in M Bedjaoui, Law of the Algerian Revolution (1961)

I

MEMORANDUM ON THE ACCESSION OF THE ALGERIAN REPUBLIC TO THE 1949 GENEVA CONVENTIONS

The Provisional Government of the Algerian Republic has the honour of addressing the present Memorandum to the Government of the United Kingdom of Libya, which has kindly agreed to transmit to the Swiss Federal Council the instruments of accession to the Geneva Conventions on behalf of the Algerian State.

It hopes by its aid to provide the United Kingdom of Libya with data to assist it in the accomplishment of this task.

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The Provisional Government of the Algerian Republic considers that :

I. The Federal Council of the Swiss Confederation is not empowered to reject the accession of the Provisional Government of the Algerian Republic to the Geneva Conventions without venturing beyond its specific functions as depositary.

II. Any opposition to this accession expressed by a State which is party to the said Conventions cannot result in the rejection *erga omnes* of the accession to the same Convention.

These are the two points developed in the present Memorandum.

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I. The Federal Council of the Swiss Confederation is not empowered to reject an act of accession.

1) The functions undertaken by the depositary are purely administrative in character.

2) The office of depositary is not dependent on the conclusion of a special agreement between the depositary and the States which charge it with this responsibility; such a fact confirms the purely administrative nature of the function under discussion, which involves no further responsibilities.

3) The depositary has no power to determine the validity in municipal law of the instruments of accession deposited with it.

4) Neither may it determine the validity of an accession in international law.

5) No State which is a party to the Conventions may hold Switzerland accountable on the grounds that the latter failed to reject an accession from a government the said State has not recognised.

Let us examine these five points in succession.

1. The functions undertaken by the depositary are purely administrative.

The duties of a depositary amount in essence to the deposit of the original of the convention in his archives, the provision of duly certified copies and translations in certain languages, the reception of instruments of ratification, accession or denunciation and their notification to States which are party to the convention, and finally the registration of the convention with the Secretariat of the United Nations.

The historical developments of this charge reveals that the depositary is not qualified to engage other parties. About 1860 certain treaties stipulated that accession

or ratification should be in the form of a declaration which should be accepted on behalf of all the contracting States by one of them authorised to this effect. This was the position under the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Time of War. The procedure for ratification recommended the use of the following formula :

« The Federal Council of the Swiss Confederation, Considering the note... (requesting the accession of a given country), declares by these presents, by virtue of the final clause of the *procès-verbal* of the exchange of ratifications (of the said Conventions), its acceptance of this accession both in the name of the Swiss Confederation and those of other contracting States, as duly certified by the present declaration».

Such a formula has completely disappeared to-day from multilateral treaties which provide for a depositary. The latter now appears as a simple « intermediary between the contracting States », according to the phrase used in one of the first conventions to make use of a depositary, the Phylloxeric Convention of November 3, 1881.

While making use of a rather loose legal terminology at different times in dealing with the function of a depositary, doctrine has nevertheless kept pace with its historical development.

If a Swiss lawyer of the Berne Political Department (Henri Thévenaz, « La Suisse, Etat mandataire », *Annuaire suisse de droit international*, 1949, VI), used the term « mandate » to describe the function assumed by Switzerland as a depositary, this was in reality in order to include under this generic term a number of different situations, in which Switzerland takes over the duties of a depositary, or diplomatic representation, or consulate duties on behalf of a State etc, and not at all to argue that within the limits of its « mandate » Switzerland, as depositary, has any powers to engage the contracting parties.

If the celebrated French jurist Jules Basdevant also describes the charge as a « mandate », he none the less adds that the depositary « is not empowered to engage the other parties » to the convention. (J. Basdevant : « Droit des traités », *Recueil des Cours de l'Académie de Droit International de La Haye*, Vol. IV, 1929).

And when Professor Serini of Italy describes the function of the depositary State as that of « representation », carrying with it, in his opinion, « power to represent all the other contracting States », he hastens to clarify his statement : « What is involved », he writes, « is a form of passive representation, limited to the reception of certain acts ». (Angelo Piero Serini : « La représentation en droit international », *Recueil des Cours de l'Académie de Droit International de la Haye*, 1948, vol. 73, p. 117).

