

RESERVATIONS TO TREATIES

At its forty-fifth session, in 1993, the International Law Commission, on the basis of the recommendation of a Working Group on the long-term programme of work, decided to include in the Commission's agenda, subject to the approval of the General Assembly, the topic "The law and practice relating to reservations to treaties". The Commission recognized the need not to challenge the regime established in articles 19 to 23 of the 1969 Vienna Convention on the Law of Treaties, but nonetheless considered that these provisions could be clarified and developed in draft protocols to existing conventions or a guide to practice (A/48/10).

The General Assembly, acting on the recommendation of its Sixth Committee (Report of the Sixth Committee to the General Assembly, A/48/612), by resolution 48/31 of 9 December 1993, endorsed the above decision of the International Law Commission on the understanding that the final form to be given to the work on the topic would be decided after a preliminary study was presented to the Assembly.

At its forty-sixth session, in 1994, the Commission appointed Mr. Alain Pellet as Special Rapporteur for the topic (A/49/10).

Acting on the recommendation of its Sixth Committee (A/49/738), the General Assembly, in resolution 49/51 of 9 December 1994, again endorsed the decision of the Commission on the understanding reflected above.

At its forty-seventh session, in 1995, the Commission had before it the first report of the Special Rapporteur (A/CN.4/470). This preliminary report provided a detailed study of the Commission's previous work on reservations and its outcome. It also provided an inventory of the problematic aspects of the topic including those relating to the ambiguities and gaps in the provisions concerning reservations contained in the Vienna Conventions on the Law of Treaties, as well as those connected with the specific object of certain treaties or provisions or arising from certain specific treaty approaches. Finally, it outlined the scope and form of the Commission's future work, guided by the preservation of what had been achieved, and proposed the form that the results of the Commission's work might take. These guidelines would, if necessary, be accompanied by model clauses (A/50/10). In the view of the Commission, those conclusions constituted the results of the preliminary study requested by the General Assembly in resolutions 48/31 of 9 December 1993 and 49/51 of 9 December 1994 (A/50/10). The Commission authorized the Special Rapporteur to prepare a detailed questionnaire on reservations to treaties to ascertain the practice of, and the problems encountered by, States and international organizations, particularly those which are depositaries of multilateral conventions (A/50/10).

The General Assembly adopted, on the recommendation of its Sixth Committee (Report of the Sixth Committee to the General Assembly, A/50/638), resolution 50/45 of 11 December 1995 in which it took note of the Commission's conclusions, invited the Commission to continue its work along the lines indicated in its report and invited States and international organizations, particularly those which are depositaries, to answer the questionnaire.

At its forty-eighth session, in 1996, the Commission had before it the Special Rapporteur's second report (A/CN.4/477, Add.1) as well as a bibliography (A/CN.4/478). The report dealt with the issue of the unity or diversity of the legal regime of reservations to treaties, especially reservations to human rights treaties. The Special Rapporteur also proposed a draft resolution of the International Law Commission on reservations to

normative multilateral treaties, including human rights treaties, which was addressed to the General Assembly for the purpose of drawing attention to and clarifying the legal aspects of the matter. The Commission did not have time to consider the report and the draft resolution. The Commission therefore deferred the debate on the topic to its next session (A/51/10).

On 16 December 1996, the General Assembly adopted, on the recommendation of its Sixth Committee (Report of the Sixth Committee to the General Assembly, A/51/626), resolution 51/160 in which it again invited States and international organizations, particularly those which are depositories, to answer the Special Rapporteur's questionnaire.

At its forty-ninth session, in 1997, the Commission again had before it the second report of the Special Rapporteur on the topic concerning the question of the unity or diversity of the juridical regime for reservations. Wishing to contribute to discussions taking place in other forums on the subject of reservations to normative multilateral treaties, particularly human rights treaties, the Commission adopted a number of preliminary conclusions on the subject (A/52/10). The Commission welcomed comments by Governments on these preliminary conclusions and invited monitoring bodies set up by the relevant human rights treaties to submit their comments as well (A/52/10).

Acting on the recommendation of its Sixth Committee (Report of the Sixth Committee to the General Assembly, A/52/648), the General Assembly, in resolution 52/156 of 15 December 1997, took note of the Commission's preliminary conclusions and its invitation to all treaty bodies set up by normative multilateral treaties that might wish to do so to provide, in writing, their comments and observations on the conclusions, while drawing the attention of Governments to the importance for the International Law Commission of having their views on the preliminary conclusions.

