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CHAPTER VII

RESERVATIONS TO TREATIES

Addendum

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1. Text of the draft guidelines

1. The text of the draft guidelines provisionally adopted by the Commission at its fiftieth, fifty-first and fifty-second sessions is reproduced below:

RESERVATIONS TO TREATIES

Guide to Practice

1. Definitions

1.1 Definition of reservations¹

“Reservation” means a unilateral statement, however phrased or named, made 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 organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

1.1.1 [1.1.4]² Object of reservations³

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

¹ For the commentary to this draft guideline, 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)*, pp. 196-199.

² The numbers in square brackets refer to the numbering adopted in the reports of the Special Rapporteur.

³ For the commentary to this draft guideline, see Report of the International Law Commission on the work of its fifty-first session, *Official Records of the General Assembly, Fifty-fourth session, Supplement No. 10 (A/54/10)*, pp. 210-217

1.1.2 Instances in which reservations may be formulated⁴

Instances in which a reservation may be formulated under guideline 1.1 include all the means of expressing consent to be bound by a treaty mentioned in article 11 of the Vienna Conventions of 1969 and 1986 on the law of treaties.

1.1.3 [1.1.8] Reservations having territorial scope⁵

A unilateral statement by which a State purports to exclude the application of a treaty or some of its provisions to a territory to which that treaty would be applicable in the absence of such a statement constitutes a reservation.

1.1.4 [1.1.3] Reservations formulated when notifying territorial application⁶

A unilateral statement by which a State purports to exclude or to modify the legal effect of certain provisions of a treaty in relation to a territory in respect of which it makes a notification of the territorial application of the treaty constitutes a reservation.

1.1.5 [1.1.6] Statements purporting to limit the obligations of their author⁷

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 means⁸

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.

⁴ For the commentary to this draft guideline, see Report of the International Law Commission on the work of its fiftieth session, op. cit., pp. 203-206.

⁵ For the commentary to this draft guideline, *ibid.*, pp. 206-209.

⁶ For the commentary to this draft guideline, *ibid.*, pp. 209-210.

⁷ For the commentary to this draft guideline, see Report of the International Law Commission on the work of its fifty-first session, op. cit., pp. 217-221.

⁸ For the commentary to this draft guideline, *ibid.*, pp. 222-223.

1.1.7 [1.1.1] Reservations formulated jointly⁹

The joint formulation of a reservation by several States or international organizations does not affect the unilateral nature of that reservation.

1.1.8 [1.1.8] Reservations made under exclusionary clauses

A unilateral statement made by a State or an international organization when that State or organization expresses its consent to be bound by a treaty, in accordance with a clause expressly authorizing the parties or some of them to exclude or to modify the legal effect of certain provisions of the treaty in their application to those parties, constitutes a reservation.

1.2 Definition of interpretative declarations¹⁰

“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 declarations¹¹

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 subjects 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 jointly¹²

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

⁹ For the commentary to this draft guideline, see Report of the International Law Commission on the work of its fiftieth session, op. cit., pp. 210-213.

¹⁰ For the commentary to this draft guideline, see Report of the International Law Commission on the work of its fifty-first session, op. cit., pp. 223-240.

¹¹ For the commentary to this draft guideline, *ibid.*, pp. 240-249.

¹² For the commentary to this draft guideline, *ibid.*, pp. 249-252.

1.3 Distinction between reservations and interpretative declarations¹³

The character of a unilateral statement as a reservation or an interpretative declaration is determined by the legal effect it purports to produce.

1.3.1 Method of implementation of the distinction between reservations and interpretative declarations¹⁴

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 interpret 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.

1.3.2 [1.2.2] Phrasing and name¹⁵

The phrasing or name given to a unilateral 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 statements in respect of a single treaty and designates some of them as reservations and others as interpretative declarations.

1.3.3 [1.2.3] Formulation of a unilateral statement when a reservation is prohibited¹⁶

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 purports to exclude or modify the legal effect of certain provisions of the treaty or of the treaty as a whole with respect to certain specific aspects in their application to its author.

