United Nations A/CN.4/526

General Assembly

Distr.: General
5 April 2002
English
Original: English/French

International Law Commission
Fifty-fourth session
Geneva, 29 April-7 June and 22 July-16 August 2002

Seventh report on reservations to treaties*

By Mr. Alain Pellet, Special Rapporteur

Contents

* Complexity of issues dealt with in the report resulted in the delayed submission of the present document.

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I. Introduction

1. As an introduction to his seventh report, the Special Rapporteur deems it useful to present, as he did in his previous reports,

– A brief summary of the lessons which in his view can be drawn from the consideration of his preceding report both by the Commission itself and by the Sixth Committee of the General Assembly, Sect. I (B);

– A concise account of the main developments with regard to reservations that occurred during the past year and were brought to his attention, Sect. I (C);

– A general presentation of this report, Sect. I (D).

In addition, since the Commission is entering a new five-year period, he thought it necessary to preface these traditional comments with a brief summary of its earlier work on the topic, Sect. I, (A).

A. The Commission's earlier work on the topic

2. Initially, the Commission considered the topic of reservations to treaties in the broader context of the law of treaties; in 1994, it was included on the Commission's agenda as a separate topic.

1. Reservations to treaties and the law of treaties[1]

3. Article 2, paragraph 1 (d), of the 1969 Vienna Convention on the Law of Treaties defines a reservation as:

> "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".

Reservations are, therefore, collateral instruments and, quite naturally, successive special rapporteurs of the Commission on the law of treaties undertook to study them between 1950 and 1966.

4. However, although the actual concept of reservation did not pose any major problems, the Commission's views regarding the legal regime applicable to these instruments has evolved considerably. This is primarily due to exogenous factors and, in particular, to the extremely innovative opinion adopted by the International Court of Justice on 28 May 1951 concerning reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.[2]

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[1] A much fuller account will be found in the first report on reservations to treaties (A/CN.4/470), chapter I "The Commission's previous work on reservations and the outcome", paras. 8-90.

[2] *C.I.J. Recueil 1951*, p. 15. Regarding the major contribution of this opinion, see Alain Pellet, "*La C.I.J. et les reserves aux traites — Remarques cursives sur une revolution jurisprudentielle*", Liber amicorum *Shigeru Oda*, Kluwer, Dordrecht, 2002, pp. 481-514; see also the studies cited in A. Pellet, second report on reservations to treaties, Annex I, bibliography concerning reservations to treaties, updated on 8 April 1999 (A/CN.4/478/Rev.1), particularly pp. 10 and 11.

5. Initially, the Commission took the generally accepted conventional approach and subjected the possibility of accepting a treaty, with reservations, to acceptance of the reservations by all parties to the treaty.[3] Although, in its opinion of 1951, the Court had adopted a more flexible approach, in keeping with the Pan-American practice and based on the criterion of compatibility of the reservation with the object and purpose of the treaty,[4] the Commission, in accordance with the views of successive special rapporteurs,[5] adhered to this position until 1961.[6]

6. It was not until Sir Humphrey Waldock's first report,[7] in 1962, that the Commission departed from the conventional approach and adopted a more flexible system "under which it is for each State individually to decide whether to accept a reservation and to regard the reserving State as a party to the treaty for the purpose of the relations between the two States"[8] it being understood that the criterion of compatibility of the reservation with the object and purpose of the treaty should guide States in their assessment.[9]

7. Having been favourably received by the General Assembly, this change was confirmed in second reading, even though the draft finally adopted in 1966 differed significantly in certain respects from the 1962 draft, inter alia because the Commission came round more clearly to the view of the International Court of Justice, and seemed to make compatibility with the object and purpose of the treaty a criterion for permissibility of the reservation.[10] The Commission's draft spelled out the rules applicable to the formulation of reservations (article 16), acceptance of and objection to reservations (article 17), procedure regarding reservations (article 18), legal effects (article 19) and withdrawal of reservations (article 20).[11]

8. The Vienna Conference preserved the structure[12] and general outlines of the draft, while further broadening the possibility of formulating reservations and lessening the effects of objections. This resulted in articles 19 to 23 of the Vienna Convention on the Law of Treaties of 23 May 1969, which were purely and simply transposed into the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986.

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[3] See the first report of James L. Brierly on the law of treaties, *Yearbook ... 1950*, vol. II, p. 240, and the report of the Commission, ibid., para. 164.

[4] *C.I.J. Recueil 1951*, pp. 24 and 29.

[5] See, in particular, the first report of Sir Hersch Lauterpacht, A/CN.4/63, *Yearbook ... 1951*, vol. II, pp. 91 and 123-136 and the first report of Sir Gerald Fitzmaurice, A/CN.4/101, *Yearbook ... 1956*, vol. II, pp. 104 and 126-128.

[6] See, in particular, the Commission's report of 1951, one chapter of which is devoted especially to the issue of reservations, pursuant to a specific request from the General Assembly (*Yearbook ... 1951*, vol. II, document A/1878, para. 24).

[7] *Yearbook ... 1962*, vol. II, document A/CN.4/144, pp. 27-80.

[8] Report of the International Law Commission at its fourteenth session, ibid., p. 180.

[9] Cf. Draft article 20, para. 2 (b), of the 1962 draft, ibid. p. 176.

[10] Cf. Article 16 of the draft and the commentary thereon, *Yearbook ... 1966*, vol. II, pp. 202-208.

[11] Ibid., pp. 202-209.

[12] However, the order of the articles was changed. In the 1969 Convention, the structure is as follows: article 19: "Formulation of reservations"; article 20: "Acceptance of and objection to reservations"; article 21: "Legal effects of reservations and of objections to reservations"; article 22: "Withdrawal of reservations and of objections to reservations"; and article 23: "Procedure regarding reservations".

9. In addition, in connection with its work on succession of States in respect of treaties, the Commission wondered about "the position of the successor State in regard to reservations, acceptances and objections" formulated by the predecessor State.[13] This led to the inclusion, in the Vienna Convention of 23 August 1978 on the subject, of an article 20 which merely states concisely the rules relating to succession in respect of reservations, without going into what happens to acceptances and objections formulated by a predecessor State and, for the rest, refers to articles 19 to 23 of the Convention of 1969.

2. The topic "reservations to treaties"

10. The rules relating to reservations in the three Vienna Conventions of 1969, 1978 and 1986 constituted — and still do constitute — the framework for practice in respect of reservations both for States which have become party to the Conventions and for those which have not acceded thereto. On the whole, at the practical level, this framework is satisfactory.

