CONCERNING WORKMEN'S COMPENSATION FOR OCCUPATIONAL DISEASES, 1925 (CONVENTION NO. 18), AND EQUALITY OF TREATMENT FOR NATIONAL AND FOREIGN WORKERS AS REGARDS WORKMEN'S COMPENSATION FOR ACCIDENTS, 1925 (CONVENTION NO. 19)

Letter from the Secretary of State for India to the Secretary-General of the League of Nations, dated 28 September, 1927

Sir,

I have the honour to inform you that, in consultation with the Government of India, I have recently had under consideration the question of the ratification by India of the draft Convention concerning workmen's compensation for occupational diseases, adopted at the International Labour Conference held at Geneva in 1925. In so far as British India is concerned no difficulty arises as the legislation necessary to make effective the provisions of the draft Convention has recently been passed by the Indian Legislature, but for the reasons explained below ratification would not be possible if the obligations arising out of the Convention which would be assumed by the Government of India extended also to the Indian States.

2. These States number several hundreds and the great majority of them are, from the industrial point of view, undeveloped. They vary greatly in size and population, and the exact relations between the various States and the Paramount Power are determined by a series of engagements and by long-established political practice. These relations are by no means identical, but, broadly speaking, they have this in common, that those branches of internal administration which might be affected by decisions reached at International Labour Conferences are the concern of the Rulers of the States and are not controlled by the Paramount Power. The Legislature of British India, moreover, cannot legislate for the States nor can any matter relating to the affairs of a State form the subject of a question or motion in the Indian Legislature.

3. That being the position, it is clear that the Government of India cannot undertake the obligation to make effective in the Indian States the provisions of a draft convention, and it follows, therefore, that a draft convention can be ratified by India only in the sense that the obligations are accepted as applying to British India.

4. No other conclusion is possible. If the consequences of ratification were to apply to the whole of India it would be necessary under the procedure laid down in Article 405 of the Treaty of Versailles that in the case of each of the Indian States all draft conventions should be brought before "the authority within whose competence the matter lies for the enactment of legislation or other action". And if this cumbrous procedure could be carried out the failure of a single State to agree to make effective the provisions of the convention would presumably prevent ratification. Further, even if these difficulties could be overcome, it would be necessary in order to comply with the provisions of Article 408 of the

Treaty to obtain from each of these several hundred States an annual report on the measures taken to give effect to the provisions of the convention.

This brief description of the practical difficulties which in my view are insurmountable, will make it clear that if obligations arising out of a draft convention are not limited to British India the only course open to the Government of India would be to refuse consistently to ratify all draft conventions—a course which they would be most reluctant to adopt, as they have in the past, in their progressive programme of social legislation, derived so much inspiration from the work of the International Labour Organization and have given so many tangible proofs of their sympathy with its objects.

But, although unable to assume obligations in regard to the Indian States, the Government of India will (on the analogy of the ninth paragraph of Article 405 of the Treaty of Versailles), when a draft convention has been ratified by India, bring it to the notice of those States to which its provisions appear to be relevant, and will also be prepared, when necessary, to use their good offices with the authorities of such States to induce them to apply so far as possible the provisions of the convention within their territories.

5. On the understanding stated in paragraph 3 above that the obligations assumed apply to British India only, I have now the honour to communicate the "ratification" of India of the draft Convention concerning workmen's compensation for occupational diseases, and of the draft Convention concerning equality of treatment for national and foreign workers as regards workmen's compensation for accidents, adopted by the International Labour Conference at its seventh session (1925).

6. The statement of the position contained in the first four paragraphs of this letter is communicated to you only for your information and to enable you to answer any enquiries that may be addressed to you. I would ask you to be good enough, when forwarding a copy of this letter to the Director of the International Labour Office, to request that it may be given the fullest publicity.

I am, etc.

(Signed) BIRKENHEAD.

* * *

The ratification in question was registered by the Secretary-General of the League of Nations on 30 September, 1927.

The above letter was communicated to the Members of the International Labour Organization in the *Official Bulletin* [1].

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[1] *Official Bulletin* of the International Labour Organization, Vol. XII, 15 November, 1927, No. 4, pp. 172-173.

2. FORMAL RATIFICATION BY AUSTRALIA OF CERTAIN INTERNATIONAL LABOUR CONVENTIONS

By letters of 11 March, 1931, the Secretary-General of the League of Nations informed the Office that by letter of 3 February, 1931, the Prime Minister and Minister for External Affairs of the Commonwealth of Australia had communicated to him, in accordance with Article 405 of the Treaty of Versailles, the formal ratification by the Government of the Commonwealth of Australia of the Conventions concerning the creation of minimum wage-fixing machinery (1928) and the marking of the weight on heavy packages transported by vessels (1929).

The letter from the Prime Minister and Minister for External Affairs of the Commonwealth of Australia relating to the Convention concerning the creation of minimum wage-fixing machinery is as follows :

"Sir,

In accordance with the terms of Article 405 of the Treaty of Versailles, I have the honour to inform you that the draft Convention adopted at the eleventh session of the International Labour Conference concerning the question of minimum wage-fixing machinery has obtained the consent of the authority within whose competence the matter lies, and has been ratified by an Order of the Governor-General in Council, dated 21st January, 1931, copy of which, as published in the Commonwealth of Australia *Gazette*, is forwarded herewith.

Advice under Article No. 421 of the Treaty of Versailles concerning the action taken in respect of the territories of the Commonwealth of Australia and the mandated territory of New Guinea will be furnished in due course to the International Labour Office.

I have, etc.

(Signed) JOHN A. BEASLEY,
for Prime Minister and Minister
for External Affairs."

The instrument of ratification of the Convention concerning the creation of minimum wage-fixing machinery is as follows :

"WHEREAS the eleventh session of the International Labour Conference held at Geneva adopted on 16th June, 1928, a draft Convention concerning the creation of minimum wage-fixing machinery ;

And whereas the Secretary-General of the League of Nations has duly communicated to the Government of the Commonwealth of Australia a certified copy of the said draft Convention ;

And whereas by Article 405 of the Treaty of Versailles it is provided that, in the case of a draft convention so communicated to Members of the International Labour Organization, each Member shall, if such draft convention obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification thereof to the Secretary-General of the League of Nations ;

And whereas such draft Convention has, in respect of the Commonwealth of Australia, obtained the consent of the authority within whose competence the matter lies and so far as the subject-matter is within the legislative competence of the Parliament of the Commonwealth of Australia such action as is necessary to make the provisions of the said draft Convention effective has been taken :

Now, therefore, I, Arthur Herbert Tennyson, Baron Somers, administering the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, do hereby order that the said draft Convention be confirmed and approved and that formal communication thereof be made to the Secretary-General of the League of Nations.

Given under my hand and the seal of the Commonwealth, at Melbourne, this twenty-first day of January, in the year of Our Lord one thousand nine hundred and thirty-one, and in the twenty-first year of His Majesty's reign.

By His Excellency's Command,
(Signed) JOHN A. BEASLEY,
for Acting Prime Minister."

The letter concerning, and the instrument of ratification of, the Convention concerning the marking of the weight on heavy packages transported by vessels are in similar terms.

Both ratifications were registered by the Secretary-General of the League of Nations on 9 March, 1931.

The letters and instruments of ratification in question were communicated to the Members of the International Labour Organization in the *Official Bulletin* [1].