The most accurate description of the duties of a depositary is given by the French professor, Jacques Dehaussy, who writes : « All the duties of a depositary appear to us to partake of the same legal character : *administrative* and consequently non-political ». And he repeats : « The depositary only has an administrative duty to perform. He is not empowered to « assent » in the name of the contracting parties ». (J. Dehaussy. « Le dépositaire des traités », *Revue Générale de Droit International Public*, 1952, p. 502).

Restricted to an administrative task of general interest, the depositary therefore appears as a simple intermediary without mandate to conclude a treaty, and restricted to receiving and transmitting instruments of accession to the convention in virtue of which it carries out these very circumscribed duties.

It is hardly necessary to point out that the relevant provisions of the 1949 Geneva Conventions confirm this point of view. They provide that accessions are to be notified in writing to the Swiss Federal Council and to come into force six months following the date of reception, and that the Swiss Federal Council would inform all the powers in whose name the Convention was signed, or the accession notified, of the accession. (Articles 61 of Convention I, 60 of Convention II, 140 of Convention III, and 156 of Convention IV).

2. The office of depositary is not dependent on the conclusion of a special agreement between the depositary and the States which charge him with this responsibility;

such a fact confirms the purely administrative nature of the function under discussion, which involves no further responsibilities.

Switzerland does not act as depositary by any agreement especially concluded to that effect, but simply by acceptance, without any special formalities.

It cannot even be claimed that the relevant clauses of a convention making Switzerland the depositary represent in themselves an agreement. This is of course a logical impossibility, since in that case Switzerland could not become depositary until it had ratified the Convention, and for ratification to come into effect a depositary must previously exist. The existence of a depositary must precede any ratification or accession. Evidence indeed to the contrary. It frequently happens that a depositary State receives instruments of accession - and has therefore accepted and carried out its duties as depositary - before the depositary State has itself acceded to the convention for which it acts as depositary. Switzerland, for instance, accepted instruments of ratification of the 1864 Geneva Convention on September 22, 1864 from France, before Switzerland itself had ratified the Convention on October 1 of the same year. In the same way the 1906 Geneva Convention was ratified by the United States (February 9, 1907), Great Britain (April 16), Italy (March 9), and Russia (February 9) before Switzerland, which was the depositary, ratified the Convention in its turn (April 16, 1907).

The General Secretary of the United Nations, moreover, who took over the work of the General Secretary of the League of Nations in this field, acts, like the Swiss Government, as depositary for more than 120 multilateral treaties and conventions. These duties also were not transferred to the U.N. General Secretary by means of any formal agreement.

The question having been raised at the Fifteenth Session of the U.N. Economic and Social Council, the representative of the General Secretary replied that these duties bore no relevance to the coming into force of instruments, and did not affect the rights and duties of the contracting parties; they only involved the duties normally carried out by a depositary. (Doc. E/AC 7/Sr. 332, pp. 3-4).

The following passage in the report of the Sixth U.N. Commission stated that the General Assembly - Resolution 24 (I) - had declared that the United Nations was prepared to accept the deposit of international instruments... There was therefore no need for any protocol to effect the transfer of such duties. (Doc. AG (VIII) Annexes, point 30 of the agenda, A/2517, p. 3).

It is clear from the preceding that a basic difference exists between, for instance, diplomatic representation, or a mandate for which an agreement specifying its nature and scope is necessary, and the duties of a depositary, which are purely administrative in character. Within the limits of his mandate the representative or authorised agent engages the principal. If, for example, he has been given a mandate to conclude a treaty on behalf of a given State, he is entitled to verify if all the conditions as to form and content are fulfilled by the party with whom the treaty is to be concluded. This is not the position of the depositary, which, since it is not empowered to engage those who entrusted it with his task, is likewise not empowered to determine the validity of the instruments deposited with it.

And therefore

3. The depositary has no power to determine the validity in municipal law of the instruments of accession deposited with it.