11. Nonetheless, as Paul Reuter pointed out "the question of reservations has always been a thorny and controversial issue, and even the provisions of the Vienna Convention [of 1969] have not eliminated all these difficulties."[14] Serious problems of principle continue to arise, inter alia concerning, on the one hand, the criterion of compatibility with the object and purpose of the treaty and, on the other, the statement by States parties of their position vis-à-vis the reservation through acceptance or objection. These problems have not inconsiderable practical repercussions. Furthermore, the provisions concerning reservations of the three Vienna Conventions on the law of treaties contain numerous other ambiguities and gaps that are the source of difficulties for States and international organizations, particularly (but not exclusively) when acting as depositaries.[15]

12. It was in order to try to remedy this situation that, in 1993, in accordance with suggestions made during discussions in the Sixth Committee of the General Assembly in 1989 and following proposals made by the Working Group regarding the long-term programme of work and by the Planning Group, the Commission decided to include the topic of reservations to treaties in its agenda.[16] The decision was approved by the General Assembly[17] and, the following year, the Commission appointed a Special Rapporteur; the latter has already submitted six reports.[18]

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[13] Third report of Sir Humphrey Waldock on the succession of States in respect of treaties, *Yearbook ... 1970*, vol. II, document A/CN.4/224, p. 47; see pp. 46-52; see also the first report of Sir Francis Vallat, *Yearbook ... 1974*, vol. II (Part One), pp. 50-55.

[14] Tenth report on the law of treaties between States and international organizations or between international organizations, *Yearbook ... 1981*, vol. II (Part One), p. 56, para. 53.

[15] For a first survey of these ambiguities and gaps, see the first report on reservations to treaties (A/CN.4/470), chapter II "Brief inventory of the problems of the topic", paras. 91-149.

[16] See *Yearbook ... 1993*, vol. II (Part Two), paras. 428-430. At the request of the Special Rapporteur, the Commission decided in 1996 to simplify the title of the topic, which initially was: "The law and practice relating to reservations to treaties". See *Yearbook ... 1996*, vol. II (Part Two), p. 79, para. 105 (a).

[17] General Assembly resolution 48/31 of 9 December 1993, para. 7.

[18] It will be recalled that, in fact, the Commission did not consider the fourth report (A/CN.4/499) and that its substance was repeated in the fifth report (A/CN.4/508 and Add.1-4).

(a) The first two reports on reservations to treaties and the Commission's decisions

13. The first two reports on reservations to treaties present specific features.

(i) First report and the outcome

14. The first report, entitled "preliminary report",[19] was submitted and discussed in 1995; it sought to present:

– The Commission's earlier work on reservations;

– Problems left pending;[20] and

– The scope and form that the outcome of the Commission's future work on the topic might take.

15. At the end of the discussions, the Special Rapporteur drew the following conclusions:[21]

(b) The Commission should try to adopt a guide to practice in respect of reservations. In accordance with the Commission's statute and its usual practice, this guide would take the form of draft articles whose provisions, together with commentaries, would be guidelines for the practice of States and international organizations in respect of reservations; these provisions would, if necessary, be accompanied by model clauses;

(c) The above arrangements shall be interpreted with flexibility and, if the Commission feels that it must depart from them substantially, it would submit new proposals to the General Assembly on the form the results of its work might take;

(d) There is a consensus in the Commission that there should be no change in the relevant provisions of the 1969, 1978 and 1986 Vienna Conventions.[22]

16. These conclusions were supported by the Commission (and by the States that spoke on the topic during the debate in the Sixth Committee in 1995)[23] and have formed the basis on which the Commission and its Special Rapporteur have worked ever since. It would be regrettable, to say the least, if they were to be questioned at this stage.

17. At its forty-seventh session, the Commission, in accordance with its previous practice, also authorized the Special Rapporteur to prepare a detailed questionnaire on reservations to treaties in order to find out about the practice followed and problems encountered by States and international organizations, particularly those which act as depositaries for multilateral treaties.[24] The secretariat sent the questionnaires to all States Members of the United Nations or members of specialized agencies or that are party to the Statute of the International Court of Justice and to 65 intergovernmental organizations. Answers were received from 33

[19] A/CN.4/470 and Corr.1.
[20] The first two chapters are very briefly summarized above (paras. 3-12).
[21] The first conclusion (a) concerned the change in the title of the topic; see note 16 above.
[22] *Yearbook ... 1996*, vol. II, (Part Two), p. 79, para. 105.
[23] A/CN.4/472/Add.1, para. 174.
[24] *Yearbook ... 1996*, vol. II, (Part Two), p. 79, para. 105.

States[25] and 24 international organizations.[26] The Special Rapporteur wishes again to draw attention to the fact that the European Community, which has an abundance of practice in respect of reservations and which does not have fewer resources for responding to such surveys than other international organizations has thus far not answered. He keenly regrets that failure to respond.

(ii) Second report and the outcome

18. The second report, submitted in 1996, consisted of two entirely different chapters.[27] In the first, the Special Rapporteur presented an "Overview of the study" and in particular, made a number of proposals with regard to the Commission's future work on the topic of reservations to treaties.[28] That chapter contained a "provisional outline of the study"[29] which is reproduced below for the convenience of members of the Commission:

Provisional plan of the study[30]

I. Unity or diversity of the legal regime for reservations to multilateral treaties (reservations to human rights treaties)

A. Unity of rules applicable to general multilateral treaties

(a) The legal regime for reservations is generally applicable

(b) The legal regime for reservations is generally applied

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[25] Argentina, Bolivia, Canada, Chile, Colombia, Croatia, Denmark, Ecuador, Estonia, Finland, France, Germany, Holy See, India, Israel, Italy, Japan, Kuwait, Malaysia, Mexico, Monaco, New Zealand, Panama, Peru, Republic of Korea, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland and United States of America. The Special Rapporteur wishes again to thank these States but no longer has much hope that other States will join them. He points out that this failure to reply skews the picture regarding practice, particularly, since the geographic origin of the replies is very unbalanced.

[26] Latin American Integration Association (ALADI), Bank for International Settlements (BIS), Council of Europe, Food and Agriculture Organization of the United Nations (FAO), International Atomic Energy Agency (IAEA), International Civil Aviation Organization (ICAO), International Labour Organisation (ILO), International Maritime Organization (IMO), International Fund for Agricultural Development (IFAD), International Monetary Fund (IMF), International Telecommunications Union (ITU), United Nations, United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO), Universal Postal Union (UPU), World Bank (IBRD, IDA, IFC, MIGA), World Customs Organization (WCO), World Health Organization (WHO), World Intellectual Property Organization (WIPO), World Meteorological Organization (WMO) and World Trade Organization (WTO). The Special Rapporteur also wishes to thank these organizations and to express the hope that those which have not yet replied to the questionnaires will do so in the next few months.