At its fiftieth session, in 1998, the Commission had before it the Special Rapporteur's third report (A/CN.4/491, Add.1, Add.2, Add.3, Add.4, Add.5, Add.6), which dealt with the definition of reservations and interpretative declarations to treaties. The Special Rapporteur proposed the following draft guidelines: 1.1 (Definition of reservations), 1.1.1 (Joint formulation of a reservation), 1.1.2 (Moment when a reservation is formulated), 1.1.3 (Reservations formulated when notifying territorial application), 1.1.4 (Object of reservations), 1.1.5 (Statements designed to increase the obligations of their author), 1.1.6 (Statements designed to limit the obligations of their author), 1.1.7 (Reservations relating to non-recognition), 1.1.8 (Reservations having territorial scope), 1.1.9 ("Reservations" to bilateral treaties), 1.2 (Definition of interpretative declarations), 1.2.1 (Joint formulation of interpretative declarations), 1.2.2 (Phrasing and name), 1.2.3 (Formulation of an interpretative declaration when a reservation is prohibited), 1.2.4 (Conditional interpretative declarations), 1.2.5 (General declarations of policy), 1.2.6 (Informative declarations), 1.2.7 (Interpretative declarations in respect of bilateral treaties), 1.2.8 (Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party), 1.3.1 (Method of distinguishing between reservations and interpretative declarations) and 1.4 (Scope of definitions). The Special Rapporteur also tentatively proposed the following draft guidelines concerning the distinction between reservations and interpretative declarations: 1.3.0 (Criterion of reservations), 1.3.0 *bis* (Criterion of interpretative declarations) and 1.3.0 *ter* (Criterion of conditional interpretative declarations). After considering part of the report, the Commission referred draft guidelines 1.1, 1.1.1-1.1.8, 1.2 and 1.4 to the Drafting Committee (A/53/10).

At the same session, the Commission provisionally adopted the following seven draft guidelines – where the numbers in square brackets correspond to the numbers of the draft guidelines proposed by the Special Rapporteur – as well as the commentaries thereto: 1.1 (Definition of reservations), 1.1.1 [1.1.4] (Object of reservations), 1.1.2 (Instances in

which reservations may be formulated), 1.1.3 [1.1.8] (Reservations having territorial scope), 1.1.4 [1.1.3] (Reservations formulated when notifying territorial application), 1.1.7 [1.1.1] (Joint formulation of a reservation) and a draft guideline with no title or number concerning the relation between the definition and the permissibility of reservations (A/53/10).

At its fifty-first session, in 1999, the Commission again had before it parts of the Special Rapporteur's third report, which it had not had time to consider at its fiftieth session, the fourth report on the topic (A/CN.4/499), as well as a revised bibliography (A/CN.4/478/Rev.1). In the fourth report, the Special Rapporteur continued the consideration of the definition of reservations and interpretative declarations and proposed a revised version of draft guideline 1.1.7 (1.1.7 *bis*) (Statements of non-recognition) which was already before the Drafting Committee. After considering the reports, the Commission referred draft guidelines 1.1.9 ("Reservations" to bilateral treaties), 1.2.1 (Joint formulation of interpretative declarations), 1.2.2 (Phrasing and name), 1.2.3 (Formulation of an interpretative declaration when a reservation is prohibited), 1.2.4 (Conditional interpretative declarations), 1.2.5 (General statements of policy), 1.2.6 (Informative declarations), 1.2.7 (Interpretative declarations in respect of bilateral treaties), 1.2.8 (Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party) and 1.3.1 (Method of distinguishing between reservations and interpretative declarations) to the Drafting Committee. The Commission noted that draft guidelines 1.3.0, 1.3.0 *bis* and 1.3.0 *ter* concerning the distinction between reservations and interpretative declarations were tentatively proposed by the Special Rapporteur for the purpose of determining a series of criteria stemming from the general definitions of reservations and interpretative declarations. The Commission concluded that the criteria were inherent in the definitions and that these three draft guidelines did not add a new element. The Commission decided not to refer those guidelines to the Drafting Committee but to reflect their content in the relevant commentaries to draft guidelines on this issue (A/54/10).

At the same session, the Commission provisionally adopted the following eighteen draft guidelines as well as the commentaries thereto: 1.1.5 [1.1.6] (Statements purporting to limit the obligations of their author), 1.1.6 (Statements purporting to discharge an obligation by equivalent means), 1.2 (Definition of interpretative declarations), 1.2.1 [1.2.4] (Conditional interpretative declarations), 1.2.2 [1.2.1] (Interpretative declarations formulated jointly), 1.3 (Distinction between reservations and interpretative declarations), 1.3.1 (Method of implementation of the distinction between reservations and interpretative declarations), 1.3.2 [1.2.2] (Phrasing and name), 1.3.3 [1.2.3] (Formulation of a unilateral statement when a reservation is prohibited), 1.4 (Unilateral statements other than reservations and interpretative declarations), 1.4.1 [1.1.5] (Statements purporting to undertake unilateral commitments), 1.4.2 [1.1.6] (Unilateral statements purporting to add further elements to a treaty), 1.4.3 [1.1.7] (Statements of non-recognition), 1.4.4 [1.2.5] (General statements of policy), 1.4.5 [1.2.6] (Statements concerning modalities of implementation of a treaty at the internal level), 1.5.1 [1.1.9] (Reservations to bilateral treaties), 1.5.2 [1.2.7] (Interpretative declarations in respect of bilateral treaties) and 1.5.3 [1.2.8] (Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party). In the light of the consideration of interpretative declarations, the Commission also adopted a new version of draft guideline 1.1.1 [1.1.4] (Object of reservations) and of the draft guideline without a title or number (which has become draft guideline 1.6 (Scope of definitions)) (A/54/10).