Contrary to the opinion of Professor Dehaussy *(op. cit.)*, the depositary has no power to determine the formal validity of acts of accession. The depositary State, which moreover neither represents nor engages the States which have selected it, cannot possess greater powers than the latter where treaties are concerned. Now doctrine undoubtedly recognises in certain cases the validity of treaties which States have concluded, but not in due form.

Even Professor Dehaussy only gives his opinion with a certain caution, taking care to make it clear that « the opinion of the depositary cannot in the last resort be considered final. Its competence is that of an « agent », an administrative authority subordinate to the contracting parties ».

The theory we have put forward is in fact followed in practice, which ends all further discussion on this point. In the past the Swiss Federal Council has accepted and duly certified an accession even when irregular in form.

Ecuador had acceded to the Convention of the Union for the Protection of Industrial Property of March 20, 1883 by a note of December 21, 1883 addressed to the Swiss Federal Council, which had been appointed as depositary by this Convention. The Government of Ecuador had however exceeded its powers on this occasion by not previously submitting the treaty to the National Congress, the body with constitutional competence to approve it. The Federal Council none the less accepted this accession and informed the other contracting States. The treaty was later submitted to the National Congress of Ecuador, which refused its assent, and the Government of Ecuador was consequently constrained to denounce the treaty by a note of October 26, 1885 adressed to the Swiss Federal Council. And there cannot be denunciation of a treaty without prior accession.

4. The depositary may not determine the validity of an accession in international law.

a) Switzerland has consistently refrained from giving any opinion on the international position or form of acceding States.

It has received accessions, couched in due form, to the 1949 Geneva Conventions from States which were not recognised by Switzerland, that is, from States or regimes legally inexistent as far as Switzerland was concerned. It accepted the accession of the Vietnam of Bao-Dai in 1953, the German Democratic Republic in 1956, the Democratic Republic of Northern Korea in 1957, the People's Republic of Mongolia in 1958, and the Democratic Republic of Vietnam in 1957.

If on the basis of these facts the claim is still put forward that Switzerland is none the less empowered to determine the legal existence of a State, there has been a failure to understand that Switzerland may refuse to admit the legal existence of a State for the purpose of recognition, and yet admit it for the purpose of accepting its accession to conventions.

« If », wrote the jurist Henri Thévenaz (*op. cit.*, p. 28) « the Federal Council has not recognised (the State wishing to accede), a difficulty arises when accession is demanded through diplomatic channels. In such a case the acceding State can only request a State which has already recognised it to act as intermediary. The depositary State, once such an accession has been received, cannot refuse to act on it simply because it has not recognised the acceding State ».

The Federal Council rejected a demand for accession to the 1949 Geneva Conventions presented by the Republic of the Southern Moluccas. To reach this decision, perfectly correct in law, the Federal Council was not called upon to determine, nor could it determine, the validity of the act of accession as such. It was sufficient for the Federal Council to note the irregular procedure by which the demand was presented. It had been directly addressed to the Federal Council, i.e., without the intermediary of a State recognised both by the Republic of the Southern Moluccas and Switzerland. As far as the latter was concerned, such an « accession » emanated from a body which did not exist at all in law.

And indeed those Indonesians who had rebelled against the central Djakarta Government, and who had temporarily set up a sort of « Moluccan Republic », were unable to find any State willing to recognise them at all, with the result that they possessed no international personality either to enter into relations with another State, or to accede to an international convention.

b) Switzerland has received and notified accessions to the 1949 Geneva Conventions from States which were not recognised by the whole of the other States party to the Conventions.