By a letter dated 1 July, 1935, the Secretary-General of the League of Nations informed the Office that the Minister for External Affairs of the Commonwealth of Australia had transmitted to him, by letter dated 24 May, 1935, under Article 405 of the Treaty of Versailles and corresponding articles of the Treaties of Peace, the formal ratification by the Government of the Commonwealth of Australia of the Conventions given below.

The letter from the Minister for External Affairs to the Secretary-General of the League of Nations was as follows :

"Sir,

In accordance with Article 405 of the Treaty of Versailles and the corresponding articles of the other treaties, I have the honour to forward herewith copies of the Orders made by the Governor-General in Council on 22nd May, 1935, to the effect that the four draft Conventions mentioned hereunder, adopted by the International Labour Conference, be confirmed and approved in respect of the Commonwealth of Australia, and that formal communication thereof be made to you, viz. :

[1] *Official Bulletin* of the International Labour Office, Vol. XVI, 31 May, 1931, No. 1, pp. 41-42.

Convention fixing the minimum age for admission of children to employment at sea,

Convention concerning unemployment indemnity in case of loss or foundering of the ship,

Convention fixing the minimum age for the admission of young persons to employment as trimmers or stokers, and

Convention concerning the compulsory medical examination of children and young persons employed at sea.

The Commonwealth Navigation Act has been amended to comply with the provisions of the Conventions under notice, and it is desired that ratification in respect of the Commonwealth of Australia be duly registered. This Act covers vessels engaged in the interstate and overseas trade, but not those engaged in the intra-state trade, which are controlled by the State navigation acts.

These ratifications do not include the Territories of Papua and Norfolk Island, and the mandated territories of New Guinea and Nauru, for the reason that the provisions of the Conventions in question are inapplicable owing to local conditions.

I have, etc.

(Signed) G. F. PEARCE,
Minister for External Affairs."

The instrument of ratification of the Convention fixing the minimum age for admission of children to employment at sea is as follows:

"ORDER

By His Excellency the Governor-General in and over the Commonwealth of Australia.

Governor-General.

Whereas at the second session of the International Labour Conference held at Genoa from 15th June to 10th July, 1920, a draft Convention was adopted fixing the minimum age for admission of children to employment at sea;

And whereas the Secretary-General of the League of Nations has duly communicated to the Government of the Commonwealth of Australia a certified copy of the said draft Convention;

And whereas by Article 405 of the Treaty of Versailles it is provided that, in the case of a draft convention so communicated to members of the authority or authorities within whose competence the matter lies, communicate the formal ratification thereof to the Secretary-General of the League of Nations;

And whereas such draft Convention has, in respect of the Commonwealth of Australia, obtained the consent of the authorities within whose competence the matter lies:

NOW THEREFORE, I, SIR ISAAC ALFRED ISAACS, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby order that the said draft Convention be confirmed and approved in respect of the Commonwealth of Australia, and

that formal communication thereof be made to the Secretary-General of the League of Nations.

[*L.S.*] Given under my hand and the seal of the Commonwealth of Australia this twenty-second day of May in the year of Our Lord one thousand nine hundred and thirty-five, and in the twenty-sixth year of His Majesty's reign.

By His Excellency's Command,
(Signed) G. F. PEARCE,
Minister for External Affairs.

GOD SAVE THE KING !"

* * *

The instruments of ratification of the other Conventions are in similar terms.

The various ratifications were registered by the Secretary-General of the League of Nations on 28 June, 1935.

The above letter and the instruments of ratification were communicated to the Members of the International Labour Organization in the *Official Bulletin* [1].

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3. FORMAL RATIFICATION BY THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND OF THE CONVENTION CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE, 1948 (CONVENTION NO. 87)

Letter from the Foreign Office to the Director-General of the International Labour Office, dated 25 June, 1949

Sir,

I am directed by Mr. Secretary Bevin to transmit to you the instrument of ratification by His Majesty's Government of Convention (No. 87) concerning freedom of association and protection of the right to organize.

It will be noted that the ratification is in respect of Great Britain and does not extend to Northern Ireland.

As you are aware, it is the practice of His Majesty's Government to ensure that the law is in accord with the provisions of a convention before it ratifies that convention. In the case of this Convention the law in Great Britain is regarded as being in accord with the provisions of the Convention, but the view has been taken that this is not entirely the case in Northern Ireland. Under the constitutional practice in the United Kingdom the matters to which this Convention relates are, in relation to Northern Ireland, matters for the Parliament and Government of Northern Ireland.

[1] *Official Bulletin* of the International Labour Office, Vol. XX, 31 December, 1935, No. 4, p. 134.

Accordingly, His Majesty's Government have decided that for the time being they must confine their ratification of this Convention to Great Britain.

I am, etc.

(Signed) F. B. A. RUNDALL.

* * *

The instrument of ratification in question is as follows:

"Whereas a Convention (No. 87) concerning freedom of association and protection of the right to organize was adopted by the International Labour Conference at its thirty-first session, held at San Francisco from the seventeenth day of June to the tenth day of July, one thousand nine hundred and forty-eight, which Convention is, word for word, as follows:

[The text of the Convention follows.]

The Government of the United Kingdom of Great Britain and Northern Ireland, having considered the Convention aforesaid, hereby confirm and ratify the same and undertake faithfully to perform and carry out all the stipulations therein contained in respect of the United Kingdom excluding Northern Ireland.

In witness whereof this instrument of ratification is signed and sealed by His Majesty's Principal Secretary of State for Foreign Affairs.

Done at London the twenty-first day of June, one thousand nine hundred and forty-nine.

(Signed) ERNEST BEVIN."

The Director-General of the International Labour Office acknowledged receipt of this letter on 27 July, 1949, stating that the ratification in question had been registered by the International Labour Office on 27 June, 1949, and that it would be communicated to all the Members of the International Labour Organization.

III.—Examples of ratifications subject to understandings which have not been regarded as constituting reservations

I. FORMAL RATIFICATION BY THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND OF THE CONVENTION CONCERNING SEAMEN'S ARTICLES OF AGREEMENT, 1926 (CONVENTION NO. 22)

Extract from a letter from the Foreign Office to the Secretary-General of the League of Nations, dated 11 June, 1929

Sir,

I am directed by Mr. Secretary Henderson to inform you, in accordance with the seventh paragraph of Article 405 of the Treaty of Versailles, that His Majesty's Government in the United Kingdom have formally ratified in respect of Great Britain and Northern Ireland

the draft Convention concerning seamen's articles of agreement, which was adopted at the ninth session of the General Conference of the International Labour Organization. A copy of the Order of Council authorizing the communication of the formal ratification of the draft Convention is enclosed herewith. In ratifying this Convention His Majesty's Government in the United Kingdom wish to draw attention to the law and practice existing in Great Britain affecting the issue of records of seamen's service and statements as to the quality of their work. Article 5 of the Convention provides that every seaman shall be given a document which contains a record of his service in a ship but contains no statement as to the quality of his work or as to his wages; and Article 14 provides that the seaman shall be able to obtain in addition a separate certificate as to the quality of his work. British law and practice enable every seaman who so desires to obtain each of these documents. They provide in addition that seamen may, if they so desire, have reports of character endorsed on their discharge certificate whether the certificates are in the form of sheets relating to single voyages or of books relating to several voyages. His Majesty's Government take the view that British law affords all the protection to seamen that the Convention contemplates and they ratify the Convention on the understanding that the provisions described above are regarded as satisfying its requirements.

. . . . . .

I am, etc.

(Signed) I. A. KIRKPATRICK.