[27] A/CN.4/477 and Add.1.

[28] Paras. 9-50.

[29] Para. 37; this outline was briefly commented on (paras. 38-50).

[30] Each heading is followed by a reference within brackets to the relevant articles of the Vienna Conventions of 1969, 1978 and 1986 (if there is no reference it means that the issue was not dealt with in the Conventions).

B. Control mechanisms

(a) Use of control mechanisms to evaluate the permissibility of reservations

(b) Consequences of the determination of a non-permissible reservation

II. Definition of reservations

(a) Positive definition (1969 and 1986, art. 2.1 (d); 1978, art. 1 (j))

(b) Distinction between reservations and other procedures aimed at modifying the application of treaties

(c) Distinction between reservations and interpretative declarations

(d) The legal regime of interpretative declarations

(e) Reservations to bilateral treaties

III. Formulation and withdrawal of reservations, acceptances and objections

A. Formulation and withdrawal of reservations

(a) Acceptable times for the formulation of a reservation (1969 and 1986, art. 19, *chapeau*

(b) Procedure regarding formulation of a reservation (1969 and 1986, art. 23.1 and 4)

(c) Withdrawal (1969 and 1986, art. 22.1 and 3 (a) and 23.4)

B. Formulation of acceptances of reservations

(a) Procedure regarding formulation of an acceptance (1969 and 1986, art. 23.1 and 3)

(b) Implicit acceptance (1969 and 1986, art. 20.1 and 5)

(c) Obligations and express acceptance (1969 and 1986, art. 20.1, 2, and 3)

C. Formulation and withdrawal of objections to reservations

(a) Procedure regarding formulation of an objection (1969 and 1986, art. 23.1 and 3)

(b) Withdrawal of an objection (1969 and 1986, art. 22.2 and 3 (b) and 23.4)

IV. Effects of reservations, acceptances and objections

– Permissibility or opposability? Statement of the problem

A. Prohibition of certain reservations

(a) Difficulties relating to the application of reservation clauses (1969 and 1986, art. 19 (a) and (b))

(b) Difficulties relating to the determination of the object and purpose of the treaty (1969 and 1986, art. 19 (c))

(c) Difficulties relating to the customary nature of the rule to which the reservation applies

B. The effects of reservations, acceptances and objections in the case of a reservation that complies with the provisions of article 19 of the 1969 and 1986 Conventions

(a) On the relations of the reserving State or international organization with a party that has accepted the reservation (1969 and 1986, art. 20.4 (a) and (c) and 21.1)

(b) On the relations of the reserving State or international organization with an objecting party (1969 and 1986, art. 20.4 (b) and 21.3)

C. The effects of reservations, acceptances and objections in the case of a reservation that does not comply with the provisions of article 19 of the 1969 and 1986 Conventions

(a) On the relations of the reserving State or international organization with a party that has accepted the reservation (1969 and 1986, art. 20.4 (a) and (c) and 21.1)

(b) On the relations of the reserving State or international organization with an objecting party (1969 and 1986, art. 20.4 (b) and 21.3)

(c) Should a reservation that does not comply with the provisions of article 19 be considered null independently of any objection?

D. The effects of reservations on relations with other contracting parties

(a) On the entry into force of the treaty

(b) On relations with other parties inter se (1969 and 1986, art. 21.2)

V. Fate of reservation, acceptances and objections in the case of succession of States

– Significance of article 20 of the 1978 Vienna Convention dealing with newly independent States

A. In the case of newly independent States

(a) Selective maintenance of reservations (1978, art. 20.1)

(b) Fate of acceptances of reservations by the predecessor State in the case of a maintenance of a reservation

(c) Fate of objections to the reservations of the predecessor State in the case of a maintenance of a reservation

(d) Possibility of a newly independent State formulating new reservations, and their consequences (1978, art. 20.2 and 3)

(e) Fate of objections and acceptances by the predecessor State with regard to reservations formulated by third States

B. Other possibilities with regard to the succession of States

(a) In cases where part of a State's territory is concerned

(b) In the case of the unification or division of States

(c) In the case of the dissolution of States

VI. The settlement of disputes linked to the regime for reservations

(a) The silence of the Vienna Conventions and its negative consequences

(b) Appropriateness of mechanisms for the settlement of disputes — standard clauses or an additional protocol

19. Chapter II of the second report, entitled "Unity or diversity of the legal regime for reservations to treaties" and subtitled "reservations to human rights treaties"[31] concluded that, although there were many different kinds of multilateral treaties, the regime of reservations to treaties outlined in articles 19-23 of the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986, because of its flexibility was suited to all treaties, including those dealing with the protection of human rights. The Special Rapporteur annexed to his report a draft resolution of the Commission concerning reservations to human rights treaties.

20. Due to time constraints the report was not considered in 1996. However, at the forty-ninth session, in 1997, it was the subject of an in-depth debate[32] following which the Commission adopted not a formal resolution, as the Special Rapporteur had proposed, but "Preliminary conclusions on reservations to normative multilateral treaties including human rights treaties",[33] and it decided to communicate the text to the human rights treaty monitoring bodies. Thus far, few of them have responded; those that have, have reacted in a somewhat negative fashion, giving reasons that are not well founded.[34]

21. Although some members of the Commission were of a different opinion, the Special Rapporteur remains convinced that it is preferable not to formally revise the preliminary conclusions adopted in 1997 before completing in first reading, if not the Guide to Practice as a whole, at least the draft guidelines concerning the effects of reservations. By the time he hopes that there will have been fuller consultation with the human rights bodies.

22. The Special Rapporteur had appended a "Bibliography concerning reservations to treaties" to his second report; a fuller and updated version is attached to his fourth report.[35]

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[31] A/CN.4/477/Add.1, paras. 55-260.

[32] See *Yearbook ... 1997*, vol. II (Part Two), pp. 44-59, paras. 44-157.

[33] Ibid., p. 57.

[34] Regarding the reactions of the human rights bodies, see the third report on reservations to treaties, A/CN.4/491, paras. 15 and 16 and the fifth report, A/CN.4/508, paras. 10-15. Independently of the debates held in 1997 within the Sixth Committee of the General Assembly (see A/CN.4/483, paras. 64-89), several States have submitted comments concerning the Commission's preliminary conclusions (see A/CN.4/508, para.16).

[35] A/C.4/478/Rev.1, 27 pages.