In addition to the examples cited above under note (a), the accession of Israel and certain Arab States, which did not recognise each other, may be mentioned. And when the Viet-Nam of Ho-Chi-Minh acceded to the Geneva Conventions in 1953, it was not recognised by Czechoslovakia or Yugoslavia, both party to the Conventions since

1950, nor by India and Pakistan, which had acceded, the former in 1950 and the second in 1951.

c) Faithful to the purely administrative character of the duties of a depositary, and the rules of conduct attendant on them, the Swiss Federal Council has moreover always refrained, since it had no powers to that effect, from any determination as to whether the conventions remain in force when States which were party to a convention disappear, change, or lose their governments. This attitude towards questions of the succession of States or military occupation is a corollary of the principle by which the depositary refrains from determining the validity of an accession in international law.

d) A precedent furnished by the United Nations is particularly revealing on the limits placed on the powers of the depositary. The General Secretary of the United Nations, as depositary for the Convention on the Prevention and Punishment of the Crime of Genocide, received instruments of accession containing reservations, and did not accept the final deposit of the instruments before obtaining the express or tacit consent of all the States party to the Convention. This action was criticised by a large number of member-States of the United Nations.

The question was brought up before the General Assembly, and later the International Court of Justice, in circumstances which will be referred to later. The International Court of Justice gave an advisory opinion on this point on May 28, 1951, in which it declared that the General Secretary, as agent, was not entitled to refuse instruments of accession from a State, which contained reservations. As for the U.N. General Assembly, it quite simply requested the General Secretary to refrain from pronouncing on the legal consequences of these documents (the reservations, and the objections to the reservations), but to restrict himself to communicating them to the States concerned. (Res. Gen. Ass. 598, VI, of Jan. 12, 1952).

e) It is not out of place here to refer to a function of the U.N. General Secretary which is closely connected with that of depositary, which is the registration of treaties. The U.N. General Secretary has consistently registered treaties concluded by States whose international capacity was questioned by one camp or the other, without taking the reactions of either camp into consideration. At the same time as the United States was arguing that Outer Mongolia and the North Korean Republic were not independent States with the capacity of concluding treaties, Soviet Russia was protesting against the claims of Formosa China to represent and engage the whole of continental China in a treaty or international agreement.

A note of the State Department addressed to the General Secretary of the United Nations declared that the U.S. Government hoped it had made it quite clear that it considered the registration of these instruments to be devoid of significance because, in the opinion of the United States, the regimes in question did not possess international personality and the instruments did not constitute treaties or international agreements in the sense of Article 102 of the Charter. The Government of the United States, it went on to state, could not regard the registration, with regard to law and established practice, as implying any form of approval of the instrument as a treaty or international agreement, or a recognition of the party to the agreement, or a judgment on the capacity of the party to conclude a treaty. (Cf. *Repertory of the practice of the United Nations*, Supplement, vol. II, under Article 102).

The question of the registration of treaties concluded by States which have not been recognised by the whole of the international community of States, like the question of accessions, illustrates the basic principle of the relative nature of international legal standards.

5. No State which is a party to the 1949 Geneva Conventions may hold Switzerland accountable on the grounds that the latter has failed to reject an accession from a government which the said State has not recognised.

This absence of liability is, as we have pointed out, a basic element in the purely administrative character of the duties of a depositary.

For responsibility to be established, a specific failure on the part of the Swiss authorities would in the first place have to be established. On the contrary, however,

Switzerland has only acted in conformity with international standards on the deposit of accessions, in refraining from determining the validity of an act of accession as such.

This fact is sufficient in itself. It is nevertheless worth putting on record that Swiss responsibility is only involved if evidence is provided, not simply of a failure to observe a binding international duty, but also of the creation of a prejudice in consequence. This could never occur on account of an accession to a purely humanitarian convention designed to alleviate or spare humanity from suffering, including the nationals of the State lodging the protest.

The idea of prejudice directly caused by an alleged failure on the part of Switzerland is essentially alien to the whole concept of the Geneva Conventions. The function of depositary is not assumed in the individual interest of any given State party to the Conventions, but in the general interest of all the parties, indeed, of all humankind. And this interest must be considered not in terms of any given international situation, but in the light of the precise purpose and final end of the Conventions themselves.

