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**AD HOC COMMITTEE OF LEGAL ADVISERS
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**SOME OBSERVATIONS ON THE STATE PRACTICE
CONCERNING OBJECTIONS TO RESERVATIONS
MADE TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN
AND THE CONVENTION ON THE RIGHTS OF THE CHILD**

submitted by the Delegation of Finland

Secretariat memorandum
prepared by the
Directorate of Legal Affairs

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Increasing attention has in recent years been devoted to the issue of reservations to multilateral treaties among others by the States Parties to such treaties as well as by several international bodies. Most notably, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 18 December 1979 and on 20 November 1989 respectively, have been subject to a considerable number of reservations which, in turn, have been subject to a similarly considerable number of objections by the other States Parties. The following is an attempt to analyse, in rather general terms, what kind of legal effects the objecting States have attached to reservations that they have considered to be against the object and purpose of the Convention or which in their opinion raise or may raise doubts as to the commitment of the reserving State to the object and purpose of the Convention. Both Conventions contain a specific clause according to which a reservation incompatible with the object and purpose of the Convention shall not be permitted (Article 28, paragraph 2 of the Convention on the Elimination of All Forms of Discrimination against Women and Article 51, paragraph 2 of the Convention on the Rights of the Child)

Declarations and Reservations to the Convention on the Elimination of All Forms of Discrimination against Women

On 23 February 1998 there were 161 States Parties to the Convention on the Elimination of All Forms of Discrimination against Women. The depositary lists 66 States Parties that have made or are still maintaining declarations or reservations made upon the signature and/or ratification or accession. Subsequently, 11 States Parties have withdrawn the declarations and reservations made in their entirety. Of the reservations still being maintained, 13 are limited to taking advantage of the provision in Article 29, paragraph 2, according to which "each State Party may at the time of signature or ratification of the Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the Article" which relates to the settlement of disputes. In the following, objections made to declarations or reservations of all these 66 States Parties have been taken into account although the declarations or reservations of only 42 States Parties (out of the 55 States Parties still maintaining declarations or reservations) are of relevance today as far as their admissibility is concerned.

Declarations and Reservations to the Convention on the Rights of the Child

On 23 February 1998 there were 191 States Parties to the Convention on the Rights of the Child. The depositary lists 73 States Parties that have made or are still maintaining declarations or reservations made upon the signature and/or ratification or accession. Only 4 States Parties have subsequently

withdrawn the declarations or reservations made in their entirety. In the following, objections made to declarations or reservations of all these 73 States Parties have been taken into account.

Objections¹ made

The declarations and reservations to these two Conventions have been subject to 220 objections by 14 different States.

In a number of these objections the objecting State has stated that it considers the declaration or reservation concerned incompatible with the object and purpose of the Convention. In 69 of these objections, the objecting State has not explicitly specified the legal effect considered by that State to be attached to such a declaration or reservation. In most of these objections the reserving State has merely stated that the objection in question does not prevent the entry into force of the Convention between the reserving and the objecting State². In 33 objections, however, the objecting State has regarded such a reservation as being without any legal effect³ and has considered the reserving State to be bound by the Convention as if no such reservation were made.

In a number of other objections the objecting State has merely stated that the declaration or reservation concerned raises or may raise doubts as to the commitment of the reserving State to the object and purpose of the Convention. In 70 of these objections, the legal effect has not been explicitly specified whereas in 15 objections such a reservation has been regarded as being without any legal effect.

There are also objections in which the State has stated that, given the general character of the reservation in question, a final assessment as to its admissibility could not be made without further clarification by the reserving State and that the reservation could not be considered as admissible unless the reserving State provides additional information or through subsequent practice ensures that the reservation is compatible with the provisions essential for the implementation of the object and purpose of the Convention. It is stated in 7 such objections that they do not preclude the entry into force of the Convention in its entirety between the States concerned.

It follows from the foregoing that in 139 objections, by 14 different States, the legal effect has not been explicitly specified whereas in 55 objections, by 7 different States, the reservation has been regarded (at least preliminarily) as being without any legal effect. One should, however, also take into account that objections belonging to the latter category have only been made since 1994 and that all of the 7 States referred to above did earlier leave the legal effect unspecified.

Note: The document is based on the information on 23 February 1998 in the UN website "United Nations Treaty Collection, Multilateral Treaties deposited with the Secretary-General" as well as on the depositary notifications of the Secretary-General. The issues addressed in this paper, such as the legal effect that the objecting State attaches to the declaration or reservation in question, and the changes in the ways of formulating objections that have taken place during the recent years present difficult questions of interpretation. Therefore, the numbers given in this paper should be regarded as indicative only.

¹ Those objections which have been received after the expiry of 12 months after the date of the depositary notification concerned have been listed as "communications" by the depositary.

² In one case the objecting State considered that the reservations concerned constituted an obstacle to the entry into force of the Convention between the objecting and the reserving State.

³ Various ways of expressing this can be found in the objections. For example, it may have been stated that the reservation concerned is devoid of legal effect or without effect under international law, that the Convention is in force in its entirety between the reserving and the objecting State or that the Convention becomes operative without the reserving State benefitting from its reservations.

