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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS FIFTY-FIRST SESSION

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CHAPTER VI

RESERVATIONS TO TREATIES

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\* Reissued for technical reasons.

A. Introduction

1. The General Assembly, in its resolution 48/31 of 9 December 1993, endorsed the decision of the International Law Commission to include in its agenda the topic "The law and practice relating to reservations to treaties".

2. At its forty-sixth session, in 1994, the Commission appointed Mr. Alain Pellet Special Rapporteur for the topic. 1/

3. At its forty-seventh session, in 1995, the Commission received and discussed the first report of the Special Rapporteur. 2/

4. Following that discussion, the Special Rapporteur summarized the conclusions he had drawn from the Commission's consideration of the topic; they related to the title of the topic, which should now read "Reservations to treaties"; the form the results of the study would take which should be a guide to practice in respect of reservations; the flexible way in which the Commission's work on the topic should be carried out; and the consensus in the Commission that there should be no change in the relevant provisions of the 1969, 1978 and 1986 Vienna Conventions. 3/ 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. As far as the Guide to practice is concerned, it would take the form of draft guidelines with commentaries which would be of assistance for the practice of States and international organizations; these guidelines would, if necessary, be accompanied by model clauses.

5. In 1995, the Commission, in accordance with its earlier practice, 4/ authorized the Special Rapporteur to prepare a detailed questionnaire on reservations to treaties, to ascertain the practice of, and problems encountered by, States and international organizations, particularly those which were depositaries of multilateral conventions. The questionnaire was sent to the addressees by the Secretariat. In its resolution 50/45 of

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1/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10), para. 382.

2/ A/CN.4/470 and Corr.1.

3/ Official Records of the General Assembly, Fiftieth Session, Supplement No. 10 (A/50/10), para. 491.

4/ See Yearbook of the International Law Commission, 1993, vol. II (Part Two), para. 286.

11 December 1995, the General Assembly took note of the Commission's conclusions, inviting it to continue its work along the lines indicated in its report and also inviting States to answer the questionnaire. 5/

6. At its forty-eighth session, the Commission had before it the Special Rapporteur's second report on the topic. 6/ The Special Rapporteur had annexed to his report a draft resolution of the International Law Commission on reservations to multilateral normative 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. 7/ Owing to lack of time, however, the Commission was unable to consider the report and the draft resolution, although some members had expressed their views on the report. Consequently, the Commission decided to defer the debate on the topic until the next year.

7. At its forty-ninth session, the Commission again had before it the second report of the Special Rapporteur on the topic.

8. Following the debate, the Commission adopted preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties. 8/

9. In its resolution 52/156 of 15 December 1997, the General Assembly took note of the Commission's preliminary conclusions and of 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.

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5/ As of 30 June 1999, 33 States and 22 international organizations had answered the questionnaire.

6/ A/CN.4/477 and Add.1.

7/ Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 (A/51/10), para. 137.

8/ Ibid., Fifty-second Session, Supplement No. 10 (A/52/10), para. 157.

10. At its fiftieth session, the Commission had before it the Special Rapporteur's third report on the topic 9/ which dealt with the definition of reservations and interpretative declarations to treaties. Due to lack of time, the Commission could not consider the third report in its entirety. It only considered part of it and referred to the Drafting Committee 10 draft guidelines included in the third report: 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), 1.2 (Definition of interpretative declarations) and 1.4 (Scope of definition). Those draft guidelines would be part of the Guide to practice.

11. On the recommendation of the Drafting Committee, the Commission provisionally adopted at the same session draft guidelines 1.1 (Definition of reservations), 1.1.1 [1.1.4] (Object of reservations), 1.1.2 (Cases in which a reservation 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. 10/

12. The Commission also adopted commentaries to the above draft guidelines. Draft guidelines 1.1.5, 1.1.6, 1.1.7 and 1.2 were still before the Drafting Committee, while draft guidelines 1.1.1 and 1.1.3 were provisionally adopted on the understanding that they would be re-examined in the light of discussion on interpretative declarations and could be reformulated if necessary. Moreover the guideline with no title or number was provisionally adopted by the Commission on the understanding that the Commission would consider the possibility of referring, under a single caveat, both to reservations, which

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9/ A/CN.4/491 and Corr.1 (English only), A/CN.4/491/Add.1, Add.2 and Add.2/Corr.1, Add.3 and Corr.1 (Chinese, French and Russian only), Add.4 and Add.4/Corr.1, Add.5 and Add.6 and Corr.1.

10/ See Report of the International Law Commission on the work of its fiftieth session, Official Records of the General Assembly, Fifty-third Session, Supplement No. 10 (A/53/10), para. 540.

were provisionally the sole object of that guideline and to interpretative declarations which, in the view of some members, posed identical problems.

B. Consideration of the topic at the present session

13. At the present session, the Commission had again before it the part of the Special Rapporteur's third report which it could not consider at its fiftieth session and the first part of his fourth report on the topic. 11/ Moreover the revised bibliography on reservations to treaties which was originally submitted by the Special Rapporteur in 1996 attached to his second report was annexed to the report. 12/

14. The Commission considered the remaining part of the Special Rapporteur's third report and part of his fourth report at its 2581st to 2586th meetings held from 3 to 11 June and referred to the Drafting Committee 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), 1.3.1 (Method of distinguishing between reservations and interpretative declarations). 13/ Moreover, the Special Rapporteur introduced a revised version of draft guideline 1.1.7 (1.1.7 bis) ("Statements of non-recognition") which was already before the Drafting Committee. This revised version of this draft guideline was included in his fourth report. 14/

15. With regard to draft guidelines 1.3.0, 1.3.0 bis and 1.3.0 ter, appearing also in the Special Rapporteur's third report and dealing with the

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11/ A/CN.4/499.

12/ A/CN.4/478/Rev.1.

13/ The text of these draft guidelines can be found in document A/CN.4/491/Add.6.

14/ A/CN.4/499, para. 53.

distinction between reservations and interpretative declarations, 15/ the Special Rapporteur himself had some doubts about their utility and he proposed them only tentatively. His main objective was to determine a series of criteria stemming from the general definition of reservations and interpretative declarations. The Commission was of the view however that these criteria were already inherent in the definitions and that these three draft guidelines would merely repeat them or overlap with them without adding a new element. The Commission decided not to refer them to the Drafting Committee but to reflect their content in the relevant commentaries to draft guidelines on this issue.

16. The Commission considered the report of the Drafting Committee at its ... meetings on 6 July ... and adopted on first reading [17] draft guidelines. Moreover, in light of the consideration of interpretative declarations, it adopted a new version of draft guideline 1.1.1 [1.1.4] and of the draft guideline without a title or number (in the new version draft guideline 1.6 (Scope of definitions)). The text of these draft guidelines and of the commentaries relating thereto is reproduced in section C below.

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15/ The text of the draft guidelines can also be found in document A/CN.4/491/Add.6.