At its fifty-second session, in 2000, the Commission had before it the Special Rapporteur's fifth report (A/CN.4/508, Add.1, Add.2, Add.3, Add.4), which dealt, on the one hand, with the alternatives to reservations and interpretative declarations and, on the other hand, with the procedure regarding reservations and interpretative declarations, particularly their formulation and the question of late reservations and interpretative

declarations. The Commission was able to consider only the first part of the fifth report (A/CN.4/508, Add.1, Add.2) in which the Special Rapporteur proposed the following draft guidelines: 1.1.8 (Reservations formulated under exclusionary clauses), 1.4.6 (Unilateral statements adopted under an optional clause), 1.4.7 (Restrictions contained in unilateral statements adopted under an optional clause), 1.4.8 (Unilateral statements providing for a choice between the provisions of a treaty), 1.7.1 (Alternatives to reservations), 1.7.2 (Different procedures permitting modification of the effects of the provisions of a treaty), 1.7.3 (Restrictive clauses), 1.7.4 ([“Bilateralized reservations”] [Agreements between States having the same object as reservations]) and 1.7.5 (Alternative to interpretative declarations). After considering the first part of the report, the Commission referred the proposed draft guidelines to the Drafting Committee (A/55/10).

At the same session, the Commission provisionally adopted the following five draft guidelines as well as the commentaries thereto: 1.1.8 (Reservations made under exclusionary clauses), 1.4.6 [1.4.6, 1.4.7] (Unilateral statements made under an optional clause), 1.4.7 [1.4.8] (Unilateral statements providing for a choice between the provisions of a treaty), 1.7.1 [1.7.1, 1.7.2, 1.7.3, 1.7.4] (Alternatives to reservations) and 1.7.2 [1.7.5] (Alternatives to interpretative declarations) (A/55/10). The Commission deferred consideration of the second part of the fifth report to the following session (A/55/10).

At its fifty-third session, in 2001, the Commission again had before it the second part of the fifth report (A/CN.4/508/Add.3, Add.4) relating to questions of procedure regarding reservations and interpretative declarations. The Special Rapporteur proposed the following draft guidelines: 2.2.1 (Reservations formulated when signing and formal confirmation), 2.2.2 (Reservations formulated when negotiating, adopting or authenticating the text of the treaty and formal confirmation), 2.2.3 (Non-confirmation of reservations formulated when signing [an agreement in simplified form] [a treaty that enters into force solely by being signed]), 2.2.4 (Reservations formulated when signing for which the treaty makes express provision), 2.3.1 (Reservations formulated late), 2.3.2 (Acceptance of reservations formulated late), 2.3.3 (Objection to reservations formulated late), 2.3.4 (Late exclusion or modification of the legal effects of a treaty by procedures other than reservations), 2.4.3 (Times at which an interpretative declaration may be formulated), 2.4.4 (Conditional interpretative declarations formulated when negotiating, adopting or authenticating or signing the text of the treaty and formal confirmation), 2.4.5 (Non-confirmation of interpretative declarations formulated when signing [an agreement in simplified form] [a treaty that enters into force solely by being signed]), 2.4.6 (Interpretative declarations formulated when signing for which the treaty makes express provision), 2.4.7 (Interpretative declarations formulated late) and 2.4.8 (Conditional interpretative declarations formulated late). After considering the report, the Commission referred the proposed draft guidelines to the Drafting Committee (A/56/10).

At the same session, the Commission provisionally adopted the following twelve draft guidelines as well as the commentaries thereto: 2.2.1 (Formal confirmation of reservations formulated when signing a treaty), 2.2.2 [2.2.3] (Instances of non-requirement of confirmation of reservations formulated when signing a treaty), 2.2.3 [2.2.4] (Reservations formulated upon signature when a treaty expressly so provides), 2.3.1 (Late formulation of a reservation), 2.3.2 (Acceptance of the late formulation of a reservation), 2.3.3 (Objection to the late formulation of a reservation), 2.3.4 (Subsequent exclusion or modification of the legal effects of a treaty by means other than reservations), 2.4.3 (Time at which an interpretative declaration may be formulated), 2.4.4 [2.4.5] (Non-requirement of confirmation of interpretative declarations made when signing a treaty), 2.4.5 [2.4.4] (Formal confirmation of conditional interpretative declarations formulated when signing a treaty), 2.4.6 [2.4.7] (Late formulation of an interpretative declaration) and 2.4.7 [2.4.8] (Late formulation of a conditional interpretative declaration) (A/56/10).