* * *

The text of the instrument of ratification is as follows:

"At the Council Chamber, Whitehall,
The 23rd day of May, 1929.

By the Lords of His Majesty's most Honourable Privy Council.

Whereas on 30 July, 1926, the Secretary-General of the League of Nations communicated to His Majesty's Government a certified copy of a draft Convention concerning seamen's articles of agreement which had been adopted by the International Labour Conference at Geneva on 24th June, 1926;

And whereas it is provided in Article 405 of the Treaty of Versailles that in the case of a draft convention so communicated each Member of the International Labour Organization shall, if such draft convention obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification thereof to the Secretary-General of the League of Nations;

And whereas such draft Convention has in respect of Great Britain and Northern Ireland obtained the consent of the authority or authorities within whose competence the matter lies and such action as is necessary to make the provisions of the said draft Convention effective therein has been taken:

Now therefore, the Lords of the Council are pleased to order, and it is hereby ordered, that the said draft Convention be confirmed and approved.

And it is further ordered that formal communication thereof be made to the Secretary-General of the League of Nations.

(Signed) M. P. A. HANKEY."

* * *

The ratification in question was registered by the Secretary-General of the League of Nations on 14 June, 1929.

The above ratification was communicated to the Members of the International Labour Organization in the *Official Bulletin* [1].

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2. FORMAL RATIFICATION BY INDIA OF THE CONVENTION CONCERNING SEAMEN'S ARTICLES OF AGREEMENT, 1926 (CONVENTION NO. 22)

Letter from the Secretary of State for India to the Secretary-General of the League of Nations, dated 27 October, 1932

Sir,

On the 10th November, 1927, with a letter No. E. & O. 8176/27, there was forwarded to you a copy of a Resolution adopted by the Indian Legislature in regard to the draft Convention concerning seamen's articles of agreement adopted by the International Labour Office at its ninth session, and in a letter dated 13th May, 1931, No. E. & O. 2792/31, there was communicated to you by direction of my predecessor the text of an Act of the Indian Legislature No. IX of 1931, amending the Indian Merchant Shipping Act 1923. This Act was intended to bring Indian national law into conformity with the draft Convention with a view to its ratification on behalf of India as a Member of the International Labour Organization.

Conformably with this intention, and in accordance with the provisions of Article 405 of the Treaty of Versailles, I have the honour to communicate to you, on behalf of India, the ratification of the draft Convention concerning seamen's articles of agreement adopted by the International Labour Conference at its ninth session. In communicating the ratification of this Convention, I desire to draw attention to the law and practice existing in India, affecting the issue of records of seamen's service, and statements as to the quality of their work. Article 5 of the Convention provides that every seaman shall be given a document which contains a record of his service in his ship, but contains no statement as to the quality of his work, or as to his wages, and Article 14 provides that a seaman shall be able to obtain in addition a separate certificate as to the quality of his work. Indian law and practice enable every seaman who so desires to obtain each of these documents. They provide in addition that seamen may, if they so desire, have reports of

[1] *Official Bulletin* of the International Labour Office, Vol. XIV, 15 September, 1929, No. 2, pp. 73-74.

character endorsed on their discharge certificates, when this is in the form of a continuous discharge certificate, relating to several voyages. The Government of India take the view that Indian law affords all the protection to seamen that the Convention contemplates, and the Convention is ratified on the understanding that the provisions described above are regarded as satisfying its requirements.

I have, etc.

(Signed) SAMUEL HOARE.

* * *

The ratification in question was registered by the Secretary-General of the League of Nations on 31 October, 1932.

The above letter was communicated to the Members of the International Labour Office in the *Official Bulletin* [1].

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3. FORMAL RATIFICATION BY AUSTRALIA OF THE CONVENTION CONCERNING HOURS OF WORK ON BOARD SHIP AND MANNING, 1936 (CONVENTION NO. 57)

Letter from the Minister for External Affairs of the Commonwealth of Australia to the Secretary-General of the League of Nations, dated 18 August, 1938

Sir,

In accordance with Article 405 of the Treaty of Versailles, I have the honour to inform you that the draft Convention concerning hours of work on board ship and manning adopted at the twenty-first session of the International Labour Conference has been formally ratified by His Majesty's Government in the Commonwealth of Australia, and I enclose the instrument of ratification.

His Majesty's Government in the Commonwealth of Australia in ratifying the said draft Convention wish to draw attention to the following matters :

(1) That effect is given to certain provisions of the Convention by means of Arbitration Court awards and not by legislation.

(2) That the provisions of the following articles of the Convention are not covered either by legislation or awards of the Commonwealth Court of Conciliation and Arbitration :

Article 10

"1 . . . . . .

(b) there shall be no consistent working of overtime."

There is no law or Arbitration Court award specifically forbidding consistent working of overtime by ratings and deck engineer officers, including apprentices and cadets. The awards governing the conditions of employment of both officers and ratings, however, prescribe heavy rates for overtime which, in their own interest, employers reduce to a minimum. Thus, in actual practice, there is no consistent working of overtime.

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[1] *Official Bulletin* of the International Labour Office, Vol. XVIII, 31 March. 1933, No. 1, p. 37.

Article 11

"1. No rating under the age of 16 years shall work at night."

There is no law or Arbitration Court award prohibiting night work on board ship by ratings under the age of 16 years. In practice, however, boys employed on ships registered in Australia are day workers.

Article 17

"If in the course of a voyage as a result of death, accident or any other cause a vessel ceases to have available the number of officers or ratings required by the preceding articles the master shall make up the deficiency at the first reasonable opportunity."

The Commonwealth law with respect to this matter is contained in Sections 43 and 44 of the Navigation Act 1912-1935.

Section 43 requires every ship registered in Australia or engaged in the coasting trade to carry persons of the number and description specified in scales set out in Schedules to the Act, or prescribed, or specified for the ship by the Minister.

Section 44 provides that the owner of such a ship shall not suffer her to go to sea, and the master shall not take her to sea, without carrying the crew so required: penalty £100. The Section also provides that "if a ship proceeds to sea being short in her crew of not more than one-fifth of her engine-room staff, or one-fifth of her deck complement, the master or owner shall not be liable under this section if it is proved that the breach was not occasioned through any fault of his own."

His Majesty's Government take the view that the law and/or practice in Australia outlined above provides all the protection to seamen that the Convention contemplates in the three articles referred to and ratifies the Convention on the understanding that such law and/or practice is regarded as specifying *(sic)* the requirements of the said articles.

As there are no vessels which come within the scope of the Convention registered in the territories of Papua and Norfolk Island and the mandated territories of New Guinea and Nauru the Convention will not be applied to these territories.

I have, etc.

(Signed) W. M. HUGHES,
Minister for External Affairs.

* * *

The instrument of ratification is as follows:

"COMMONWEALTH OF AUSTRALIA,
to wit
HUNTINGFIELD,
ADMINISTRATOR,

By His Excellency the Administrator of the Government of the Commonwealth of Australia.

Whereas at the twenty-first session of the International Labour Conference held at Geneva from the sixth day of October, one thousand nine

hundred and thirty-six, to the twenty-fourth day of October, one thousand nine hundred and thirty-six, a draft Convention Number 57 was adopted on the twenty-fourth day of October, one thousand nine hundred and thirty-six, concerning hours of work on board ship and manning, which draft Convention is word for word as follows :

[*Here follows the text of the Convention.*]

His Majesty's Government in the Commonwealth of Australia having considered the said draft Convention hereby confirm and ratify the same and undertake faithfully to perform and carry out all the stipulations therein contained.

