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RESERVATIONS TO TREATIES

Titles and texts of the draft guidelines adopted by
the Drafting Committee

1.1.1 [1.1.4] 1/ 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/ The numbers in square brackets correspond to the original numbers proposed by the Special Rapporteur.

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 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 initialing 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.