

Reservations to Multilateral Conventions

ONE OF THE major difficulties in the formation of multilateral international agreements is to make all provisions acceptable to each party. It has consequently become a practice for states objecting to certain articles of an agreement to qualify their acceptance by the inclusion of reservations⁽¹⁾. A reservation creates a special position in favour of a state which, on the other hand, makes it a *sine qua non* of its participation in the convention. The modern practice of opening conventions for accession by states which have not participated at the drafting stage is particularly conducive to the deposit by such states of instruments of accession that include reservations.

Background

It will be recalled that the controversial question of reservations to multilateral conventions was the subject of long debate at the sixth and seventh sessions of the United Nations General Assembly. The question was also considered in 1951 by the International Court of Justice in relation to the Genocide Convention and, in a more general context, by the International Law Commission⁽²⁾. However, no solution as to the fundamental question of the method of admission of reservations was reached, and, all attempts to reach a compromise having failed, the 1952 General Assembly adopted resolution 598 (VI), requesting the Secretary-General to continue to act as depositary of documents containing reservations or objections without passing upon their legal effect. The Secretary-General was asked to communicate the text of such documents to all states concerned, leaving it to each state to draw legal consequences from them. Obviously this practice could not be considered entirely satisfactory because it meant that the status of the reservations (and, in consequence, the status of the convention itself) must remain uncertain. Under the circumstances, and as could be foreseen at that time,⁽³⁾ the problem of determining the precise legal position resulting from reservations was likely to arise again in the future.

India's Instrument of Acceptance of IMCO

On January 6, 1959, the Government of India deposited with the United Nations Headquarters its instrument of acceptance of the Convention on the Inter-governmental Maritime Consultative Organization (IMCO),⁽⁴⁾ to which was appended a declaration to the effect that any measures the Indian Government adopts or may have adopted on various shipping subjects are consistent with the purpose of IMCO as defined in the convention⁽⁵⁾. Since no provisions concerning reservations

⁽¹⁾ For a definition of, and details on, the practice of reservations, see "Canada and the United Nations 1950", pp. 138-139; 1951-1952, pp. 129-131; and "External Affairs", March 1952, p. 111.

⁽²⁾ On the International Law Commission see "External Affairs", September 1949, p. 21.

⁽³⁾ See "Canada and the United Nations", 1951-52, at page 131 *in fine*.

⁽⁴⁾ This convention was concluded on March 6, 1948, and Canada was the first country to ratify it on October 15, 1948.

⁽⁵⁾ For the complete text of the instrument of acceptance by India see Doc. A/4235 of Oct. 6, 1959, Annex I.