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AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

20th meeting
Strasbourg, 12-13 September 2000

THE ROLE OF THE DEPOSITARY:
UN SECRETARY-GENERAL'S PRACTICE AS
DEPOSITARY OF MULTILATERAL TREATIES

Foreword

At its 19th meeting, Berlin, 13-14 March 2000, the CAHDI decided to enter into a dialogue with the UN Secretariat General concerning the UN Secretary-General's practice as depositary of multilateral treaties.

In pursuance of the CAHDI decision, by letter dated 5 June 2000, the Director General of Legal Affairs invited the UN Under-Secretary for Legal Affairs to attend the 20th meeting of the CAHDI or designate a representative, possibly from the Treaty Section.

Following this invitation, the CAHDI Secretariat received a copy of a recent communication circulated by the Legal Counsel of the UN to all Member States [ref. LA4TR/221(23-1)] relating to the practice followed by the Secretary-General as depositary in respect of communications from States which seek to modify their existing reservations to multilateral treaties deposited with the Secretary-General or which may be understood to seek to do so.

The above-mentioned communication is attached notwithstanding the possible participation of a representative of the UN Treaty Section at the 20th meeting of the CAHDI.

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REFERENCE: LA41TR/221(23-1)

The Legal Counsel of the United Nations presents his compliments to the Permanent Representatives to the United Nations and has the honour to communicate the following relating to the practice followed by the Secretary-General as depositary in respect of communications from States which seek to modify their existing reservations to multilateral treaties deposited with the Secretary-General or which may be understood to seek to do so.

The current practice of the Secretary-General is to stipulate a period of 90 days as the length of time within which parties must object to a communication of this nature if they wish the Secretary-General not to accept that communication in deposit.

The Legal Counsel notes in this regard that 90 days is the period which has been traditionally set by the Secretary-General in his capacity as depositary for the purpose of assuming tacit consent to a juridical act or proposition.

However, the Secretary-General's attention has been drawn to the complex questions of law and policy which may fall to be considered by the parties to a treaty, and the necessity that might arise for consultations among them, in deciding what, if any, action should be taken in respect of such a communication. It is his understanding that the 90-day period may be inadequate for this purpose.

Mindful of these considerations, the Legal Counsel is pleased to advise the Permanent Representative that the Secretary-General as depositary intends henceforth to stipulate a period of twelve months as that within which parties must inform him if they wish him not to accept in deposit a communication by a State party which seeks to modify, or may be understood to seek to modify, an existing reservation to a treaty.

In coming to this decision, the Secretary-General has been mindful of the provisions of the Convention on the Law of Treaties, done at Vienna on 23 May 1969. Since a communication which seeks to modify an existing reservation is aimed at creating new exemptions from, or modifications of, the legal effects of certain provisions of the treaty in question in their application to the State concerned, such a communication possesses the nature of a new reservation.

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In determining the period within which parties must inform him if they wish him not to accept in deposit a communication which is, or might be understood to be, of such a character, the Secretary-General has accordingly been guided by Article 20, paragraph 5, of the Convention, which indicates a period of twelve months to be appropriate for Governments to analyse and assess a reservation that has been formulated by another State and to decide upon what action, if any, should be taken in respect of it.

By the same token, the Secretary-General as depositary will in future, when circulating a reservation which a State may seek to formulate subsequently to having established its consent to be bound by a treaty, stipulate twelve months as the period within which other parties must inform him if they do not wish him to consider them to have accepted that reservation.

The Legal Counsel of the United Nations avails himself of this opportunity to renew to the Permanent Representatives to the United Nations the assurances of his highest consideration.

A handwritten signature in dark ink, appearing to be 'H.C.' or similar initials.

4 April 2000