In witness whereof this instrument of ratification is signed by His Excellency the Administrator by and with advice and consent of the Federal Executive Council and the seal of the Commonwealth of Australia is hereto affixed.

Given at Canberra this eighteenth day of August in the year of Our Lord one thousand nine hundred and thirty-eight and the second year of His Majesty's reign.

By his Excellency's command,
(Signed) W. M. HUGHES,
Minister for External Affairs."

* * *

By letter of 5 October, 1938, the Secretary-General of the League of Nations replied to the letter of 18 August, 1938, from the Minister for External Affairs of the Commonwealth of Australia.

The letter of the Secretary-General of the League of Nations is as follows :

"Sir,

I have the honour to acknowledge the receipt of your letter of 18 August, 1938, informing me, in accordance with the provisions of Article 405 of the Treaty of Versailles, that the Convention concerning hours of work on board ship and manning adopted by the International Labour Conference at its twenty-first session (Geneva, October 6-24, 1936) has now been formally ratified by His Majesty's Government in the Commonwealth of Australia and enclosing the instrument of ratification.

2. As stated in the same communication, the Convention is not applicable to the territories of Papua and Norfolk Island and the mandated territories of New Guinea and Nauru.

3. In reply, I beg to inform you that the above-mentioned ratification was registered with the Secretariat of the League of Nations on September 24, 1938, and I will not fail to inform the Members of the International Labour Organization and the Director of the International Labour Office of this fact.

4. You have been good enough to inform me at the same time that His Majesty's Government in the Commonwealth of Australia in

ratifying the said draft Convention wish to draw attention to the following matters :

[*Here follows the text of the letter of 18 August, 1938, of the Minister for External Affairs with the exception of the first and last paragraphs.*]

5. The terms of your letter have been communicated to the Director of the International Labour Office who has drawn my attention to the fact that if the understanding stated in your letter were to be regarded as constituting a reservation, the doctrine approved by the Committee of Experts on the Progressive Codification of International Law, in a report accepted by the Council on 17 June, 1927, to the effect that the reservations to international labour conventions are inadmissible, would be applicable to the present case. It is presumed, however, that the Government of the Commonwealth of Australia, which has communicated to the Secretariat an instrument of ratification in unqualified terms, has no intention of purporting to ratify subject to a reservation, but is merely drawing attention to the law and/or practice in Australia, which it understands to be in conformity with the requirements of the Convention.

I have, etc.

For the Secretary-General :
(Signed) L. A. PODESTA COSTA,
Under Secretary-General."

* * *

The ratification in question was registered by the Secretary-General of the League of Nations on 24 September, 1938.

The above letters and instrument of ratification were communicated to the Members of the International Labour Organization in the *Official Bulletin* [1].

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4. FORMAL RATIFICATION BY THE UNITED STATES OF AMERICA OF THE CONVENTIONS CONCERNING THE MINIMUM REQUIREMENT OF PROFESSIONAL CAPACITY FOR MASTERS AND OFFICERS ON BOARD MERCHANT SHIPS, 1936 (CONVENTION NO. 53); CONCERNING ANNUAL HOLIDAYS WITH PAY FOR SEAMEN, 1936 (CONVENTION NO. 54) ; CONCERNING THE LIABILITY OF THE SHIPOWNER IN CASE OF SICKNESS, INJURY OR DEATH OF SEAMEN, 1936 (CONVENTION NO. 55) ; CONCERNING HOURS OF WORK ON BOARD SHIP AND MANNING, 1936 (CONVENTION NO. 57) ; FIXING THE MINIMUM AGE FOR THE ADMISSION OF CHILDREN TO EMPLOYMENT AT SEA (REVISED 1936) (CONVENTION NO. 58)

By letters of 9 November, 1938, the Secretary-General of the League of Nations informed the Office that, by letters of 27 October, 1938, the Envoy Extraordinary and Minister Plenipotentiary of the United States of America at Berne had communicated to him the ratification by the Government of the United States of America of the above-named Conventions.

[1] *Official Bulletin* of the International Labour Office, Vol. XXIII, 31 December, 1938, No. 4, pp 137-139.

The letter from the Envoy Extraordinary and Minister Plenipotentiary of the United States at Berne to the Secretary-General of the League of Nations relating to the ratification of the Convention concerning the minimum requirement of professional capacity for masters and officers on board merchant ships is as follows :

"Sir,

Acting under instructions from my Government, I have the honour to transmit herewith, for registration in accordance with Article 8 of the Convention, the instrument of ratification on the part of the United States of America of the draft Convention concerning the minimum requirement of professional capacity for masters and officers on board merchant ships, adopted by the International Labour Conference, at its twenty-first session, held at Geneva October 6-24, 1936.

I am further directed to advise you that this draft Convention was ratified by the United States of America subject to the following understandings, which are made a part of the ratification :

'That the United States Government understands and construes the words "vessels registered in a territory" appearing in this Convention to include all the vessels of the United States as defined under the laws of the United States.

That the United States Government understands and construes the words "maritime navigation" appearing in this Convention to mean navigation on the high seas only.

Nothing in this Convention shall be so construed as to prevent the authorities of the United States from making such inspection of any vessel referred to in Article V, paragraph 3, within the jurisdiction of the United States, as may be necessary to determine that there has been a compliance with the terms of this Convention, or to prevent such authorities from withholding clearance to any such vessel which they find has not complied with the provisions of the Convention until such time as any such deficiency shall be corrected.

That the provisions of this Convention shall apply to all territory over which the United States exercises jurisdiction, except the Government of the Commonwealth of the Philippine Islands and the Panama Canal Zone, with respect to which this Government reserves its decision.'

These understandings are deemed not to be reservations which would require the acceptance of other governments, but to be merely clarifications of definitions to show that the definitions accepted by the United States of America are in fact those that were intended by the Conference. The last understanding is in accordance with Article 7 of the draft Convention.

Please accept, etc.

(Signed) LELAND HARRISON,
American Minister."

The instrument of ratification of the Convention is as follows :

"FRANKLIN D. ROOSEVELT,
President of the United States
of America,

To all to whom these presents shall come, greeting :

Know Ye, that whereas a draft Convention (No. 53) with regard to the establishment by each maritime country of a minimum requirement of professional capacity in the case of captain, navigating and engineer officers in charge of watches on board merchant ships, was adopted on the twenty-fourth day of October, nineteen hundred and thirty-six, by the General Conference of the International Labour Organization at its twenty-first session held at Geneva, October 6-24, 1936 ;

And whereas, the United States of America being a Member of the International Labour Organization, the Secretary-General of the League of Nations, acting in conformity with a requirement in the nineteenth Article of the Constitution of the said Organization, communicated to the Government of the United States of America a certified copy of the said draft Convention, the text of which in the French and English languages is word for word as follows :

[*Here follows the text of the Convention in the French and English languages.*]

And whereas the Senate of the United States of America by their Resolution of June 13, 1938 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said draft Convention (No. 53), subject to the following understandings to be made part of such ratification :

'That the United States Government understands and construes the words "vessels registered in a territory" appearing in this Convention to include all the vessels of the United States as defined under the laws of the United States.

That the United States Government understands and construes the words "maritime navigation" appearing in this Convention to mean navigation on the high seas only.

Nothing in this Convention shall be so construed as to prevent the authorities of the United States from making such inspection of any vessel referred to in Article V, paragraph 3, within the jurisdiction of the United States, as may be necessary to determine that there has been a compliance with the terms of this Convention, or to prevent such authorities from withholding clearance to any such vessel which they find has not complied with the provisions of the Convention until such time as any such deficiency shall be corrected.

