



General Assembly

Distr.
LIMITED

A/CN.4/L.696
9 June 2006

Original: ENGLISH

INTERNATIONAL LAW COMMISSION
Fifty-eighth session
Geneva, 1 May-9 June and 3 July-11 August 2006

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

Rapporteur: Ms. Hanqin XUE

CHAPTER VIII

RESERVATIONS TO TREATIES

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
A. Introduction	1 - 9	
B. Consideration of the topic at the present session	10 - 16	
C. Text of the draft guidelines on reservations to treaties provisionally adopted so far by the Commission		
1. Text of the draft guidelines	17	

CHAPTER VIII

RESERVATIONS TO TREATIES

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 (1994), the Commission appointed Mr. Alain Pellet, Special Rapporteur for the topic.¹
3. At its forty-seventh session (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 of the results of the study, 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 was 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.

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.

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 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 (1996), 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

7. At its forty-ninth session (1997), the Commission adopted preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties.⁸

8. 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.

⁴ See *Yearbook ... 1993*, vol. II (Part Two), para. 286.

⁵ As of 31 July 2003, 33 States and 25 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.

9. From its fiftieth session (1998) to its fifty-seventh session (2005) the Commission considered 8 more reports⁹ by the Special Rapporteur¹⁰ and provisionally adopted 71 draft guidelines and the commentaries thereto.

B. Consideration of the topic at the present session

10. At the current session, the Commission had before it the second part of the tenth report of the Special Rapporteur (A/CN.4/558/Add.1) on validity of reservations and the concept of the object and purpose of the treaty.

11. The Commission considered the second part of the tenth report of the Special Rapporteur at its ... meetings, from ... to ... July 2006.

12. At its ... meeting, held on ... July 2006, the Commission decided to send draft guidelines ... to the Drafting Committee.

13. At its 2883rd meeting, on 6 June 2006, the Commission considered and provisionally adopted draft guidelines 3.1 (Permissible reservations), 3.1.1 (Reservations expressly prohibited by the treaty), 3.1.2 (Definition of specified reservations), 3.1.3 (Permissibility of reservations not prohibited by the treaty) and 3.1.4 (Permissibility of specified reservations) to the Drafting Committee. Moreover the Commission provisionally adopted draft guidelines 1.6 (Scope of definitions) and 2.1.8 [2.1.7 *bis*] (Procedure in case of manifestly invalid reservations) as redrafted.

14. Those draft guidelines had already been sent to the Drafting Committee at the fifty-seventh session (2005).

⁹ Third report (A/CN.4/491 and Corr.1 (English only), Add.1, Add.2 and Corr.1, Add.3 and Corr.1 (A/F/R only), Add.4 and Corr.1, Add.5 and Add.6 and Corr.1); Fourth report (A/CN.4/499); Fifth report (A/CN.4/508, Add.1, Add.2, Add.3 and Add.4); Sixth report (A/CN.4/518 and Add.1-3); Seventh report (A/CN.4/526 and Add.1-3); Eighth report (A/CN.4/535 and Add.1); Ninth report (A/CN.4/544); and Tenth report (A/CN.4/558 and Corr.1, Add.1 and Corr.1 and Add.2).

¹⁰ For a detailed historical presentation, see *Official Records, Fifty-ninth Session, Supplement No. 10* (A/59/10), paras. 257-269.

15. At its ... meeting, on ... August 2006, the Commission adopted the commentary relating to the aforementioned draft guidelines.

16. The text of the draft guidelines and the commentary thereto are reproduced in section C.2 below.

[Summary of the debate in document A/CN.4/L.696/Add.1]

C. Text of the draft guidelines on reservations to treaties provisionally adopted so far by the Commission

1. Text of the draft guidelines

17. The text of the draft guidelines provisionally adopted so far by the Commission is reproduced below.

RESERVATIONS TO TREATIES

Guide to practice

Explanatory note¹¹

Some draft guidelines in the present Guide to Practice are accompanied by model clauses. The adoption of these model clauses may have advantages in specific circumstances. The user should refer to the commentaries for an assessment of the circumstances appropriate for the use of a particular model clause.

1. Definitions

1.1 Definition of reservations¹²

“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

¹¹ For the commentary see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10)*, p. 189.

¹² For the commentary to this draft guideline, see *ibid.*, *Fifty-third Session, Supplement No. 10 (A/53/10)*, pp. 196-199.