This was excellently expressed by the International Court of Justice in its advisory opinion over the Genocide Convention, when it declared that in such a convention the contracting States had no private interests; each and everyone of them had only one common interest, which was to maintain the higher ends which were the purpose of the Convention. As a result, it declared, it was impossible in a convention of this sort to speak of the individual advantages or disadvantages of States, any more than of an exact contractual balance to be maintained between rights and responsibilities. (I.C.J., advisory opinion on reservations to the Genocide Convention, May 28, 1951, *I.C.J. Reports*, 1951, 15, 29).

II. If the Swiss Federal Council is limited to accepting the instruments of accession and informing the States party to the 1949 Conventions, without determining its validity, does a State which is party to the said Conventions possess, on the other hand, the right of opposition ?

The answer to such a question may be found in the three following propositions:

1) The right of opposition concerns closed or semi-open treaties.

2) The 1949 Geneva Conventions are open to accession on the part of every State, and make no provision for the right of opposition.

3) In any case the right of opposition cannot entail the rejection *erga omnes* of the accession.

1. The right of opposition concerns closed or semi-open treaties.

A State cannot of course impose itself on the parties to a multilateral treaty against their will. Their agreement is generally given in the clause of the treaty dealing with accession. If the contracting States intend to prevent, restrict or control the accession of other States, this intention is expressed in the text of the treaty, and they enjoy the right of opposition to accessions to enforce their will as expressed in the treaty.

According to whether accession is impossible, or accompanied by conditions, the treaty is regarded as a closed or a semi-open treaty. Article 10, for instance, of the Treaty of April 4, 1949, setting up NATO, provided that the contracting parties might, *by unanimous consent*, invite the accession to the Treaty of any other European State fulfilling the required conditions. Article 7 of a treaty of understanding and collaboration between the Balkan States, which came into force on November 3, 1934, laid down that « accession may only take place with the *common consent* of the High Contracting Parties ». Article 42 of the Convention of October 13, 1919 Relating to Aerial Navigation, admits accession if it is « accepted by at least three-quarters of the signatory and acceding States ».

There is no need to multiply examples to prove that, in a sphere where the will of the contracting parties is completely free, the nature and conditions of accession are very varied. The right of a State to opposition to a given accession may therefore

Doctrine supports this right on grounds described by the English lawyer, M. Fitzmaurice, to the effect that the balance of a treaty and to a certain extent its usefulness may be gravely compromised, because the relative value of votes might well be changed by the unexpected accession of one or several States whose participation in the said treaty was not originally foreseen. (Report by Mr. Fitzmaurice to the U.N. Committee of International Law, *Yearbook of the Committee*, vol. II, 1956, p. 128; the same opinion is expressed in the report of Professor Lauterpacht to the same Committee, doc. A/CN. 4/63 of March 24, 1953).

It is obvious, and we shall note it further on, that such a consideration finds no place in the context of the 1949 Geneva Conventions.

It should be added in conclusion that even where provision has been made for the right of opposition, it is not always exercised. The Hague Conventions of 1899 and 1907 subjected accession to the consent of the contracting parties. Yet when newly founded States, such as Poland, Czechoslovakia and Finland acceded to these Conventions, no attempts were made to enforce the clause requiring the agreement of all the contracting parties (Cf. Lauterpacht *op. cit.)*.

2. The 1949 Geneva Conventions are open to all States, and make no provision for the right of opposition.

Article 60 of Convention I, Article 59 of Convention II, Article 139 of Convention III, and Article 155 of Convention IV, clearly provide that the Convention should, after it had come into force, remain open for accession by any State non-signatory to the Convention.

Because of their humanitarian and universal character the Geneva Conventions are precisely the type of convention which cannot be permitted to impose restrictions on the accession of States.

No limitation, declared the *Commentaire de la Convention IV*, published by the International Committee of the Red Cross (Geneva 1956, p. 666), nor any condition, except the prior coming into force of the Convention, had been drawn up in this connection; the invitation was open to all States, whether or not they had been party to one of the earlier Conventions. The Geneva Conventions, which drew their strength from their universal character, were treaties open to all.

