> nature confers a status, and with it the rights inherent in that status. The whole balance of a treaty is capable of being altered after signature by the admission of reservations, or of other acceeding parties, so that a signatory State may find that the treaty it has signed . . . is, in effect, no longer the same treaty. ([1956] 2 Y.B. INT. L. COMM. 122, para. 59.)

The absence of any indication in the review to the author's basis may distort the picture and can only mislead the reader.

Thirdly, the learned reviewer maintains that the author's ". . . view (pp. 324, 325) that a state would automatically cease to be a party to the Convention if it ceased to be a member of the United Nations and of any specialized agency because only a member of one of these organizations may bcome a party to the Convention is highly questionable" (p. 602). The author's interpretation is based on the *travaux préparatoires* of the Tokyo Convention and the circumstances prevailing at the Tokyo Conference of 1963. The origin of the final clauses of the Tokyo Convention is the final clauses of the Guadalajara Convention (1961), Supplementary to the Warsaw Convention 1929 (see International Conference, Tokyo, Vol. II, ICAO Doc. 8565-LC/152-2, Doc. No. 4, at 21) which contained, at first, the "all States clause" but were amended to limit partnership in the Convention to members of the United Nations and those of the specialized agencies, on the basis of a U.S. proposal (see International Conference on Private Air Law, Guadalajara (1961), ICAO Doc. 8301-LC/149-1, at 225–228 and 8301-LC/149-2, at 51). Moreover, statements made at the Tokyo Conference by some of the participants from both the Western and Socialist states, *e.g.*, those of the delegations of the Federal Republic of Germany, the United States and the USSR, together with the fact that the invitation to attend the Tokyo Conference was limited to members of the United Nations and the specialized agencies, would seem to provide some basis, in the author's opinion, for his interpretation in this respect (see pp. 300–02 of the work and Tokyo Conference, ICAO Doc. 8565-LC/152-1, at 7–9 and 353–55). Furthermore, the author used a cautious terminology such as "it is possible to argue," "it is feasible to maintain" and "the question is not crystal clear under the Convention" (p. 323), which the reviewer might perhaps have failed to notice. Again, the absence of any reference to this page could convey a wrong impression even to the careful reader.

Finally, I would like to state that the book is the edited and updated thesis accepted for the degree of Doctor of Philosophy at Cambridge University. It had been supervised by Professor R. Y. Jennings and was examined by Mr. John Collier and Professor David Johnson.

SAMI SHUBBER

Professor Lissitzyn responds:

Below is my reply to the three points in Dr. Shubber's letter:

First, the objective and purpose of a treaty are certainly relevant to its interpretation, but the Tokyo Convention contains no statement of its objective and purpose. They are inferred by Dr. Shubber mainly from some passages in the records of the Legal Committee of ICAO whose work laid the foundation for the Tokyo Conference. These inferences should not be allowed to render meaningless a specific provision of the Convention, Article 3(3) quoted in full in my review, which explicitly preserves "any criminal jurisdiction exercised in accordance with national law."

Perusal of the preparatory work in its entirety reaffirms my opinion that Dr. Shubber's effort to interpret away Article 3(3) is unconvincing. His interpretation is inconsistent with that of Boyle and Pulsifer in the article I cited in my review (and well known to Dr. Shubber) who say that the language of this paragraph as drafted by the Legal Committee "was further expanded [at the Conference] to make it clear that any form of criminal jurisdiction exercised by a State under its national law would still be available . . ." (30 J. OF AIR L. & COMMERCE 305, 336 (1964)). As I pointed out, Mr. Boyle was the head of the U.S. delegation at the Tokyo Conference. Another member of this delegation, Allan I. Mendelsohn, also strongly stresses this purpose of Article 3(3) (A. Mendelsohn, *In-Flight Crime: The International and Domestic Picture under the Tokyo Convention*, 53 VA. L. REV. 509, 517–18 (1967)). Mendelsohn's article is cited by Dr. Shubber (at p. 72 of his book), as is that of Miss G. M. E. White (*id.*) who also disagrees with Dr. Shubber's interpretation. Furthermore, as I pointed out in my review, Dr. Shubber's interpretation is inconsistent with the practical construction of the Convention by at least one party thereto, the United States, which in the 1970 Act of Congress entitled: "An Act to Implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for Other Purposes" (P.L. 91-449, 84 Stat. 921, 49 U.S.C. §1472(i–k) (1970 ed.)) asserts criminal jurisdiction on the basis, *inter alia*, of the place of first landing of the aircraft (with qualifications). (*Cf.* my editorial comment in 67 AJIL 306, 310 (1973).) That this assertion of jurisdiction was deliberate and emerged after full consideration of the issue appears from the already cited article of Mendelsohn (at 548–58) who, as an attorney in the Office of the Legal Adviser, U.S. Department of State, contributed to the drafting of the legislation eventually enacted in 1970. It is generally recognized that practical construction by the parties may be used in the interpretation of treaties.

