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A/CN.4/L.575

Reservations to treaties. Titles and texts of the draft guidelines adopted by the Drafting Committee: guidelines 1.1.1 [1.1.4], 1.1.5 [1.1.6], 1.1.6, 1.2... 1.4.2 [1.1.6], 1.4.3 [1.1.7], 1.4.4 [1.2.5], 1.4.5 [1.2.6], 1.5, 1.5.1 [1.1.9], 1.5.2 [1.2.7], 1.5.3 [1.2.8] and 1.6

Topic:
Law and practice relating to reservations to treaties

Extract from the Yearbook of the International Law Commission:-
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*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

2597th MEETING

Tuesday, 6 July 1999, at 10 a.m.

Chairman: Mr. Zdzislaw GALICKI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Candiotti, Mr. Crawford, Mr. Dugard, Mr. Gaja, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Sepúlveda, Mr. Tomka, Mr. Yamada.

Reservations to treaties¹ (*continued*)* (A/CN.4/491 and Add.1-6,² A/CN.4/496, sect. F, A/CN.4/499 and A/CN.4/478/Rev.1,³ A/CN.4/L.575)

[Agenda item 5]

DRAFT GUIDELINES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the draft guidelines proposed by the Drafting Committee (A/CN.4/L.575), the titles and texts of which read:

1.1.1 [1.1.4]** *Object of reservations*

A reservation purports to exclude or modify the legal effect of certain provisions of a treaty or of specific aspects of the treaty as a whole, in their application to the State or to the international organization which formulates the reservation.

1.1.5 [1.1.6] *Statements purporting to limit the obligations of their author*

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty by which its author purports to limit the obligations imposed on it by the treaty constitutes a reservation.

1.1.6 *Statements purporting to discharge an obligation by equivalent means*

A unilateral statement formulated by a State or an international organization when that State or that organization expresses its consent to be bound by a treaty by which that State or that organization purports to discharge an obligation pursuant to the treaty in a

manner different from but equivalent to that imposed by the treaty constitutes a reservation.

1.2 *Definition of interpretative declarations*

“Interpretative declaration” means a unilateral statement, however phrased or named, made by a State or by an international organization whereby that State or that organization purports to specify or clarify the meaning or scope attributed by the declarant to a treaty or to certain of its provisions.

1.2.1 [1.2.4] *Conditional interpretative declarations*

A unilateral statement formulated by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or international organization subordinates its consent to be bound by the treaty to a specific interpretation of the treaty or of certain provisions thereof, shall constitute a conditional interpretative declaration.

1.2.2 [1.2.1] *Interpretative declarations formulated jointly*

The joint formulation of an interpretative declaration by several States or international organizations does not affect the unilateral nature of that interpretative declaration.

1.3 [1.3.1] *Distinction between reservations and interpretative declarations*

To determine whether a unilateral statement formulated by a State or an international organization in respect of a treaty is a reservation or an interpretative declaration, it is appropriate to ascertain the purpose of its author by interpreting the statement in good faith in accordance with the ordinary meaning to be given to its terms, in light of the treaty to which it refers. Due regard shall be given to the intention of the State or the international organization concerned at the time the statement was formulated.

1.3.1 [1.2.2] *Phrasing and name*

The character of a unilateral statement as a reservation or an interpretative declaration is determined by the legal effect it purports to produce. The phrasing or name given to the statement provides an indication of the purported legal effect. This is the case in particular when a State or an international organization formulates several unilateral declarations in respect of a single treaty and designates some of them as reservations and others as interpretative declarations.

1.3.2 [1.2.3] *Formulation of a unilateral statement when a reservation is prohibited*

When a treaty prohibits reservations to all or certain of its provisions, a unilateral statement formulated in respect thereof by a State or an international organization shall be presumed not to constitute a reservation except when it is established that it purports to exclude or modify the legal effect of certain provisions of the treaty or of specific aspects of the treaty as a whole, in their application to its author.

1.4 *Unilateral statements other than reservations and interpretative declarations*

Unilateral statements formulated in relation to a treaty which are not reservations nor interpretative declarations are outside the scope of the present Guide to Practice.

1.4.1 [1.1.5] *Statements purporting to undertake unilateral commitments*

A unilateral statement formulated by a State or an international organization in relation to a treaty, whereby its author purports to

* Resumed from the 2586th meeting.

** The numbers in square brackets correspond to the original numbers proposed by the Special Rapporteur in his third report (see footnote 2 below).

¹ For the text of the draft guidelines provisionally adopted by the Commission on first reading at its fiftieth session, see *Yearbook ... 1998*, vol. II (Part Two), p. 99, chap. IX, sect. C.

² See *Yearbook ... 1998*, vol. II (Part One).

³ Reproduced in *Yearbook ... 1999*, vol. II (Part One).

undertake obligations going beyond those imposed on it by the treaty constitutes a unilateral commitment which is outside the scope of the present Guide to Practice.