(b) The third and fifth reports — elaboration of the Guide to Practice

23. What the third report and [the first and second parts of the] fifth report on reservations to treaties[36] have in common is that all three documents introduce draft guidelines contained in the Guide to Practice in respect of reservations to treaties which the Commission has approved for drafting.[37] These draft guidelines, most of which have been adopted by the Commission, are the product of a uniform method of elaboration, whose main elements it might be useful to recall.

(i) Draft guidelines which have been adopted

24. As the question of the unity or diversity of the legal regime for reservations to multilateral treaties (particularly human rights treaties) was the topic of the second report, in accordance with the plan of work submitted in 1995,[38] the third report[39] and the first part of the fifth report[40] dealt with the question of the definition of reservations, which has turned out to be infinitely more complex than could have been imagined, since the aim was to carefully distinguish between the reservations of comparable institutions which could not be assimilated. This is the topic of Part One of the Guide to Practice[41] ("Definitions"), which has 30 draft guidelines divided into seven sections:[42]

1.1 Definition of reservations (draft guidelines 1.1 and 1.1.1 to 1.1.8)

1.2 Definition of interpretative declarations (draft guidelines 1.2, 1.2.1 and 1.2.2)

1.3 Distinction between reservations and interpretative declarations (draft guidelines 1.3 and 1.3.1 to 1.3.3)

1.4 Unilateral statements other than reservations and interpretative declarations (draft guidelines 1.4.1 to 1.4.7)

1.5 Unilateral statements in respect of bilateral treaties (draft guidelines 1.5.1 to 1.5.3)

1.6 Scope of definitions (draft guideline 1.6), and

1.7 Alternatives to reservations and interpretative declarations (draft guidelines 1.7.1 and 1.7.2).

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[36] As mentioned above (note 18), the fourth report could not be considered by the Commission; by and large, its substance was reproduced in the fifth report.

[37] See para. 15 and 16 above.

[38] See para. 18 above.

[39] A/CN.4/491 and Add.1, Add.1 (and Corr.1), Add.3, Add.4 (and Corr.1), Add.5 and Add.6 (and Corr.1).

[40] A/C.4/508 and Add.1, paras. 66-213, on "alternatives to reservations and interpretative declarations" (and Add.2: recapitulative annex on the definition of reservations).

[41] All the guidelines adopted by the Commission thus far are annexed to this report under the symbol A/CN.4/526/Add.1.

[42] The commentaries on these drafts are contained in the reports of the Commission on its fiftieth session (*Yearbook ... 1998*, vol. II (Part Two), pp. 99-108), fifty-first session, *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 210-310) and fifty-second session, *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10* (A/55/10), pp. 229-272.

25. One of the concepts similar to reservations of particular importance in State practice — although it is neither dealt with nor even evoked in the 1969 and 1986 Vienna Conventions — is that of interpretative declarations, whose legal regime was to be considered at the same time as the legal regime for reservations and which is therefore dealt with in some of the provisions of the Guide to Practice.[43]

26. A problem, however, arose in that regard and cropped up again in the report of the Commission on the work of its fifty-third session (2001).[44] The problem is as follows: the Commission distinguished between two categories of interpretative declarations: on the one hand, those which purport solely to specify or clarify the meaning or scope which the authors, States or international organizations attribute to a treaty or to certain of its provisions[45] and, on the other hand, those whereby the declarant, purporting to achieve the same objective of specifying or clarifying, subjects its consent to be bound to this interpretation. In accordance with much of the doctrine, the Commission called this latter type of declaration "conditional interpretative declarations".[46] The distinction has not been contested. Nonetheless, as work on the draft progresses, it appears that the legal regime for conditional interpretative declarations is similar, and even identical, to that for reservations. Consequently, certain members of the Commission expressed their strong opposition to the draft dealing separately with conditional interpretative declarations. While the Special Rapporteur does not object to this in principle, he believes, as do other members, that no final decision should be taken on the matter until the effects of reservations and conditional interpretative declarations have been considered. If, mutatis mutandis, an identical regime applies to both, there would still be time to delete specific guidelines relating to conditional interpretative declarations and adopt a single guideline assimilating the legal regime applicable to conditional interpretative declarations to that of reservations.

27. The second part of the fifth report[47] and the sixth report[48] addressed seemingly minor problems with regard to the formulation of reservations and interpretative declarations, although some of them were of great practical significance. On the basis of the fifth report, the Commission, at its fifty-third session (2001), adopted 11 draft guidelines included in Part Two of the Guide to Practice ("Procedure")[49] concerning:

– the confirmation of reservations formulated when signing (draft guidelines 2.2.1 to 2.2.3),

– late formulation of reservations (draft guidelines 2.3.1 to 2.3.4) and

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[43] See the third report, A/CN.4/508, para. 61.

[44] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), paras. 20, 123 and 149. See also paras. 39 and 43 below.

[45] Cf. draft guideline 1.2.

[46] Cf. draft guideline 1.2.1.

[47] A/CN.4/508/Add.3 and Add.4, paras. 214-332, on the "moment of formulation of reservations and interpretative declarations".

[48] A/CN.4/518/Add.1 and Add.2, paras. 36-173 on the form, notification and publicity of reservations and interpretative declarations (and Add.3, "Consolidated text of all draft guidelines dealing with the formulation of reservations and interpretative declarations proposed in the fifth and sixth reports"). See sect. B below on the consideration of this report.

[49] The text of and commentaries on these draft guidelines are reproduced in the report of the International Law Commission on the work of its fifty-third session, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10, pp. 465-506).

– various aspects of the procedure relating to interpretative declarations (draft guidelines 2.4.3 to 2.4.7).

(ii) Method of elaboration and adoption of draft guidelines

28. For the purposes of the elaboration and adoption of the draft guidelines adopted thus far, both the Special Rapporteur, in his reports, and the Commission limited themselves to a uniform method which is more fully described in the third report.[50]

29. In substance, in accordance with the indications given in 1998, the reports are based on the following general outline:

– Each chapter will begin by recalling the relevant provisions of the three Vienna Conventions on the law of treaties and the *travaux préparatoires* leading to their adoption;

– Next, the Special Rapporteur will describe the practice of States and international organizations with regard to those provisions and any difficulties to which their application has given rise; in that context, the replies to questionnaires[51] which he has received will be particularly valuable;

– Simultaneously or in a separate section, as appropriate, he will describe the relevant judicial practice and the commentaries of jurists;

– On the basis of this information, he proposes a series of draft articles that will form the Guide to Practice which the Commission intends to adopt;

– Where appropriate, the draft articles are accompanied by model clauses which States could use when derogating from the Guide to Practice in special circumstances or specific fields or, on the contrary, to give effect to it.[52]

30. It goes without saying that it will be necessary to deviate from this outline on certain points. In particular, this will happen when the Vienna Conventions remain completely silent, for example in the case of interpretative declarations, to which the Conventions make absolutely no allusion. In such cases, the Special Rapporteur will revert to the usual methodology employed in preparing the Commission's draft articles, that is, he will base the work directly on international practice (see the second stage described above).