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]¹³ Object of reservations¹⁴

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.

1.1.2 Instances in which reservations may be formulated¹⁵

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 scope¹⁶

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.

¹³ The number between square brackets indicates the number of this draft guideline in the report of the Special Rapporteur or, as the case may be, the original number of a draft guideline in the report of the Special Rapporteur which has been merged with the final draft guideline.

¹⁴ For the commentary to this draft guideline, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10 (A/54/10)*, pp. 210-217.

¹⁵ For the commentary to this draft guideline, see *ibid.*, *Fifty-third Session, Supplement No. 10 (A/53/10)*, pp. 203-206.

¹⁶ For the commentary to this draft guideline, see *ibid.*, pp. 206-209.

1.1.4 [1.1.3] Reservations formulated when notifying territorial application¹⁷

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 author¹⁸

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 means¹⁹

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.

1.1.7 [1.1.1] Reservations formulated jointly²⁰

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

¹⁷ For the commentary to this draft guideline, see *ibid.*, pp. 209-210.

¹⁸ For the commentary to this draft guideline, see *ibid.*, *Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 217-221.

¹⁹ For the commentary to this draft guideline, see *ibid.*, pp. 222-223.

²⁰ For the commentary to this draft guideline, see *ibid.*, *Fifty-third Session, Supplement No. 10* (A/53/10), pp. 210-213.

1.1.8 Reservations made under exclusionary clauses²¹

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 declarations²²

“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 declarations²³

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 jointly²⁴

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

²¹ For the commentary to this draft guideline, see *ibid.*, *Fifty-fifth Session, Supplement No. 10* (A/55/10), pp. 230-241.

²² For the commentary to this draft guideline, see *ibid.*, *Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 223-240.

²³ For the commentary to this draft guideline, see *ibid.*, pp. 240-249.

²⁴ For the commentary to this draft guideline, see *ibid.*, pp. 249-252.

1.3 Distinction between reservations and interpretative declarations²⁵

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 declarations²⁶

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 name²⁷

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 prohibited²⁸

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

²⁵ For the commentary to this draft guideline, see *ibid.*, pp. 252-253.

²⁶ For the commentary to this draft guideline, see *ibid.*, pp. 254-260.

²⁷ For the commentary to this draft guideline, see *ibid.*, pp. 260-266.

²⁸ For the commentary to this draft guideline, see *ibid.*, pp. 266-268.

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 declarations²⁹

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 commitments³⁰

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 treaty³¹

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-recognition³²

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.

²⁹ For the commentary to this draft guideline, see *ibid.*, pp. 268-270.

³⁰ For the commentary to this draft guideline, see *ibid.*, pp. 270-273.

³¹ For the commentary to this draft guideline, see *ibid.*, pp. 273-274.

³² For the commentary to this draft guideline, see *ibid.*, pp. 275-280.

1.4.4 [1.2.5] General statements of policy³³

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 level³⁴

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 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 clause³⁵

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.

³³ For the commentary to this draft guideline, see *ibid.*, pp. 280-284.

³⁴ For the commentary to this draft guideline, see *ibid.*, pp. 284-289.

³⁵ For the commentary to this draft guideline, see *ibid.*, *Fifty-fifth Session, Supplement No. 10* (A/55/10), pp. 241-247.

1.4.7 [1.4.8] Unilateral statements providing for a choice between the provisions of a treaty³⁶

A unilateral statement made by a State or an international organization, in accordance with a clause 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 treaties³⁷

1.5.1 [1.1.9] “Reservations” to bilateral treaties³⁸

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 treaties³⁹

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

³⁶ For the commentary to this draft guideline, see *ibid.*, pp. 247-252.

³⁷ For the commentary, see *ibid.*, *Fifty-fourth Session, Supplement No. 10 (A/54/10)*, pp. 289-290.

³⁸ For the commentary to this draft guideline, see *ibid.*, pp. 290-302.

³⁹ For the commentary to this draft guideline, see *ibid.*, pp. 302-306.

1.5.3 [1.2.8] Legal effect of acceptance of an interpretative declaration made in respect of bilateral treaty by the other party⁴⁰

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 definitions⁴¹

The definitions of unilateral statements included in the present chapter of the Guide to Practice are without prejudice to the validity and effects of such statements under the rules applicable to them.

1.7 Alternatives to reservations and interpretative declarations⁴²

1.7.1 [1.7.1, 1.7.2, 1.7.3, 1.7.4] Alternatives to reservations⁴³

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.

