

CHECK AGAINST DELIVERY

INTERNATIONAL LAW COMMISSION
Fifty-seventh session
Geneva, 2 May - 3 June 2005 and
11 July – 5 August 2005

RESERVATIONS TO TREATIES

**Statement of the Chairman of the Drafting Committee
20 May 2005**

Mr. W. Mansfield

Mr. Chairman,

I have the pleasure to present the first report of the Drafting Committee for the present session. The first report is devoted to the topic "Reservations to Treaties". The report of the Drafting Committee is to be found in document A/CN.4/L.665. The Committee had two meetings on this topic on 9 and 10 May 2005.

The Committee considered two draft guidelines referred to it by the Plenary during the 56th session of the International Law Commission.

Before introducing the report I wish to thank Mr. Pellet, the Special Rapporteur on the topic for his guidance and cooperation. I would also like to thank the members of the Drafting Committee for their helpful suggestions and effective participation.

Mr. Chairman,

The two draft guidelines before you deal with the definition of objections. Draft guideline 2.6.1 deals with the definition of objections *per se* and draft guideline 2.6.2 deals with a specific category of objections, namely those to the late formulation of reservations or to the widening of the scope of reservations.

Draft guideline 2.6.1

You may recall that this draft guideline was first introduced by the Special Rapporteur in his eighth report in 2003. Other versions of the guideline were proposed by the Special Rapporteur, in his ninth report and in last year's report of the Commission taking into account the views expressed in the Plenary. The Drafting Committee worked on the latest version of the guideline which appeared in paragraph 293 (e) of the Commission's report of last year.

The Drafting Committee discussed at length the definition of objections. It considered whether this definition should focus on the effects of objections as the text proposed by the Special Rapporteur does or should rather constitute a factual statement, whereby the objecting State or international organization indicates that it does not accept the reservation or considers it unlawful.

Various arguments were made in support or in opposition to either of these two approaches. It was pointed out that a definition strictly factual would be incomplete or that it would risk including mere political declarations which were not intended to be "objections" producing legal effects. Some thought, such a definition would seem to be tautological.

The Drafting Committee tried to draft a possible combination of the two approaches in one single definition. But it soon became obvious that this could not work as it was excessively long and impractical.

The Committee finally agreed that the words "exclude or modify" were really key elements of any objection purporting to produce legal effects. It was concluded that, without necessarily listing all the possible effects of an objection, the definition based on them should include a very general description of such effects. This description followed

the one found in articles 20 (4)(b) and 21 (3) of the Vienna Convention on the Law of Treaties.

Such a definition should include the possible exclusion of the application of the treaty as a whole, reflecting art. 21 (3) of the Vienna Convention on the Law of Treaties.

The Committee also thought that the definition should not be over-elaborate. Other draft guidelines would in the future deal with other aspects of objections. The current wording follows closely the corresponding wording of the draft guideline as proposed in 2004. The term "formulated" in the second line was retained as more appropriate than the term "made", in view of the fact that under the Vienna Convention a reservation is deemed to be "formulated" until no objection has been made.

Mr. Chairman,

I would like to point out that the French term "auteur de la réserve" has been rendered in English as "the reserving State or organization".

I would also note that this definition does not affect the ability of States to make statements or comments about reservations on political grounds and this point would be developed in the commentary.

Finally the commentary will make it clear that the definition is without prejudice to the validity or legal effects of objections. Draft guideline 1.6 "Scope of definitions" is of particular relevance in this context.

The title of draft guideline 2.6.1 is "Definition of objections to reservations".

Draft guideline 2.6.2

Draft guideline 2.6.2 is entitled "Definition of objections to the late formulation or widening of the scope of a reservation". This draft guideline follows closely the original drafting as proposed by the Special Rapporteur. The Committee contemplated the possibility of modifying the wording in order to align it with that of draft guideline 2.6.1. ("purports to oppose" instead of "opposes"). It finally abandoned this idea realizing that the case of this draft guideline was different from the one covered by draft guideline 2.6.1. The purpose of 2.6.2 is to underline the fact that the term objection may be used also in relation to opposition to late formulation of a reservation or the widening of the scope of a reservation.

Draft guideline 2.6.2 is currently placed immediately after draft guideline 2.6.1 dealing with the definition of objections. However, the Committee agreed that its placement would be more appropriate somewhere between guidelines 2.3.2 ("Acceptance of late formulation of reservation") and 2.3.3 ("Objection to late formulation of a reservation"). The draft guideline would retain its current number in order not to upset an already complex numbering of draft guidelines, on the understanding that on second reading this draft guideline should be placed in the section dealing with late formulation of reservations.

Mr. Chairman,

This concludes my presentation of the report of the Drafting Committee. The Drafting Committee recommends to the Commission the adoption of the draft guidelines which are before you.

Thank you, Mr. Chairman.