31. In other instances, however, the Vienna Conventions may provide sufficient guidelines for practice. The Special Rapporteur nevertheless feels that there would be no justification for excluding them from the study or even from the Guide to Practice under consideration: silence on this point would make the draft incomplete and difficult to use, whereas its purpose is precisely to make available to "users" — legal services in ministries of foreign affairs and international organizations, ministries of justice, judges, lawyers, specialists in public or private international relations — a reference work that is as complete and comprehensive as possible.

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[50] A/CN.4/491, paras. 31-41.

[51] See para. 17 above.

[52] Thus far, model clauses have been proposed only in the fifth report (A/CN.4/508/Add.4, para. 312). These drafts concern "Reservations formulated after the expression of consent to be bound"; anxious not to encourage the practice of late reservations (which is in fact highly questionable), the Commission did not refer these draft guidelines to the Drafting Committee.

Thus, the Guide to Practice reproduces the relevant provisions of the three Vienna Conventions of 1969, 1975 and 1986, combining them where necessary.

32. This method met with the general approval of both the Sixth Committee and the International Law Commission. Nonetheless, misunderstandings sometimes arose in connection with this second aspect of the Special Rapporteur's method, which was to reproduce word for word the provisions of the Vienna Conventions on the Law of Treaties relating to reservations: certain members of the Commission strongly supported proposals to insert amendments in the draft guidelines of the Guide to Practice which, in their view, would improve them. This approach is unwise; not only is it hardly compatible with the basic premise that the Vienna Conventions should not be called into question[53] but it also sows confusion and is unnecessarily ponderous. While the texts of the Conventions may seem obscure or ambiguous, that seems infinitely preferable to attempting to clarify or supplement them by adopting separate draft guidelines. Moreover, this is what the Commission decided in all cases where such problems arose. The Special Rapporteur fervently hopes that this sound approach will not be called into question in future.

33. Otherwise, the Commission is proceeding, in the elaboration of the Guide to Practice, as it does for all draft articles:[54]

- The Commission discusses in the plenary meeting the draft guidelines proposed by the Special Rapporteur;
- These draft guidelines are (or are not) referred to the Drafting Committee, which makes whatever changes it deems appropriate;
- The new version is again discussed in the plenary;
- Once the final text is adopted, the Special Rapporteur prepares draft commentaries with the assistance of the Secretariat; and
- The commentaries are discussed, amended if necessary, and adopted by the Commission prior to their inclusion in the annual report of the International Law Commission for consideration by the Sixth Committee of the General Assembly.

34. It should be noted, however, that the debates in the Sixth Committee cannot have an immediate effect: unless it is prepared to turn its work (whether it is on the Guide to Practice in respect of reservations or any other draft) into a kind of Penelope's web and start over and over again, the Commission cannot be constantly

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[53] See para. 15 above.

[54] The Special Rapporteur wishes to evoke in passing a (relatively minor) question on which he does not share the views of certain members of the Commission: the numbering of draft guidelines. One view holds that the numbering should follow the usual practice: article 1; article 2; article 3 ... The Special Rapporteur has always been against this: he believes that the current practice (1.1; 1.1.1; 1.2.1) has its advantages: First of all, it helps to draw a clear distinction between the Guide to Practice and the draft convention with which the Guide to Practice is not synonymous (moreover, certain draft guidelines which have already been adopted will never find their way into a treaty — cf. guidelines 1.7.1 or 1.7.2, for example). Secondly, with the numbering adopted, draft guidelines can be conveniently rearranged by, inter alia, chapters or sections; also, additions can be made to the Guide to Practice as work progresses without having to continually dismantle the whole structure. Furthermore, the fact is that, in practice, after an adjustment period, the numbering chosen no longer poses any problem and is adopted by both the members of the Commission and the speakers in the Sixth Committee.

revising its drafts to reflect the reactions of the representatives of States in the General Assembly. Such reactions are, and can only be, a means of "fixing a date" for the second reading. Nothing, however, precludes the Commission and special rapporteurs from taking into account the comments made in the Sixth Committee, which may prove useful in their *future* work. On the contrary, there is every reason to do so, and no one is more convinced than the Special Rapporteur on reservations to treaties that this should be done, even if there is no question of turning the International Law Commission, a body of independent experts, into a mere rubber stamp for the unpredictable positions taken in an international political organ such as the General Assembly.

B. Outcome of the sixth report on reservations to treaties

1. Consideration of the sixth report by the Commission

35. Like the question of the definition of reservations, the question of the formulation of reservations, when taken up, proved to be much more complex and delicate than had been expected. Not only did it have obvious concrete importance (it is important to know, among other things, in what form and at what moment a reservation may be made and the other contracting States and international organizations notified), but it also poses certain problems of principle as was shown, for example, in the Commission's rather lively discussions on the subject of late reservations, one of the subjects of the fifth report.

36. This is why, despite his efforts, the Special Rapporteur was unable in his fifth report to complete his examination of the problems associated with the formulation of reservations, as he had hoped to do. This he was able to do only in the sixth report.[55] The latter deals only with the form and notification of reservations and interpretative declarations,[56] including the important question of the role of the depositary.

37. At its fifty-third session, the Commission completed its consideration of the fifth report on reservations to treaties[57] and began consideration of the sixth. The discussion focussed mainly on quite technical and very specific points often in the form of useful opinions on which, in the absence of specific guidelines from the Commission,[58] the Drafting Committee will have to decide.

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[55] In response to criticisms of the slow progress of the work (criticisms which he recognizes were less severe during the previous two years, perhaps because of a growing awareness of the scope of the task), the Special Rapporteur wishes to recall that he receives no assistance in the preparation of his reports, apart from whatever limited help the secretariat of the Commission is able to provide and for which he is extremely grateful.

[56] A/CN.4/518/Add.1 and Add.2, paras. 36-173.

[57] See para. 27 above.

[58] See summaries of the debates in the report of the Commission on the work of its fifty-third session, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), paras. 118-154. See also the summary records of the 2689th to 2696th meetings (A/CN.4/SR.2689 to 2696).

38. The Commission in fact referred to the Drafting Committee the entire set of draft guidelines proposed by the Special Rapporteur in his sixth report[59] on the form, notification and publication of reservations and interpretative declarations. Owing to the lack of time, however, the Special Rapporteur was unable to consider them. He will therefore do so at the fifty-fourth session.