At the fifty-third session, the Commission also had before it the Special Rapporteur's sixth report (A/CN.4/518, Add.1, Add.2, Add.3) relating to the modalities of formulating reservations and interpretative declarations (including their form and notification) as well as the publicity of reservations and interpretative declarations (their communication, addressees and obligations of depositaries). The Special Rapporteur proposed the following draft guidelines: 2.1.1 (Written form), 2.1.2 (Form of formal confirmation), 2.1.3 (Competence to formulate a reservation at the international level), 2.1.3 *bis* (Competence to formulate a reservation at the internal level), 2.1.4 (Absence of consequences at the international level of the violation of internal rules regarding the formulation of reservations), 2.1.5 (Communication of reservations), 2.1.6 (Procedure for communication of reservations), 2.1.7 (Functions of depositaries), 2.1.8 (Effective date of communications relating to reservations), 2.4.1 (Formulation of interpretative declarations), 2.4.1 *bis* (Competence to formulate an interpretative declaration at the internal level), 2.4.2 (Formulation of conditional interpretative declarations) and 2.4.9 (Communication of conditional interpretative declarations). After considering the report, the Commission referred the proposed guidelines to the Drafting Committee (A/56/10).

At its fifty-fourth session, in 2002, the Commission had before it the Special Rapporteur's seventh report (A/CN.4/526, Add.1, Add.2, Add.3) relating to the formulation, modification and withdrawal of reservations and interpretative declarations. The Special Rapporteur proposed the following draft guidelines: draft guidelines: 2.1.7 *bis* (Case of manifestly impermissible reservations), 2.5.1 (Withdrawal of reservations), 2.5.2 (Form of withdrawal), 2.5.3 (Periodic review of the usefulness of reservations), 2.5.4 (Withdrawal of reservations held to be impermissible by a body monitoring the implementation of a treaty), three alternative versions of guideline 2.5.5 (Competence to withdraw a reservation at the international level; the third version entitled "Competence to withdraw a reservation"), 2.5.5 *bis* (Competence to withdraw a reservation at the internal level), 2.5.5 *ter* (Absence of consequences at the international level of the violation of internal rules regarding the withdrawal of reservations), two alternative versions of guideline 2.5.6 (Communication of withdrawal of a reservation), 2.5.6 *bis* (Procedure for communication of withdrawal of reservations), 2.5.6 *ter* (Functions of depositaries), 2.5.7 (Effect of withdrawal of a reservation), 2.5.8 (Effect of withdrawal of a reservation in cases of objection to the reservation and opposition to entry into force of the treaty with the reserving State or international organization), 2.5.9 (Effective date of withdrawal of a reservation, including model clauses A, B and C), 2.5.10 (Cases in which a reserving State may unilaterally set the effective date of withdrawal of a reservation), 2.5.11 (Partial withdrawal of a reservation), 2.5.11 *bis* (Partial withdrawal of reservations held to be impermissible by a body monitoring the implementation of a treaty), 2.5.X (Withdrawal of reservations held to be impermissible by a body monitoring the implementation of a treaty) and 2.5.12 (Effect of a partial withdrawal of a reservation). After considering the report, the Commission referred the proposed draft guidelines, including the related model clauses, to the Drafting Committee with the exception of draft guidelines relating to the withdrawal of a reservation held to be impermissible by a treaty-monitoring body (i.e., 2.5.4, 2.5.11 *bis* and 2.5.X).

At the same session, the Commission provisionally adopted the following eleven draft guidelines – where the numbers in square brackets correspond to the numbers of the draft guidelines proposed by the Special Rapporteur or, as the case may be, the numbers of the draft guideline proposed by the Special Rapporteur were merged with the final draft guideline – as well as the commentaries thereto: 2.1.1 (Written form), 2.1.2 (Form of formal confirmation), 2.1.3 (Formulation of a reservation at the international level), 2.1.4 [2.1.3 *bis*, 2.1.4] (Absence of consequences at the international level of the violation of internal rules regarding the formulation of reservations), 2.1.5 (Communication of reservations) 2.1.6 [2.1.6, 2.1.8] (Procedure for communication of reservations), 2.1.7 (Functions of depositaries), 2.1.8 [2.1.7 *bis*] (Procedure in case of manifestly [impermissible] reservations) (A/57/10), 2.4.1 (Formulation of interpretative declarations),

[2.4.2 [2.4.1 *bis*] (Formulation of an interpretative declaration at the internal level)], [2.4.7 [2.4.2, 2.4.9] (Formulation and communication of conditional interpretative declarations)] (A/57/10).

