



General Assembly

Distr.
LIMITED

A/CN.4/L.696/Add.2
21 July 2006

ENGLISH
Original: FRENCH

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

Addendum

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
B. Consideration of the topic at the present session (<i>continued</i>)		
3. Special Rapporteur's concluding remarks	54 - 68	

B. Consideration of the topic at the present session (*continued*)

3. Special Rapporteur's concluding remarks

54. Summing up the discussion, the Special Rapporteur noted that the rich debate had afforded him insights into different points of view on the major issues and produced some interesting comments that contributed constructively to the work of the Commission.

55. With regard to draft guidelines 3.1.5 and 3.1.6, he had noted that the participants in the debate had thought that they formed a whole defining the concept of the object and purpose of a treaty. The three versions of draft guideline 3.1.5 proposed in 2005¹ and 2006² could serve as a basis for a possible definition, bearing in mind, of course, the element of subjectivity inherent in the concept.

56. Since contracting States might have differing opinions on what was essential in a treaty, he was convinced that an effort should be made to identify the point of equilibrium, which he had expressed in the idea of “the general architecture” or “the balance of the treaty”. He had noted, however, that the idea had not commanded general support and that the phrase “rules, rights and obligations” had been preferred to the phrase “essential conditions” of the treaty.

57. He was alive to the argument that the “*raison d'être*” of a treaty might be difficult to identify, since a treaty could have more than one *raison d'être*, if it had more than one objective or if the parties had different expectations. On the other hand, he did not think that the word “seriously” should be deleted from the phrase “could seriously disturb”. Since a reservation by definition affected the integrity of a treaty, it was logical to suppose that only a serious impact was capable of threatening the object and purpose of the treaty.

58. With regard to draft guideline 3.1.6, he was doubtful about the wisdom of including a reference to the subsequent practice of the parties, although a majority of the members had been in favour of it. It was true that a treaty evolved over time, but it should be recalled that the

¹ A/CN.4/4/558/Add.2, annex.

² A/CN.4/572, paras. 7 and 8.

reservation was generally formulated at the start of a treaty's life when practice still had little relevance. Moreover, he was not sure that the object and purpose of a treaty could evolve over time.

59. The Special Rapporteur noted that draft guidelines 3.1.7 to 3.1.13 and the pragmatic approach they represented had generally met with support. He was not sure that he had grasped how the additional category of reservations that a member had proposed, namely reservations to provisions relating to the implementation of treaties through domestic legislation, differed from those set out in draft guideline 3.1.11; however, he was not opposed to having the Drafting Committee consider whether to add a draft guideline on that point. He was persuaded by the argument put forward by several members that the vague and general nature of a reservation could cause it to be invalid, but for reasons other than incompatibility with the object and purpose of the treaty.

60. On draft guideline 3.1.9, several members had echoed the doubts that he himself had expressed at the previous session. He agreed that the draft guideline was grounded in article 53 of the Vienna Convention, rather than article 19 (c).

61. He was not insensitive to the concern of some members that reservations to provisions relating to non-derogable rights should constitute the exception and should be strictly limited; however, that concern could be dealt with by rewording draft guideline 3.1.10 and did not call into question the underlying principle.

62. The Special Rapporteur had noted with satisfaction that no member had disputed the principle that States or international organizations had competence to assess the validity of reservations. He had listened with interest to the comments of several members on the relation between that principle and article 20 of the Vienna Convention, but he felt it would be more appropriate to take up the point when the Commission considered the effects of acceptance of and objections to reservations.

63. As to the competence of dispute settlement bodies or treaty implementation monitoring bodies to assess the validity of reservations, he recalled that he had simply taken note of practice without "conferring" (or refusing to confer) powers on such bodies, who, in his view, did not have greater competence in that area than they had in general.

64. He pointed out that all the draft guidelines on that point were in keeping with the preliminary conclusions on reservations to normative multilateral treaties including human rights treaties adopted by the Commission in 1997. He would also like to repeat his proposal to delete the word “other” in both places from the phrase “The other contacting States ... or other contracting organizations” in draft guideline 3.2, in order to accommodate the point that domestic courts might have occasion to assess the validity of reservations formulated by their own State.

65. The Drafting Committee might consider the possibility of supplementing draft guideline 3.2.4 with another specifying that monitoring bodies should take into account the assessment by contracting States of the validity of reservations.

66. With regard to draft guideline 3.3.1, he was convinced that an invalid reservation did not violate the treaty to which it referred and did not engage the responsibility of its author; if the reservation was invalid, it was null and void.

67. In conclusion, the Special Rapporteur said that it would be preferable to defer a decision on draft guidelines 3.3.2, 3.3.3 and 3.3.4 until the Commission could consider the effect of objections to and acceptance of reservations.

68. Accordingly, he proposed that the other draft guidelines discussed, namely, draft guidelines 3.1.5, 3.1.6, 3.1.7, 3.1.8, 3.1.9, 3.1.10, 3.1.11, 3.1.12, 3.1.13, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3 and 3.3.1, should be referred to the Drafting Committee.