2. Consideration of chapter VI of the report of the Commission by the Sixth Committee

39. Chapter VI of the report of the Commission on the work of its fifty-third session deals with reservations to treaties. A very brief summary is contained in chapter II[60] and the "specific issues on which comments would be of particular interest to the Commission" are dealt with in chapter III. On the topic of reservations to treaties,[61] these issues concern:

- Conditional interpretative declarations (the question being whether draft guidelines specifically relating to such declarations should be included in the Guide to Practice);[62]
- Late formulation of reservations (two questions were posed to States on this issue: (i) should draft guideline 2.3.1 on the "Late formulation of a reservation" be retained in the Guide to Practice? (ii) is it advisable to use the term "objection" in the same draft guideline to signify opposition by a contracting party to such a formulation?);[63]
- Role of the depositary (does it lie with the depositary to refuse to communicate to the States and international organizations concerned a reservation that is manifestly inadmissible, particularly when it is prohibited by a provision of the treaty?).

40. This part of the report was the subject of debate in the Sixth Committee of the General Assembly from 31 October to 9 November 2001,[64] during which

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[59] Ibid., para. 155. Numbered draft guidelines 2.1.1 to 2.1.8 and 2.4.1, 2.4.2 and 2.4.9 in the sixth report. The text of these proposals is contained in italics in the annex to the present report, A/CN.4/526/Add.1.

[60] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10, para. 13). The Special Rapporteur questions the usefulness of these "summaries", which are not very informative.

[61] Ibid., paras. 20-26.

[62] See para. 26 above.

[63] The problem lies in the fact that, according to the Special Rapporteur and certain members of the Commission, the use of this word is a source of confusion, since the objection is not to the content of the proposed reservation (as in articles 20 to 23 of the 1969 and 1986 Vienna Conventions), but to the very principle of its formulation. That is why, during the work of the Drafting Committee, the Special Rapporteur had proposed the use of a different term, such as "opposition" or "rejection".

[64] In principle, the Sixth Committee wished the different chapters of the report to be considered separately. Unfortunately, States paid little heed to this prudent recommendation. The relevant summary records are contained in documents A/C.6/56/SR.11 to SR.24 (with the exception of SR.16, of 2 November 2001, which contains no statement on the subject of reservations to treaties). The Special Rapporteur again expresses regret that the vast majority of the summary records sent to him were in English only. See also the very useful "topical summary" prepared by the Secretariat (A/CN.4/521).

representatives of 28 States or groups of States[65] spoke on the topic of reservations to treaties. Even though the Special Rapporteur has deep reservations about the way in which consultations take place between the Sixth Committee and the International Law Commission,[66] he noted with satisfaction and appreciation that most of the speakers had focussed on the issues raised by the Commission.[67]

41. As noted above,[68] many of the views expressed by States in the Sixth Committee can be taken into consideration only when the Commission proceeds to the second reading of the Guide to Practice. This observation evidently applies to the responses to the two questions posed with regard to the late formulation of reservations,[69] which was the subject of draft guidelines 2.3.1 to 2.3.4 now adopted.

42. Were it to be otherwise, it would no doubt be imprudent to seek clear guidelines in the statements made during the debates of the Sixth Committee on the topic. While certain States did indeed seem to be against the very principle of including in the Guide to Practice[70] guidelines concerning the late formulation of reservations, some of these declarations are in reality ambiguous.[71] Furthermore, other speakers, on the contrary, approved the inclusion.[72] States were also divided on the use of the term "objection" in draft guideline 2.3.1.[73]

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[65] Sweden spoke on behalf of Denmark, Finland, Iceland and Norway (A/C.6/56/SR.17, of 2 November 2001, paras. 18-24).

[66] The Special Rapporteur had occasion to give voice publicly to these concerns at the 21st meeting of the Sixth Committee, held on 6 November 2001 (A/C.6/56/SR.21, paras. 27 to 28 and para. 34).

[67] This is also true of the useful written observations which the United Kingdom kindly transmitted to him on 27 February 2002 through the Secretariat.

[68] Para. 34.

[69] See para. 39 above.

[70] Cf. the positions of the United States (A/C.6/56/SR.14, para. 84) or of Mexico (A/C.6/56/SR.23, para. 26), which expressed concern that the inclusion in the Guide to Practice of a guideline on the late formulation of a reservation might serve to encourage a practice that is open to criticism. Also expressing concern (?) were Sweden, on behalf of the Nordic countries (A/C.6/56/SR.17, para. 24), Kenya (A/C.6/56/SR.22, para. 85), Haiti (A/C.6/56/SR.23, para. 39) and India (A/C.6/56/SR.24, para. 5).

[71] As is the case of the written proposal of the United Kingdom (see note 67 above) which, after reiterating its opposition in principle to the late formulation of reservations, proposes new wording for draft guideline 2.3.1 which, in its view, is different from the one retained by the Commission only by the requirement (contrary to the current practice) of express acceptance: "If a State or international organization formulates a reservation after it has expressed its consent to be bound, the reservation shall have no effect unless the treaty provides otherwise or all the other contracting parties expressly accept the late formulation of the reservation". See also the comments of Austria, which argues that such declarations formulated after the expression of consent to be bound constitute reservations, but which does not seem to be opposed to its inclusion in the Guide to Practice (A/C.6/56/SR.13, para. 10); see also Japan (A/C.6/56/SR.22, paras. 52-54) and the Russian Federation (ibid., paras. 74-75).

[72] Cf. the positions of Singapore (A/C.6/56/SR.12, para.57), Venezuela (A/C.6/56/SR.15, para. 41), Bahrain (A/C.6/56/SR.19, paras. 18-23), China (ibid., para. 29), Italy (ibid., paras 40 to 42), Mali (A/C.6/56/SR. 20, para. 2), Poland (ibid., para. 8), Hungary (A/C.6/56/SR.21, para.4), Greece (A/C.6/56/SR.22, paras. 69-70); see also Romania (?) (A/C.6/56/SR.18, para. 56) and Guatemala (A/C.6/56/SR.20, para. 12). In his statement, the Special Rapporteur recalled *that no State* had objected to the practice of the Secretary-General of the United Nations (and other depositaries) consisting in considering as accepted a reservation that is formulated late, in the absence of any "objection" within a specified period of time (A/C.6/56/SR.21, paras. 32-33).