It should be noted moreover that one of the precursors of the 1949 Geneva Conventions, the Geneva Convention of July 6, 1906 for amelioration of the condition of the sick and wounded, only permitted the accession of a State on the condition that none of the contracting parties opposed this accession within a given period (article 32, para. 3). Does not the fact that this right of opposition was not re-affirmed in the 1949 Geneva Conventions denote in itself that it was intended to reject the right of opposition ?

The State which is party to the Conventions, moreover, is still less entitled to take advantage of a right of opposition in that it is not concerned to safeguard any balance to these Conventions (see above), and that accession cannot be analysed in a truly contractual relation.

According to the report quoted above, (A/CN 4/63), multilateral treaties, the object of which was to regulate questions of general interest to the international community, could not, properly speaking, be considered as establishing purely contractual relationships. These Conventions were, it was declared, often called « international laws », or « treaty-laws ».

This specifically contractual aspect can be seen through the question of reciprocity in the 1949 Geneva Conventions. On this subject the International Red Cross (*op. cit.* p. 23), wrote that these Conventions had come to be regarded less and less as reciprocal contracts concluded in the national interest of the parties, and more and more as solemn affirmations of principle observed for their own intrinsic value, as a series of unconditional engagements of each of the contracting parties towards the others. A State did not publicly affirm the protection due to civilians in the hope of alleviating the fate of a certain number of its own nationals, but because of the respect it bore to the human person as such.

It is for this reason that Article 2, which is common to all four Conventions,

declares that if one of the powers in conflict is not a party to the present Convention, the other powers which were parties to it none the less remain bound by its provisions in their reciprocal relations. They would moreover be bound by the Convention in their relations with the said Power if the latter were to accept the Convention and enforce the provisions.

This marks considerable progress from the principles of the 1907 Hague Convention and the 1906 Geneva Convention, which no longer applied if one of the parties to the dispute was not bound by the Conventions.

Even during he period when these two Conventions were in force, it cannot be maintained that accession resulted in the creation of bilateral ties of a completely classical character between the acceding country and other powers already party to these Conventions. For it would be difficult to comprehend that a number of States, linked by a convention involving what are considered strictly bilateral relations, would refrain from enforcing it on account of the single fact that one power, a party to the same dispute as they are, is not a party to the same Convention.

And equally, if reference is made to the provisions governing the denunciation of the Geneva Conventions (Article 63 of Convention I, Article 62 of Convention II, Article 142 of Convention III, and Article 158 of Convention IV), it becomes clear it is not conceived after the classical method of denouncing bilateral treaties. In certain cases the denunciation of the Geneva Conventions is without legal effect and the Power in question remains bound by the Convention. Which is to say that the latter is not so much bound toward each of the contracting parties as to the corporate conscience of humankind.

It is clear from the preceding that a right of opposition to any given accession can only be justified if this accession has led to the formation of a full contractual bond between the acceding and the opposing nations, and if it has caused prejudice to the opposing State.

International practice, however, reveals the existence of a right of opposition available to each State party to a convention even if the latter is completely open to all. The most striking example concerns the Convention on the Prevention and Punishment of the Crime of Genocide. This example, which we shall examine now, shows that this right of opposition, even when recognised, cannot entail the rejection *erga omnes* of an accession.

It is important to bear this conclusion in mind.

3. The right of opposition cannot entail the rejection erga omnes *of the accession.*

The General Secretary of the United Nations, as depositary of the Convention on the Prevention and Punishment of the Crime of Genocide, had received instruments of accession to this Convention which contained certain reservations. The General Secretary decided to accept the final deposit of such instruments only after having obtained the express or tacit consent of all States party to the Convention at the time the reservation was expressed.

The States which made the reservations contested the legal correctitude of such action, and found themselves in disagreement with the States party to the Convention, which had objected to their reservations. The basic problem therefore was to settle whether a State could accede to a Convention despite the objection of another State.

The U.N. General Assembly requested the International Court of Justice to give an advisory opinion. On May 28, 1951 the International Court of Justice delivered an advisory opinion with the following important conclusions :

a) « A State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention, but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that State cannot be regarded as being a party to the Convention ».

b) « If a party to a Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention it can in fact consider

c) « If, on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention, it can in fact consider that the reserving State is a party to the Convention ».