That the provisions of this Convention shall apply to all territory over which the United States excercises jurisdiction,

except the Government of the Commonwealth of the Philippine Islands and the Panama Canal Zone, with respect to which this Government reserves its decision.'

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said draft Convention (No. 53) with regard to the establishment by each maritime country of a minimum requirement of professional capacity in the case of captain, navigating and engineer officers in charge of watches on board merchant ships, do hereby in pursuance of the aforesaid advice and consent of the Senate ratify and confirm the same and every article and clause thereof, subject to the understandings hereinabove recited and made part of this ratification.

In testimony whereof, I have caused the seal of the United States of America to be hereunto affixed.

Done at the City of Washington this first day of September in the year of Our Lord one thousand nine hundred and thirty-eight and of the Independence of the United States of America the one hundred and sixty-third.

(Signed) FRANKLIN D. ROOSEVELT.

By the President:
CORDELL HULL,
Secretary of State."

* * *

It will be observed that the ratification by the United States of the Convention concerning the minimum requirement of professional capacity for masters and officers on board merchant ships is subject to four understandings:

(1) The United States Government understands and construes the words "vessels registered in a territory" appearing in this Convention to include all the vessels of the United States as defined under the laws of the United States.

(2) The United States Government understands and construes the words "maritime navigation" appearing in this Convention to mean navigation on the high seas only.

(3) Nothing in this Convention shall be so construed as to prevent the authorities of the United States from making such inspection of any vessel referred to in Article V, paragraph 3, within the jurisdiction of the United States, as may be necessary to determine that there has been a compliance with the terms of this Convention, or to prevent such authorities from withholding clearance to any vessel which they find has not complied with the provisions of this Convention until such time as any such deficiency shall be corrected.

(4) The provisions of this Convention shall apply to all territory over which the United States exercises jurisdiction, except the Government

of the Commonwealth of the Philippine Islands and the Panama Canal Zone, with respect to which this Government reserves its decision.

The letters and instruments of ratification relating to the other conventions in question are identical except for the following points:

The ratification of the Convention (No. 54) concerning annual holidays with pay for seamen does not contain understandings (1) and (4).

The ratification of the Convention (No. 55) concerning the liability of the shipowner in case of sickness, injury or death of seamen does not contain understandings (1), (2) and (4).

The ratification of the Convention (No. 57) concerning hours of work on board ship and manning does not contain understandings (1), (3) and (4).

The ratification of the Convention (No. 58) fixing the minimum age for the admission of children to employment at sea (revised) does not contain understandings (2) and (4).

The various ratifications were registered by the Secretary-General of the League of Nations on 29 October, 1938.

The letters and instruments of ratification in question were communicated to the Members of the International Labour Organization in the *Official Bulletin* [1].

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[1] *Official Bulletin* of the International Labour Office, Vol. XXIII, 31 December, 1938, No. 4, pp. 128-136.

9. WRITTEN STATEMENT OF THE GOVERNMENT OF POLAND

The Government of Poland, availing itself of the provisions of Article 66 of the Statute of the International Court of Justice and following the Order made on December 1st by the President of the Court, submits hereby its views concerning the General Assembly's Resolution of November 16th, 1950. The U.N. General Assembly addressed, by this decision, a series of questions to the International Court of Justice concerning the reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and requested an advisory opinion. The International Law Commission was at the same time requested to deal, within the scope of its work on the codification of the law of treaties, with the question of reservations to multilateral conventions.

I. *The Competence of the Court to give an Advisory Opinion*

The Convention on the Prevention and Punishment of the Crime of Genocide as approved by the General Assembly of the United Nations at its third session on December 3rd, 1948, provides for the competence of the International Court of Justice exclusively in Article IX which is setting forth the following conditions for it :

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

The wording of the said article leaves no doubt that the Court is entitled to deal with any question relating to the Convention if the following conditions exist :

(1) there must be a dispute,

(2) the dispute must concern "the interpretation, application or fulfilment" of the Convention or its Article III,

(3) the dispute must arise between "the Contracting Parties", if they accepted the provisions of this article.

The present case does not contain these qualifications and therefore it is the opinion of the Government of Poland that the International Court of Justice is not competent to deal with the question thus submitted.

The Government of Poland wishes to emphasize that, in accordance with the principles of international law, the submission to any international body of questions arising from agreements, if

those agreements do not provide for the competence of these bodies, constitutes an inadmissible attempt at revising these agreements.

There is also no possibility to interpret Article 96 of the Charter as granting general permission to request the International Court of Justice to give advisory opinions on legal questions even contrary to the explicit provisions of the international agreement in question. Indeed, Article 96 of the Charter entitles the General Assembly and the Security Council to request the opinion of the Court only in cases if this is not excluded by special stipulations or provisions. Such an exclusion however does exist wherever an explicit proviso vests this competence with another body or wherever the wording of the agreement implies the limited competence of the Court. For a different practice would mean that special agreements of the contracting parties would be deprived of their legal value, which cannot be the case.

This would also mean that the principle of *lex specialis* wherever the latter is not contrary to the Charter—does not precede *lex generalis*. It is obvious that any such conclusion would be in contradiction with the generally accepted principles of law.

Such a practice is moreover inadmissible also for other reasons. The right to interpret or to seek an interpretation of the text of an agreement has always been reserved to those States only which have signed the instrument or have acceded to it. The request for interpretation of the convention voted upon by a majority of States which are not parties to it, constitutes therefore a violation of the undeniable right of its signatories. It is only those States Parties to the Convention with which this right is vested. The resolution to request the opinion of the International Court of Justice was—in the present case—voted upon by a majority of representatives of States which did not sign the Convention on the Prevention and Punishment of the Crime of Genocide, or accede to it. To the knowledge of the Polish Government several of these States have not even the intention to accede to this Convention.

Consequently no rights accrue from this Convention as *res inter alios gesta* to these States. Thus they possess no title to decide on the contents of the Convention or on the rights of those States which have resolved to accede to it with reservations relating to certain of its articles.

In view of the reasons set forth above, the Government of Poland considers that in accordance with the principles of international law the question submitted :

(a) being tantamount to an inadmissible attempt to revise the Convention on the Prevention and Punishment of the Crime of Genocide,

(b) being contrary to the wording of Article IX of the said Convention,

(c) having been submitted with the participation of States which are not parties to the Convention

the International Court of Justice ought to, in accordance with the law, refuse to give an advisory opinion for lack of competence. The lack of qualification essentially concerns those who submitted the request but above all the Court itself.

The Government of Poland feels fully entitled to take this attitude for it acceded to the Convention on the Prevention and Punishment of the Crime of Genocide and is a party to it—following the law voted upon by the Polish Parliament on July 18th, 1950, and published in the Journal of Laws of the Polish Republic *(Dziennik Ustaw R. P.)* No. 36 Poz. 325 of August 26th, 1950.

Finally, the Polish Government is anxious to draw attention to the danger to which this most essential principle in international relations *pacta sunt servanda* would be exposed should a different solution be applied to the problem in question.

II. *The Question of Substance concerning Reservations*

Apart from the legal points raised above which are of a decisive character, the Polish Government is desirous to stress that the question of reservations to multilateral conventions has been solved by international law in a manner which leaves no room for any doubt.