[73] Singapore (A/C.6/56/SR.12, para. 58) and Venezuela (A/C.6/56/SR.15, para. 41) declared that

43. It is less difficult to identify a broad trend in the positions taken by speakers in the Sixth Committee regarding the advisability of including in the Guide to Practice guidelines concerning the juridical regime applicable to conditional interpretative declarations. Indeed, while certain States took a firm position in favour[74] or against[75] such guidelines,[76] the vast majority of delegations that spoke supported the position of the Special Rapporteur[77] that this juridical regime is very likely identical or very similar to the regime of reservations, but it would be prudent to confirm that before taking a final decision on the matter.[78] In this report, the Special Rapporteur will therefore continue to raise questions about the rules applicable to conditional interpretative declarations and will propose that the Commission take a decision on the matter only after consideration of the report which he will prepare on the permissibility of reservations and interpretative declarations and their legal effects.

44. The last question posed by the Commission with regard to reservations was more exclusively prospective in nature, namely, whether the depositary may or should "refuse to communicate to the States and international organizations concerned a reservation that is manifestly inadmissible, particularly when it is prohibited by a provision of the treaty".[79] The nuanced responses given to this question by the delegations of States to the Sixth Committee could serve as a useful guide to the Commission and its Drafting Committee during the consideration of the draft guidelines proposed by the Special Rapporteur in his sixth report which, as indicated above,[80] have been referred to the Drafting Committee, which had been unable to consider them. They will be particularly useful in the final elaboration of draft guideline 2.1.7 ("Functions of depositaries"),[81] which could be appropriately modified or complemented by another draft guideline specifically concerned with the question that was posed to States.

45. Generally speaking, States have expressed a preference for the strict alignment of the Guide to Practice with the provisions of the 1969 Vienna Convention concerning the role of the depositary, in particular article 77 thereof.[82] Some of the delegations that spoke stressed that the depositary must demonstrate impartiality and

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they had no objection to it. On the contrary, the United States (A/C.6/56/SR.14, para. 85) and Mali (A/C.6/56/SR.20, para. 2) indicated their preference for other terms such as "opposition", "refusal" or "rejection"; see also the position taken by Poland (A/C.6/56/SR.20, para. 8).

74 Cf. China (?) (A/C.6/56/SR.19, para. 28).

75 Cf. Venezuela (A/C.6/56/SR.15, para. 40). See also the doubts expressed by Austria (A/C.6/56/SR.13, para. 11) and by the United Kingdom (A/C.6/56/SR.18, para. 16) and the written reactions of this State (see note 67 above).

76 Others have made no distinction (mistakenly, according to the Special Rapporteur) between simple interpretative declarations and conditional interpretative declarations (cf. Bahrain (A/C.6/56/SR.19, para. 26), or Israel (A/C.6/56/SR.21, para. 14)).

77 See para. 26 above.

78 Cf. United States (A/C.6/56/SR.14, para. 83), Romania (A/C.6/56/SR.18, para. 56), Mali (A/C.6/56/SR.20, para.1), France (?) (A/C.6/56/SR.20, para. 4), Hungary (A/C.6/56/SR.21, para. 4), Greece (?) (A/C.6/56/SR.22, para. 71), Russian Federation (ibid., para. 73), Kenya (A/C.6/56/SR.22, para. 84) and Mexico (A/C.6/56/SR.23, para. 25).

79 *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), para. 25.

80 Paragraph 38.

81 See sixth report, A/CN.4/518/Add.2, para. 169; the text of this draft is reproduced below (note 87).

82 Cf. Spain (A/C.6/56/SR.12, para. 42).

neutrality in the exercise of his functions and that he should therefore limit himself to transmitting to the parties the reservations that were formulated.[83] However, a number of representatives on the Sixth Committee were of the view that, when a reservation is manifestly impermissible, it is incumbent upon the depositary to refuse to communicate it[84] or at least to first inform the author of the reservation of its position and, if the author maintains the reservation,[85] to communicate it and draw the attention of the other parties to the problem. Moreover, the United Kingdom of Great Britain and Northern Ireland underscored the role which the Guide to Practice could play in harmonizing the practice of depositaries in the matter.[86]

46. In view of the responses of States to the question posed by the Commission, the latter might perhaps wish to consider the possibility of including in the Guide to Practice a draft guideline complementing draft guideline 2.1.7[87] that specifies the action to be taken by the depositary in cases where he considers the reservation that has been formulated to be manifestly impermissible. This draft guideline could be worded as follows:

> "2.1.7 bis *Case of manifestly impermissible reservations*
>
> Where, in the opinion of the depositary, a reservation is manifestly impermissible, the depositary shall draw the attention of the author of the reservation to what, in the depositary's view, constitutes such impermissibility.
>
> If the author of the reservation maintains the reservation, the depositary shall communicate the text of the reservation to the signatory States and international organizations and to the contracting States and international organizations, attaching the text of the exchange of views which he has had with the author of the reservation."

47. In addition, during the debates in the Sixth Committee, a number of States made useful observations on the details of several of the draft guidelines proposed in the sixth report. These observations are summarized in the topical summary

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[83] Cf. Venezuela (A/C.6/56/SR.15, para. 42), China (A/C.6/56/SR.19, para. 30), Hungary (A/C.6/56/SR.21, para. 5), Israel (A/C.6/56/SR.21, para. 15), Russian Federation (A/C.6/56/SR.22, para. 76) and Kenya (?) (ibid., para. 86).

[84] Cf. Mali (A/C.6/56/SR.20, para. 3).

[85] Cf. United States (A/C.6/56/SR.14, paras. 86-87), France (?) (A/C.6/56/SR.20, para. 6), Poland (ibid., para. 9), Mexico (A/C.6/56/SR.23, para. 27) and India (?) (A/C.6/56/SR.24, para.5) and the written reactions of the United Kingdom (see note 67 above).

[86] Cf. United Kingdom (A/C.6/56/SR.18, para. 18) and the written reactions of that State (see note 67 above).

[87] The draft reads as follows:

> "*Functions of depositaries*: The depositary shall examine whether a reservation to a treaty formulated by a State or an international organization is in due and proper form.
>
> "In the event of any difference appearing between a State or an international organization and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of: (a) the signatory States and organizations and the contracting States and contracting organizations; or (b) where appropriate, the competent organ of the international organization concerned" (A/CN.4/518/Add.2, para. 169).

prepared by the Secretariat.[88] The Drafting Committee will of course keep these observations in mind when considering the draft guidelines.

C. Recent developments with regard to reservations to treaties

48. As far as the Special Rapporteur is aware, there have been few developments of any significance during the year just ended with regard to reservations to treaties.

