



## General Assembly

Distr.  
LIMITED

A/CN.4/L.705  
25 May 2007

ENGLISH  
Original: ENGLISH AND  
FRENCH

---

INTERNATIONAL LAW COMMISSION  
Fifty-ninth session  
Geneva, 7 May-8 June and 9 July-10 August 2007

### RESERVATIONS TO TREATIES

#### Titles and texts of the draft guidelines adopted by the Drafting Committee on 9, 10, 11 and 22 May 2007

##### **3.1.5 Incompatibility of a reservation with the object and purpose of the treaty**

A reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general thrust, in such a way that the reservation impairs the *raison d'être* of the treaty.

##### **3.1.6 Determination of the object and purpose of the treaty**

The object and purpose of the treaty is to be determined in good faith, taking account of the terms of the treaty in their context. Recourse may also be had in particular to the title of the treaty, the preparatory work of the treaty and the circumstances of its conclusion and, where appropriate, the subsequent practice agreed upon by the parties.

##### **3.1.7 Vague or general reservations**

A reservation shall be worded in such a way as to allow its scope to be determined, in order to assess in particular its compatibility with the object and purpose of the treaty.

### **3.1.8 Reservations to a provision reflecting a customary norm**

1. The fact that a treaty provision reflects a customary norm is a pertinent factor in assessing the validity of a reservation although it does not in itself constitute an obstacle to the formulation of the reservation to that provision.

2. A reservation to a treaty provision which reflects a customary norm does not affect the binding nature of that customary norm which shall continue to apply as such between the reserving State or international organization and other States or international organizations which are bound by that norm.

### **3.1.9 Reservations contrary to a rule of *jus cogens***

A reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law.

### **3.1.10 Reservations to provisions relating to non-derogable rights**

A State or an international organization may not formulate a reservation to a treaty provision relating to non-derogable rights unless the reservation in question is compatible with the essential rights and obligations arising out of that treaty. In assessing that compatibility, account shall be taken of the importance which the parties have conferred upon the rights at issue by making them non-derogable.

### **3.1.11 Reservations relating to internal law**

A reservation by which a State or an international organization purports to exclude or to modify the legal effect of certain provisions of a treaty or of the treaty as a whole in order to preserve the integrity of specific norms of the internal law of that State or rules of that organization may be formulated only insofar as it is compatible with the object and purpose of the treaty.

### **3.1.12 Reservations to general human rights treaties**

To assess the compatibility of a reservation with the object and purpose of a general treaty for the protection of human rights, account shall be taken of the indivisibility, interdependence and interrelatedness of the rights set out in the treaty as well as the importance that the right or provision which is the subject of the reservation has within the general thrust of the treaty, and the gravity of the impact the reservation has upon it.

### **3.1.13 Reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of the treaty**

A reservation to a treaty provision concerning dispute settlement or the monitoring of the implementation of the treaty is not, in itself, incompatible with the object and purpose of the treaty, unless:

(i) The reservation purports to exclude or modify the legal effect of a provision of the treaty essential to its *raison d'être*; or

(ii) The reservation has the effect of excluding the reserving State or international organization from a dispute settlement or treaty implementation monitoring mechanism with respect to a treaty provision that it has previously accepted, if the very purpose of the treaty is to put such a mechanism into effect.

-----