It is of little importance that the example quoted is concerned with accessions with reservations. It is essential to realise that the fundamental problem under debate is to discover whether a State which is party to the Convention has the right to determine the validity of any accession, and if its opposition has the effect of preventing the accession which had been deposited.

From the Court's reply it may be concluded that :

a) The depositary of the Convention is not in any way entitled to determine on the validity of an accession and to refuse to accept an instrument of accession. The duty of the U.N. General Secretary, declared the Court, was limited to accepting the reservations and objections and notifying them. The U.N. General Assembly in fact requested the General Secretary 1) to conform to the advisory opinion of the Court, and 2) in future a) to continue to carry out his duties as depositary when documents containing reservations and objections were deposited, without determining the legal effects of these documents; and b) to notify all the States concerned of the text of the said documents. (Res. of January 12, 1952, 598 (VI).

b) The State already party to the Convention enjoys the right of opposition to a new accession, but 1) it is not an absolute right. Its exercise, and certainly even its existence, is governed by the higher purposes of the Convention. And 2) this right, when its existence and exercise are possible, cannot entail the rejection *erga omnes* of the act of accession which is the object of opposition. The accession to which opposition is offered remains valid and makes the acceding State a party to the convention. The right of opposition only allows the State exercising it to consider that the State to whose accession it objects is not a party to the convention. This effect is essentially relative, and only operates in relations between the opposing and acceding States.

The U.N. General Assembly therefore requested the General Secretary, in the Resolution quoted above, to notify all the States concerned of accessions, with reservations and objections, leaving each State the task of deducing the legal consequences of these communications.

It will be noted in passing that the solution put forward, and which takes its authority from no less a body than the International Court of Justice, falls somewhat short of the general practice adopted by the American States, which are members of the United Nations and at the same time members of the Organisation of American States, since the latter organisation recognises that a State desiring to accede to a convention becomes in any case *ipso jure* party to the convention, whatever the character of the reservations formulated or the objections raised to them by contracting States.

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The following conclusions may therefore be reached.

1) The Swiss Federal Council is not in a position, without exceeding its purely administrative powers as depositary, to reject the instruments of accession to the 1949 Geneva Conventions deposited by the Provisional Government of the Algerian Republic through the intermediary of the United Kingdom of Libya.

2) The Swiss Federal Council must restrict itself to the notification of such accession to all the States which are party to the Convention.

3) In so far as a right of opposition is recognised to States party to the Convention, a right which must be compatible with the purely humanitarian aims and universal purpose of the Conventions, those States which exercise this right may each of them consider, as far as they are concerned, that the Algerian State is not in fact party to the Conventions.

4) Those States party to the Convention, which have recognised the Provisional Government of the Algerian Republic, or those States party to the Conventions which,

without having recognised the Algerian Provisional Government, are none the less of the opinion that the humanitarian purposes of the Conventions are not compatible with the exercise of the right of opposition should, in so far as they are concerned, consider the Algerian State as party to the Geneva Conventions.

5) If these solutions are not found acceptable, in defiance of the law and the higher interests which the Geneva Conventions are designed to preserve, then it rests with each of the States party to the Conventions, which has recognised the Provisional Government of the Algerian Republic, to take the dispute to law before the International Court of Justice, which will then give a decision on :

a) whether it is in accordance with the principle of the relative nature of international laws, and the equal sovereign rights of States, that one or several States nullify the effects of the recognition this State has accorded to the Provisional Government of the Algerian Republic, which implies the capacity of the latter to enter into treaties;

b) if the construction of the relevant provisions of the 1949 Geneva Conventions as well as the rights and duties of the depositary and the States party to the Conventions give grounds for the rejection of the instruments of accession deposited by the Provisional Government of the Algerian Republic.

ADDITION TO MEMORANDUM

It is particularly interesting to consider the legal situation created by the accession of the German Democratic Republic to certain international conventions, and to note the attitude adopted towards the G.D.R. by the States which act as depositaries for these conventions, since the Federal German Republic of Bonn claims to represent the whole of the German people, just as France claims to represent Algeria.