Second, in objecting to my criticism of his assertion that a "signatory to the Tokyo Convention had the right to object to the admission of new parties to the Convention," Dr. Shubber wastes time and space by discussing objections to *reservations*, which were not even mentioned in my review, and quotes a statement of Sir Gerald Fitzmaurice concerning accessions as well as reservations which, with respect to accessions, is clearly inapplicable to a treaty which contains a clause expressly permitting accession by nonsignatories, as does the Tokyo Convention (Art. 22), since accession by a state pursuant to such a clause cannot be regarded as modifying the treaty without a signatory's consent. By signing the treaty, a state consents in advance to accession by any qualified state. This simple consideration seems to have escaped Dr. Shubber's attention, although he devotes several pages of the book (317 *et seq.*) to discussing the accession clause in the Convention.

Third, in questioning Dr. Shubber's view that a state automatically ceases to be a party to the Convention if it ceases to be a member of the United Nations and of any specialized agency, I did not overlook the cautious language on p. 323 of his book which he quotes in his letter. The chapter in which he discusses this matter ends, however, with this unequivocal sentence (at 325): "Therefore, any State which ceases to be a member of any of the said organizations, ceases, immediately, to be a party to the Tokyo Convention." I still regard this view as highly questionable. A provision limiting the right to sign or accede to a convention to states members of certain organizations, and the discussion of this provision in the

course of preparatory work, do not necessarily imply that a state which has become a party to the convention ceases automatically to be such if it ceases to be a member of any of these organizations. The Tokyo Convention contains a denunciation clause (Art. 23) of the usual type which does not reflect Dr. Shubber's view (*cf.* also Art. 26), but does not contain any clause concerning expulsion or automatic exclusion from the Convention of any party. Dr. Shubber, furthermore, is unable to cite any state practice or provision in the Vienna Convention on the Law of Treaties to support his position. *Cf.* Articles 54 and 55 of the Vienna Convention which, though not directly applicable, rather point in the opposite direction.

To The Editor-in-Chief,

You were kind enough to pay attention in your widely known *Journal* to my book *Zastrzeżenia do traktatów wielostronnych* ["Reservations to Multilateral Treaties"]. I refer to the book note by Professor Kazimierz Grzybowski which appeared in 70 AJIL 616–17 (1976). I admit that it is a somewhat unusual step on the part of an author of a book to comment upon a review. And if I do so, it is because something more than my personal dissatisfaction is involved in the whole issue.

In my opinion, even if one chooses to present citations concerning third class problems only—as is the case with the review under consideration—at least these citations should correspond to the real text of a book. There are three quotations from my book with the respective pages indicated and to my regret not one meets this requirement.

The review says: "The author states four reasons for the innovations in the Treaty on Treaties as regards reservations, among them structural changes in the international community (the theory of the three camps) (p. 68)." In fact neither in the text nor in the context of "four reasons" given on p. 68 is an allusion made to the Treaty on Treaties. The exact translation of the whole statement in question is as follows:

> B . . . UN period.
> During the UN period reservations grew (and continue to grow) in number in a geometrical progression. This growth is an outcome of the following facts: . . . .
> — . . . .
> — . . . .
> —differentiation of the international community: existence of socialist states, capitalist states and the so-called Third World states, representing very often different group interests.
> — . . . .

The review goes on: "However, in describing various tendencies among the participants in the Vienna Conference which drafted the text of the Convention, she discovers that the proponents of the new rules included the United States, most of the Latin American states, socialist states, and some others, a somewhat puzzling statement in view of the earlier findings (p. 143)." In fact on p. 143 no allusion in any form whatsoever is made either to the Vienna Conference or to the Treaty on Treaties. It is clear from the text as well as from the context that all references to the positions of states appearing on this page deal with the General Assembly debates on reservations to the Genocide Convention in 1950–1952. Having indicated which countries defended the idea of unanimity in respect of reservations to this Convention, I stated (p. 143): "Almost all countries from the American continent (including the USA), socialist states (except