⁴⁰ For the commentary to this draft guideline, see *ibid.*, pp. 306-307.

⁴¹ This draft guideline has been reconsidered and modified during the fifty-eighth session (2006). For the new commentary see section C.2 below.

⁴² For the commentary see *ibid.*, *Fifty-fifth Session, Supplement No. 10 (A/55/10)*, pp. 252-253.

⁴³ For the commentary to this draft guideline, see *ibid.*, pp. 253-269.

1.7.2 [1.7.5] Alternatives to interpretative declarations⁴⁴

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.

2. Procedure

2.1 Form and notification of reservations

2.1.1 Written form⁴⁵

A reservation must be formulated in writing.

2.1.2 Form of formal confirmation⁴⁶

Formal confirmation of a reservation must be made in writing.

2.1.3 Formulation of a reservation at the international level⁴⁷

1. Subject to the customary practices in international organizations which are depositaries of treaties, a person is considered as representing a State or an international organization for the purpose of formulating a reservation if:

⁴⁴ For the commentary to this draft guideline, see *ibid.*, pp. 270-272.

⁴⁵ For the commentary to this draft guideline, see *ibid.*, *Fifty-seventh Session, Supplement No. 10 (A/57/10)*, pp. 63-67.

⁴⁶ For the commentary to this draft guideline, see *ibid.*, pp. 67-69.

⁴⁷ For the commentary to this draft guideline, see *ibid.*, pp. 69-75.

(a) That person produces appropriate full powers for the purposes of adopting or authenticating the text of the treaty with regard to which the reservation is formulated or expressing the consent of the State or organization to be bound by the treaty; or

(b) It appears from practice or other circumstances that it was the intention of the States and international organizations concerned to consider that person as competent for such purposes without having to produce full powers.

2. By virtue of their functions and without having to produce full powers, the following are considered as representing a State for the purpose of formulating a reservation at the international level:

(a) Heads of State, heads of Government and Ministers for Foreign Affairs;

(b) Representatives accredited by States to an international conference for the purpose of formulating a reservation to a treaty adopted at that conference;

(c) Representatives accredited by States to an international organization or one of its organs, for the purpose of formulating a reservation to a treaty adopted by that organization or body;

(d) Heads of permanent missions to an international organization, for the purpose of formulating a reservation to a treaty between the accrediting States and that organization.

2.1.4 [2.1.3 bis, 2.1.4] Absence of consequences at the international level of the violation of internal rules regarding the formulation of reservations⁴⁸

The determination of the competent authority and the procedure to be followed at the internal level for formulating a reservation is a matter for the internal law of each State or relevant rules of each international organization.

⁴⁸ For the commentary to this draft guideline, see *ibid.*, pp. 75-79.

A State or an international organization may not invoke the fact that a reservation has been formulated in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for formulating reservations as invalidating the reservation.

2.1.5 Communication of reservations⁴⁹

A reservation must be communicated in writing to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty.

A reservation to a treaty in force which is the constituent instrument of an international organization or to a treaty which creates an organ that has the capacity to accept a reservation must also be communicated to such organization or organ.

2.1.6 [2.1.6, 2.1.8] Procedure for communication of reservations⁵⁰

Unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations, a communication relating to a reservation to a treaty shall be transmitted:

- (i) If there is no depositary, directly by the author of the reservation to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty; or
- (ii) If there is a depositary, to the latter, which shall notify the States and organizations for which it is intended as soon as possible.

A communication relating to a reservation shall be considered as having been made by the author of the reservation only upon receipt by the State or by the organization to which it was transmitted, or as the case may be, upon its receipt by the depositary.

⁴⁹ For the commentary to this draft guideline, see *ibid.*, pp. 80-93.

⁵⁰ For the commentary to this draft guideline, see *ibid.*, pp. 94-104.

The period during which an objection to a reservation may be raised starts at the date on which a State or an international organization received notification of the reservation.

Where a communication relating to a reservation to a treaty is made by electronic mail or by facsimile, it must be confirmed by diplomatic note or depositary notification. In such a case the communication is considered as having been made at the date of the electronic mail or the facsimile.

2.1.7 Functions of depositaries⁵¹

The depositary shall examine whether a reservation to a treaty formulated by a State or an international organization is in due and proper form and, if need be, bring the matter to the attention of the State or international organization concerned.