Yet the accession of the German Democratic Republic to international conventions, (and particularly the 1949 Geneva Conventions) has been admitted as valid, despite the claims of Federal Germany.

The caution and neutrality with which the depositary States carries out its duties can, for instance, be seen in this example. Belgium, when approached as depositary by the East German Government on November 5, 1954, requested its representatives in the countries which were party to the Convention to transmit to their respective governments a copy of the letters of accession from M. Grotewohl to the conventions unifying various maritime laws. The Belgian note declared that the Government of Belgium wished to point out that in communicating these letters it acted exclusively in its capacity as the depositary State of the above conventions, with the sole purpose of notifying the signatory countries.

The Belgian diplomats were likewise asked to request no reply to the petition presented by M. Grotewohl. Following the Belgian communication, certain countries informed the depositary State that they did not recognise the German Democratic Republic, and that they considered the letters of M. Grotewohl devoid of legality « in so far as they were concerned », thus recognising the relative nature of their opposition.

In another connection, when the German Democratic Republic, by the intermediary of Czechoslovakia, presented a memorandum of accession to the International Union for the Protection of Industrial Property to the Swiss Federal Council, the Political Department of the Swiss Confederation limited its actions to the dispatch of a note, without commentary, to the other States party to the Union, notifying them of the contents of the German memorandum.

A verbal note on the part of the Bonn Government, dated May 28, 1956, put forward the following argument. « The Government of the German Federal Republic is the only German Government which has been set up freely and in due form; it is therefore the only Government qualified to represent the German people in international affairs ». This position recalls the West German thesis expressed in an earlier *aide-mémoire* of February 10, 1956. A note of January 14, 1957 repeated the same argument.

A number of countries, it is true, contested the right of East Germany to accede to the convention in question, but they all maintained that the accession was devoid of legal effect in so far as they and their individual relations with the German Democratic Republic were concerned.

The latter has however continued to register its patents and trade - marks with the above-mentioned international union; it has taken its seat at certain diplomatic conferences connected with the Convention (the Berlin Conference); it has regularly paid its contributions, which have been regularly accepted, and has acted consistently as a sovereign Power.

It is unnecessary to add that the accession of the German Democratic Republic to the humanitarian Geneva Conventions, with their universal character, met with no difficulties.

INSTRUMENTS OF ACCESSION OF THE ALGERIAN REPUBLIC TO THE GENEVA CONVENTIONS OF AUGUST 12, 1949 (1)

The Provisional Government of the Algerian Republic,

After having seen and examined the following Conventions, concluded at Geneva, August 12, 1949, in the text given in the *U.N. Collection of Treaties* under the registration N°s 970, 971, 972, 973, vol. 75, pp. 31, 85, 135 and 287 :

I. The Convention (with Annexes) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

II. The Convention (with Annexe) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

III. The Convention (with Annexes) relative to the Treatment of Prisoners of War.

IV. The Convention (with Annexes) on the Protection of Civilians in Time of War.

Has approved the Conventions indicated above by decree n° 60-61 passed by the Council of Ministers on April 6, 1960.

In conformity with Article 61 of Convention I, Article 60 of Convention II, Article 140 of Convention III and Article 156 of Convention IV, the Provisional Government of the Algerian Republic, through the intermediary of the Government of the United Kingdom of Libya, requests the Federal Council of the Swiss Confederation to consider these presents as the instrument of its final, formal and unqualified accession to the above-mentioned Conventions.

In witness whereof We, Ferhat Abbas, President of the Provisional Government of the Algerian Republic, do set to these presents the seal of the Provisional Government of the Algerian Republic, and have apposed Our signature, at Tunis, the fourteenth day of Doul Kaada in the year one thousand three hundred and seventy nine, which corresponds to the eleventh day of April, one thousand nine hundred and sixty.

Signed Ferhat ABBAS

(1) This accession was registered at Berne, June 20, 1960.