

Reservations to treaties

Statement of the Chairman of the Drafting Committee

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Mr. Chairman,

It is my pleasure, today, to introduce the fourth report of the Drafting Committee for the sixty-first session of the Commission. This report, which deals with the topic “Reservations to treaties”, is contained in document A/CN.4/L.744/Add.1.

The present report concerns two draft guidelines – namely, draft guidelines 3.3 and 3.3.1 – relating to the non-validity of reservations, which the Commission referred to the Drafting Committee at the 2891st meeting, on 11 July 2006.

The Drafting Committee considered and provisionally adopted these two draft guidelines in 2 meetings, on 29 May and 4 June 2009.

Before I introduce the details of the report, let me once again pay tribute to the Special Rapporteur, Mr. Alain Pellet, whose mastery of the subject, guidance and cooperation greatly facilitated the work of the Drafting Committee. I also thank the other members of the Drafting Committee for their active participation and essential contributions. Furthermore, I wish to thank the Secretariat for its valuable assistance.

Mr. Chairman,

I shall now turn to the substance of the report, beginning with draft guideline 3.3.

Draft guideline 3.3

Draft guideline 3.3 is entitled “Consequences of the non-validity of a reservation”, as originally proposed.

This draft guideline, which was referred to the Drafting Committee in 2006 following an indicative vote, gave rise to an extensive debate in the Committee. Some members agreed with the view of the Special Rapporteur that there was no distinction to be made, as regards the consequences of invalidity, between the different grounds for invalidity of a reservation which are listed in draft guideline 3.1. On the contrary, other members believed that the consequences of the invalidity of a reservation may be different depending on the ground for such invalidity. Furthermore, some members were of the view that it was premature to adopt this draft guideline since the Commission had not yet examined the consequences arising from the invalidity of a reservation.

The Drafting Committee finally agreed on a text which is largely based on that originally proposed by the Special Rapporteur. However, following a suggestion made in the Plenary, the words “explicit of implicit”, which referred to the prohibition of a reservation, were deleted in order to bring the text into line with that of other draft guidelines provisionally adopted by the Commission. Moreover, an explicit reference to the *consequences* of invalidity was included in the text of the draft guideline. Thus, the provision states the principle that a reservation which is formulated in spite of a prohibition arising from the provisions of the treaty or in spite of its incompatibility with the object and purpose of the treaty is not valid, without there being any need to distinguish between the consequences of these grounds for invalidity. However, I should indicate that, according to certain members, the statement contained in this draft guideline should not be interpreted as prejudging any final determination as to whether the consequences of the different grounds for invalidity are necessarily identical. Some members were also of the view that this draft guideline might need to be revisited in the light of the outcome of the Commission’s consideration of the question of the consequences of the invalidity of a reservation.

Mr. Chairman,

I shall now turn to draft guideline 3.3.1.

Draft guideline 3.3.1

Draft guideline 3.3.1 is now entitled “Non-validity of reservations and international responsibility”. This draft guideline enunciates the principle

that the formulation of an invalid reservation produces its consequences pursuant to the law of treaties and does not, in itself, engage the international responsibility of the State or international organization which has formulated the reservation.

The draft guideline as adopted by the Drafting Committee is largely based on the text proposed by the Special Rapporteur, which did not give rise to many comments during the plenary debate in 2006.

Some minor changes were introduced by the Drafting Committee to the text proposed by the Special Rapporteur, namely the replacement of the word “effects” by the word “consequences”; the replacement of the expression “within the framework of” by the expression “pursuant to”; the replacement, in the English text, of the words “shall not” by the words “does not”; and the addition of the word “international” before “responsibility” both in the text and in the title of the draft guideline.

A view was expressed in the Drafting Committee that the formulation of a reservation which is incompatible with *jus cogens* would engage the international responsibility of the author of the reservation. However, the majority of the members were of the opinion that the general statement contained in this draft guideline remained accurate as far as the formulation of the reservation was concerned. The commentary would indicate that the words “in itself” purport to clarify that this draft guideline refers *only to the formulation* of an invalid reservation and is without prejudice to the consequences that might be attached, in terms of international responsibility, to any conduct that could be adopted by a State or an international organization in relation to, or as a consequence of, the formulation of an invalid reservation.

Mr. Chairman,

This concludes my introduction of the fourth report of the Drafting Committee on the topic “Reservations to treaties”. It is my sincere hope that the Plenary will be in a position to adopt the draft guidelines presented.