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.

2.1.8 [2.1.7 bis] Procedure in case of manifestly invalid reservations⁵²

Where, in the opinion of the depositary, a reservation is manifestly invalid, the depositary shall draw the attention of the author of the reservation to what, in the depositary's view, constitutes the grounds for the invalidity of the reservation.

⁵¹ For the commentary to this draft guideline, see *ibid.*, pp. 105-112.

⁵² This draft guideline has been reconsidered and modified during the fifty-eighth session (2006). For the new commentary see section C.2 below.

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 and, where appropriate, the competent organ of the international organization concerned, indicating the nature of legal problems raised by the reservation.

2.2.1 Formal confirmation of reservations formulated when signing a treaty⁵³

If formulated when signing a treaty subject to ratification, act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

2.2.2 [2.2.3] Instances of non-requirement of confirmation of reservations formulated when signing a treaty⁵⁴

A reservation formulated when signing a treaty does not require subsequent confirmation when a State or an international organization expresses by its signature the consent to be bound by the treaty.

2.2.3 [2.2.4] Reservations formulated upon signature when a treaty expressly so provides⁵⁵

A reservation formulated when signing a treaty, where the treaty expressly provides that a State or an international organization may make such a reservation at that time, does not require formal confirmation by the reserving State or international organization when expressing its consent to be bound by the treaty ...⁵⁶

⁵³ For the commentary to this draft guideline, see *ibid.*, *Fifty-sixth Session, Supplement No. 10* (A/56/10), pp. 465-472.

⁵⁴ For the commentary to this draft guideline, see *ibid.*, pp. 472-474.

⁵⁵ For the commentary to this draft guideline, see *ibid.*, pp. 474-477.

⁵⁶ Section 2.3 proposed by the Special Rapporteur deals with the late formulation of reservations.

2.3.1 Late formulation of a reservation⁵⁷

Unless the treaty provides otherwise, a State or an international organization may not formulate a reservation to a treaty after expressing its consent to be bound by the treaty except if none of the other Contracting Parties objects to the late formulation of the reservation.

2.3.2 Acceptance of late formulation of a reservation⁵⁸

Unless the treaty provides otherwise or the well-established practice followed by the depositary differs, late formulation of a reservation shall be deemed to have been accepted by a Contracting Party if it has made no objections to such formulation after the expiry of the 12-month period following the date on which notification was received.

2.3.3 Objection to late formulation of a reservation⁵⁹

If a Contracting Party to a treaty objects to late formulation of a reservation, the treaty shall enter into or remain in force in respect of the reserving State or international organization without the reservation being established.

2.3.4 Subsequent exclusion or modification of the legal effect of a treaty by means other than reservations⁶⁰

A Contracting Party to a treaty may not exclude or modify the legal effect of provisions of the treaty by:

- (a) Interpretation of a reservation made earlier; or
- (b) A unilateral statement made subsequently under an optional clause.

⁵⁷ For the commentary to this draft guideline, see *ibid.*, pp. 477-489.

⁵⁸ For the commentary to this draft guideline, see *ibid.*, pp. 490-493.

⁵⁹ For the commentary to this draft guideline, see *ibid.*, pp. 493-495.

⁶⁰ For the commentary to this draft guideline, see *ibid.*, pp. 495-499.

2.3.5 Widening of the scope of a reservation⁶¹

The modification of an existing reservation for the purpose of widening its scope shall be subject to the rules applicable to the late formulation of a reservation. However, if an objection is made to that modification, the initial reservation remains unchanged.

2.4 Procedure for interpretative declarations⁶²

2.4.1 Formulation of interpretative declarations⁶³

An interpretative declaration must be formulated by a person who is considered as representing a State or an international organization for the purpose of adopting or authenticating the text of a treaty or expressing the consent of the State or international organization to be bound by a treaty.

[2.4.2 [2.4.1 *bis*] Formulation of an interpretative declaration at the internal level⁶⁴

The determination of the competent authority and the procedure to be followed at the internal level for formulating an interpretative declaration is a matter for the internal law of each State or relevant rules of each international organization.

A State or an international organization may not invoke the fact that an interpretative declaration has been formulated in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for formulating interpretative declarations as invalidating the declaration.]

⁶¹ For the commentary see *ibid.*, *Fifty-ninth Session, Supplement No. 10 (A/59/10)*, pp. 269-274.