At its fifty-fifth session, in 2003, the Commission had before it the Special Rapporteur's eighth report (A/CN.4/535, Add.1) relating to withdrawal and modification of reservations and interpretative declarations as well as to the formulation of objections to reservations and interpretative declarations. The Special Rapporteur proposed the following draft guidelines: 2.3.5 (Enlargement of the scope of a reservation), 2.4.9 (Modification of interpretative declarations), 2.4.10 (Modification of a conditional interpretative declaration), 2.5.12 (Withdrawal of an interpretative declaration), 2.5.13 (Withdrawal of a conditional interpretative declaration), 2.6.1 (Definition of objections to reservations), 2.6.1 *bis* (Objection to late formulation of a reservation) and 2.6.1 *ter* (Object of objections). In addition, he proposed three revised draft guidelines: 2.4.3 (Time at which an interpretative declaration may be formulated or modified), 2.4.6 (Late formulation or modification of an interpretative declaration), and 2.4.8 (Late formulation or modification of a conditional interpretative declaration), so as to accommodate modification alongside the formulation of interpretative declarations.

After considering the report, the Commission decided to refer to the Drafting Committee the following proposed draft guidelines: 2.3.5 (Enlargement of the scope of a reservation), 2.4.9 (Modification of interpretative declarations), 2.4.10 (Modification of a conditional interpretative declaration), 2.5.12 (Withdrawal of an interpretative declaration) and 2.5.13 (Withdrawal of a conditional interpretative declaration).

At the same session, the Commission provisionally adopted the following eleven draft guidelines (with three model clauses) as well as the commentaries thereto: 2.5.1 (Withdrawal of reservations), 2.5.2 (Form of withdrawal), 2.5.3 (Periodic review of the usefulness of reservations), 2.5.4 [2.5.5] (Formulation of the withdrawal of a reservation at the international level), 2.5.5 [2.5.5 *bis*, 2.5.5 *ter*] (Absence of consequences at the international level of the violations of internal rules regarding the withdrawal of reservations), 2.5.6 (Communication of withdrawal of a reservation), 2.5.7 [2.5.7, 2.5.8] (Effect of withdrawal of a reservation), 2.5.8 [2.5.9] (Effective date of withdrawal of a reservation, including model clauses A, B and C), 2.5.9 [2.5.10] (Cases in which a reserving State or international organization may unilaterally set the effective date of withdrawal of a reservation), 2.5.10 [2.5.11] (Partial withdrawal of a reservation) and 2.5.11 [2.5.12] (Effect of a partial withdrawal of a reservation) (A/58/10).

At its fifty-sixth session, in 2004, the Commission had before it the ninth report of the Special Rapporteur on the "generic" object of objections to reservations (A/CN.4/544). After considering the report, it decided to refer draft guidelines 2.6.1 "Definition of objections to reservations" and 2.6.2 "Objection to the late formulation of widening of the scope of a reservation" to the Drafting Committee.

On the basis of the report of the Drafting Committee, the Commission further considered and provisionally adopted draft guidelines 2.3.5 ("Widening of the scope of a reservation"), 2.4.9 ("Modification of an interpretative declaration"), 2.4.10 ("Limitation and widening of the scope of a conditional interpretative declaration"), 2.5.12 ("Withdrawal of an interpretative declaration"), and 2.5.13 ("Withdrawal of a conditional interpretative declaration"), with commentaries thereto (A/59/10).

At its fifty-seventh session, in 2005, the Commission considered part of the tenth report of the Special Rapporteur (A/CN.4/558, Corr.1, Add.1, Add.1/Corr.1). On the basis of that report, the Commission decided to refer draft guidelines 3.1 (Freedom to formulate reservations), 3.1.1 (Reservations expressly prohibited by the treaty), 3.1.2 (Definition of specified reservations), 3.1.3 (Reservations implicitly permitted by the treaty) and 3.1.4

(Non-specified reservations authorized by the treaty) to the Drafting Committee. The Commission also decided to send draft guidelines 1.6 and 2.1.8, which had already been provisionally adopted, to the Drafting Committee with a view to their revision in the light of the terms selected. The Commission further considered at the same session and provisionally adopted draft guidelines 2.6.1 (Definition of objections to treaties) and 2.6.2 (Definition of objections to the late formulation or widening of the scope of a reservation) with commentaries thereto (A/60/10). The Commission also decided to continue its consideration of the tenth report during its fifty-eighth session to be held in 2006.

The Commission, in 2006, sought the comments of Governments on the practice wherein States often object to a reservation that they consider incompatible with the object and purpose of the treaty, but without opposing the entry into force of the treaty between themselves and the author of the reservation (A/60/10). The General Assembly, on the recommendation of its Sixth Committee (A/60/516), adopted resolution 60/22 of 23 November 2005, in which it invited Governments to provide information to the International Law Commission, as requested in chapter III of its report, regarding, *inter alia*, reservations to treaties.