49. Mention should be made, however, of the important report prepared by the Secretariat at the request of the Committee on the Elimination of Discrimination against Women,[89] which was submitted to this Committee at its twenty-fifth session.[90] This report includes a section on "Practices of human rights treaty bodies",[91] which examines the practice followed by:

– The Human Rights Committee;

– The Committee against Torture;

– The Committee on the Elimination of Racial Discrimination;

– The Committee on Economic, Social and Cultural Rights; and

– The Committee on the Rights of the Child.

50. The present report is not the appropriate place in which to summarize much less to comment on this document, which contains useful information. The document conveys, however, a general impression that is worthy of note: human rights treaty bodies have an attitude towards reservations that is no doubt less dogmatic than the text of General Observation No. 24 of the Human Rights Committee suggests.[92] Indeed, it shows that the bodies reviewed are more anxious to engage in a dialogue with the States authors of the reservations to encourage them to withdraw the reservations when these appear to be abusive rather than to rule on their impermissibility. This, for example, is the practice of the Committee on the Elimination of Discrimination against Women.[93] Annex VI of the Committee's report contains a legal opinion of the Office of Legal Affairs,[94] the date of which is not indicated but which appears to have been overtaken by events on certain points.

51. At its twenty-fifth session (2-20 July 2001), the Committee on the Elimination of Discrimination against Women took no decision on the report of the Secretariat nor did it take up the question of reservations at its following session (14 January-1 February 2002).

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[88] A/CN.4/521, paras. 46-50.

[89] See sixth report on reservations to treaties, A/CN.4/518, para. 28.

[90] 2-20 July 2001, CEDAW/C/2001/II/4, 40 pages.

[91] Ibid., paras. 20-56.

[92] CCPR/C/21/Rev.1/Add.6. For a critical commentary on this General Observation, see the second report on reservations to treaties, A/CN.4/477/Add.1, paras. 59-62 and 218-252.

[93] Cf. the above-mentioned report, note 90, paras. 4, 7 (c) or 10; see also the report of the Committee on its thirteenth session (*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 38* (A/49/38); chap. 1, sect. C, para. 10).

[94] Above-mentioned report, note 90. This report was annexed to the report of the Committee on its third session, ibid., *Thirty-ninth Session, Supplement No. 45* (A/39/45), vol. II, annex III; see also the second report on reservations to treaties, A/CN.4/477/Add.1, para. 194.

52. For its part, the Sub-Commission on the Promotion and Protection of Human Rights, despite the concerns that had been expressed by the Commission on Human Rights,[95] renewed in its resolution 2001/17 of 16 August 2001, entitled "Reservations to human rights treaties", its earlier decisions of 1999 and 2000 and decided:

> "to entrust Ms. Françoise Hampson with the task of preparing an expanded working paper on reservations to human rights treaties based on her working paper [E/CN.4/Sub.2/1999/28 and Corr.1], as well as the comments made and discussions that took place at the fifty-first and fifty-second sessions of the Sub-Commission, which study will not duplicate the work of the International Law Commission, which concerns the legal regime applicable to reservations and interpretative declarations in general, whereas the proposed study involves the examination of the actual reservations and interpretative declarations made to human rights treaties in the light of the legal regime applicable to reservations and interpretative declarations, as set out in the working paper, and of submitting the extended working paper to the Sub-Commission at its fifty-fourth session" (para. 1).
>
> The Sub-Commission further decided:
>
> "to continue its consideration of the question of reservations to human rights treaties at its fifty-fourth session under the same agenda item" (para. 2).

53. In light of the concerns that had been expressed on the question at the fifty-third session of the Commission, the Special Rapporteur did not follow up on his intention to contact Ms. Hampson[96] and the latter did not take the initiative to do so. He is of the view, however, that coordination, if done in a spirit of openness and mutual understanding, would be useful and even necessary and he hoped that the debate on this subject would be renewed this year in the International Law Commission. Generally speaking, it seemed a useful idea for the Commission to take the initiative in promoting closer consultations with the human rights bodies with a view to the re-examination in one or two years' time of the Preliminary Conclusions adopted in 1997.[97]

54. With regard to the Committee of Legal Advisers on Public International Law (CADHI), there does not seem to be any important new development to report. In accordance with the decision taken at its meeting in Paris in 1998, CADHI continued to act as a European unit for monitoring reservations to international treaties.[98] In this capacity, it prepares and updates a list of reservations and declarations to conventions concluded both outside the Council of Europe and within the Council and likely to give rise to objections.[99]

55. The Special Rapporteur has no knowledge of other important recent developments in the matter of reservations. He would be grateful to the other

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[95] Cf. decision 2001/113 of the Commission, of 25 April 2001. For previous episodes of this ongoing debate, see the sixth report on reservations to treaties, A/CN.4/518, paras. 21-27.

[96] See sixth report on reservations to treaties, A/CN.4/518, para. 28.

[97] See above, paras. 20-21.

[98] See the fifth report on reservations to treaties, A/CN.4/508, para. 56.

[99] For the latest situation on this issue, see the note prepared by the Secretariat for the twenty-second meeting of CADHI (Strasbourg, 11-12 September 2001), CADHI (2001) 6 and Add.

members of the Commission and to any reader of this report for any additional information that might be provided on the question.

D. General presentation of the seventh report

56. Learning from experience, the Special Rapporteur is making no firm commitment with regard to the content of the present report. Nevertheless, such objectives as he might have set himself may be described as follows.

57. The second part will consist of the continuation and end of the study on the formulation, modification and withdrawal of reservations to treaties and interpretative declarations. Since the third part of the fifth report was concerned with the time at which these instruments should be formulated[100] and the sixth report dealt with the modalities of this formulation,[101] it now remains to study the delicate questions of their withdrawal and, above all, their modification.

58. In accordance with the provisional outline of the study proposed in 1996 in the second report,[102] the third part will deal with the formulation and withdrawal of acceptances to reservations and objections thereto.

59. Moreover, a fourth and last part will present an overview of the problems related to the permissibility of reservations (and interpretative declarations), their effects and the effects of their acceptance and of objections thereto. Unlike the preceding parts, this part will not contain draft guidelines. It will take the form of a summary so as to permit the Commission (and, if necessary, a working group) to carry out a broad review of the more thorny issues posed by the subject and, if possible, provide guidance for the future work of the Special Rapporteur.

60. Lastly, as indicated above,[103] an annex under a different symbol (A/CN.4/526/Add.1) will reproduce the entire set of draft guidelines adopted thus far by the Commission or proposed by the Special Rapporteur.

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[100] A/CN.4/508/Add.3 and Add.4, paras. 223-332. See above, paras. 27 and 35-37.
[101] A/CN.4/518/Add.1 and Add.2, paras. 36-173. See above, paras. 27 and 35-38.
[102] See above, para. 18.
[103] See notes 41 and 59 above.