At its present stage of historical development, international law permits any signatory to accede to a multilateral convention with such reservations it may consider consistent with its interests. This right results from the principle of the sovereign equality of States.

In this respect the Polish Government wishes to refer to the statement made by its representative in the 6th (Legal) Committee of the fifth session of the General Assembly of the United Nations of October 12th, 1950 (Press Release PM/1953).

Thus there were no grounds in substance to submit the whole question to the International Court of Justice.

Concluding, the Government of Poland considers that the International Court of Justice, in applying binding rules of international law on the basis of the points raised above, cannot but refuse the request for an advisory opinion, this request being deprived of foundation both in form and in substance.

Warsaw, January 13th, 1951.

10. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE TCHÉCOSLOVAQUIE

LE MINISTRE DE TCHÉCOSLOVAQUIE AUX PAYS-BAS AU GREFFIER DE LA COUR

La Haye, le 20 janvier 1951.

Monsieur le Greffier,

Me référant à vos communications en date du 25 novembre et du 1er décembre 1950, numéros 12160 et 12208, j'ai l'honneur de soumettre à la Cour, d'ordre de mon Gouvernement et en conformité avec le point de vue exprimé par la délégation tchécoslovaque à la Vme session de l'Assemblée générale de l'Organisation des Nations Unies, l'exposé écrit suivant :

Le Gouvernement tchécoslovaque ayant formulé, lors de la signature et de la ratification de la Convention pour la prévention et la répression du crime de génocide, des réserves aux articles IX et XII de cette convention, maintient son point de vue selon lequel dans le cas où un État a fait valoir lors de la ratification d'un traité international multilatéral son droit indéniable de faire des réserves, le traité en question est en vigueur entre celui-ci et les autres parties contractantes dans le cadre donné par les réserves formulées. Le droit de formuler des réserves lors de la conclusion d'un traité est généralement reconnu dans la théorie et dans la pratique internationale. L'assertion selon laquelle le Secrétaire général de l'Organisation des Nations Unies, auprès duquel sont déposés les instruments de ratification ou d'adhésion, ne peut accepter ces instruments s'ils contiennent des réserves auxquelles une des parties contractantes a fait une objection, se trouve en contradiction avec les principes généralement reconnus du droit international, avec les buts et constitue un obstacle au développement de la coopération internationale. Si un tel procédé devait être reconnu, cela signifierait qu'un seul État aurait la faculté d'exclure un autre État de la participation à un traité multilatéral, même si toutes les autres parties contractantes avaient manifesté, soit expressément, soit tacitement, leur assentiment avec les réserves de l'État en question. Aucun État ne peut se constituer juge d'un autre État souverain. Un tel pouvoir arbitraire serait en contradiction avec le principe de l'égalité souveraine des États (article 2, paragraphe 1, de la Charte de l'Organisation des Nations Unies). Il est absolument évident que les États qui ont signé le traité, mais ne l'ont pas ratifié, et d'autant moins les États qui ne l'ont même pas signé, ne peuvent se prévaloir de droits qui n'appartiennent pas aux États qui ont ratifié le traité. C'est un des buts

de l'Organisation des Nations Unies que de réaliser la coopération internationale, en résolvant les problèmes internationaux d'ordre économique, social, intellectuel ou humanitaire (article 1, paragraphe 3, de la Charte). La conclusion de traités internationaux est un des moyens pour atteindre ce but. Si un État, qui a formulé une réserve à certaines dispositions d'un traité, devait être privé de la participation à ce traité uniquement parce que l'une des parties contractantes a fait objection à une telle réserve, ce procédé serait en contradiction avec les dispositions de l'article 1, paragraphe 3, de la Charte.

Toutes les raisons exposées ci-dessus confirment clairement le point de vue du Gouvernement tchécoslovaque selon lequel un État qui a formulé une réserve au moment de la ratification d'un traité multilatéral ou au moment de l'adhésion, devient partie au traité sans égard au fait, si l'une des autres parties contractantes a fait une objection à cette réserve, le traité étant en vigueur entre les parties contractantes dans le cadre donné par les réserves formulées.

Veuillez agréer, etc.

(Signé) Dr J. MARTINIC,
Envoyé extraordinaire et
Ministre plénipotentiaire de Tchécoslovaquie.

11. EXPOSÉ ÉCRIT DU GOUVERNEMENT DES PAYS-BAS

LE MINISTRE DES AFFAIRES ÉTRANGÈRES DES PAYS-BAS AU GREFFIER DE LA COUR

La Haye, le 19 janvier 1951.

Monsieur le Greffier,

En réponse à votre lettre du 1er décembre 1950, n° 12208, concernant la question des réserves à la Convention pour la prévention et la répression du crime de génocide, j'ai l'honneur de vous communiquer, à toutes fins utiles, quelques renseignements au sujet de l'exclusion de la ratification, ainsi que de l'adhésion, de l'article X de la Convention pour l'adaptation à la guerre maritime des principes de la Convention de Genève du 22 août 1864, signée le 29 juillet 1899 à la Première Conférence de la Paix à la Haye.

Dans la période du 29 juillet au 31 décembre 1899, l'Allemagne, les États-Unis d'Amérique, la Grande-Bretagne et l'Irlande, ainsi que la Turquie, signèrent ladite convention « sous réserve de l'article X », non pas avant que le Gouvernement des Pays-Bas ne se fût assuré, en tant qu'État dépositaire, de l'approbation des États représentés à la Conférence. Étant donné que ledit article X avait été adopté par la Deuxième Commission à la majorité d'une voix seulement, le Gouvernement néerlandais s'adressa, au début du mois de novembre 1899, aux États afin de les pressentir au sujet de l'exclusion de l'article X de la ratification.

Au mois de janvier 1900, le Gouvernement impérial de Russie communiqua qu'il ne verrait pas d'inconvénient à l'exclusion de l'article susmentionné du texte de la ratification si tous les autres États partageaient cet avis et qu'aucune modification nouvelle ne fût introduite dans le texte de la convention revêtu de la signature des Puissances.

Par lettre du 29 janvier 1900, le Gouvernement néerlandais demanda aux Puissances intéressées, si elles consentaient à ce que l'article X fût exclu de la ratification.

Le Gouvernement russe appela l'attention sur le fait que, malgré l'exclusion de l'article X adopté par toutes les Puissances représentées à la Conférence, cet article figurerait pourtant dans les instruments de ratification. Telle Puissance ratifierait par exemple « sous réserve », telle autre « avec exclusion ». C'est pourquoi ledit Gouvernement propose de faire remettre, à toutes les Puissances, de nouveaux exemplaires des textes signés, dans lesquels l'article X serait remplacé par le mot « Exclu », bien que les numéros des articles fussent maintenus. Après avoir fait une contre-proposition,

le Gouvernement néerlandais se rallia au point de vue russe et, par lettre en date du 20 avril 1900, il demanda l'avis et le consentement des États intéressés. Ce consentement obtenu, le Gouvernement des Pays-Bas transmit alors aux États signataires les textes imprimés des Conventions et Déclarations de la Conférence pour qu'ils fussent insérés dans les instruments de ratification. Dans ces instruments, déposés à la Haye le 4 septembre 1900, le texte de l'article X de la Convention mentionné plus haut a donc été remplacé par le mot « Exclu ». Depuis, ledit article X a été exclu de toute ratification ou adhésion ultérieure.

Veuillez agréer, etc.

Pour le Ministre :
Le Secrétaire général,
(Signé) H. N. Boon.

12. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE LA RÉPUBLIQUE POPULAIRE DE ROUMANIE

TÉLÉGRAMME DATÉ DE BUCAREST LE 20 JANVIER 1951

Se référant à la lettre nº 12209 du 1er décembre 1950 relative à l'avis consultatif dans la question des réserves à la Convention pour la prévention et la répression du crime de génocide, le Gouvernement de la République populaire roumaine a l'honneur de porter ce qui suit à la connaissance de la Cour internationale de Justice :

Le Gouvernement de la République populaire roumaine conteste à la Cour internationale de Justice la qualité de s'occuper des questions qui lui ont été soumises par la Résolution de l'Assemblée générale de l'Organisation des Nations Unies sur les réserves formumulées par certains États à l'occasion de la signature, de l'adhésion ou de la ratification de la Convention pour la prévention et la répression du crime de génocide.

Par la demande faite à la Cour internationale de Justice de donner un avis consultatif, on tente, en réalité, non pas à éclaircir certains problèmes de nature juridique, mais à empêcher la mise en application de la Convention sur le génocide.

Tenant compte de la nécessité de proclamer que le génocide est un crime contre le droit des peuples et d'établir la responsabilité pour la perpétration de ce crime, tant des individus que des gouvernements qui le commettent, le Gouvernement roumain a adhéré à la Convention sur le génocide, malgré toutes les limitations et les insuffisances qu'elle contient en raison de la non-adoption par les gouvernements impérialistes de certaines propositions de l'Union soviétique, destinées à faire de la convention un instrument plus puissant et plus efficace.

A l'occasion de son adhésion, le Gouvernement de la République populaire roumaine a formulé, aux articles 9 et 12 de la convention, certaines réserves qui, d'une part, ont pour but de défendre la souveraineté de l'État roumain et, d'autre part, expriment l'opinion du Gouvernement roumain que la convention doit s'étendre également aux territoires qui ne se gouvernent pas eux-mêmes, y compris les territoires sous tutelle.

Le Gouvernement roumain constate toutefois que les Gouvernements des U. S. A., de l'Angleterre et ceux qui les suivent, allant à l'encontre du désir de l'humanité progressiste tout entière, recourent, pour enlever toute efficacité à la Convention sur le génocide, à différentes manœuvres comme celle de contester le droit des États de faire des réserves à cette convention.

Le droit inconditionné des États de formuler des réserves à l'occasion de la signature, de l'adhésion ou de la ratification d'une convention multilatérale découle du principe de la souveraineté et de l'indépendance des États et est consacré par une longue pratique dans les relations internationales.

La conséquence juridique de ce droit inconditionné est que l'État qui formule des réserves à une convention multilatérale est partie égale à la convention avec tous les autres États participants, la convention en question étant en vigueur entre l'État réservataire et tous les autres participants à la convention, à l'exception des dispositions qui font l'objet des réserves.

Le fait que certains États contestent à d'autres le droit de formuler des réserves à la Convention sur le génocide constituerait tout au plus un différend entre ces États, différend qui ne peut en aucun cas faire l'objet d'un jugement de la Cour internationale de Justice sans le consentement des parties intéressées.

La Cour internationale de Justice n'a pas qualité pour résoudre un tel différend par la voie détournée de l'avis consultatif sans que les États intéressés aient donné leur consentement pour une telle procédure.

Le Gouvernement de la République populaire roumaine déclare que, pour les motifs exposés, il n'est pas d'accord pour que soient portées devant la Cour internationale de Justice les questions contenues dans la demande d'avis consultatif concernant les réserves formulées à la Convention pour la prévention et la répression du crime de génocide et il ne reconnaît pas à la Cour la compétence de se prononcer dans cette question.

13. WRITTEN STATEMENT OF THE GOVERNMENT OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC

TELEGRAM DATED FROM KIEV, JANUARY 20th, 1951

In response to request of International Court of Justice December 1 *comma* 1950 on reservations to Genocide Convention Government Ukrainian Soviet Socialist Republic informs that it considers any State has right to make reservations to any treaty according to principle of sovereignty *point* Submitting of reservations has consequence that treaty is valid between that State that introduced the reservation and other States signed the treaty except for that part concerning which reservation was made.—ALEKSEY VOINA Acting Minister Foreign Affairs Ukrainian Soviet Socialist Republic.

14. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE LA RÉPUBLIQUE POPULAIRE DE BULGARIE

TÉLÉGRAMME DATÉ DE SOFIA LE 19 JANVIER 1951

Faisant toutes réserves en ce qui concerne la compétence de la Cour internationale de Justice à l'égard de la République populaire de Bulgarie *virgule* Gouvernement bulgare se permet d'attirer l'attention de la Cour sur l'inadmissibilité de la thèse du Secrétaire général de l'O. N. U. *virgule* selon laquelle il suffirait d'une seule objection contre une réserve formulée pour rendre impossible l'acceptation du dépôt d'un document quelconque de ratification ou d'adhésion *stop* Son acceptation signifierait en pratique une grave et indésirable entrave à la possibilité de conclure des conventions internationales multilatérales *stop* La possibilité pour tout pays de formuler des réserves sur la base de sa souveraineté permet aux États de se rallier à une cause commune *virgule* et le fait que dans le cas présent la plupart des parties dans la Convention contre le génocide n'ont pas formulé des objections contre les réserves faites *virgule* prouve que ces réserves ne sont pas de nature à empêcher la mise en vigueur de la convention *stop* La thèse contraire attribue trop d'importance à des objections très souvent accidentelles faites par une partie ou par quelques-unes des parties et trop peu d'importance à l'acceptation *virgule* expresse ou tacite *virgule* des réserves de la part de la majorité *stop* Cette manière de voir permettrait à une partie d'imposer sa volonté à toutes les autres parties. — NENOCHEV Ministre Affaires étrangères.

15. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE LA RÉPUBLIQUE SOCIALISTE SOVIÉTIQUE DE BIÉLORUSSIE

TÉLÉGRAMME DATÉ DE MINSK LE 22 JANVIER 1951

Gouvernement de la R. S. S. de Biélorussie répondant à l'Ordonnance de la Cour internationale de Justice en date du premier décembre 1950 concernant les réserves relatives à la Convention sur le génocide attire attention de la Cour internationale de Justice sur le fait que chaque État souverain a le droit imprescriptible de formuler une réserve par rapport à n'importe quel traité dont il veut être signataire *stop* La conséquence du dépôt d'une réserve est que le traité est en vigueur entre une partie qui a fait une réserve et autres participants au traité à l'exception de la partie du traité pour laquelle une réserve est formulée *stop* Point de vue indiqué du Gouvernement de la R. S. S. de Biélorussie avait déjà été exposé par ses délégués à la cinquième session de l'Assemblée générale de l'O. N. U. — Ministre des Affaires étrangères de la R. S. S. de Biélorussie KISELEV.

16. WRITTEN STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

The Philippine Government wishes to avail itself of the right to submit a written statement for the purpose of stating its position on such an important question as that submitted by the General Assembly Resolution of November 16, 1950, for the advisory opinion of this Honourable Court.

The Resolution requests this Honourable Court to give an advisory opinion on the question of reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.

It may be mentioned in this connexion that the Secretary-General of the United Nations submitted the general question of reservations to multilateral conventions to the attention of the General Assembly because he desired guidance concerning the procedure he should follow regarding ratifications and accessions to conventions and multilateral agreements made conditional upon reservations. The question then was of urgent importance in view of the fear that a dispute might arise as to the date of the entry into force of the Convention on Genocide. However, when the matter was being deliberated in the Sixth Committee, a sufficient number of ratifications had been received to permit the entry into force of the Convention on Genocide, even disregarding those ratifications and accessions with reservations, thus solving the problem of the entry into force thereof. The only problem that was in fact before the Sixth Committee and the General Assembly was the general problem of the legal effect of reservations to multilateral conventions.