At its fifty-eighth session, in 2006, the Commission had before it the second part of the tenth report of the Special Rapporteur on validity of reservations and the concept of the object and purpose of the treaty (A/CN.4/558, Corr.1, Corr.2, Add.2). In this regard, the Special Rapporteur had also prepared a note relating to draft guideline 3.1.5 (Definition of the object and purpose of the treaty) and presenting a new version of this guideline including two alternative texts (A/CN.4/572, Corr.1). The Special Rapporteur also submitted his eleventh report (A/CN.4/574) which the Commission decided to consider it at its fifty-ninth session to be held in 2007.

At the same session, the Commission considered and provisionally adopted draft guidelines 3.1 (Permissible reservations), 3.1.1 (Reservations expressly prohibited by the treaty), 3.1.2 (Definition of specified reservations), 3.1.3 (Permissibility of reservations not prohibited by the treaty) and 3.1.4 (Permissibility of specified reservations). Moreover, the Commission provisionally adopted draft guidelines 1.6 (Scope of definitions) and 2.1.8 [2.1.7 *bis*] (Procedure in case of manifestly invalid reservations) as redrafted. The Commission also adopted the commentaries relating to the aforementioned draft guidelines (A/61/10).

At its fifty-ninth session, in 2007, the Commission had before it the eleventh and twelfth reports of the Special Rapporteur on the formulation and withdrawal of acceptances and objections and on the procedure for acceptances of reservations respectively (A/CN.4/574, A/CN.4/584). At the same session, the Commission considered and provisionally adopted draft guidelines 3.1.5 (Incompatibility of a reservation with the object and purpose of the treaty), 3.1.6 (Determination of the object and purpose of the treaty), 3.1.7 (Vague or general reservations), 3.1.8 (Reservations to a provision reflecting a customary norm), 3.1.9 (Reservations contrary to a rule of *jus cogens*), 3.1.10 (Reservations to provisions relating to non-derogable rights), 3.1.11 (Reservations relating to internal law), 3.1.12 (Reservations to general human rights treaties) and 3.1.13 (Reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of a treaty). The Commission also adopted the commentaries relating to the aforementioned draft guidelines (A/62/10).

Also at its fifty-ninth session, in accordance with article 25, paragraph 1 of its Statute, the Commission held a meeting on 15 and 16 May 2007, with United Nations and other experts in the field of human rights, including representatives from human rights treaty bodies (A/62/10). Experts from regional human rights bodies were also invited. On 6 December 2007, the General Assembly adopted, on the recommendation of its Sixth Committee (A/62/450), resolution 62/66 in which it noted these meetings.

At the sixtieth session, in 2008, the Commission considered the thirteenth report of the Special Rapporteur (A/CN.4/600) on reactions to interpretative declarations and conditional interpretative declarations. The Commission also had before it a note by the Special Rapporteur on draft guideline 2.1.9, “Statement of reasons for reservations” (A/CN.4/586), which had been submitted at the end of the fifty-ninth session. At the same session, the Commission referred draft guideline 2.1.9 as well as 10 draft guidelines (2.9.1 to 2.9.10) to the Drafting Committee and proceeded to provisionally adopted the following 23 draft guidelines: 2.1.6 (Procedure for communication of reservations) (as amended), 2.1.9 (Statement of reasons [for reservations]), 2.6.6 (Joint formulation [of objections to reservations]), 2.6.7 (Written form), 2.6.8 (Expression of intention to preclude the entry into force of the treaty), 2.6.9 (Procedure for the formulation of objections), 2.6.10 (Statement of reasons), 2.6.13 (Time period for formulating an objection), 2.6.14 (Conditional objections), 2.6.15 (Late objections), 2.7.1 (Withdrawal of objections to reservations), 2.7.2 (Form of withdrawal), 2.7.3 (Formulation and communication of the withdrawal of objections to reservations), 2.7.4 (Effect on reservation of withdrawal of an objection), 2.7.5 (Effective date of withdrawal of an objection), 2.7.6 (Cases in which an objecting State or international organization may unilaterally set the effective date of withdrawal of an objection to a reservation), 2.7.7 (Partial withdrawal of an objection), 2.7.8 (Effect of a partial withdrawal of an objection) and 2.7.9 (Widening of the scope of an objection to a reservation). The Commission also considered and provisionally adopted draft guidelines 2.6.5 (Author [of an objection]), 2.6.11 (Non-requirement of confirmation of an objection made prior to formal confirmation of a reservation), 2.6.12 (Requirement of confirmation of an objection made prior to the expression of consent to be bound by a treaty) and 2.8 (Forms of acceptance of reservations) as well as commentaries to the above-mentioned draft guidelines (A/63/10).

Acting on the recommendation of its Sixth Committee (A/63/439), the General Assembly adopted resolution 63/123 of 11 December 2008 in which it drew – in paragraph 3 of the resolution – the attention of Governments to the importance for the Commission of having their views on the various aspects involved in the topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report, regarding, *inter alia*, reservations to treaties. And it further invited Governments, within the context of paragraph 3, to provide information to the Commission regarding practice with regard to, *inter alia*, the topic of reservations to treaties.