⁶² For the commentary see *ibid.*, *Fifty-seventh Session, Supplement No. 10 (A/57/10)*, p. 115.

⁶³ For the commentary to this draft guideline, see *ibid.*, pp. 115-116.

⁶⁴ For the commentary to this draft guideline, see *ibid.*, pp. 117-118.

2.4.3 Time at which an interpretative declaration may be formulated⁶⁵

Without prejudice to the provisions of guidelines 1.2.1, 2.4.6 [2.4.7], and 2.4.7 [2.4.8], an interpretative declaration may be formulated at any time.

2.4.4 [2.4.5] Non-requirement of confirmation of interpretative declarations made when signing a treaty⁶⁶

An interpretative declaration made when signing a treaty does not require subsequent confirmation when a State or an international organization expresses its consent to be bound by the treaty.

2.4.5 [2.4.4] Formal confirmation of conditional interpretative declarations formulated when signing a treaty⁶⁷

If a conditional interpretative declaration is formulated when signing a treaty subject to ratification, act of formal confirmation, acceptance or approval, it must be formally confirmed by the declaring State or international organization when expressing its consent to be bound by the treaty. In such a case the interpretative declaration shall be considered as having been made on the date of its confirmation.

2.4.6 [2.4.7] Late formulation of an interpretative declaration⁶⁸

Where a treaty provides that an interpretative declaration may be made only at specified times, a State or an international organization may not formulate an interpretative declaration concerning that treaty subsequently except if none of the other Contracting Parties objects to the late formulation of the interpretative declaration.

⁶⁵ For the commentary to this draft guideline, see *ibid.*, *Fifty-sixth Session, Supplement No. 10* (A/56/10), pp. 499-501.

⁶⁶ For the commentary to this draft guideline, see *ibid.*, pp. 501-502.

⁶⁷ For the commentary to this draft guideline, see *ibid.*, pp. 502-503.

⁶⁸ For the commentary to this draft guideline, see *ibid.*, pp. 503-505.

[2.4.7 [2.4.2, 2.4.9] Formulation and communication of conditional interpretative declarations⁶⁹

A conditional interpretative declaration must be formulated in writing.

Formal confirmation of a conditional interpretative declaration must also be made in writing.

A conditional interpretative declaration must be communicated in writing to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty.

A conditional interpretative declaration regarding a treaty in force which is the constituent instrument of an international organization or a treaty which creates an organ that has the capacity to accept a reservation must also be communicated to such organization or organ.]

2.4.8 Late formulation of a conditional interpretative declaration⁷⁰

A State or an international organization may not formulate a conditional interpretative declaration concerning a treaty after expressing its consent to be bound by the treaty except if none of the other Contracting Parties objects to the late formulation of the conditional interpretative declaration.

2.4.9 Modification of an interpretative declaration⁷¹

Unless the treaty provides that an interpretative declaration may be made or modified only at specified times, an interpretative declaration may be modified at any time.

⁶⁹ For the commentary to this draft guideline, see *ibid.*, *Fifty-seventh Session, Supplement No. 10* (A/57/10), pp. 118-119.

⁷⁰ For the commentary to this draft guideline, see *ibid.*, *Fifty-sixth Session, Supplement No. 10* (A/56/10), pp. 505-506. This draft guideline (formerly 2.4.7 [2.4.8]) was renumbered as a result of the adoption of new draft guidelines at the fifty-fourth session.

⁷¹ For the commentary see *ibid.*, *Fifty-ninth Session, Supplement No. 10* (A/59/10), pp. 275-277.

2.4.10 Limitation and widening of the scope of a conditional interpretative declaration⁷²

The limitation and the widening of the scope of a conditional interpretative declaration are governed by the rules respectively applicable to the partial withdrawal and the widening of the scope of reservations.

2.5 Withdrawal and modification of reservations and interpretative declarations

2.5.1 Withdrawal of reservations⁷³

Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State or of an international organization which has accepted the reservation is not required for its withdrawal.

2.5.2 Form of withdrawal⁷⁴

The withdrawal of a reservation must be formulated in writing.

2.5.3 Periodic review of the usefulness of reservations⁷⁵

States or international organizations which have made one or more reservations to a treaty should undertake a periodic review of such reservations and consider withdrawing those which no longer serve their purpose.

In such a review, States and international organizations should devote special attention to the aim of preserving the integrity of multilateral treaties and, where relevant, give consideration to the usefulness of retaining the reservations, in particular in relation to developments in their internal law since the reservations were formulated.