1.4.2 [1.1.6] *Unilateral statements purporting to add further elements to a treaty*

A unilateral statement whereby a State or an international organization purports to add further elements to a treaty constitutes a proposal to modify the content of the treaty which is outside the scope of the present Guide to Practice.

1.4.3 [1.1.7] *Statements of non-recognition*

A unilateral statement by which a State indicates that its participation in a treaty does not imply recognition of an entity which it does not recognize as a State constitutes a statement of non-recognition and is outside the scope of the present Guide to Practice even if it purports to exclude the application of the treaty between the declaring State and the non-recognized entity.

1.4.4 [1.2.5] *General statements of policy*

A unilateral statement formulated by a State or by an international organization whereby that State or that organization expresses its views on a treaty or on the subject matter covered by the treaty, without purporting to produce a legal effect on the treaty, constitutes a general statement of policy and is outside the scope of the present Guide to Practice.

1.4.5 [1.2.6] *Statements concerning modalities of implementation of a treaty at the internal level*

A unilateral statement formulated by a State or an international organization whereby that State or that organization indicates the manner in which it intends to implement a treaty at the internal level, without purporting as such to affect the rights and obligations of the other contracting parties, constitutes a merely informative statement and is outside the scope of the present Guide to Practice.

1.5 *Unilateral statements in respect of bilateral treaties*

1.5.1 [1.1.9] *“Reservations” to bilateral treaties*

A unilateral statement formulated by a State or an international organization after initialling or signature but prior to entry into force of a bilateral treaty, by which that State or that organization purports to obtain from the other party a modification of the provisions of the treaty in respect of which it is subordinating the expression of its final consent to be bound, does not constitute a reservation within the meaning of the present Guide to Practice, however phrased or named.

1.5.2 [1.2.7] *Interpretative declarations in respect of bilateral treaties*

Guidelines 1.2 and 1.2.1 [1.2.4] are applicable to bilateral treaties.

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*

The interpretation resulting from an interpretative declaration made in respect of a bilateral treaty by a State or an international organization party to the treaty and accepted by the other party constitutes the authentic interpretation of that treaty.

1.6 *Scope of definitions*

The definitions of unilateral statements included in the present chapter of the Guide to Practice are without prejudice to the permissibility and effects of such statements under the rules applicable to them.

2. Mr. CANDIOTI (Chairman of the Drafting Committee), introducing the report of the Drafting Committee, said that the Committee had held eight meetings from 3 to 22 June 1999. He wished to thank the Special Rapporteur for his guidance, cooperation and efficiency in assisting the Committee, its members for their constructive attitude and the Secretariat for its valuable assistance.

3. At the fiftieth session of the Commission, the Drafting Committee had considered and completed work on nine draft guidelines dealing primarily with the definition of reservations. The Commission had adopted seven of those guidelines⁴ and had referred two back to the Drafting Committee for reconsideration. At the current session, the Commission had referred 10 draft guidelines to the Drafting Committee. He was pleased to report that the Drafting Committee had completed work on all of the draft guidelines referred to it so far.

4. To present the draft guidelines in a more coherent manner, the Drafting Committee had restructured chapter I, on definitions, of the Guide to Practice, breaking it down into six sections: section 1.1 (Definition of reservations), section 1.2 (Definition of interpretative declarations), section 1.3 (Distinction between reservations and interpretative declarations), section 1.4 (Unilateral statements other than reservations and interpretative declarations), section 1.5 (Unilateral statements in respect of bilateral treaties) and section 1.6 (Scope of definitions).

5. Concerning section 1.1, he pointed out that the Commission had decided to review draft guidelines 1.1.1 [1.1.4] (Object of reservations), and 1.1.3 [1.1.8] (Reservations having territorial scope), in the light of the discussion on interpretative declarations. Upon reconsidering the two draft guidelines, the Drafting Committee had decided that no changes were necessary for draft guideline 1.1.3 [1.1.8], but had proposed a new formulation for draft guideline 1.1.1 [1.1.4]. The Drafting Committee had noted that that draft guideline, which concerned the so-called transverse or across-the-board reservations, was useful, especially in view of the very frequent recourse to such reservations, that the field was not really covered by the 1969 Vienna Convention and that the Commission had already done very useful work in identifying and defining it. Three issues had been raised.

6. First, the text was very close to the definition of interpretative declarations, the expression “the way in which a State ... intends to apply the treaty” was a potential source of confusion and the element of intention was lacking from the general definition of reservations in section 1.1. Secondly, the use of the phrase “the treaty as a whole” did not exactly correspond to the situation that draft guideline 1.1.1 [1.1.4] purported to cover, namely transverse or across-the-board reservations, which excluded the application of the entire treaty but only in respect of certain categories of persons, objects, situations, specific circumstances, etc. Thirdly, there was still some uneasiness about the use of the word “may”, even though paragraph (11) of the commentary to the draft guideline adopted at the fiftieth session⁵ made it clear that the word

⁴ See *Yearbook ... 1998*, vol. II (Part Two), pp. 91 and 99, paras. 480 and 540, respectively.

⁵ *Ibid.*, p. 102.