At the sixty-first session in 2009, the Commission had before it the fourteenth report of the Special Rapporteur (A/CN.4/614, Add.1). The Commission also had before it a memorandum by the Secretariat on reservations to treaties in the context of succession of States (A/CN.4/616). The Commission considered and provisionally adopted draft guidelines 2.8.1-2.8.11, as well as draft guidelines 2.4.0, 2.4.3 *bis*, 2.9.1-2.9.10 and 3.2, 3.2.1-3.2.5 and draft guidelines 3.3 and 3.3.1. The Commission also provisionally adopted the titles of sections 2.8 and 2.9. The Commission also adopted commentaries to the above-mentioned guidelines (A/64/10).

At its sixty-second session in 2010, the Commission had before it a second addendum to the fourteenth report of the Special Rapporteur (A/CN.4/614/Add.2) as well as the Special Rapporteur's fifteenth (A/CN.4/624, Add.1, Add.2) and sixteenth (A/CN.4/626, Add.1) reports. The Commission also had before it the memorandum submitted by the Secretariat, in 2009, on the question of reservations to treaties in the context of succession of States (A/CN.4/616).

The Commission considered and provisionally adopted the following draft guidelines: 2.6.3 (Freedom to formulate objections), 2.6.4 (Freedom to oppose the entry into force of the treaty vis-à-vis the author of the reservation), 3.3.2 [3.3.3] (Effect of individual acceptance of an impermissible reservation), 3.3.3 [3.3.4] (Effect of collective

acceptance of an impermissible reservation), 3.4.1 (Permissibility of the acceptance of a reservation), 3.4.2 (Permissibility of an objection to a reservation), 3.5 (Permissibility of an interpretative declaration), 3.5.1 (Permissibility of an interpretative declaration which is in fact a reservation), 3.5.2 (Conditions for the permissibility of a conditional interpretative declaration), 3.5.3 (Competence to assess the permissibility of a conditional interpretative declaration), 3.6 (Permissibility of reactions to interpretative declarations), 3.6.1 (Permissibility of approvals of interpretative declarations) and 3.6.2 (Permissibility of oppositions to interpretative declarations); 4.1 (Establishment of a reservation with regard to another State or organization), 4.1.1 (Establishment of a reservation expressly authorized by a treaty), 4.1.2 (Establishment of a reservation to a treaty which has to be applied in its entirety), 4.1.3 (Establishment of a reservation to a constituent instrument of an international organization), 4.2.1 (Status of the author of an established reservation), 4.2.2 (Effect of the establishment of a reservation on the entry into force of a treaty), 4.2.3 (Effect of the establishment of a reservation on the status of the author as a party to the treaty), 4.2.4 (Effect of an established reservation on treaty relations), 4.2.5 (Non-reciprocal application of obligations to which a reservation relates), 4.3 (Effect of an objection to a valid reservation), 4.3.1 (Effect of an objection on the entry into force of the treaty as between the author of the objection and the author of a reservation), 4.3.2 (Entry into force of the treaty between the author of a reservation and the author of an objection), 4.3.3 (Non-entry into force of the treaty for the author of a reservation when unanimous acceptance is required), 4.3.4 (Non-entry into force of the treaty as between the author of a reservation and the author of an objection with maximum effect), 4.3.5 (Effect of an objection on treaty relations), 4.3.6 (Effect of an objection on provisions other than those to which the reservation relates), 4.3.7 (Right of the author of a valid reservation not to be compelled to comply with the treaty without the benefit of its reservation), 4.4.1 (Absence of effect on rights and obligations under another treaty), 4.4.2 (Absence of effect on rights and obligations under customary international law), 4.4.3 (Absence of effect on a peremptory norm of general international law (*jus cogens*)), 4.5.1 [3.3.2, later 4.5.1 and 4.5.2] (Nullity of an invalid reservation), 4.5.2 [4.5.3] (Status of the author of an invalid reservation in relation to the treaty), 4.5.3 [4.5.4] (Reactions to an invalid reservation), 4.6 (Absence of effect of a reservation on the relations between the other parties to the treaty), 4.7.1 [4.7 and 4.7.1] (Clarification of the terms of the treaty by an interpretative declaration), 4.7.2 (Effect of the modification or the withdrawal of an interpretative declaration in respect of its author) and 4.7.3 (Effect of an interpretative declaration approved by all the contracting States and contracting organizations); as well as the following draft guidelines on reservations, acceptances of and objections to reservations, and interpretative declarations in the case of succession of States: 5.1.1 [5.1] (Newly independent States), 5.1.2 [5.2] (Uniting or separation of States), 5.1.3 [5.3] (Irrelevance of certain reservations in cases involving a uniting of States), 5.1.4 (Establishment of new reservations formulated by a successor State), 5.1.5 [5.4] (Maintenance of the territorial scope of reservations formulated by the predecessor State), 5.1.6 [5.5] (Territorial scope of reservations in cases involving a uniting of States), 5.1.7 [5.6] (Territorial scope of reservations of the successor State in cases of succession involving part of a territory), 5.1.8 [5.7] (Timing of the effects of non-maintenance by a successor State of a reservation formulated by the predecessor State), 5.1.9 [5.9] (Late reservations formulated by a successor State), 5.2.1 [5.10] (Maintenance by the successor State of objections formulated by the predecessor State), 5.2.2 [5.11] (Irrelevance of certain objections in cases involving a uniting of States), 5.2.3 [5.12] (Maintenance of objections to reservations of the predecessor State), 5.2.4 [5.13] (Reservations of the predecessor State to which no objections have been made), 5.2.5 [5.14] (Capacity of a successor State to formulate objections to reservations), 5.2.6 [5.15] (Objections by a successor State other than a newly independent State in respect of which a treaty continues in force), 5.3.1 [5.16 *bis*] (Maintenance by a newly independent State of express acceptances formulated by the predecessor State), 5.3.2 [5.17] (Maintenance by a successor State other than a newly independent State of express acceptances formulated by the predecessor State), 5.3.3 [5.18] (Timing of the effects of non-maintenance by a successor State of an express acceptance