The Philippine Government feels that the General Assembly should not take the initiative in referring specific questions relating to the application of the Convention on Genocide to the International Court of Justice, and therefore asks this Honourable Court to decline giving the advisory opinion requested by the Assembly.

I. *The question raised relates directly to a dispute actually pending between Australia and the Philippines*

As held by this Honourable Court in its Advisory Opinion of March 30, 1950, on the interpretation of Peace Treaties with Bulgaria, Hungary and Romania (pp. 71-72, Series of 1950), as requested by the General Assembly, there are certain limits to the Court's duty to reply to a request for an opinion. Article 65 of the Statute which authorizes the Court to give an advisory opinion is *permissive*. Said article gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline the answer to the request.

In the Eastern Carelia case (Advisory Opinion No. 5), the Permanent Court of International Justice declined to give an advisory

opinion because it found that the question put to it was directly related to the main point of a dispute actually pending between two States, so that answering the question would be substantially equivalent to deciding the dispute between the parties, and that at the same time it raised a question of fact which could not be elucidated without hearing both parties.

It may not be amiss to state briefly the facts which relate to the Australian attitude on the Philippine reservations. On October 20, 1950, at the 225th meeting of the Sixth Committee, the Philippine representative pointed out that a dispute was in the making between the Philippines, on the one hand, and the Australian Government, on the other. In a letter dated September 26, 1950, addressed to the Secretary-General by Mr. K. Shann, for the Minister of State for External Affairs of Australia, the position of the Australian Government *vis-à-vis* the legal effect of the reservations of the Philippines to the Genocide Convention was expressly reserved. On October 10, 1950, at the 219th meeting of the Sixth Committee, the Australian representative made a statement which went as far as to indicate that parties which made reservations and which are objected to by any party, could choose only between withdrawing their reservations or not acceding to the Convention on Genocide.

The dispute has since then materialized in view of the subsequent letter of November 15, 1950, of Mr. B. C. Ballard, for the Minister of State for External Affairs of Australia, which stated, among other things, that the Australian Government does not regard as valid any ratification of the Convention maintaining reservations such as those contained in the instrument of ratification dated June 23, 1950, of the Republic of the Philippines. For its part, the Philippine Government, through its Secretary of Foreign Affairs, in a letter dated December 15, 1950, informed the Secretary-General that it does not recognize such non-acceptance by the Australian Government of the reservations, contained in its instrument of ratification of the Convention on Genocide, as in any way affecting the validity of said ratification. Notice was further served on the Secretary-General that the Philippine Government is prepared to bring the matter as a contentious case before this Honourable Court in accordance with the procedure laid down in Article IX of the Genocide Convention.

It follows that this Honourable Court, as the principal judicial organ of the United Nations, should decline to render an opinion as requested by the General Assembly for the reason that questions I and II put to it are directly related to the main point of a dispute actually pending between the Philippines and Australia, and that answering these questions would be substantially equivalent to deciding the dispute between the parties.

The position of the Philippines on the General Assembly's request for an advisory opinion has been expressly reserved not only in the Sixth Committee but also in the plenary session of the General Assembly. It is therefore felt that the Philippines has a right to

insist that the procedure laid down in Article IX of the Convention on Genocide should be strictly followed. As this Honourable Court held in its Advisory Opinion of March 30, 1950 (p. 71, Series of 1950), an advisory opinion of the Court has no binding force on any State. It is to the interest of all concerned, therefore, that the dispute between Australia and the Philippines be decided by this Honourable Court as a contentious case so that its judgment may be binding on the parties.

II. *The General Assembly has no right to submit to this Honourable Court any dispute between the contracting parties relating to the interpretation or application of the Convention on Genocide, much less to formulate the issues to be decided by it*

Article IX of the Genocide Convention provides as follows :

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

It follows from the aforesaid provision that the General Assembly of the United Nations has no personality to submit to this Honourable Court a dispute actually pending between any of the contracting parties involving the interpretation, application or fulfilment of the Convention on Genocide.

The functions of the Secretary-General as depositary of the Convention on Genocide are purely ministerial in character. If there is any dispute between the contracting parties as to the interpretation of Articles VII, VIII and IX of the Convention on Genocide, that could only be submitted to this Honourable Court by any of the parties to the dispute.

The dispute, to be within the competence of this Honourable Court, must be between the contracting parties and that dispute should be real and not merely theoretical. A dispute between the contracting parties would not be justifiable if it is related merely to a hypothetical situation. In other words, the Court must be confronted with actual facts and not with contingent events. It is believed that this consideration applies no less to a request for an advisory opinion.

It also follows that the issues to be decided by this Honourable Court must be formulated by the contracting parties directly involved and not by the General Assembly. Necessarily, the issues should not have been formulated in such a general or hypothetical way as is asked by the General Assembly. The issues should be directed to the specific reservations that have been made to the Convention and to such objections as are actually made to such reservations. In addition to questions I and II propounded by the General Assembly, there are other issues which should be submitted

to the Court, particularly with reference to the nature and form of the "reservations" made in the instrument of ratification of the Philippines, as well as to the "non-acceptance" of those reservations by Australia. The necessity of particularizing the request for an advisory opinion to the specific reservations so far made to the Convention on Genocide and the actual objections thereto, is self-evident, unless the intention is to ask hypothetical questions which would be beyond the purview of this Honourable Court.

It may be argued that Australia, as a Member of the General Assembly who voted in favour of the General Assembly Resolution of November 16, 1950, has in fact submitted the dispute between the Philippines and Australia to this Honourable Court. This view would not be tenable, in the first place, because it cannot be inferred that such an individual act on the part of Australia is separate and distinct from the collective act of the General Assembly.

In the second place, question No. III propounded by the General Assembly has no relation whatsoever to the dispute pending between Australia and the Philippines or to any actual dispute between the contracting parties to the Convention on Genocide. In this connexion, it should be noted that this Honourable Court refused to answer questions III and IV propounded by the General Assembly in its request for an advisory opinion on the interpretation of the Peace Treaties with Bulgaria, Hungary and Romania, until after the contingency contemplated come to pass. (International Court of Justice *Reports*, 1950, pp. 65, 221.)

In the third place, while it is true that a dispute may be submitted to this Honourable Court by any party to the dispute under Article IX of the Genocide Convention, it does not follow that the submitting party may unilaterally, to the exclusion of the other party or parties directly involved in the dispute, formulate the issues to be decided by it. The General Assembly may not do what Australia, as a party to the dispute, could not do itself, that is, unilaterally formulate the issues to be decided by the Court.

In the fourth place, such an advisory opinion as may be rendered by this Honourable Court at the request of the General Assembly would not finally decide the dispute between Australia and the Philippines because it would not be binding on any State and, on the other hand, it may prejudge the dispute if not compromise the legal position of the parties. It is felt that States directly affected should be given an opportunity to thrash out their differences amicably and failing that, they should be allowed to agree upon the issues to be submitted to the judgment of the Court.

In view of the foregoing considerations, the Philippine Government asks this Honourable Court to decline to give the advisory opinion requested by the Assembly.

Manila, January 17, 1951. *(Initialled)* [Illegible.]