1.4 Unilateral statements other than reservations and interpretative declarations¹⁷

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.

¹³ For the commentary to this draft guideline, *ibid.*, pp. 252-253.

¹⁴ For the commentary to this draft guideline, *ibid.*, pp. 254-260.

¹⁵ For the commentary to this draft guideline, *ibid.*, pp. 260-266

¹⁶ For the commentary to this draft guideline, *ibid.*, pp. 266-268.

¹⁷ For the commentary to this draft guideline, *ibid.*, pp. 268-270.

1.4.1 [1.1.5] Statements purporting to undertake unilateral commitments¹⁸

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 treaty¹⁹

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-recognition²⁰

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 constitutes a statement of non-recognition which 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 policy²¹

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 which 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 level²²

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

¹⁸ For the commentary to this draft guideline, *ibid.*, pp. 270-273.

¹⁹ For the commentary to this draft guideline, *ibid.*, pp. 273-274.

²⁰ For the commentary to this draft guideline, *ibid.*, pp. 275-280.

²¹ For the commentary to this draft guideline, *ibid.*, pp. 280-284.

²² For the commentary to this draft guideline, *ibid.*, pp. 284-289.

internal level, without purporting as such to affect its rights and obligations towards the other contracting parties, constitutes an informative statement which is outside the scope of the present Guide to Practice.

1.4.6. [1.4.6, 1.4.7] Unilateral statements made under an optional clause

A unilateral statement made by a State or by an international organization, in accordance with a clause in a treaty expressly authorizing the parties to accept an obligation that is not otherwise imposed by the treaty, is outside the scope of the present Guide to Practice.

A restriction or condition contained in such statement does not constitute a reservation within the meaning of the present Guide to Practice.

1.4.7 [1.4.8] Unilateral statements providing for a choice between the provisions of a treaty

A unilateral statement made by a State or an international organization, in accordance with a clause contained in a treaty that expressly requires the parties to choose between two or more provisions of the treaty, is outside the scope of the present Guide to Practice.

1.5 Unilateral statements in respect of bilateral treaties²³

1.5.1 [1.1.9] “Reservations” to bilateral treaties²⁴

A unilateral statement, however phrased or named, 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 to which it is subjecting the expression of its final consent to be bound, does not constitute a reservation within the meaning of the present Guide to Practice.

1.5.2 [1.2.7] Interpretative declarations in respect of bilateral treaties²⁵

Draft guidelines 1.2 and 1.2.1 are applicable to interpretative declarations in respect of multilateral as well as bilateral treaties.

²³ For the commentary to this draft guideline, *ibid.*, pp. 289-290.

²⁴ For the commentary to this draft guideline, *ibid.*, pp. 290-302.

²⁵ For the commentary to this draft guideline, *ibid.*, pp. 302-306.

1.5.3 [1.2.8] Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party²⁶

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 definitions²⁷

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.

1.7 Alternatives to reservations and interpretative declarations

1.7.1 [1.7.1, 1.7.2, 1.7.3, 1.7.4] Alternatives to reservations

In order to achieve results comparable to those effected by reservations, States or international organizations may also have recourse to alternative procedures, such as:

- The insertion in the treaty of restrictive clauses purporting to limit its scope or application;
- The conclusion of an agreement, under a specific provision of a treaty, by which two or more States or international organizations purport to exclude or modify the legal effects of certain provisions of the treaty as between themselves.

1.7.2 [1.7.5] Alternatives to interpretative declarations

In order to specify or clarify the meaning or scope of a treaty or certain of its provisions, States or international organizations may also have recourse to procedures other than interpretative declarations, such as:

- The insertion in the treaty of provisions purporting to interpret the same treaty;
- The conclusion of a supplementary agreement to the same end.

²⁶ For the commentary to this draft guideline, *ibid.*, pp. 306-307.

²⁷ For the commentary to this draft guideline, *ibid.*, pp. 308-310.