⁷² For the commentary see *ibid.*, pp. 277-278.

⁷³ For the commentary to this draft guideline, see *ibid.*, *Fifty-eighth Session, Supplement No. 10* (A/58/10), pp. 190-201.

⁷⁴ For the commentary to this draft guideline, see *ibid.*, pp. 201-207.

⁷⁵ For the commentary to this draft guideline, see *ibid.*, pp. 207-209.

2.5.4 [2.5.5] Formulation of the withdrawal of a reservation at the international level⁷⁶

1. Subject to the usual practices in international organizations which are depositaries of treaties, a person is competent to withdraw a reservation made on behalf of a State or an international organization if:

(a) That person produces appropriate full powers for the purposes of that withdrawal;

or

(b) It appears from practice or other circumstances that it was the intention of the States and international organizations concerned to consider that person as competent for such purposes without having to produce full powers.

2. By virtue of their functions and without having to produce full powers, the following are competent to withdraw a reservation at the international level on behalf of a State:

(a) Heads of State, heads of Government and Ministers for Foreign Affairs;

(b) Representatives accredited by States to an international organization or one of its organs, for the purpose of withdrawing a reservation to a treaty adopted by that organization or body;

(c) Heads of permanent missions to an international organization, for the purpose of withdrawing a reservation to a treaty between the accrediting States and that organization.

2.5.5 [2.5.5 bis, 2.5.5 ter] Absence of consequences at the international level of the violation of internal rules regarding the withdrawal of reservations⁷⁷

The determination of the competent body and the procedure to be followed for withdrawing a reservation at the internal level is a matter for the internal law of each State or the relevant rules of each international organization.

⁷⁶ For the commentary to this draft guideline, see *ibid.*, pp. 210-218.

⁷⁷ For the commentary to this draft guideline, see *ibid.*, pp. 219-221.

A State or an international organization may not invoke the fact that a reservation has been withdrawn in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for the withdrawal of reservations as invalidating the withdrawal.

2.5.6 Communication of withdrawal of a reservation⁷⁸

The procedure for communicating the withdrawal of a reservation follows the rules applicable to the communication of reservations contained in guidelines 2.1.5, 2.1.6 [2.1.6, 2.1.8] and 2.1.7.

2.5.7 [2.5.7, 2.5.8] Effect of withdrawal of a reservation⁷⁹

The withdrawal of a reservation entails the application as a whole of the provisions on which the reservation had been made in the relations between the State or international organization which withdraws the reservation and all the other parties, whether they had accepted the reservation or objected to it.

The withdrawal of a reservation entails the entry into force of the treaty in the relations between the State or international organization which withdraws the reservation and a State or international organization which had objected to the reservation and opposed the entry into force of the treaty between itself and the reserving State or international organization by reason of that reservation.

2.5.8 [2.5.9] Effective date of withdrawal of a reservation⁸⁰

Unless the treaty otherwise provides, or it is otherwise agreed, the withdrawal of a reservation becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization.

⁷⁸ For the commentary to this draft guideline, see *ibid.*, pp. 221-226.

⁷⁹ For the commentary to this draft guideline, see *ibid.*, pp. 227-231.

⁸⁰ For the commentary to this draft guideline, see *ibid.*, pp. 231-239.

Model clauses⁸¹

A. Deferment of the effective date of the withdrawal of a reservation

A Contracting Party which has made a reservation to this treaty may withdraw it by means of notification addressed to [the depositary]. The withdrawal shall take effect on the expiration of a period of X [months] [days] after the date of receipt of the notification by [the depositary].

B. Earlier effective date of withdrawal of a reservation⁸²

A Contracting Party which has made a reservation to this treaty may withdraw it by means of a notification addressed to [the depositary]. The withdrawal shall take effect on the date of receipt of such notification by [the depositary].

C. Freedom to set the effective date of withdrawal of a reservation⁸³

A Contracting Party which has made a reservation to this treaty may withdraw it by means of a notification addressed to [the depositary]. The withdrawal shall take effect on the date set by that State in the notification addressed to [the depositary].

2.5.9 [2.5.10] Cases in which a reserving State or international organization may unilaterally set the effective date of withdrawal of a reservation⁸⁴

The withdrawal of a reservation takes effect on the date set by the withdrawing State or international organization where:

(a) That date is later than the date on which the other contracting States or international organizations received notification of it; or

⁸¹ For the commentary to this model clause, see *ibid.*, p. 240.