formulated by the predecessor State), and 5.4.1 [5.19] (Interpretative declarations formulated by the predecessor State) (A/65/10). The Commission also adopted the commentaries to the above-mentioned draft guidelines.

Thus, the Commission was able to provisionally adopt the entire set of draft guidelines of the Guide to Practice on Reservations to Treaties (with commentaries) (A/65/10) at its sixty-second session in 2010. The Commission also indicated that it intended to adopt the final version of the Guide to Practice during its sixty-third session in 2011, taking into consideration the observations of States and international organizations as well as the organs with which the Commission cooperates, made since the beginning of the examination of the topic, together with further observations received by the Secretariat of the Commission before 31 January 2011 (A/65/10).

On 6 December 2010, the General Assembly, on the recommendation of its Sixth Committee (A/65/467), adopted resolution 65/26 whereby it invited, *inter alia*, Governments to submit to the Secretariat of the Commission, by 31 January 2011, any further observations on the entire set of draft guidelines constituting the Guide to Practice on Reservations to Treaties, provisionally adopted by the Commission at its sixty-second session, with a view to finalizing the Guide at the sixty-third session.

At the sixty-third session in 2011, the Commission had before it the seventeenth report of the Special Rapporteur, as well as comments and observations received from Governments on the provisional version of the Guide to Practice on Reservations to Treaties adopted by the Commission at its sixty-second session in 2010. The Commission established a Working Group in order to proceed with the finalization of the text of the guidelines constituting the Guide to Practice, as had been envisaged during the sixty-second session (A/65/10). The Commission also referred to the Working Group a draft recommendation or conclusions on the reservations dialogue, and a draft recommendation on technical assistance and assistance in the settlement of disputes concerning reservations, contained, respectively, in the seventeenth report of the Special Rapporteur and in the addendum to that report. On the basis of the recommendations of the Working Group (A/CN.4/L.779), the Commission adopted the Guide to Practice on Reservations to Treaties, which comprises an introduction, the text of the guidelines with commentaries thereto as well as an annex on the reservations dialogue and a bibliography (A/66/10, Add.1). In accordance with article 23 of its Statute, the Commission recommended to the General Assembly to take note of the Guide to Practice on Reservations to Treaties and ensure its widest possible dissemination (A/66/10, Add.1). The Commission also adopted a recommendation to the General Assembly on mechanisms of assistance in relation to reservations to treaties (A/66/10, Add.1).

At its sixty-sixth session, the General Assembly adopted, on the recommendation of its Sixth Committee (A/66/473), resolution 66/98 of 9 December 2011, in which it commended the Commission for the completion of its work on, *inter alia*, the Guide to Practice on Reservations to Treaties, and decided that the consideration of chapter IV of the report of the Commission on the work of its sixty-third session, dealing with the topic "Reservations to treaties", would be continued at the sixty-seventh session of the General Assembly (2012), during the consideration of the report of the Commission on the work of its sixty-fourth session. The consideration of this topic was subsequently delayed until the sixty-eighth session (2013) of the General Assembly, at which time the Sixth Committee continued and completed its consideration of the Guide to Practice (A/68/464). At the same session, the General Assembly adopted, on the recommendation of the Sixth Committee, resolution 68/111 of 16 December 2013, in which the Assembly welcomed the successful completion of the work of the Commission on the topic, took note of the Guide to Practice on Reservations to Treaties, including the guidelines, the text of which was annexed to the resolution, and encouraged its widest possible dissemination.