⁸² For the commentary to this model clause, see *ibid.*, pp. 240-241.

⁸³ For the commentary to this model clause, see *ibid.*, pp. 241-242.

⁸⁴ For the commentary to this draft guideline, see *ibid.*, pp. 242-244.

(b) The withdrawal does not add to the rights of the withdrawing State or international organization, in relation to the other contracting States or international organizations.

2.5.10 [2.5.11] Partial withdrawal of a reservation⁸⁵

The partial withdrawal of a reservation limits the legal effect of the reservation and achieves a more complete application of the provisions of the treaty, or of the treaty as a whole, to the withdrawing State or international organization.

The partial withdrawal of a reservation is subject to the same formal and procedural rules as a total withdrawal and takes effect on the same conditions.

2.5.11 [2.5.12] Effect of a partial withdrawal of a reservation⁸⁶

The partial withdrawal of a reservation modifies the legal effect of the reservation to the extent of the new formulation of the reservation. Any objection made to the reservation continues to have effect as long as its author does not withdraw it, insofar as the objection does not apply exclusively to that part of the reservation which has been withdrawn.

No objection may be made to the reservation resulting from the partial withdrawal, unless that partial withdrawal has a discriminatory effect.

2.5.12 Withdrawal of an interpretative declaration⁸⁷

An interpretative declaration may be withdrawn at any time by the authorities competent for that purpose, following the same procedure applicable to its formulation.

⁸⁵ For the commentary to this draft guideline, see *ibid.*, pp. 244-256.

⁸⁶ For the commentary to this draft guideline, see *ibid.*, pp. 256-259.

⁸⁷ For the commentary to this draft guideline, see *ibid.*, *Fifty-ninth Session, Supplement No. 10* (A/59/10), pp. 279-280.

2.5.13 Withdrawal of a conditional interpretative declaration⁸⁸

The withdrawal of a conditional interpretative declaration is governed by the rules applying to the withdrawal of reservations.

2.6.1 Definition of objections to reservations⁸⁹

“Objection” means a unilateral statement, however phrased or named, made by a State or an international organization in response to a reservation to a treaty formulated by another State or international organization, whereby the former State or organization purports to exclude or to modify the legal effects of the reservation, or to exclude the application of the treaty as a whole, in relations with the reserving State or organization.

2.6.2 Definition of objections to the late formulation or widening of the scope of a reservation⁹⁰

“Objection” may also mean a unilateral statement whereby a State or an international organization opposes the late formulation of a reservation or the widening of the scope of a reservation.

3.1 Permissible reservations⁹¹

A State or an international organization may, when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

⁸⁸ *Ibid.*, p. 280.

⁸⁹ For the commentary see *ibid.*, *Sixtieth Session, Supplement No. 10* (A/60/10), pp. 186-202.

⁹⁰ For the commentary see *ibid.*, pp. 202-203.

⁹¹ For the commentary see section C.2 below.

- (a) The reservation is prohibited by the treaty;
- (b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) In cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

3.1.1 Reservations expressly prohibited by the treaty⁹²

A reservation is expressly prohibited by the treaty if it contains a particular provision:

- (a) Prohibiting all reservations;
- (b) Prohibiting reservations to specified provisions and a reservation in question is formulated to one of such provisions;
- (c) Prohibiting certain categories of reservations and a reservation in question falls within one of such categories.

3.1.2 Definition of specified reservations⁹³

For the purposes of guideline 3.1, the expression “specified reservations” means reservations that are expressly envisaged in the treaty to certain provisions of the treaty or to the treaty as a whole with respect to certain specific aspects.

⁹² For the commentary see section C.2 below.

⁹³ For the commentary see section C.2 below.

3.1.3 Permissibility of reservations not prohibited by the treaty⁹⁴

Where the treaty prohibits the formulation of certain reservations, a reservation which is not prohibited by the treaty may be formulated by a State or an international organization only if it is not incompatible with the object and purpose of the treaty.

3.1.4 Permissibility of specified reservations⁹⁵

Where the treaty envisages the formulation of specified reservations without defining their content, a reservation may be formulated by a State or an international organization only if it is not incompatible with the object and purpose of the treaty.

⁹⁴ For the commentary see section C.2 below.

⁹⁵ For the commentary see section C.2 below.